

THE SOCIAL AND POLITICAL THOUGHT OF

SIMON NICOLAS HENRI LINGUET

by

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ABSTRACT

This thesis is a reassessment of Simon Nicolas Henri Liguët, a thinker of originality and a trenchant critic of the *ancien régime* of eighteenth century France. It purports to show a unity within Liguët's thought obscured by previous conflicting interpretations which portray Liguët variously as a conservative and an apologist of absolute monarchy, a reactionary and advocate of slavery and despotism, or a strident and perspicacious critic of French society whose insights have earned for him a place in the socialist tradition. In the belief that this disagreement as to Liguët's place in the intellectual life of eighteenth century France had arisen from a tendency to abstract his thought from its context, I have examined it as a response to the inadequacies of French jurisprudence (of which his training as a barrister made him aware), to the ambitions of the parlements of France, to the physiocratic program of economic reform, to the philosophy of the enlightenment and the activities of its proselytizers. Moreover, in thus weaving Liguët's thought back into the social political, and intellectual fabric of eighteenth century France I have addressed myself, in particular, to that body of interpretation which has portrayed Liguët as a precursor of nineteenth century socialism. From this study I

have concluded that social concern is not the exclusive preserve of ideologies which assume the existence of inalienable human rights. Those elements of Linquet's thought which have prompted others to include him in the socialist tradition are compatible with the principles of absolute monarchy.

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INTRODUCTION

Simon Nicolas Henri Linguet, in his own lifetime a barrister, journalist, and controversialist of great repute, disappeared into historical oblivion soon after his death in 1794 only to reappear intermittently and then often only in passing references. Despite the generally mediocre literary quality of his writing, his defense of absolute monarchy, and his criticism of French society, in general, and of the lot of the poverty-stricken rural masses, in particular, while not unique in its content, was expressed in such a fashion that historians in the nineteenth century considered Linguet a forerunner of the socialism of their time. Linguet's contemporaries and historians of the twentieth century were more divided in their assessment. In the eighteenth century, Linguet was reviled by "liberals" as a supporter of slavery and despotism yet mistrusted by fellow conservatives as an untrustworthy ally. This ambiguity, attributable to a proclivity for expressing himself paradoxically and a tendency to employ the shibboleths of eighteenth-century liberals to express conservative views,¹ has led

¹H. Vyverberg, Historical pessimism in the French Enlightenment, (Cambridge, 1958), p. 207.

historians of this century to think of him as a socialist, a communist or as a conservative.²

This ambiguity was also indicative of a life of multifarious pursuits. As a young man in his twenties Linguet entered upon a literary career which showed signs of great promise. With the publication of his treatise, Théorie des lois civiles, which repudiated the new philosophy and the political pretensions of the French parlements, the initial interest shown toward this young writer by the literary community was soon replaced, for ideological reasons, by hostility. The littérateurs took their revenge through d'Alembert, who refused Linguet's application for membership in the Académie Française. With this act of rejection, Linguet began his life-long campaign against the philosophes and their beliefs.

The occasion for this rift with the philosophes, Théorie des lois civiles, was the product of another involvement. Linguet at twenty-eight, had entered the Ordre des Avocats of the parlement of Paris as a stagiaire or novice. The decade spent by him in the legal profession produced an awareness of the shortcomings of French jurisprudence which he closely associated with the ambitions of the parlementaires. Linguet's expulsion from the Ordre des Avocats in 1774 led

²See Kingsley Martin, French Liberal Thought in the Eighteenth Century, (New York, 1962), pp. 223, 236, 253-6, 258; Alfred Cobban, The Social Interpretation of the French Revolution (Cambridge, 1965), pp. 148-149.

immediately to a career in journalism. Between 1774 and 1792 he used his editorship of the Journal de politique et de littérature (1774-1776) and the Annales politiques, civiles, et littéraires du XVIII^e siècle (1777-1792) as a platform for his condemnation of social, judicial, and political abuses, and his attacks upon the magistrature, the philosophes and physiocrats. Often vehemence got the better part of discretion with the result that Linguet became the victim of that ministerial despotism which he had denounced. Maurepas suppressed his Journal de politique et de Littérature.³ and in conjunction with a fellow minister, the duc d'Aiguillon, had Linguet incarcerated in the Bastille from 1780 until 1782.⁴ Despite his treatment at the hands of the ministers of the king, Linguet remained a staunch supporter of the monarchy or rather that ideal of absolute monarchy from which, he felt, the French Crown had strayed in his own time.

Linguet conceived of the monarchy as an integral part of an organic whole which embraced a rigidly hierarchical social order, the church and the state. The authority of the

³ L.G. Michaud, Biographie Universelle ancien et moderne (Paris, 45 vols., 1854-1865), XXIV, 566.

⁴ See Annales politiques, civiles, et littéraires du XVIII^e siècle [Hereafter cited as Annales], XII, Memoire au roi, contenant sa reclamation actuellement pendante au parlement de Paris (London, 1786), passim; memoires sur la Bastille et la détention de l'auteur dans ce chateau royale depuis le 27 septembre 1780 jusqu' au 19 mai 1782 (London, 1783), p. 42.

monarch "selon dieu" was supported and its sovereignty limited by its close association with the authority of the church and by the fundamental laws of the realm, the sanctity of which was derivative of the divinely inspired origins of society. An apology on behalf of the institution of absolute monarchy, however, involved more than the defense of the office and the person of the reigning monarch against the political ambitions of the parlements or the authority of the church from the corrosive effects of the new philosophy. The activities of the philosophes and the parlementaires both encouraged and were indicative of a more fundamental threat to the monarchical ideal: the progressive confusion and distortion of the jurisdictional and class boundaries of a once rigidly hierarchical social order. This trend toward hierarchical disintegration had produced a worsening of the lot of the poverty-stricken rural population which represented the vast majority of the king's subjects. The further exaggeration of the economic dislocation and general deprivation of the peasantry would ultimately lead to overt class conflict and would, in conjunction with the other forces of social, ideological and political disintegration, produce revolution and the complete destruction of that social order which alone was compatible with absolute monarchy. There was therefore a unity of purpose behind Linguet's wide-ranging polemics--the defence of this concept of absolute monarchy.

This unity has hitherto been obscured by the tendency on the part of historians to place Linguet in their own context rather than in that of the eighteenth century. It is in the hope of correcting this distortion that Linguet's thought is presented in this study as a response to social and political conditions as well as to group interests and beliefs. Linguet's critique of French jurisprudence and his critique of Montesquieu's Esprit des lois as a rationale for parlementary ambitions are presented first in an explication of Linguet's treatise, Théorie des lois civiles which became the theoretical basis for his polemics against the magistrature, the physiocrats and the philosophes. This treatise is viewed as a product of Linguet's brief career as an avocat, during which he acquired a consciousness of the deficiencies of French jurisprudence with which he closely associated the ambition of the magistrature. More generally, however, Linguet's training and experience as an avocat was productive of a legalistic turn of mind which manifested itself in the extensive use of concepts of jurisdiction and property, both in the Théorie des lois civiles and in his other attacks on the magistrature, the physiocrats and the philosophes. The succeeding chapters on Linguet's differences with the physiocrats and the philosophes relate the Théorie des lois civiles to Linguet's concern for the lot of the poverty-stricken peasantry, his apologia for the social utility of the church and his rejection of the program and the philosophy of the Enlightenment. By thus weaving Linguet's thought back

into the social, political and intellectual fabric of eighteenth century France, it is hoped that the unity of Linguet's thought will become evident to the reader.

Finally, it should be noted, that in establishing the unity of Linguet's thought, this study addresses itself in particular to the proposition that Linguet was a precursor of socialism. To my knowledge, this notion first made its appearance in 1865 when Karl Marx likened Linguet to Proudhon.⁵ It did not appear again until the last decade of the nineteenth century at which time it became a firmly established myth. In 1895 André Lichtenberger published a thesis entitled Le socialisme au XVIII siècle, étude sur les écrivains français du XVIII siècle avant la Révolution which he had anticipated two years earlier with an article entitled, "Linguet socialiste,"⁶ in which Linguet is declared a socialist on the basis of his social criticism.⁷ F.A. Aulard,

⁵Karl Marx, Fredrick Engels, Selected Works, I (Moscow, 1955), 396. "Proudhon has often been compared to Rousseau. Nothing could be more mistaken. He is more like Nic. Linguet, whose Theory of Civil Law, by the way, is a very brilliant book."

⁶André Lichtenberger, "Linguet socialiste," La Révolution française, 25 (1893), 97-125.

⁷Ibid., p. 124. "C'est uniquement par le côté négatif qu'il est de l'école socialiste. Comme elle il montre l'injustice de la propriété privée, les vices de la société moderne, l'horreur du sort du quatrième Etat."

one of the examiners at Lichtenberger's oral presentation of his thesis, was of a mind to extend the term socialism to include not only those disparate and isolated expressions of social criticism and of social aspirations but the active assault upon the old regime's feudal system of property rights.⁸ A biographer of Linguet, Jean Cruppi, credited Linguet with having predicted a socialist revolution and formulated the "iron law of wages." Linguet has now become the precursor of Marx and Lassalle.⁹ Even the eminent sociologist, Emile Durkheim, labelled Linguet a socialist, upon the basis of his portrayal of the day laborer as the "heir of the slave of antiquity and of the serf of the middle ages."¹⁰ This characterization of Linguet as a socialist and the more general enthusiasm for discovering the proofs of socialism in the eighteenth century reflected an enthusiasm within the burgeoning French socialist movement to work for social change through the political institutions of the Third Republic which involved the attitude that, to varying degrees, the goals of socialism were compatible with the spirit behind these institutions. One of the most forthright expressions of this position

⁸ F.A. Aulard, B.B. "Chronique Bibliographique," La Révolution française, 29 (Juillet, 1895), 90.

⁹ Jean Cruppi, Linguet: un avocat journaliste au XVIII^e siècle (Paris, 1895), 165.

¹⁰ Emile Durkheim, Socialism, ed. introduction, Alvin W. Gouldner, trans. Charlotte Lattler (New York, 1958), 294-297.

was the conviction of Jean Jaurès, that the principles of socialism had been present in the "republican idea" since the French Revolution.¹¹

One can agree with Jaurès' analysis of socialism as an extension of republican ideals insofar as there is, in the socialist aim of improving the lot of the proletariat, an implicit affirmation of the *right* of the individual to a certain minimum level of well being. Socialism in this respect extends the theory of natural rights into the economic sphere. According to this criterion, Linguet's social criticism, did not, however, evidence even vague socialistic aspirations. Rather, his indignation at the condition of the rural day labourer in France was a logical outgrowth of a firm belief in the political mythology supporting absolute monarchy central to which was the image of the king as the benevolent father of his people.

Those who have chosen to portray Linguet as a precursor of nineteenth century socialism have, however, performed a real service. They have focused attention on a thinker who brought a highly original mind to his trenchant and perspicacious criticism of French society. Furthermore in doing so they have emphasized those elements of his thought which demonstrate both his originality and his acumen. In doing

¹¹Jean Jaurès, Oeuvres: études socialistes I (1888-1897) (Paris, 1931), 48.

so Linguet foresaw one of the major evils of the free market economy at a time when such an economy was only beginning to intrude upon the economic and social life of the ancien régime . Linguet perceived the class conflict latent in French society in the eighteenth century which would eventually erupt during the revolution which he had foreseen. Consequently, Linguet was credited with having grasped, although incompletely, what Marxists considered the operating principle behind social dynamics. For Linguet, however, neither the class struggle as a process of social change nor the transformation of society were dictated by historical necessity. On the contrary it was Linguets' conviction that class antagonisms could be contained in their latency and their intensity minimalized in a properly constituted society. Such a society would not be a utopia constructed on the ruins of the ancien régime but the ancien régime purified through the elimination of those accretions which were foreign to its nature, that is, through a return to the past. It would seem, therefore, that although the importance of these insights have been grasped the spirit which lay behind them and, consequently, their precise nature have been misunderstood. It is toward the correction of this misunderstanding that this thesis is dedicated.

CHAPTER I

LINGUET AS A CRITIC OF THE JUDICIAL SYSTEM OF FRANCE

. . . il n'y en a pas un seul (nation) qui ait des lois faites avec réflexion et pour lui; pas un qui ait même pensé à se rendre compte des conditions sous lesquelles il doit exister, contracter, tester, se marier; pas un qui s'estime assez pour se croire en état de concilier dans un Code, la Raison et l'Humanité.

Des coutumes grossières, fondées sur les caprices de l'ignorance et de la stupidité, dans la nuit de l'anarchie féodale, incompatibles avec les changemens survenus dans tous les genres, voilà nos lois nationales. Leur bizarrerie et leur multiplicité les mettent à chaque instant en contradiction les unes avec les autres, et plus encore avec le sens-commun.

L'embarras augmente tous les jours par les Ordonnances journalières, par les décisions des Tribunaux, qui, ne les abolissant jamais, et y dérogeant souvent, fournissent un ample champ aux subterfuges de la chicane; et enfin le Droit Romain, ou plutôt la compilation extravagante, faite sous, ce nom, par un Jurisconsulte pervers, et un Empereur imbécile avant conservé, en quelque pays, l'autorité d'une loi, et étant cité dans tous par les Praticiens, qui lui donnent, avec une justesse digne d'eux, le nom de Raison Ecrite, achève de rendre le désordre aussi effrayant qu'incurable. 1

In criticizing the French judicial system and magistrature, Linguet was by no means a voice crying in the wilderness. French jurists throughout the eighteenth century had maintained as a long term objective the elimination of some of

¹Simon H.N. Linguet, Annales politiques, civiles et littéraires du XVIII siècle, I, No. 1 (1777), 18.

the more barbarous and confused aspects of existing law with a view to creating a single well-ordered legal code. Very little progress was made in this direction, however, until the last generation before the Revolution when avocats² with a broader outlook than their predecessors began to agitate for reform, especially in the areas of criminal law and procedure.³ For Linguet, however, the inequities of French justice did not arise solely out of the chaos of French law, but were rather sustained and aggravated by the

²There were three offices in the legal profession below the rank of magistrate: the avocat, the notary and the proctor. The avocat, both professionally and socially, outranked the notary and proctor. It was the advocate who was acquainted with the legal system as a whole, and was particularly expert in the principles of the law. It was the task of the advocate to bring to the attention of the judge the relevant legal principles of a case, as derived from Roman law, in written briefs or mémoires. Proctors, on the other hand, served as defense attorneys in criminal cases, presenting the facts of a case to the court rather than the legal principles. In civil cases the proctor's function was the same as the notary's, that is, to act as clerc, recording legal dispositions, witnessing signatures and drafting documents to be certified.

See Philip Dawson, "The Bourgeoisie de Robe in 1789," French Historical Studies, IV (Spring, 1965), 2-6.

³W.F. Church, "The Decline of the French Jurists as Political Theorists, 1660-1789," French Historical Studies, V (Spring, 1967), 28. See also Linguet, Annales, VIII (1780), 235.

French magistrature. Furthermore, given the political ambitions of the noblesse de robe, the problem of injustice was a political as well as a judicial one.

French law was a patrimony which the parlements were moved to uphold against all revision, out of an awareness of their own vested interests in that patrimony and out of an esprit de corps which viewed all attempts to repeal a law or appeal a decision handed down by them as very much akin to lèse-majesté.⁴ Therefore, would not the extension of their power into the political realm introduce a new dimension of oppression and injustice into French society? This briefly is the association Linguet made between judicial abuses and the political pretensions of the parlements, their theoretician, Montesquieu, and his Esprit des lois, and, more generally the thèse nobiliaire.

Evils Inherent In The Judicial System

Although Linguet is naturally concerned about the effect which the barbarisms of French jurisprudence had on French society as a whole, his primary frame of reference is the welfare of the lower classes in France:

⁴Linguet, Annales, II (1777), 27.

Enfin chez nous les pauvres sont traités avec une indifférence, un dédain, et souvent sacrifiés avec une barbarie qui révoltent des coeurs sensibles. Le Manouvrier, le Domestique, et en général 'l' Inferieur,' ont toujours tort dans le premier moment. C'est sur ce préjugé défavorable qu'est dirigé l'examen qui suit la plainte, et souvent il n'y a pas d'examen du tout. La loi autorise ce déni de justice, en recommandant à ses agents d'observer de grandes distinctions dans les rigueurs préliminaires de leurs poursuites. Ils décrètent et doivent, d'après le texte des ordonnances, decreter de prise de corps, un Paysan, pour le même fait, qui voudra à peine une assignation à un Bourgeois. 5

Linguet points out that there are special courts called "Prévôtés" for judging "à mort",⁶ promptly and without appeal, mendicants and other individuals designated under the law as "gens sans aveu." In addition, there are small tribunals, presided over by procureurs, "cours de conscience" or "cours des requêtes" to deal with minor crimes or with domestic quarrels and the like. The outcome of cases brought before these courts invariably favor the master or the man of property.

⁵ It will be shown in a later chapter that Linguet maintained the welfare of the lower classes as his primary frame of reference in his dispute with the Physiocrats.

Linguet, loc. cit., p.33.

⁶ A mort refers to the passing of a sentence of death on all those who are proven by the court to be in the category of "gens sans aveu."

Le propos le plus ordinaire du Praticien metamorphosé en Juge, c'est, qu'il s'agit de si peu de chose! et en enclinant ainsi la balance au préjudice de la partie le plus en état de payer, le consciencieux procureur n'oublie pas de s'assurer ses épices (legal fees, see pp. 7-8). Les frais y sont assez considerables, et n'ont aucune proportion avec les objets de la compétence de cet étrange tribunal. 7

Similarly seignorial justice, with its distinction between "haute" "moyenne" and "basse" justice, produces inequities by arbitrarily dictating at which level of court proceedings the accused will be tried.⁸

Linguet sees in French court procedure another source of inequity, particularly for those at the lower end of the social scale. Rather than being judged by one's peers as is the case in the British jury system, a Frenchman has the misfortune of being judged by those whose profession it is to judge others and who, consequently, become hardened to the implications of the judgements they pass.⁹ Linguet contrasts the merits of the British jury system with its absence in criminal procedure of France:

C'est ici qu'il est bien permis de regretter l'usage admirable de la procédure Anglaise, qui n'est, à ce qui je crois, conservé qu'en Angleterre, et qui suffirait seul pour assurer à l'administration de cette fle un rang distingué dans l'estime du genre humaine. Tout l'instruction se fait en public; les spectateurs

⁷ Ibid., pp. 34-35.

⁸ Simon Linguet, La France plus qu'anglais (Brussels, 1788), pp. 136-137.

⁹ This would especially be true in cases involving journaliers and poor tenant farmers since the magistrates were seigneurs and nobles. See Simon Linguet, Entretien de M. Linguet et de M. Bergasse (Brussels, 1788), p. 41. See also, Linguet, Annales, II, 28.

admis à ce combat de preuves et de justifications,
qui va enlever ou rendre un homme à la Société, jug-
ent et les témoins et l'accusé, et les Juges eux-
mêmes 10

While he does not approve of the indiscriminate classification of crimes, both minor and major, as capital offenses, Linguet, however, cannot help but admire what he sees as the scrupulous nature with which judicial proceedings are conducted. Both the crown and the defense have to present their evidence in the presence "d'un auditoire nombreux et impartiale qui les apprécie."¹¹ To this he opposes the "clandestinité qui flétrit en France et ailleurs, la procédure criminelle, et donne aux arrêts les plus équitables la forme d'un assassinat."¹² In France judges are required to make public the nature of the crime upon which they have passed sentence. The safeguarding of justice is only illusory since the evidence upon which judgement is handed down need not be published.

The public nature of judicial proceedings is further enhanced in Britain by the freedom of the press enjoyed in that island. While in Britain the discussion of the evidence and judgement are published in newspapers, in France, all the public has to go on are a confusing array of mémoires, or legal briefs, each one seeking to disprove its predecessor. With the essential facts of a case confused and distorted by

¹⁰ Linguet, Annales, I, 177.

¹¹ Ibid.

¹² Ibid.

the polemics of the mémoires, it is made easier for the parlement to suppress an isolated plea on behalf of an individual condemned by that body.¹³

In summary,

Les Grecs représentaient la justice avec un bandeau: en France elle en a bien un aussi; mais c'est sur les yeux des spectateurs qu'elle l'applique. 14

French justice is also blind to the severe financial strain it places upon those who come before it; especially it is hard on the poor. In France, unlike in England, tribunals are immobile and therefore trials can be extremely expensive for those who have to come a great distance to the seat of the court. This is especially the case in the jurisdiction of the parlement of Paris which is so large that people could be drawn to it from as far away as La Rochelle and Lyon.¹⁵ To make the situation even more absurd the parlements even deal with petty crimes and especially those cases which had been appealed, so that "Un simple appel était dans les provinces une espèce de lettre d'exil pour les deux plaideurs qu'il commettait ensemble de nouveau" ¹⁶

In the case of decisions being appealed to a higher court, the inconvenience of having to travel to the seat of

¹³Ibid., 178-179.

¹⁴Ibid., 178.

¹⁵Linguet, Annales, II, 30.

¹⁶Linguet, Annales, XIV (1788), 176.

the appellate court is only one of the problems involved in this aspect of French justice. In contrast to the speed with which criminal cases are concluded and the victim dispatched, is the plodding and complicated procedure of civil cases:

Mais comme tout change, quand c'est un innocent qui poursuit la réparation d'une injustice. D'abord sa réclamation exige un examen: il faut instruire, il faut discuter, peser de nouveau des preuves déjà admises. Notre terrible procédure apporte, à cette révision, des obstacles sans nombre. Le préjugé, le pouvoir, sont sur leurs gardes: pour vaincre l'un, pour désarmer l'autre, il faut des dépenses effrayantes, et un tems prodigieux: or, la patience et la générosité ne vont pas toujours avec le crédit. 17

The financial resources of the litigant are strained not only by the involved nature of a civil case but also by the excessive number of professional fees for which the litigant, if successful, was responsible. Legal fees had to be paid not only to the avocat and the procureur but to the magistrate and the secrétaires, as well.

Originally, judgements cost the parties involved nothing since the magistrature was paid by the King. In the reign of Charles VII, however, this financial support was withdrawn and succeeding monarchs were only too glad to stand by this arrangement. Before Charles VII, it had been the

¹⁷ Simon Linguet, Journal de politique et de littérature, III (1775), 491. [Hereafter cited as Journal].

custom for the winning party in a civil suit to present the magistrates with a small gift of spices, not as a tribute, but as a mark of respect. Following the reign of Charles VII, however, "les épices" became transformed into a monetary tribute paid by the winning party. There were no limits placed on this tax, nor any scale worked out for the different types of proceedings with the result that by the eighteenth century these levies had become exorbitant. Furthermore, since the arrêt of the successful litigant was not delivered into his hands until after he had paid the levy, this custom often came to spell ruination for this individual, or, in the case of non-payment of the fee, an unresolved case.¹⁸

Like the magistrates, the secrétaires too had originally been in the employ of the government. Previously called clerks, their offices had been established in order to assist the judges in studying the deluge of mémoires and related materials presented by the avocats and procureurs in a case. As secrétaires, however, they ceased to be merely the employees of the magistrates and became the collaborators of those who wrote up the report submitted to the magistrate; thus becoming judges in their own right. Like the magistrates, they too ceased being paid by the government and instead received their fees from those who came before the court.

¹⁸ Linguet, Annales, VIII (1780), 232-233.

¹⁹ Ibid., pp. 234-235.

Therefore, if either party in a civil case entertained any hope of success, he found he had to pay the secrétaires, who thus acted as their patrons before the court.¹⁹

While civil jurisprudence, for Linguet, is chaotic, plodding and expensive, criminal jurisprudence is barbarous and degrading. Court procedure degrades the defendant by requiring him to sit before his judges on a small three-legged stool referred to as "la sellette." To this indignity is added the excruciating anguish of execution, whether on the gibet, the wheel or the stake.²⁰

Although barbarous in its present form, capital punishment per se should not be abolished, however. In the first place, the cost of maintaining prisoners who otherwise would have been executed, Linguet felt, would be placing an unnecessary burden on French society.²¹ More importantly, however, the abolition of capital punishment would open the way to a state of affairs where the wealthy and the noble could commit any crime with the knowledge that their influence in high places would secure the annulment of any sentence that might be brought down upon them. Execution of the condemned immediately following judgement would eliminate the possibility

²⁰ Linguet, La France plus qu'anglais, p. 57. Since Linguet made this particular criticism of criminal law in 1778, no mention is made of the question préparatoire, torture for the purpose of extracting a confession, which was abolished in 1780. Nor is mention made of the question préalable, the routine torture of the condemned with a view to obtaining the names of accomplices, which, in turn, was abolished in 1788. See Alfred Cobban, A History of Modern France (2nd edition, middlesex, 1961), I, 110.

of such influence being brought to bear on a case.²²

What is more, Linguet points out ironically that the abolition of capital punishment would be an imposition on the poor: "Ce sont les pauvres qu'il faudrait forcer de vivre, pour les punir; ce sont les riches dont il faudrait proscrire la tête, quand ils se seraient exposés au châtement."²³ Again, justice is a marketable commodity which favors those who can pay for it:

Nous avons, dans nos Institutions politiques une multitude de délits graves, dont on se rachette par une contribution pécuniaire. La mort n'y est que l'équivalent d'une amende: la Justice ne boit le sang que du malheureux qui ne peut tromper sa soif par l'argent. Voilà, Monsieur, un genre de la loi contre lequel l'humanité et la politique doivent également tonner. 24

The Magistrature

French jurisprudence, with its many abuses, has for Linguet, one overlying characteristic--a contempt for those possessing neither noble status nor wealth. This is only to

²¹Linguet, Journal, III, 487.

²²Ibid., p. 488.

²³Ibid., p. 489.

²⁴Ibid., p. 490.

be expected given the nature of French society²⁵ and of the custodians of the law, the parlements of France. It is the latter, motivated by a desire to maintain their vested interests and by a highly developed esprit de corps, which thwart attempts at legal reform and compound the abuses of French law.

If we accept Linguet's proposition that French jurisprudence favored nobility and wealth, the magistrature did, indeed, have a large stake in the existing body of law. The magistrature had emerged from the reign of Louis XIV a powerful institution, thoroughly entrenched in its privileges. An edict of 1644 had conferred perfect nobility (immediate assumption of noble status) on all présidents, conseillers, gens du roi, and greffiers-en-chef, of the parlement of Paris. Subsequent edicts extended these privileges to the other sovereign courts of France.²⁶ As a result 81.5 per cent of the French magistrature was classified as being noble in 1715.²⁷

Although their claim to equal nobility was beyond question, the parlementaires had, however, by no means been fully integrated socially into the nobility. At the beginning

²⁵Linguet's theory on the origin and nature of society will be dealt with in the next chapter.

²⁶Franklin L. Ford, Robe and Sword: the Regrouping of the French Aristocracy after Louis XIV, (Cambridge, Mass., 1953) Paperback edition, 1965, pp. 59-63.

²⁷Francois Bluche, Les Magistrats du parlement de Paris au XVIII^e siècle (1715-1771) (Paris, 1960), p. 82.

of the century, they were looked upon by the noblesse d'epée as being rôturiers, and, therefore, still very much socially inferior.²⁸ While this assertion had an obvious basis in fact during the Regency, by mid-century a sufficient transformation had taken place within the robe for the differences between the robe and sword to appear much less obvious. Indeed, the noble de robe, in his manners and attitudes, was almost indistinguishable from his brother of the sword; the old bourgeois--Jansenist characteristics of austerity, industry and thrift had largely been superseded by those of "elegance, social hauteur and a feudalized conception of privilege."²⁹

This is not to say, however, that the Robe was completely assimilated into the society of the noblesse d'epée:

Le rapprochement ne va pas jusqu'à l'intimité, ni même jusqu'à la mutuelle estime. Les gens de robe n'estime pas les gens de cour, et les dames de la noblesse d'épée reprochent aux dames de la magistrature de n'avoir pas l'usage du monde. Les magistrats vivent surtout entr'eux et leur commerce entretient leur orgueil. 30

Thus, the noblesse de robe never felt entirely secure in the possession of their noble status, despite the sense of unity which encompassed the whole of the second estate in the

²⁸ Ibid., pp. 136-138. See also Ford, op. cit., p. 72.

²⁹ Ford, op. cit., p. 75. This process of integration had been achieved a) by the robe's development as a landed aristocracy; b) by integration into the top echelons of the army c) through common membership in the academies and salons throughout France; d) through intermarriage between robe and sword. For examples, see Bluche, op. cit., pp. 130, 216, 319 and Ford, op. cit., pp. 68, 204.

latter half of the century. As parvenus they were overanxious to demonstrate their oneness with the noblesse d'epée. This often led to the assumption of an excessively hardhearted attitude by magistrates toward those beneath them socially:

— En général, nos vieux Serrateurs sont deux, d'un d'abord difficile; ils rebutent les pauvres et les malheureux par un air de hauteur et d'importance, qui, souvent même, est éloigné du caractère.³¹

For Linguet, however, this haughty demeanour was entirely in keeping with the treatment which the noblesse de robe meted out to their social inferiors.

The parlementaires were staunch supporters of a social and judicial order which reinforced and affirmed their high social rank and the ownership of offices wherein this rank resided. Linguet, for example, points out that seigneurial justice is upheld by the magistrature as " . . . un patrimoine foncier, comme une propriété sacrée; et elle n'a pas tort, puisque ce sont tout ces séries de juridictions enchêvtrées les unes dans les autres, qui sont sa force."³² Since the

³⁰ H. Carré and P. Sagnac, Le règne de Louis XVI (1774-1789). Tome IX, Histoire de la France, ed. E. Lavisse, (Paris, 1911), 187.

³¹ Molivas Saint-Ayr, Tableau du siècle, p. 35, cited in Bluche, op. cit., p. 309.

³² Linguet, La France plus qu'anglais, p. 138.

cost of judicial offices is so prohibitive,³³ the magistrature are inclined to maximize the returns from their offices.³⁴

Venality of judicial offices also encourages the retention of offices and tribunals which have ceased to serve any useful function.³⁵ This superfluity encourages exorbitant professional fees and court costs and promotes those jurisdictional jealousies arising out of both function and area, which victimize those who come before the courts. Linguet points out that in France a provincial court like the Conseil Provincial of Artois can pass judgement on a criminal case, as a sovereign court, with no appeal, while all its judgements in civil cases can be appealed to Paris. Since these courts find the review of their decisions distasteful, they naturally avail themselves of that legal provision which leaves it to the provincial tribunals to decide on a formula for the classification of cases as either civil or criminal.

. . . et comme c'est à la sévérité qu'est attachée pour elles l'indépendance, il doit s'y former peu à peu un esprit de corps, qui ayant commencé par la rigueur, peut devenir de la cruauté et enfin de l'injustice 36

³³ Linguet, Observations sur le nouvel arrêt du parlement de Paris, en date du 5 décembre, 1788, (1789), p. 21.

The cost of judicial office even then was only a small part of the expense involved in becoming a magistrate. From the day one entered law school to the day one assumed judicial office, each small progression was achieved only after payment of a fee to some official.

³⁴ See above pp. 7-8 for a discussion of the professional fees of the magistrature.

The parlements also would not tolerate any alteration of the boundaries of their areas of jurisdiction.³⁷ This attitude grew, in part, out of a certain parochialism:

Le Royaume de France est composé, comme ses voisins, de pièces rapportées, de provinces soudées les uns après les autres à ce grand Corps. Plusieurs d'entr'elles, au moment de l'union, ont stipulé soigneusement la conservation de leurs vieux usages, de leurs vieilles loix, c'est-à-dire, de leurs vieux abus, et le droit funeste de résister à des réformes utiles. 38

The French judiciary of the eighteenth century was made up of an agglomeration of thirty-one sovereign courts (in addition to the large number of small local courts referred to variously as bailliages or sénéchausées) whose jurisdictional

³⁵Linguet, Annales, XIV, 174. "La création des Tribunaux n'ayant été jusqu'ici en France, à la honte du Gouvernement, qu'une speculation fiscale, ou le droit de juger se vendait, et s'acquerrait pour de l'argent, et le désir de faciliter le débit de cette étrange marchandise ayant fait attacher à sa possession des émolumens avec des honneurs, proportionnés non pas à la fatigue, ou à l'importance des fonctions, mais au prix déboursé pour en acquérir le titre, les Tribunaux vraiment utiles, chargés d'un Ministère laborieux étaient rares, et l'on avait accumulé avec une indiscretion poussée jusqu'au ridicule ceux dont la multiplicité ruineuse aux peuples, embarrassante pour le Government, était à-la-fois l'opprobre et le fléau de la Nation, le lit de justice du 8 mai commence à remédier à cet abus.

³⁶Linguet, Annales, II, 32-33.

³⁷Linguet, Annales, IV (1778), 326.

³⁸Ibid., p. 335.

interrelationships can only be described as chaotic. These sovereign courts in no way constituted a rationally-organized system. They represented rather the random delegations of royal authority over hundreds of years. Jurisdictional obscurity and duplication was the rule rather than exception, while in many instances, courts originally possessing extensive powers had suffered the ravages of time and the redelegation of royal authority until little more was left of their jurisdiction than the dried out theoretical husk divested of most of its meaning.³⁹ Since they had all originally been purchased, such jurisdictions were still considered worth upholding, much to the detriment of jurisdictional clarity.⁴⁰

This jurisdictional wrangling was also motivated, to a very large extent, by the esprit de corps which had developed within the various sovereign courts. For Linguet this esprit de corps is the paramount shortcoming of the parlements of France. It is an esprit de corps which involves a conception of the Judiciary as

. . . une espèce de sacerdoce, dont certaines compagnies sont revêtus par le Souverain: il faut des provisions, des patentes en forme, pour l'exercer. C'est un ministre exclusif, auquel on ne peut pas participer, sans avoir reçu cette consécration. Tout homme qui oseroit l'usurper sans ce préliminaire, deviendrait lui - même coupable d'une espèce de crime de Lèze-Majesté. 41

³⁹ Ford, op. cit., pp. 51-52.

⁴⁰ Linguet, Annales, XIV, 175. These thirty-one sovereign courts included fifteen parlements, three of which were actually provincial councils, nine chambres des comptes, four cours des aides, two cours des monnaies and the Grand Conseil. See Ford, op. cit., pp. 37-44.

There is in this attitude the belief that the laws do not have an existence independent of the magistrature. As a result, the parlements resist very poorly the temptation of arbitrary power: conseillers quite readily rationalize that passing judgements according to the exact letter of the law is the obligation of subaltern judges and that the privilege of the parlement is to judge according to conscience.⁴² It is this same esprit de corps which brings the parlements inflexibly to uphold any decision passed down by them, no matter how arbitrary, even if it overruled by the king.⁴³ They do this in order to maintain the fiction of their infallibility and to prevent their prerogatives from being questioned:

⁴¹Linguet, Annales, II, 27.

⁴²Linguet, Entretien de M. Linguet et de M. Bergasse (Brussels, 1788), p. 23.

⁴³Linguet, Annales, IV, 336. A classic case of this refusal of the magistrature to allow previous judgements to be questioned and one in which Linguet took a lively interest, was the Lally-Tollendal Affair. In 1766 Lally-Tollendal had been executed for treason. In 1777 his son approached the Conseil du Roi with a request to have his father rehabilitated. The parlements of Rouen and Paris in the end succeeded in having the original judgement upheld. Many of Linguet's criticisms of the magistrature were made as part of his discussion of the case in the Annales. For details of the Affair see Annales, VIII, 163-185, 344-352, 492-498, 498-502. See also H. Carré and P. Sagnac, op. cit., 193-194.

La robe n'a peut-être pas la cruelle vertu de la chemise de Nessus; elle n'enflamme pas les passions, mais elle ne les éteint pas non plus. Or, une des plus furieuses, des plus intraitables, dans tout ce qui s'appelle compagnie, c'est le désir de maintenir leurs prerogatives et de ne pas voire détruire leur ouvrage Les Juges s'indignent contre une demande qui semble les accuser de faiblesse ou de corruption. Ils appellent révolte le cri plaintif que pousse leur victime, du fonds du gouffre où ils l'ont plongée: ils voient en elle un dénonciateur qui cherche à les flétrir, et qu'il faut perdre pour s'épargner de la honte ou des remords: les plus vertueux même ne sont pas à l'abri de cette effrayante surprise de l'esprit de corps: ils sont souvent inflexibles, en raison de ce que leurs intentions ont été plus droites: ils ne peuvent soutenir l'idée qu'on les croira capables de ne s'être pas défiés d'une erreur, ou d'avoir concouru à une iniquité; ils travaillent à en assurer le triomphe pour s'épargner le désagrement de la voir rétractée; l'expérience ne fournit à cet égard que de trop affreuses démonstrations. 44

In addition to their noble status, wealth and esprit de corps, the unique relationship of the parlementaires to the royal administration conspires to make a mockery out of these pretensions of judicial infallibility. The magistrate in France, unlike his counterpart in other countries, does not completely associate his status and therefore his self-esteem with his judicial functions. On the contrary,

. . . un magistrat ne fait précisément ce qu'il est: sa classe est une pépinière qui fournit des sujets presque à toutes les autres. Il n'y a point de 'Licencié ès Loix', un peu riche, qui dès qu'il s'est harnaché d'une robe dans une Cour Souveraine, ne vise à devenir Me. des Requêtes, Intendant, Contrôleur-Général, Ministre, etc. Son ambition est justifiée par des exemples journaliers 45

⁴⁴Linguet, Journal, III, 491-492. ⁴⁵Linguet, Annales, VIII, 494.

This situation had developed as a result of the terribly slow process of advancement in the parlements and especially in the parlement of Paris. Like baroque architecture, the hierarchy of the parlement of Paris was imposing in its intricacy. Directly below the king, the chancellor and the garde des sceaux, who were honorific heads of the parlement, was the first président who presided over the Grand'Chambre, the highest court within the parlement. Directly below him and acting as his assistants were the nine présidents à mortier. Below these, in turn, were the group of thirty-three councillors (twenty-one laics and twelve cléricks) who constituted the deliberative element in court proceedings.

Going beyond the Grand'Chambre there were the présidents of the chambres des enquêtes and requêtes, numbering three to each court. These présidents, it should be pointed out, were of inferior rank to the présidents à mortier of the Grand'Chambre. Under these three présidents in each court were councillors, numbering thirty-two for each chambre des enquêtes and from ten to twelve for each chambre des requêtes.

Attached to the parlement, but, theoretically not an integral part of that company were the gens du roi (often referred to as the parquet) consisting of a procureur-général and from two to four avocats-généraux. It was their task to represent the king's interests to parlement. As the eighteenth century wore on, however, those holding these offices were less often appointees of the king, since these offices became the private

preserve of the great dynasties of the magistrature. In terms of parliamentary rank, the gens du roi were directly beneath the présidents à mortier.⁴⁶

A young magistrate might enter one of the lower courts in the Palais de Justice as a conseiller, where he would have to wait up to twenty-five years before entering the Grand'Chambre.⁴⁷ After ten years of service in the lower courts, he would be eligible for the position of président des enquêtes or requêtes. Similarly, the conseiller of the Grand'Chambre had to serve ten years before becoming eligible for the position of président à mortier. Furthermore, an officer in one of the lower courts in parlement, once having served the required period, would have to wait his turn as vacancies in the Grand'Chambre were filled in order of seniority of office.⁴⁸ Therefore, while there was one category of magistrate who was sustained through this process by "l'amour de son état", there was that other category which saw the parlement as a place from which to launch a career in the administration.⁴⁹ And, as Linguet pointed out it was quite common for a young robin to seek the position of maître des requêtes on the Conseil des Parties (part of the

⁴⁶ See Bluche, op. cit., p. 49; and Jean Egret, "L'Aristocratie parlementaire française à la fin de l'ancien régime," Revue Historique, CCVII (juillet-septembre, 1952), 4.

⁴⁷ These waiting periods could be and were shortened by the grace of the king. See Bluche, op. cit., p. 65.

⁴⁸ Ibid., pp. 64-65.

⁴⁹ Ibid., p. 62.

Conseil d'Etat) and rise to the position of intendant and, eventually, of conseiller d'état ⁵⁰--a process taking, on the average, twenty years.⁵¹

This involvement of magistrates beyond the confines of parlement and their strict judicial role renders it impossible, for Linguet, that objectivity and personal detachment which is absolutely necessary for the equitable dispensation of justice. A judgement is based on more than just the evidence in a given case. In judicial proceedings outside of France, the judge is instructed by both parties, hands down a verdict and the public accepts this verdict without defiance. In France, however, it is not the judges which the parties of a given case seek to persuade, it is the public:

. . . les Juges on ne cherche qu'à les séduire: c'est par des manoeuvres qu'on les approche: c'est par des importunités, par des artifices, quelquefois par des moyens encore plus criminels qu'on les gagne: tandis qu'on plaide avec de gros mémoires au tribunal des lectures, qui deviennent ensuite aussi bavarder que les Avocats, on cabale avec des femmes, des directeurs, des confrères, auprès des Magistrats qui ne lisent point, mais qui jugent: on remue les cabinets où se rédige dans les ténèbres d'arrêt qui doit se proclamer à l'Audience avec solennité 52

Again, justice goes to those who have influence through wealth and social standing.

⁵⁰ Linguet, Annales, VIII, 494.

⁵¹ Bluche, op. cit., pp. 65-67.

⁵² Linguet, Annales, VIII, 492-493.

The Palais de Justice: the Context of Linguet's
Critique of French Jurisprudence

Although Linguet criticized the parlementaires' abuse of their judicial role on several points, it was his criticism of the esprit de corps of the parlements which he stressed most persistently. Indeed it is a theme which pervades the larger part of Linguet's writings: the esprit de corps of the parlements is put forth as an argument against the thèse nobiliaire and Montesquieu's theory of the separation of powers; it is used also to castigate the philosophes. That it was considered by Linguet to be such a fundamental shortcoming of the French judicial system was due, in part, to the fact that it was that judicial evil which had had the most decisive effect on Linguet's personal life. It was the esprit de corps of the Ordre des Avocats of the parlement of Paris that Linguet had observed and resisted for eleven years, and which he held as chiefly responsible for his expulsion from that Order.⁵³

Like that of the parlements, the esprit de corps of the Ordre des Avocats was very closely related to its members' social and professional status, their social and professional

⁵³ The Ordre des Avocats of the parlement of Paris numbered six hundred members who were evenly distributed between twelve bancs or benches. At the head of each bench was one of the elder and respected members of the bar, whose duties included the supervision of the stagiaires, or apprenticing advocates. The director and head of the Ordre was the batonnier, a magistrate and robe noble, whose task it was to represent the corporate will of the Ordre before the magistrature of the parlement, usually at the head of a delegation made up of the

ambitions, and to the role which this membership ascribed to itself. In short, this esprit de corps was a function of the image the group had of itself. This image had developed with the role and status of the avocat both in parlement and in society at large. By the time Linguet joined the bar, avocats generally occupied one of the highest social positions in the third estate. Within the hierarchy of the judiciary, at both the level of the parlement and the bailliage, only the magistrate outranked him. In the parlement of Paris, the position of avocat neither conferred nor excluded nobility.⁵⁴

The high social and professional status attained by the avocats reflected the changes which had been taking place since the beginning of the eighteenth century in the avocats' position in the magistrature, and, more generally, in the avocat's role in society. At the beginning of the century, rigid class divisions separated the magistrature from the avocats who were only " . . . roturiers, des hommes du Tiers-Etat, sans fortune, exerçant une profession qui n'y mène quère."⁵⁵ Later in the century, closer professional and business ties and even

⁵³(continued) Order's senior members. See Jean Cruppi, Un Avocat journaliste au XVIII siècle: Linguet (Paris, 1895), p. 52; and Baron Francis Delbeke, L'action politique et sociale des avocats au XVIII siècle: Leur part dans la préparation de la Revolution française. (Louvain, 1927), pp. 68-82.

⁵⁴Ibid., p. 109. see also Philip Dawson, op. cit., p. 11.

⁵⁵Delbeke, op. cit., p. 92.

bonds of friendship and marriage existed between magistrate and advocate.⁵⁶

This change can be attributed to the emergence of two trends by the third decade of the eighteenth century which would continue to develop during the rest of the ancien régime: a) a less submissive and more independent attitude towards the magistrature on the part of the avocats; b) the emergence of avocats as public figures as a result of the growing importance of public opinion and of the men of letters who influenced this opinion.⁵⁷ This especially became the case towards the middle of the century when it became à la mode in the salons and academies to discuss practical matters of agriculture, finance, the laws and administration,⁵⁸ that is, in areas where the advocates' legal expertise and broad professional background would prove most helpful.

While avocats may have enthusiastically participated in the salon culture of France, serious involvement in the world of letters was frowned upon. An avocat of the parlement of Paris might seek diversion in the world of letters or draw upon contemporary currents of thought in literature in the practice of his profession, but he could not seriously culti-

⁵⁶ Ibid., p. 122.

⁵⁷ Ibid., pp. 96-104. See also Linguet, Annales II, 174-176.

⁵⁸ Voltaire, Dictionnaire philosophique, II, 11; or XVIII of Oeuvres complètes (Paris, 1878) 11.

vate his literary talents without running afoul of the Ordre des Avocats, since the Ordre staunchly maintained the incompatibility of the profession of avocat with any other.⁵⁹

The Ordre des Avocats imposed, therefore, a very strictly confined and conservative conception of the avocat's role on its membership. This role, moreover, was symptomatic of the essential nature of the body, rendered conservative by the training of its personnel and by its organizational structure. The Faculté de Droit de Paris and similar schools throughout France still placed primary emphasis on the study of Roman law without concerning themselves in any way with the current philosophy of natural right⁶⁰ (which was essentially a philosophy of reform and change).⁶¹ Having secured a Licencée es Lois, after three years of study, the aspirant entered the Ordre des Avocats as a stagiaire and for the next four years served an apprenticeship. Success at the bar required that this apprenticeship be served under the supervision of one of its prominent and respected numbers, although it would seem that this procedure had not yet been formalized.⁶² By attach-

⁵⁹Delbeke, op. cit., p. 86. See also Linguet, Appel à la posterité, ou recueil des mémoires et plaidoyers de M. Linguet, pour lui-même, contre la communauté des avocats du parlement de Paris (n.p.) (1779), pp. 124-125.

⁶⁰W.F. Church, op. cit., p. 33.

⁶¹It is a philosophy of change by virtue of the fact that it posits the existence of the individual possessing certain rights, beyond the confines of society. These rights became external standards to be applied to society. These standards serve as goals as well since society must be brought into conformity with them. Linguet was no partisan of natural rights, See Chapter II, p. 3.

ing himself to the escutcheon of one of these venerables, an avocat would, according to Linguet, devote the talent and energy of his youth to bolster the fading image of the older patron.⁶³

One of the primary elements of this education at this time were the conférences de doctrine during which young avocats were examined by the head of their respective bancs. A "certificate d'assiduité" had to be secured from the leader of each banc, indicating that the stagiaire had performed satisfactorily at these conférences before he would be admitted to the bar.⁶⁴

Admittance to the bar did not mean an end to the tyranny exercised by the senior advocates. They exerted control over their confrères by means of the right of radiation du tableau. The leading avocats were thus able to impose unity within the Order by having a dissenting or recalcitrant member expelled from the bar. A small group of the leading avocats could achieve this without consulting the membership at large by constituting itself a "communauté"--a status which gave it the right as a legal body to pass an arrêt of expulsion.⁶⁵

⁶²Delbeke, op. cit., pp. 73-74. See also Linguet, Appel à la posterité, p. 172.

⁶³Ibid., p. 172.

⁶⁴Delbeke, op. cit., pp. 74-75.

⁶⁵Linguet, Appel à la posterité, p. 8.

The whole structure of the Ordre des Avocats, therefore, encouraged the predominance of the outlook of its senior tribunes--an outlook rendered conservative by their station in the profession and society at large. Of well-to-do bourgeois background, the successful avocat was less moved than others to urge thoroughgoing political and social change as long as his standing within his profession remained secure and class lines remained flexible enough to allow him to live nobly and to form associations with the noblesse de robe.

Because of this outlook, the Ordre des Avocats (dominated by its senior members,) while having a more independent attitude towards the magistrature, still conceived of its existence as closely linked with that of the parlement of Paris. The Ordre was, therefore, not about to challenge seriously the position of the noblesse de robe on the matter of legal reforms. The inability of the senior members of the Ordre des Avocats to conceive of a role for themselves which did not include the magistrature of the parlement of Paris was made quite clear in 1771 when chancellor Maupeou exiled the magistrature of the parlement of Paris to the provinces and divided the jurisdiction of the parlement between six newly formed courts appointed by the king.⁶⁶ At this time the Ordre des Avocats split into two camps: over five hundred of the Order's membership,⁶⁷ the avocats "souillés", accepted

⁶⁶ These courts were subsidized by the government and therefore dispensed justice without charge.

⁶⁷ Ibid., p. 177.

the Maupeou regime and took up positions in the new court for the Paris region, while the avocats "vierges" or "romaines" stood behind the magistrature of the parlement of Paris and refused to take a place in the new tribunal.⁶⁸

This split in the Ordre, on the one hand, can be seen as a natural outcome of that growing spirit of independence within the Ordre des Avocats. It must be remembered, however, that the "coup Maupeou" was more than simply a decisive move in the power struggle between robe and crown; it represented a significant judicial reform. It meant the elimination of venal magistratutorial offices above the level of the bailliage, in a jurisdictional area encompassing one-third of the realm. It also meant the end of those inequities which resulted from the high cost of court fees and from inconveniences imposed by an excessively large jurisdictional area. It would not be unreasonable to assume, therefore, that among the five hundred-odd avocats "souillés," there were those whose decision to support the Maupeou regime involved more than a mere passive acceptance of circumstances. Certainly those young avocats who entered the Grand'Chambre after 1771 did not accept these judicial abuses which reappeared following the restitution of the parlement of Paris in 1774. Consequently,

⁶⁸H. Carré and P. Sagnac, op. cit., p. 19.

considerable friction developed between these younger advocates and the more senior members of the Order who accepted the good old ways.⁶⁹ It was this group of young advocates who would vigorously agitate for those judicial reforms which had hitherto been suggested with so little force by jurisconsultants throughout the eighteenth century.

This new breed of advocate was more critical of the existing judicial order not simply by virtue of the fact that their formative years in the Palais de Justice had coincided with Maupeou's new judicial regime. They felt more at liberty to criticize the judicial order since they had a much broader conception of their role, as well as ambitions which transcended the narrow confines of the legal profession.⁷⁰ They had, in all likelihood, been attracted to the vocation of avocat, in the first place, because they conceived of the avocat's

⁶⁹Linguet, Annales, VIII, 235.

⁷⁰C. Monselet, Les oubliées et les dédaignées: figures de la fin du XVIII^e siècle (Paris, 1876), p. 1. "Il y a visiblement; dans la seconde moitié du dix-huitième siècle, une bande d'hommes auxquelles Voltaire semble avoir ouvert le chemin de l'universalité; hommes bons à tout faire et à tout dire, aventuriers des lettres, des sciences, de la politique, et de l'industrie, gens à qui le hasard ou les circonstances improvisent des vocations. Signalez cette bande active et extraordinairement intelligente, c'est nommer Linguet, Beaumarchais, Mercier, Brissot--quelques autres encore, mais beaucoup plus bas placés. Le bruit que font ces hommes aux approches de la Révolution s'étend de tous parts, et leur influence sur les événements est d'autant plus considérable qu'elle n'exerce sous la pression des censeurs, du fond de l'exil, au même derrière les portes des prisons d'Etat "

role as a multipurpose one, embracing literature and politics as well as jurisprudence. The rise of leading avocats to public prominence and the increasing activity of the legal profession in the salon culture of France in the last half of the eighteenth century would have tended to encourage this belief. For the aspiring man of letters, might not the way to public acclaim seem more certain by way of well-written mémoire and the Palais de Justice than the Eloge and the académie française? With such ambitions, the realities of the legal profession must have seemed overly-constricting for this new generation of avocats of whom Linguet was in the forefront.

This narrow professionalism and conservative outlook which characterized the Ordre des Avocats had been challenged prior to the "coup Maupeou", however. Indeed, one of the charges laid against Linguet in the proceedings leading to his initial expulsion from the Ordre in February of 1774 was that he had turned the bar into a gladiatorial arena. Linguet, however, denied that he had changed the tone of the bar, observing that it had already been in an uproar when he became a member.⁷¹ Nevertheless, Linguet did stand out as a disruptive element in the Ordre des Avocats. His impetuosity and his ambition to carve out a substantial reputation for

⁷¹Linguet, Appel à la posterité, pp. 205-206.

himself neither rendered him particularly adaptable to the traditional ways of the bar nor endeared him to the bar's foremost tribunes.⁷² Bypassing that period of apprenticeship which had all but been made mandatory by tradition, Linguet proceeded to build-up a truly prodigious record of courtroom victories in the space of a very few years.⁷³

Indeed, as a relative newcomer to the bar, Linguet went so far as to pit himself, professionally, against Gerbier, one of the most respected and influential advocates at the bar,⁷⁴ in the defense of the comtesse de Bethune.⁷⁵ It was

⁷²Ibid., p. 471. Linguet cites the Ordre's formal argument against his flamboyant approach to the duties of the avocat: "Quand on se connaît une imagination trop facile à s'enflammer, et à éprouver, des passions étrangères, ne doit-on pas s'obstenir, des fonctions d'un état qui exige une circonspection sévère "

⁷³Linguet, Journal, I (1775), 109. During the proceedings leading to his final expulsion of 1775, Linguet, with much pride but little discretion, pointed out that out of more than one hundred court cases in which he was involved he had lost only nine.

⁷⁴Linguet, Appel à la postérité, p. 304.

⁷⁵Linguet does not explicitly state the exact nature of the case in Appel à la postérité. As far as I can surmise, the comtesse de Bethune was a widow with a family whose right to her husband's estate was being challenged in court by one of her in-laws. The proceedings were initiated in 1773 and continued into 1774.

Gerbier, in conjunction with twelve other leading avocats,⁷⁶ who were instrumental in having Linguet definitively expelled from the Ordre des Avocats.⁷⁷

Linguet's expulsion from the Ordre des Avocats was represented as a disciplinary action required to preserve the integrity of the Ordre: Linguet was held responsible for having introduced demagoguery into court proceedings, for having undermined that "circonspection sévère" required for the equitable dispensation of justice. To a large degree, however, Linguet's sin had been to arouse against himself the narrow professional prejudices of the Ordre. Linguet was made to pay for having achieved success at the bar by ignoring the traditions of the Ordre. He was made to pay, as well, for having failed to adopt the style of the bar, that is, for having simultaneously pursued a literary and a legal career as evidenced by the following excerpt from the Ordre's inditement against him:

⁷⁶ Linguet, op. cit., p. 24. See also Jean Cruppi, op. cit., pp 341-343.

⁷⁷ Linguet was initially expelled from the Ordre on February 11, 1774. Linguet, in his defence, launched a series of appeals before the now reconvened parlement of Paris and the conseil des dépêches. The Ordre, however rejected those arrêts which annulled their original position and, in the end, succeeded in having Linguet definitively expelled from the Ordre des Avocats on March 27, 1775. A relatively concise account of these proceedings is Linguet's Requête au conseil du roi contre les arrêts du parlement de Paris des 29 mars and 4 février 1775 (Amsterdam, 1776).

On voit rarement echouer à cet écueil ceux qui étant entré au Barreau des leur première jeunesse, se sont pénétrés de bonne heure de ses principes, et ont commencé par nourrir leur esprit d'études et de réflexions solides. Le défaut dont nous parlons ici est souvent le partage de ceux qui, après avoir consacré leurs premières années à des occupations frivoles, et aux jeux de bel-esprit, se déterminent par une vocation tardive à prendre place au Barreau, et apprennent dans des travaux sérieux leurs premiers goûts et leur premiers penchans. 78

Linguet stood as a transgressor against one of the Ordre's cardinal rules: the incompatibility of the profession of avocat with any other. That he should have seriously pursued a literary career while a member of the Bar was bad enough. That he should have written a work such as Théorie des lois civiles (1767) which attacked the parliamentary theoretician, Montesquieu, and defended slavery and despotism was scandalous. 79

Linguet was obviously much too independent a spirit to have fitted properly into the Ordre des Avocats:

. . . en général, je n'ai point confraternisé, je l'avoue: mais autre que les orages que m'ont accueillié (concerning the Théorie des Loix Civiles) au premier pas que j'ai fait dans cette carrière, n'étaient pas propres à m'inspirer un désir bien vif d'y former des liaisons; mes occupations et mon genre de vie m'en éloignaient encore davantage. 80

⁷⁸ Linguet, Appel à la posterité, pp. 472-473.

⁷⁹ Ibid., p. 179. "Tous les préjugés occasionnés par la Theorie des Loix, furent renouvelés et confirmés par les succès de son auteur dans une carrière où il semblait ne être jette que par une suite de ses principes."

⁸⁰ Ibid., p. 393.

Linguet, it would seem, neither identified himself nor his career very closely with the Ordre des Avocats. His ambitions and interests, like many of those who entered the Palais de Justice after 1771, transcended the narrow professionalism and esprit de corps of the Ordre.

Given his feeling of detachment from the Ordre des Avocats, Linguet from his first days as a stagiaire onward, was probably more aware than most of his confrères of this esprit de corps. Its essential nature, however, was most forcefully impressed upon Linguet at the time of his expulsion. Despite Linguet's attempts to have the decision of February 11, 1774 reversed, the Ordre des Avocats succeeded in upholding its position that such disciplinary action, lying beyond the bounds of any other tribunal, was not subject to repeal.⁸¹ Linguet took this as evidence that the Ordre des Avocats considered themselves "accountable to no one while demanding complete acquiescence on the part of its members."⁸² This "despotisme claustral" he found typical, not only of the Ordre

⁸¹Ibid., p. 428.

⁸²Linguet, Appel à la postérité, pp. 364-365. "S'il existait dans un Royaume policé une compagnie qui prétendit être indépendante de toute espèce de pouvoir; où l'on ne put acquérir la qualité d'aggrégé qu'en perdant celle de citoyen; où le Corps crut ne rien devoir aux membres, tandis que les membres devoient tout au Corps; s'il existait une association qui put interrompre le cours de la Justice, quand la Justice refuserait de consacrer ses caprices . . . , il faudrait bien se garder de lui donner le nom d'Ordre par excellence; c'est celui de désordre qu'il faudrait lui approprier."

des Avocats, but of all classes and groups within the social hierarchy.⁸³ This esprit de corps subverted the individual's sense of what was just and eliminated the fear of retribution for injustices committed. For a group possessed of this spirit,

Les remords n'y font aucune impression, parce que chacun s'etourdit sur ceux qu'il éprouve, en supposant que c'est une erreur, une faiblesse de son coeur, puisque ses voisins ne paroissent pas en ressentir de pareils: enfin la honte et la crainte ne sont pas des motifs qui puisse la toucher, parce que chacun n'étant que pour une portion infiniment petite dans le danger, ou dans l'opprobre, chacun ayant la ressource de dire qu'il n'a pas trempé dans la resolution criminelle ou déshonorante, ou procède avec le sang-froid le plus flegmatique, à des attentats qui feraient frémir ou trembler chacun de ceux qui la composent, s'il était isolé. 84

It was through the magistrature that this spirit worked its most evil effects for -

Armée d'un pouvoir actif [the right of remonstrance], autorisée, par un abus des mots, à se dire propriétaire des droits qui lui sont confiés; regardant le trône comme une emanation de sa substance ou du moins se croyant une origine, et une nature commune, avec lui; defendue de la pudeur, par sa propriété de n'opérer qu'en "Troupe", de la pitié par l'habitude, et la persuasion que l'organe de la loi n'en doit pas être susceptible; du scrupule par le genre profane de ses occupations; du remords par les formes qui précédent toujours ses écarts les plus irréguliers, elle ne connaît ni bornes dans ses emportemens, ni modification dans ses vengeances. 85

⁸³Linguet, Annales, V (1779), 424.

⁸⁴Linguet, Appel à la posterité, p. 367.

⁸⁵Linguet, Annales, III (1777), 112.

The magistrature's complete lack of a sense of responsibility toward any group or power beyond itself was reinforced by the parlementaires' political ideology which reserved for the parlements the collective role of depository of the laws and representative of the nation by virtue of their unique qualifications and traditions.⁸⁶ Furthermore, with parlementary political ambitions armed with the right of remonstrance, the magistrature was capable of perpetuating injustices beyond the realm of jurisprudence and into the realm of politics. For this reason, Linguet's attitude towards the thèse nobiliaire and the thèse royale was very much influenced by his years in the Palais de Justice:

Dans le petit nombre d'années que j'ai habité le palais, j'ai été témoin des dénies de justice les plus creants, et de la violation la plus audacieuse des loix. Qui ne sait qu'il y a des procès qui traînent depuis des siècles, et que les parlements éludent toujours de juger, parce qu'ils n'ont, ni assez d'impartialité pour condamner l'une des parties, ni assez d'effronterie pour condamner l'autre, eh bien, de tant d'opprimés, et de victimes du pouvoir arbitraire des cours, soit en jugeant soit en ne jugeant pas, nul n'a jamais osé demander la prise à partie. J'ai fait souvent cette accablante réflexion. Alors, je l'avoue j'ai été quelquefois tenter de demander au ciel un despote, devant qui tous soient égaux, pourvu que comme chez l'empereur de la Chine, il y ait un tambour à la porte du palais, et que le prince sait tenu de descendre, dès que le moindre de ses sujets a frappé sur le tambour, et que le signal l'oppression a retent. 87

⁸⁶ A discussion of the development of the thèse nobiliaire is included in Chapter II.

⁸⁷ Linguet, Entretien, p. 37.

There was a close association in Linguet's mind between the political ambitions and the judicial abuses perpetrated by the parlements of France. The former, if realized, would extend injustice from the judicial into the political realm because both aspects of the parlements of France were inseparable, both being products of a common evil, the jurisdictional confusion of French jurisprudence. The latter, with the parlements as its agents, was also taken to task by Linguet for the manner in which it mitigated against the poor. The evils of French jurisprudence were productive, therefore, of judicial, political and social injustices which, in Linguet's mind, shared this in common: they were all detrimental to the stability of that rigidly hierarchical social order compatible with his conception of absolute monarchy the preservation of which (as will be demonstrated in the succeeding chapters) was his prime concern.

CHAPTER II

LINGUET AND MONTESQUIEU

Théorie des loix civiles was published in 1767.

Written during Linguet's first years at the bar, it represents both an extension of his earlier criticism of French jurisprudence and his one major essay in political theory. These two aspects of the Théorie loix civiles are not inconsistent with one another, for, as the concluding citation in the previous chapter illustrated, Linguet closely associated judicial and political abuses. Furthermore, this association in Linguet's eyes, was a logical one in view of the parliamentary onslaught upon the wavering authority of the French crown during in the reigns of Louis XV and Louis XVI. Of even greater significance, in the context of this struggle between crown and robe, is that the Théorie des lois civiles is primarily a refutation of the robe's principal ideological source--Montesquieu and his Esprit des lois. The purpose of this chapter, therefore, is to examine the Théorie des loix civiles with a view to

- (a) demonstrating this inter-relationship which Linguet finds between judicial and political abuses and,
- (b) portraying the Théorie des loix civiles as a contribution to the constitutional debate surrounding

the struggle between the magistrature and the royal authority.

For Linguet, the necessity of legal reform in France was the basis of his attacks on the political role of the magistrature. Simplicity and uniformity are required in jurisprudence and in the French body politic.¹ As corollaries to this proposition, Linguet asserts, first, that a nation becomes decadent and approaches revolution in proportion to the complexity of its legal system.² Secondly, this complexity is due to the juxtaposition of the fundamental or original laws of the nation and those legal accretions which, acquired by the state during the course of its development, are inconsistent in principle with the former.³ Therefore reform, for Linguet, is less a matter of creating new laws than eliminating those laws inconsistent with the fundamental laws of the realm.⁴

The following are presented explicitly in Théorie des Loix Civiles as fundamental laws:

¹Theorie des loix civiles, (2 vols., London, 1767), I, 2. [Hereafter cited as Theorie].

²Ibid., I, p. 13.

³Linguet makes the traditional distinction between fundamental laws and those laws which are built upon these fundamental laws. Ibid., I, 36-37.

⁴Ibid., I, 32.

- (a) laws protecting and regulating property;
 - (b) the marriage contract which is an extension of the institution of private property;
 - (c) laws relative to the internal order of families which include those laws governing the transmission of goods by succession or by testament.
- (The latter, again, are an extension and buttress of private property.)

Not explicitly presented as fundamental laws but revealed as consistent with the spirit of the fundamental laws are the following:

- (a) the right of the monarch to choose his own successor which emanates from the laws governing the transmission of property of testament;
- (b) the absolute sovereignty of the French monarch.

The purpose of these fundamental laws and, therefore, of society is to protect the institution of property through the maintenance of public order. Conversely, it is not the purpose of society to protect what some consider to be the natural rights of the individual, that is, rights emanating not from membership in society but from natural laws which antedate society. Consequently, the Théorie des lois civiles is a refutation of the concepts of natural right and the social contract. Linguet however

attacks these concepts primarily with a view to refuting Montesquieu's doctrine of tempered monarchy and of the division of powers, and, more generally, the notion that parlements through their remonstrances were the guardians of the fundamental laws and hence of the 'general will' of the nation. Finally, the Théorie des lois civiles is an apology for absolute monarchy. Linguet argues that absolute monarchy possesses three attributes. First, it is fundamental to French society; secondly, it is that form of polity which is able to maintain public order most efficaciously, that is, with a minimum of force; and, finally, it is that regime most amenable to the achievement of social justice.

Montesquieu and the Development of the Thèse Nobiliaire

Théorie des lois civiles was written during a period of maximum confrontation between the parlements of France and the crown. Reduced to political impotence during the reign of Louis XIV, the parlement of Paris, armed with the right of remonstrance,⁵ continually challenged the crown on matters of financial reform and religion. By mid-century the robe

⁵The magistratures' most significant source of power and influence lay in the right to remonstrate prior to the enactment of legislation. In 1673 Louis XIV had denied the parlements this right, allowing them to remonstrate only after legislation had been passed. Immediately following the death of Louis XIV, this right was restored by the regent. See Alfred Cobban, A History of Modern France (2nd edition, Harmondsworth, Middlesex, 1961), I, 61-62, 88-89.

had scored decisively against the crown in both areas of dispute and had thoroughly re-established itself as a power in the land. The vingtième, instituted by Machault in 1749 and strongly endorsed by the Pompadour, was reluctantly suspended in 1751.⁶ Similarly, the so-called Jesuit-Jansenist controversy, involving a parlementary offensive against the Jesuits and the crown (which had chosen to stand behind the Order) concluded with the Paris parlement's abolition of the Society of Jesus in 1762 and Louis XV endorsing this by royal decree.⁷ An era of intensified rivalry between robe and throne was to follow that saw the provincial parlements join in the struggle with increasing frequency.⁸

The most prolonged and serious of these confrontations between the parlements and the ministers of the king prior to the aristocratic revolution of 1788 was the "affaire de Bretagne." The casus belli presented itself in the form of the royal corvée imposed by the duc d'Aiguillon, the military commandant of Brittany, for road construction during the Seven Years' War. A transgression of provincial rights was claimed

⁶ This was the first decisive blow in what was to be a general parliamentary offensive against subsequent Controller-Generals and Intendants.

⁷ See Alfred Cobban, A History of Modern France (3 vols., London, 1957-1965), I, 61-62, 88-89.

⁸ Bickart, op. cit., p. 5.

by the estates of Brittany and the parlement of Rennes, and, in short order, by parlements throughout France. Provincial and parlementary rights were so stridently asserted and came so close to denying the sovereignty of the King that Louis XV reacted by issuing a scathing denunciation of parlementary pretensions in a lit de justice of 1766, which has come to be referred to as the "séance de flagellation."⁹ The parlements, however, continued to challenge the royal authority until Maupeou, in January of 1771, exiled the magistrates of the parlement of Paris to the provinces.¹⁰

The struggle against the crown had encouraged that growing sense of unity which had been developing throughout the first half of the eighteenth century, both within the magistrature and between the nobility of the robe and the sword. What had been in 1715 a disparate collection of sovereign courts constantly quarrelling with each other over matters of jurisdiction had become a united front against the crown by mid-century.¹¹ Similarly, the high robe had become a tightly-knit professional caste within the larger confines of the French aristocracy.¹²

⁹See J. Flammeront and M. Tourneux, Remontrances du parlement de Paris au XVIII^e siècle (3 vols.), I, 556-558.

¹⁰Cobban, op. cit., I, pp. 93-96.

¹¹Franklin L. Ford, Robe and Sword: the regrouping of the French aristocracy after Louis XIV (paperback edition, New York, 1965), pp. 51-52.

¹²Ibid., p. 115. See the discussion of social position of the magistrature in chapter one, above, pp. 10-12.

This growing unity within the French aristocracy was reflected in the theoretical justification of aristocratic political aspirations, the thèse nobiliaire.¹³ Originally, the robe had envisaged the French crown as heir of the Roman Emperor and his senate.¹⁴ By the eighteenth century, however, both the robe and the sword subscribed to the German theory which traced the origin of monarchical authority to the annual assembly of Frankish warriors and to that body of warrior-councillors to whom the Frankish kings were responsible. From that body of warrior-councillors had developed the curia regis of Pepin and eventually the Estates-General whose role as 'corps intermédiaire' was claimed in that body's absence by the French parlements.¹⁵

This penchant for finding the essence of something in its origins was transformed by that preoccupation with the philosophy of natural right which was particularly characteristic of the French Enlightenment in the last half of the eighteenth century. This theory was essentially ahistorical

¹³ The thèse nobiliaire prior to Montesquieu had been primarily historical, the assumption being that to know the origins of the French monarchy was to understand its essential nature.

¹⁴ This position, known as the Roman theory, was hardly a challenge to the concept of absolute monarchy.

¹⁵ Ibid., p. 228.

since it was maintained that man possessed certain inalienable rights which antedated organized human society and had an existence independent of it. Man's entry into society involved a contract wherein these rights were either guaranteed inviolate or, were relinquished in part or in their entirety for other benefits offered by social organization. The nature of this contract was determined by the motives which brought man to enter into this contract, or, to put it another way, human nature determined the nature of the social contract. This philosophy of natural right, therefore, was ahistorical and cosmopolitan: while national peculiarities were not denied (witness Montesquieu), human societies were based on the same principles which were dictated by human nature and consecrated in a social contract.

Prior to this transformation, the parlementary theorists defined the fundamental laws of the realm, their own role as the custodians of these laws, and the contractual theory of state in historical terms. It was sufficient that certain laws be consecrated by tradition in order that they be considered fundamental. The contractual theory of state, which had a certain vogue in France since the Wars of Religion in the sixteenth century,¹⁶ had originally been clothed in

¹⁶J.H. Shennan, "The Parlement of Paris," History Today, No. 10 (May, 1960), p. 343.

feudal concepts and biblical allusions.¹⁷ Now, however, the fundamental laws and the idea of a contract between the king and the people were traced, not to the beginning of the French monarchy or to biblical times, but to the origin of society--an abstraction in the distant past. The contractual theory of the state had also become the social contract of Locke and Rousseau. Its popularity during the last half of the eighteenth century required that it be central to parlementary theory.¹⁸

In this shift to a less historical and more theoretical exposition of the thèse nobiliaire, Montesquieu's Esprit des lois, written in 1748, stands as a watershed. A président à mortier of the parlement of Bordeaux, Montesquieu in his Esprit des lois gave expression to the group interests of the robe and stressed the synthesis of the two traditions within the thèse nobiliaire. Montesquieu is a key figure in the struggle between crown and robe, not so much because he was the first to elaborate this synthesis, but because he restated parlementary aspirations in the new spirit and vocabulary of the French Enlightenment. Montesquieu took the traditional position that the parlements were the custodians of the fundamental laws of the realm which had previously been a

¹⁷ Alfred Cobban, "The Parlements of France in the Eighteenth Century," History, XXXV (February - June, 1950), 73.

¹⁸ J. Lough, "Encyclopédie and the remonstrances of the Parlement of Paris," Modern Language Review, (July, 1961), 393-395. See also Flammeront and Tourneux, op. cit., I, p. 522.

statement of historical fact and elevated it into a general principle: monarchy, as a form of government, in order to function efficaciously or even to survive, required that the judiciary serve as an intermediary body and a depository of the laws within the body politic:

In monarchies, policy effects great things with as little virtue as possible. Thus in the nicest machines, art has reduced the number of movements, springs and wheels. The state subsists independently of the love of our country, of the thirst of true glory, of self-denial, of all the heroic virtues which we admire in the ancients, and to us are known only by tradition. The laws supply here the place of those virtues; they are by no means wanted, and the state dispenses with them: an action performed here in secret is in some measure of no consequence. ¹⁹

The key to this form of governmental perfection was the presence of the laws. It was thus as custodians of these laws that the magistrature might claim its role as 'corps intermédiaire' and as 'dépositaire des lois':

It is not enough to have intermediate powers in a monarchy; there must be also a depository of the laws. This depository can only be the judges of the supreme courts of justice, who promulgate the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence and contempt of civil government, require that there should be a body invested with the power of reviving and executing the laws, which would otherwise be buried in oblivion. The prince's councils are not a proper depository of the fundamental laws. They are naturally the depository of the momentary will of the prince. Besides, the prince's council

¹⁹ Montesquieu, The Spirit of the Laws, trans. Thomas Nugent, (New York, 1949), Vol. I, Book 111, 23.

is continually changing; it is neither permanent nor numerous; neither has it a sufficient share of the confidence of the people; consequently it is incapable of setting them right in difficult conjunctures, or of reducing them to proper obedience. 20

In these two statements one has a thoroughly comprehensive statement of the robe's attitudes and aspirations: the contempt for the nobless d'epée of a highly self-conscious magistrate, who despite his own impeccable lineage, was unafraid to attack the noblesse de race at its weakest point; opposition to any attempt by the monarchy through its ministers to institute reform, financial or otherwise, which endangered their privileges as nobility; the political ambitions of the robe.

This concern of the robe over the reforming ministers of Louis XV expressed itself through Montesquieu in the distinction between a monarchical government, operating on the principle of honour, and the despotic government, operating on the basis of fear. For Montesquieu, despotism is a corruption of monarchy:

Monarchy is destroyed when a prince thinks he shows a greater exertion of power in changing than in conforming to the order of things; when he deprives some of his subjects of their hereditary employments to bestow them arbitrarily upon others, and when he is fonder of being guided by fancy than judgement. 21

²⁰ Ibid., p. 17.

²¹ Ibid., Vol. 1, Book VIII, p. 113. This, incidentally is also Linguet's definition of despotism, as will be shown later in the chapter.

The meaning behind this passage becomes apparent when one reads "the king's ministers and the court" for 'others' and 'fancy'. Since the parlements always protested their attachment to the monarchy, (even during the *révolte nobiliaire*), 'despotism' came to represent 'ministerial despotism'. In the years after 1748, this question of the distinction between despotism and legitimate monarchy would become a matter of wide concern.²²

As I have said before, however, Montesquieu's importance in the context of the struggle between robe and crown lay not so much in his synthesis of parlementary traditions but in his restating of those traditions in a new spirit and a new vocabulary. For instance, his description of the monarchy tempered by the principle of honour is not organic but mechanistic: monarchy represents the 'nicest' of 'machines' in which "art has reduced the number of movements, springs, and wheels."²³ Similarly, it was the checks and balances of the English system, as he saw it, with its division of the executive, legislative and judicial functions that Montesquieu admired.²⁴

²² E. Carcassone, Montesquieu et le problème de la constitution française au XVIII^e siècle (Paris, 1927), pp. 404-406.

²³ See above, p. 8.

²⁴ Montesquieu, op. cit., I, Book XI, ch. 1-7.

It was this new spirit that reflected the popularity of the natural law school of thought which would make Montesquieu useful to the robe in its struggle with the Crown. After 1750 such terms as 'droit', 'nation', 'contrat', 'volonté générale', 'corps intermédiaire' and 'dépositaire des lois' took their place next to such expressions as 'monarchie légitime' and 'lois fondamentales' in the vocabulary of the parlementaires in their effort to influence and win the support of public opinion.²⁵ Basically the parliamentary argument elaborated between 1750 and the Revolution was as follows:

- (a) The monarchical government of France was 'légitime', that is, based on laws. A despotic government was not based on laws;
- (b) Certain of these laws were 'fondamentales' and therefore unalterable in principle. They had been passed on from generation to generation by custom and tradition and together made up the French constitution which was unwritten;
- (c) These fundamental laws were the outcome of a free contract between the king and the nation, involving reciprocal privileges and duties;
- (d) The constitution might not, therefore be altered without the consent of the nation. Therefore, the king was subordinate to the laws of which the judiciary was the guardian.

Even within the new reorientation of parliamentary thinking, however, the historical argument was still present:

- (a) The parlements were as ancient as the monarchy.

At the time of the monarchy's origin an 'assemblée générale' had to consent to legislation before it could be dignified as law;

- (b) While it was the Estates-General which normally was heir to this assembly's functions, its absence since 1614 made parlement the heir of this tradition. In the exercise of this prerogative--serving both as 'corps intermédiaire' and as 'dépositaires des lois', the parlement had the right to consider itself the representative of the will of the nation.²⁶

Of key importance for an understanding of the threat which this parlementary argument posed for the French monarchy is the realization that the fundamental laws had never been strictly defined, while the constitution, which represented their sum total, was a blank sheet upon which the parlements wrote whatever they wished. The fundamental laws, reasoned the parlementaires, were based on the contract concluded between the king and his people. The king, therefore was

²⁵ Carcassonne, op. cit., p. 291.

²⁶ Bickart, op. cit., pp. 1-2.

subordinate to these laws. The fundamental laws were also the basis of the ordinary laws of the realm. Thus these ordinary laws became an extension of the original contract and the king was subordinate to them as well.²⁷

The contract theory was equally capable of expansion since it had corollaries which the parlements thoroughly exploited. First, the contract between the king and the nation could not be modified without the consent of the nation. Secondly, if the king did not fulfill his obligations as set forth in the contract, the nation was free to disregard its obligations and the contract was broken, that is, sovereignty no longer resided with the monarch.²⁸

This takes on additional meaning when the parliamentary conception of its role of 'corps intermédiaire' is understood. The parlementaires adapted this concept to the doctrine of national sovereignty by equating it with that of representative of the nation. Legislation represented an expression of the general will of the nation. The parlements assigned to this general will a passive function in the legislative process. In other words, before legislation assumed the status of legality, it required the consent of the nation. Since the size of the nation made the direct articulation of this consent difficult, the nation must needs fulfill its

²⁷ Ibid., p. 55.

²⁸ Ibid., pp. 66-67.

role in the legislative process through its representatives.²⁹
 In its capacity as representative of the nation, the
parlement would no longer be restricted to the role of advisor
 to the king, but, with a mandate from the people, would be
 able to accept or reject legislation as being either within
 or beyond the bounds set by the contract between king and
 nation.³⁰

The Basis of Linguet's Argument Against Montesquieu

Linguet clearly saw the notion of national sovereignty
 for what it was--a rationale for political revolution:

Etablira-t-on que la pluralité suffit pour en
 autoriser le désir. Mais c'est ouvrir la porte
 aux rebellions: à quoi la reconnaîtra-t-on cette
 pluralité? Chacun ne prétendra-t-il pas l'avoir
 de son côté? Ceux même qui ne l'auront pas diront
 que la multitude est séduite. Ils soutiendront
 qu'il faut compter les raisons, plus que les hommes,
 et qu'un petit nombre d'esprits éclairés est pré-
 férable à une foule d'aveugles ignorans. 31

As a result,

Tout attroupement séditieux se dirait l'Etat.
 La société serait perpétuellement troublée. 32

²⁹ Ibid., p. 86.

³⁰ Ibid., pp. 111-112.

³¹ Linguet, op. cit., I, 69-70.

³² Ibid., I, 70.

In the ensuing political struggle it would be the common man that would suffer most:

Ils périraient entre leurs défenseurs et leurs ennemis, comme une brebis qu'un dogue veut arracher au loup qui l'emporte, se sent mettre en pièces, tandis que chacun des deux la tire par le côté qu'il a saisi. 33

Linguet realized, as well, that the parlementary thesis was an extension and a vulgarization of Montesquieu's Esprit des lois:

En général les grands génies parviennent tôt ou tard à faire des enthousiastes, même parmi les ennemis cruels qui les déchirent. Ils ressemblent à ces conquérans qui recrutent leurs troupes dans les pays où ils font la guerre. Il ne faut qu'une portion échauffée pour en faire naître une foule d'autres. On aime à s'attacher à leur fortune, à mesure qu'elle paraît plus affermie: et tel ouvrage n'a essuyé d'abord que des critiques, qui n'a plus que des admirateurs, dès qu'il a trouvé un panegyriste. 34

Furthermore, in Linguet's eyes, Montesquieu had failed to free himself from the prejudices and group interests of the magistrature trial. Linguet maintained that Montesquieu had been opposed to those projects of legal reform which had been suggested by jurisconsultants throughout the eighteenth century and which Linguet takes as the point of departure for his Théorie des lois civiles:

³³ Ibid., I, 71.

³⁴ Ibid., I, 130.

- (a) the establishment of simplicity and uniformity in the laws (thereby eliminating that over-complexity and confusion which breeds chicanery);
- (b) a reduction in the variety of tribunals with a view to eliminating that warring of juridical factions which arises from the overlapping of jurisdictions;
- (c) the creation of more tribunals (as opposed to classes or varieties of tribunals) in order the more properly to facilitate the punctual execution of justice.³⁵

Montesquieu, Linguet maintained, opposed a simple and uniform legal structure as an instrument of despotism.³⁶ Usurpers, we are told, all worked for the simplification of the law.³⁷ Linguet argued, however, that

les Césars, les Cromwells, etc. sentaient le besoin de ressusciter, par la simplicité des Loix, les Etats que la complication de ces Loix avait tués. 38

Here, as elsewhere in his discussion, Linguet is closely associating juridical and political structures. Indeed, he clearly states that there should be no difference between 'le droit civile' and 'le droit politique' and that the latter should support and be in harmony with the former since

³⁵ Ibid., I, 97-99.

³⁶ Ibid., I, 99-100.

³⁷ Ibid., I, 101-102.

³⁸ Ibid., I, 102.

tous les droits, et surtout ces deux-là réduisent à être juste, à rendre à chacun ce qui lui appartient, pour conserver le sien propre. 39

It is the function of the juridical and political structure and, indeed, of society, generally, to maintain and protect the institution of property. Taking this as his basic criterion, Linguet maintains that governments will stand or fall according to whether or not they can provide security for the property of their peoples:

Le pouvoir des Rois n'est assuré qu'autant que les possessions de leurs sujets sont solidement affermies; et la raison en est bien simple; c'est qu'ils possèdent tous au même titre. Les Royaumes appartiennent à leurs Maîtres, comme une ferme est à moi. 40

Society is founded on the principle of proprietorship. Therefore, it is necessary and natural that this principle should be embodied in the state which governs society.

The proprietorship of the monarch is absolute by virtue of the fact that proprietorship, by its very nature, knows no extenuations. Indeed, as will be shown later in the chapter, Linguet's conception of property primarily involves the right to exercise absolute authority over that which is possessed. Therefore, to question or to place limits on the sovereignty (or proprietorship) of the king, as Montesquieu does is to undermine the basis of society and

³⁹ Ibid., I, 89.

⁴⁰ Ibid., I, 65.

initiate all manner of disorders.⁴¹

Since the Monarch is the proprietor of his realm, his interests and those of his subjects are indissolubly tied. A monarch's position is secure only as long as he adequately provides for the security of his subjects and their property:

Un tyran équitable relativement à l'administration de la justice distributive, quelque cruel qu'il soit, peut être sûr de mourir tranquille: au contraire un Roi dont les caprices troublent l'ordre des possessions civiles, règne rarement avec sécurité, quelques vertus qu'il possède d'ailleurs. 42

This restriction placed upon the king by the very nature of the authority which resides in him is much more efficacious, even in its implicitness, than some social contract which is no more than a theoretical construction.⁴³ The concept of the social contract is the work of metaphysicians since it assumes the existence of natural rights which antedate society and since it assumes that human society is based on the laws of nature wherein these rights reside. Both these assumptions are mistaken and undesirable.

Based on these two assumptions and equally mistaken and harmful to the tranquillity of the realm, Linguet tells us, Montesquieu's concept of a monarchy tempered by a 'corps

⁴¹Ibid., I, 65.

⁴²Ibid., I, 79.

⁴³Ibid., 90.

intermediaire' consisting of the parlements, aristocracy, the corporations and so on, the keystone of which is the judiciary which served as 'dépositaire des lois', or guardians of the fundamental laws of the realm.⁴⁴ Rather

. . . les Souverains jouissent, parce qu'ils jouissent. L'exercice même de leur puissance en est le titre. S'ils en abusent, malheur à eux sans doute. Mais enfin ils ne sont justiciables d'aucune sorte de tribunal. 45

The judiciary should not be separate from the executive. Indeed, the monarch should be the first magistrate of the realm.⁴⁴ And this is as it should be, for the king's right to administer justice equitably is the surest means of ensuring the continuance of his reign.⁴⁶ Therefore, when the king assigns the duties of administering justice into other hands it is in his own and his subjects' best interests for him personally to watch over its execution.⁴⁷ That is, through close surveillance of his ministers and his magistrature, the king must ensure that the fundamental laws of the kingdom are not transgressed, either in the creation of new laws or in the administration of the old.

Despite the fact that all societies owe their origins to violence and conquest and that the first decrees issued

⁴⁴ Montesquieu, op. cit., XXIV.

⁴⁵ Linguet, op. cit., I, 73.

⁴⁶ Ibid., I, 91.

⁴⁷ Ibid., I, 91.

by their first legislators have as their sole object the consolidation of the property wrested from the vanquished, these fundamental laws laws will be the basis of a just social order on condition that all subsequent general laws are consistent with them.⁴⁸ All too often, however, there exists this essential difference between these two categories of law:

Au lieu de se diriger dans les Unes, comme dans les autres, par des vues générales, étendues, qui les rendissent propres à gouverner une société dans toutes ses périodes, on n'y survit dans celles qui nous sont propres qu'un plan retreci; mesquin, qui subordonnait toujours l'intérêt public au particulier; et qui favorisait la tyrannie, bien plus que la propriété. C'est ce plan altéré encore, dénaturé par le tems surchargé de je ne sais quels accompagnemens gôtiques, que je dis qu'il faut reformer. 49

It is a monarchy unfettered by 'intermediary bodies' that will be most capable of transcending the esprit de corps and narrow group interests so prevalent in the latter. The 'dépositaire des lois', therefore is the monarch with absolute authority, for it is he and not the magistrature who is most capable of restoring that consistency between fundamental and general laws which is the basis of a just society.

⁴⁸ Ibid., I, 34-37.

⁴⁹ Ibid., I, 37-38.

Linguet on the Nature of the Laws and of Society

The Théorie des loix civiles, as I mentioned earlier, is more than simply a refutation of Montesquieu's concept of monarchy tempered by a corps intermédiaire. Rather, Linguet's critique of Montesquieu's Esprit des lois is a vehicle for his attack on parlementary political pretentions.

In order to discredit the magistratures' posture as the guardian of the fundamental laws and/or protector of the rights and liberties of the individual against the incursions of despotism, more was required than simply a refutation of Montesquieu's original conception of monarchy watched over by a 'dépositaire des lois'. It was necessary to prove that individuals in society did not possess natural rights (that is rights which were not contingent upon membership in society).

Linguet's approach to this problem was to prove that the laws of nature were not those of society. Positing the physical equality of men in a state of nature as basic to the laws of nature, Linguet set out to prove that men in society were unequal and that society was inherently hierarchical. In this way he sought to dispel the notion that men in society were equal by virtue of their holding certain natural rights in common.

Men in a state of nature, asserted Linguet, were equal, since they were equally equipped physically to cope

with their environment and were independent of each other.⁵⁰ Man's forced entry into society, however, reversed this situation. With the passage of time, this forced interdependence, through habit, became a voluntary attachment.⁵¹ Those who responded to their yearning for that bygone state of freedom and innocence by placing themselves outside of society found themselves easy prey to all manner of enemies. Men, therefore, resigned themselves to living in society.⁵²

Furthermore, society becomes necessary for man's survival in proportion to the hardship it imposes on him:⁵³

. . . toute la nature captive a cessé d'offrir à ses enfans des ressources faciles pour le soutien de leur vie. Il faut payer ses bienfaits par des fatigues assidues, et ses presens par des travaux opiniâtres. Le riche qui l'en est attribué la possession exclusive, ne consent qu'à ce prix à en remettre en commun la plus petite portion. Pour être admis à partager ses trésors, il faut s'employer à les augmenter.

Ses soupçons toujours dirige contre le pauvre qu'il dépouille lui font regarder l'indépendance comme un attentat, et la liberté comme une révolte. Il dit hautement que le droit de penser n'appartient qu'à lui. Il s'applique à écraser continuellement l'indigence, de peur qu'en se relevant elle ne soit tentée de faire de ses forces un autre usage que celui qu'il en exige. Il imite envers elle la politique des Egyptiens avec les enfans de Jacob. Il la surcharge de travaux, pour lui ôter même le tems de songer à son infortune. 54

⁵⁰ Ibid., I, 181-182.

⁵¹ Ibid., I, 184.

⁵² Ibid., I, 185.

⁵³ Ibid., I, 187.

⁵⁴ Ibid., I, 189.

In the first place population growth brings with it an equal increase in the needs of the population which can only be met by undermining the hierarchical nature of society. Since those regulations which protect private property (which is in the hands of a small minority) place strict limits on the satisfaction of these needs, the temptation on the part of those outside this small minority to satisfy these needs by violating the laws increases correspondingly. Society, therefore, tends to increase man's inequalities, thereby producing the twin problems of poverty and theft. Society has responded to this growing threat to property not by alleviating the poverty of the masses but by rendering the law increasingly comprehensive in its scope and the penalties it imposes increasingly severe.⁵⁵

An even worse evil follows in the wake of economic and social inequality and the proliferation of the laws protecting property--indulgence in luxury by the rich minority. Although this multiplicity of legislation has not been instituted with the encouragement of luxury in mind, it has made this evil possible by confirming this rich minority in the possession of its property. The increase in the assets of the members of this propertied class (made possible by the ever-growing economic inequality existing in society)

⁵⁵Ibid., I, 211.

has made it possible for greater social distinctions through the acquisition of what are considered to be status-bearing superfluities.⁵⁶ By striving to 'live nobly' through an ostentatious display of opulence the man of property acts " . . . aux dépens et sous les yeux de tous les malheureux dont il dévore le travail."⁵⁷

By pursuing a life of luxury, the propertied minority is depriving the mass of the people of one of the principal benefits which society offers them:⁵⁸

On a pourtant, il est vrai, trouvé un palliatif à cette oppression apparente. Elle est adoucie par la nécessité où sont les possesseurs de tout, de louer les bras de ceux qui n'ont rien L'envie de jouir surmonte l'avarice, et par une combinaison aussi utile que singulière, ce qu'une passion a entassé une autre passion le dispense. 59

⁵⁶ Ibid., I, 215-216.

⁵⁷ Ibid., I, 216.

⁵⁸ Linguet lists other misfortunes which arise from social organization and the fundamental laws. 1) War - which is a product of the laws of property and property is founded on the laws. 2) Pestilence and famine arise from population growth and subsequent overcrowding which are the products of society.

⁵⁹ Ibid., I, 197.

This paternalistic attitude of the leisure class towards the common people arises out of the recognition that its economic well-being and, therefore, its status as a leisure class are strictly dependent on the welfare of the common people.⁶⁰

The leisure class should realize that it is only through the welfare of the common people that it will reap the maximum benefits from its property. It should also realize that the security of this property requires peaceful coexistence between itself and the common people.⁶¹ Indeed,

le but des lois est donc d'entretenir la paix dans la société, d'empêcher ou au moins d'appraiser les débats que les passions ne sauraient marquer d'y produire. Le moyen le plus sûr pour y réussir était de fixer les propriétés, et c'est ce qu'elles ont fait. 62

Public order and the very existence of society itself depend on the existence of these laws because,

les vues particulières changant toujours, ou le plus souvent les vues générales; chacun par le droit naturel étant autorisé à ne penser qu'à soi, à sacrifier à son bien-être celui des autres; la force étant la seule raison suffisante pour appuyer les demandes, et la faiblesse la seule incapable de justifier des refus, une guerre éternelle, ou une entière indifférence aurait été le partage du genre humaine. 63

⁶⁰ The craving for luxury overpowers this recognition, with the result that the common people are left to fend for their own and can expect little in the way of material aid in times of hardship. This problem will be dealt with more thoroughly when I discuss Linguet's espousal of slavery.

⁶¹ Ibid., I, 196.

⁶² Ibid., I, 192.

Although these laws enforce the hierarchical nature of society and often result indirectly in hardships for the unpropertied, they do provide security, for both propertied and commoner alike, from the even greater hardships which arise from social disorder and anarchy.

The Concept of the Social Contract is Fallacious

Linguet's denial of the existence of a social contract is an elaboration of his refutation of the philosophy of natural right. This philosophy assumes that, because man possesses rights which transcend society, society exists for the benefit of the individual. The social contract, as part of this body of doctrine, makes the further assumption that man is governed by reason. Through his powers of reason man becomes aware of these natural rights. Through the powers of reason, he also comes to a realization of the necessity or the benefits of social organization. As a result, men enter into a contract with each other voluntarily, with the understanding that the state is charged with the responsibility of governing society in accordance with the laws of nature central, to which are those natural rights. Consequently

⁶³Ibid., I, 193-194.

the authority of the state is conditional upon the observance of these natural rights.

As far as Linguet is concerned, however, society was not created with the well-being of the totality of its members in mind, since it is the spirit of the laws to consecrate the property rights of a minority within society. Since this minority would hardly have created the fundamental laws legitimizing its property before coming to a full awareness of the benefits forthcoming from this new social institutions, property must have been the antecedent of the laws. Furthermore, property requires the existence of social organization. Therefore, in order to understand the origins of society one has to delve back beyond the formulation of the fundamental laws.⁶⁴

It was common to look to human nature for an explanation of what brought men together to form society. Montesquieu maintained that men in their natural state lived in harmony, not because of an absence of desires, nor a tranquillity of soul, but because of a perpetual fear based on a sense of their weakness in relation to the forces of nature. Linguet discounted this theory, observing that it was more probable that natural man had a sense of his own strength since fear was less natural than boldness while curiosity was the first and almost only passion of ignorance.⁶⁵ Furthermore, if all

⁶⁴ Ibid., I, 235.

⁶⁵ Ibid., I, 238-240.

men in this natural state were fearful and overwhelmed by a sense of their own inferiority, they would have avoided each other, thereby preventing the formation of society.⁶⁶

Montesquieu also suggested that the attraction between male and female created a bond which provides the basis for human society.⁶⁷ Linguet counters, however, that this attraction is an exclusive thing; the bond that tied two people thus does not lend itself by extension to others.⁶⁸

The social contract theorists, however, choose to see this socially-oriented element of human nature as a prudent circumspection, which does not exclude courage, but which sees society as useful. However, this point of view, and more generally the whole concept of the social contract, presupposes a level of sophistication unknown to primitive man.⁶⁹

⁶⁶Ibid., I, 241.

⁶⁷ It will be shown later in this chapter how Linguet used this idea of the marriage bond as the basis of society to justify absolute monarchy as consistent with the fundamental laws of society.

⁶⁸ Linguet, op. cit., I, 242-243.

⁶⁹Ibid., I, 257-259.

Rien en serait si juste et si beau que cette opération [social contract] si elle était possible. Mais il faudrait pour la rendre probable, supposer tant de lumières dans les inventeurs, tant de tranquillité dans leurs passions, tant de concert dans leurs démarches, qu'on est forcé d'en abandonner l'idée, à l'instant où l'on s'attache à la discuter. . . . Des êtres capables de mettre tant de réflexions dans leurs procédés seraient des intelligences célestes, et non pas des hommes, tels surtout, que durent être les premiers instituteurs des sociétés. 70

Furthermore, natural man's love of freedom and equality would not have so easily been abandoned.⁷¹ Linguet concluded, therefore, that it was not a rational desire to create a more efficacious method of self-defence which led man to create society.⁷²

Other writers, wishing to completely disassociate violence from the origin of society, put forth agriculture as the basis of society. Linguet, however, points to the slow development of agriculture and animal husbandry. The domestication of animals and the discovery of those plants which were amenable to agriculture undoubtedly took a long time.⁷³ Moreover,

Les premières familles qui réussirent dans leurs recherche en l'un de ces deux genres, durent, sans doutes, songer à en recueillir le fruit exclusivement. Plus leurs travaux étaient pénibles, plus il était naturel qu'elles voulussent en profiter seules. Plus l'abondance qui'les suivait était douce, plus elles devaient se proposer de la concentrer autour d'elles. 74

⁷⁰ Ibid., I, 232.

⁷¹ Ibid., I, 259.

⁷² Ibid., I, 262.

⁷³ Ibid., I, 263-270.

The pursuance of agriculture, according to Linguet, produces a desire for solitude.

Among hunting peoples there exists an interdependence imposed by trapping and killing of game, which is prerequisite for the formation of society. Since hunters rely on each other for assistance, the individual hunter does not think of avoiding the division of his kill among his fellows since he knows that he will soon be called to aid in the killing (and, therefore, receiving a portion) of someone else's game.⁷⁵ Therefore, it is neither fear nor reflexion which causes men to band together. Rather, it is need, " . . . cet éclair de raison qui, dans le coeur du vrai sauvage, avant que d'avoir été développé par la société, ne doit être supérieur à l'instinct des animaux et en tient la place."⁷⁶ This banding together of the hunters entails neither formal recognition nor submission. It imposes only momentary obligations. This relationship, therefore, is not society but rather its precursor.⁷⁷

In this association of the hunters there is one big obstacle to the creation of society--a love of liberty.

⁷⁵ Ibid., I, 280-281.

⁷⁶ Ibid., I, 283.

⁷⁷ Ibid., I, 283-284.

Il est de la nature de la société, à quelque moment qu'on la prenne, d'exiger des déférences et des distinctions. Elle fixe des rangs à obtenir, des égards à rendre. Elle veut absolument que, parmi ceux qui la composent, les uns consomment sans inquiétude, tandis que les autres se livrent à des travaux pénibles 78

Since the formation of society entails destroying man's natural equality, it can only be achieved by violent means.⁷⁹

Linguet, therefore, conceived of the origin of society in terms of the conquest of an agricultural people by hunters. Having preyed upon the flocks of the agricultural people haphazardly, the hunters came to desire the possession of these flocks, thereby eliminating the dangers and fatigue of their mode of life. They, therefore, claimed the land and livestock of the agricultural people as their own, while allowing the former proprietors to continue to work the land and to tend the livestock. In return the new proprietors would allow the former to retain whatever produce they required. Society, therefore, is based on a master-slave relationship.⁸⁰

Having founded society, it was then necessary for the hunters to establish the rights of private property. In order to prevent conflict between themselves and to maintain

⁷⁸ Ibid., I, 285.

⁷⁹ Ibid., I, 285-286.

⁸⁰ Ibid., I, 289-292.

the agricultural people in a state of servitude, it was necessary for the hunters to distribute the newly-acquired land and livestock amongst their own numbers. Furthermore, it was necessary to assure the security of each hunter in the possession of his property and chattels by creating laws.⁸¹ These laws, then, consecrated this first violent usurpation while forbidding all future seizures unless undertaken by society as a whole.⁸² Thereafter, only society, as a whole, has had the right to claim all property as its own.⁸³

By way of justifying the fundamental laws and the violent usurpation upon which they are based, Linguet reasoned that they were the product of divine inspiration.⁸⁴ While

⁸¹Ibid., I, 296.

⁸²This provision is consistent with the first seizure since it was undertaken by the hunters as a group and not as individuals.

⁸³Linguet, op. cit., I, 298.

⁸⁴Ibid., I, 300.
The fundamental laws were designed to keep the vanquished in a state of servility inasmuch as whosoever, having had his lands and property claimed in the first usurpation and who took action to have this property reinstated, would be defying the laws and would therefore become a public enemy.

society's laws are the result of an injustice, their intent, because of their divine origin, must be the ultimate achievement of justice. God chose to institute society through violent means since "la force et la violence pouvaient seules arracher les hommes à l'abatardissement où ils étaient tombés".⁸⁵ Certainly, the fundamental laws, in establishing a master-slave relationship placed the majority of society's members under the heavy weight of oppression. With the passage of time, however, the rigor of this master-slave relationship came to be mitigated. The personal authority of the master, once limitless, became strictly defined by law. As a result the master had become "le bienfaiteur des hommes que son prédécesseur avait opprimés."⁸⁶

Since society's laws are divinely inspired, the philosophes (including Montesquieu)⁸⁷ are wrong in discount-

⁸⁵ Since Linguet does not openly question the tenets of the Roman Catholic faith, it is reasonable to assume that this "abatardissement" was the result, of original sin and the subsequent Fall of Man. Moreover, his discussion on the origin of society belies a conviction (which he shares with Hobbes) that man is basically antisocial. He admits that he and Hobbes have much in common but he cautions his readers "... de ne pas croire que tous les Ecrivains qui soutiennent un même principe, soient également d'accord pour en tirer les mêmes conséquences." Ibid., 302. Linguet's fundamental disagreement with Hobbes is due to the fact that Hobbes failed to realize that the civil order is the absolute reversal of the natural order: the guiding principle of the natural order being the preservation of the species; the guiding principle of the civil order being the preservation of property. Linguet, op. cit., II, 78-79. Linguet refers the reader to Hobbes, deCive, Ch. 9, No. 3-5. See appendix dealing with this similarity.

ing them as a merely human creation without claim to universality or immutability.⁸⁸ Not only are the fundamental laws immutable but they are, by divine purpose, the direct antithesis of the laws of nature. Therefore,

Le prétendu droit naturel qui subsiste parmi nous, est une production factice, absolument étrangère à la nature, et due toute entière à l'art qui lui a donné la naissance Il n'en existe pas le moindre vestige dans la société. Il est même incompatible avec elle, et l'un emporte nécessairement la destruction de l'autre. L'essence du droit naturel est une liberté indéfinie. Celle du droit social, est la privation entière de cette première liberté. S'il en subsistait encore la moindre partie après la formation des sociétés, quel pouvoir auraient les loix sur cette partie qui ne leur serait point soumise? 89

The philosophy of natural right, besides being erroneous, is a socially destructive force. Natural rights become standards by which to judge society imperfect and banners behind which to promote change. Such change is dangerous, however, in that it is based on criteria which ignore the basic nature of society.

⁸⁸Linguet, op. cit., I, 302.

⁸⁹Ibid., I, 348-349.

Absolute Monarchy is Consistent with the Spirit of
the Fundamental Laws of Society

Having established the nature of society and the fundamental laws, Linguet proceeded to reveal absolute monarchy as entirely consistent with the underlying purpose of these laws--the preservation of property through the maintenance of public order. Absolute monarchy is shown as an extension of the three fundamental laws which he considered most closely associated with the ownership of private property: the rights of husbands over wives; the rights of fathers over their offspring; the right to dispose of one's property as one wishes.

All three of these fundamental laws are closely associated with the violent origins of society. Having usurped the property of the agricultural people and having begun to raise children, the hunters were disquieted by the thought that, once grown up, their offspring might prove a threat to their newly acquired property. Remembering that their violent usurpation was the basis of their own property rights they feared that history might repeat itself through their offspring.⁹⁰ In order to prevent this from happening, the hunters extended

⁹⁰Linguet, op. cit., II, 49-54.

the master-slave relationship between themselves and the agricultural people to the institution of marriage. With the wife as part of the husband's property, it followed that all children resulting from this union would be the property of the father, who had the right to kill them, sell them into captivity, disinherit them and refuse them food and shelter.⁹¹

Agricultural people, of necessity, adapted this master-slave relationship to their families as well. The problem of securing the necessities of life produced fierce competition between the members of each family. An absolute arbiter therefore was needed to keep peace. The wife and children of the agricultural people submitted themselves to this new regime knowing that the other alternative would be to put themselves directly at the mercy of the conquerors.⁹²

Linguet justified this absolute paternal authority over wife and children both in terms of logic and social utility. Since the law makes the father absolute owner of his land it is only logical that his absolute rule should extend over all those who partake of the fruits of this land, since, by doing so, they are an extension (as a result of their own sustenance) of these fruits.⁹³ This master-slave relationship is socially beneficial, as well. Women may be obliged

⁹¹ Ibid., II, 6.

⁹² Ibid., II, 64.

⁹³ Ibid., II, 55-58.

to yield up their liberty to their spouses, but in doing so they gain the security of an interested defender. Moreover, it is upon this master-slave relationship between husband and wife that the political liberty of men is based.⁹⁴ The emancipation of women promotes the institution of gallantry as a social custom. Not only is this custom ephemeral (in that it discourages the establishment of solid relationships) but it is also basically factitious and productive of libertinage:

Alors les corps s'énervent, les âmes s'avilissent,
les loix se détruisent. Les femmes règnent par
le luxe; et le despotisme s'établit par le luxe
et par elles. 95

Similarly, absolute paternal authority over one's offspring, while unnatural is, again, one of the great benefits of society. It establishes a relationship mutually felicitous

⁹⁴ This statement is made as a refutation of Montesquieu who regards the domestic subjugation of women as an appanage of despotism. Esprit des lois, Book VII, Ch. 9, 15: Book XVI, Ch. 9, 11 cited in Theorie des lois, 368. What is involved here as well (as will be shown later) is the broader question of the differentiation between monarchical government and despotism.

⁹⁵ Linguet, op. cit., I, 370-371. It will be shown later in the chapter how Linguet tended to define despotism in terms of the introduction of unwarranted social and political change which runs counter to the spirit of the fundamental laws of society. It should also be pointed out that this citation is a direct commentary upon the contemporary situation in France and in Europe; for Linguet stated that it is this paternal authority of the father over his wife and children, which, of all the fundamental laws, has suffered most the ravages of time in Europe. Civilization is in decay, and the danger of revolution is imminent. Linguet, op. cit., II, 175.

to parents and offspring from which stability results: the child's respect for the parents is compensation for the obligations imposed by child-rearing, as well as a consolation in old age; the child, on the other hand, receives sustenance, protection and education during his upbringing, and the right of succession.⁹⁶ Consequently, "Ce commerce réciproque de secours et d'affection fait servir successivement un âge de soutien à l'autre."⁹⁷

This right of succession, for Linguet, is the most significant of the fundamental laws. It is " . . . le rempart de la propriété à laquelle on subordonnait tout . . . "⁹⁸ it is the right of succession which places absolute paternal authority on a secure footing, thereby ensuring the stability of society.⁹⁹ It does so by providing the proprietor's wife and offspring with a motive, other than respect and affection, for obeying his will:

⁹⁶ Ibid., II, 46, 95.

⁹⁷ Ibid., II, 46.

⁹⁸ Ibid., II, 100.

⁹⁹ Ibid., II, 155, 175.

Dès-lors le chef de famille put envisager la multiplication des enfants comme l'accroissement de son bien: il leur en confia la défense, et l'administration, qui commence à les intéresser, puisque la propriété devait leur en revenir un jour. Il vit sans inquiétude augmenter le nombre de ces gardiens, qui existant par lui, ne pouvaient plus désormais exister que pour lui. Ses soins pour eux en furent plus tendres, et son attachement s'accroît dans la même proportion que la tranquillité de son domaine. 100

Finally, the right to dispose of one's goods embodied the spirit of private property taken to its logical conclusion. Through the last will and testament, the proprietor asserts the immortality of his property rights. By extending his control over the disposal of his property he is extending his property rights, in his own mind, beyond the grave.¹⁰¹ This, however, is an illusion, since the proprietor is merely the tenant of his property for the period of his lifetime.¹⁰²

To whom does the property of the individual ultimately belong therefore? It will be remembered that it is the proprietor class as a whole and, therefore, to society as a whole,¹⁰³ that the property belongs. By extension this property belongs to he whom the property-holders of society have chosen to be their leader. Since ownership of property is

¹⁰⁰ Ibid., II, 100.

¹⁰¹ Ibid., II, 150-154.

¹⁰² Ibid., II, 158.

¹⁰³ This is the case, since those not a part of the leisure class are the property of the leisure class.

necessarily absolute, the form of leadership most in keeping with the spirit of property and the fundamental laws is absolute monarchy. Furthermore, since the monarchy is the apotheosis of the principle of proprietorship, the monarch is entitled to the same rights as the individual, non-regal proprietor. Therefore, the right to dispose of one's property as one wishes, entitles the Monarch to choose his successor (since his realm is his property). The Monarchy, because it is absolute, must necessarily be hereditary.

For Linguet, therefore, the family and, in particular, the absolute authority of the father, is the model for social organization.¹⁰⁴ Absolute paternal authority--" . . . cette heureuse espèce de magistrature¹⁰⁵ qui travaille pour eux, sans même qu'ils le sachent"--is the only type of magistrature which does not become dangerous through the awakening of group interests, ambitions and esprit de corps.¹⁰⁶ Therefore, in a well-constituted monarchy, based on this principle of

¹⁰⁴Linguet, op. cit., II, 189.

¹⁰⁵"Magistrature" in the above case should not be taken to mean simply the members of the sovereign courts of France. Since, according to Linguet, the king is absolute sovereign and consequently proprietor of the realm, it behooves him to assure the security of this property by upholding the fundamental laws of society. For this reason it is only right that the king should be the first magistrate of the realm, in both the judicial and political senses.

¹⁰⁶Linguet, op. cit., II, 226.

absolute paternal authority,

Il n'y à ni jalousie ni rivalité entre les puissances qui les composent, parce qu'elles rapportent toutes leur origine à la même source. Elles sont établis pour le bien commun, elles n'ont point d'autre vue que de travailler, à le procurer, et d'autre gloire que d'y réussir. 107

Moreover, absolute monarchy is the most efficacious and socially beneficial of all forms of government in that it permits the monarch to rule with a minimum of physical force:¹⁰⁸ "Elle n'a besoin ni d'assistance pour faire respecter ses ordres ni de formalités pour les transmettre."¹⁰⁹ Respect for the monarch as a patriarch obviates the need for intermediary powers or of a magistrature independent of his authority.

This paternalistic form of government would, of course, be considered despotic by Montesquieu,¹¹⁰ since it allows

¹⁰⁷ Ibid., II, 189-190.

¹⁰⁸ Ibid., II, 223-225.

¹⁰⁹ Ibid., II, 223.

¹¹⁰ Esprit des Lois, I, Bk. III, Ch. 10, 27.

"In despotic states, the nature of government requires the most passive obedience; and when once the prince's will is made known, it ought infallibly to produce its effect. Here they have no limitations or restrictions, no mediums, terms, equivalents, or remonstrances; no change to propose; man is a creature that bindly submits to the absolute will of the sovereign". See also T.T. Bk. II, Ch 4, 5; Bk. III, Ch. 7-9; Bk. VIII, Ch. 6-8.

for "no limitations or restrictions" and since it allows for no changes in the social order. For Linguet, however, a desire for indiscriminate change is essential to the nature of the despot:

Il ne devient cruel que parce qu'on lui résiste: on ne lui résiste que parce qu'il veut détruire: et il ne veut détruire que parce que l'amour de changement est dans sa nature. Il ne serait pas despote, s'il laissait subsister ce qui est établi. Les innovations sont inseparables de son existence, et les seuls vrais gouvernement despotiques sont ceux où les loix éprouvent des révolutions. 111

The despot strives for change, while providing for the security of his rule, by promoting division and discord within society. Since the basis of the social order is the family, the despot seeks to undermine society by destroying the inner tranquillity of the family unit by encouraging the wife and children to challenge the father's authority. The father's authority (and with it the family unit) having been destroyed, the despot becomes the sole authority in society.¹¹² The despot considers such total rule necessary since "Il veut avoir le droit de changer d'un moment à l'autre la constitution d'un Empire."¹¹³ An essential characteristic of despotism, therefore, is the will to transgress the fundamental laws of the realm. This preservation of these laws can only be assured through the institution of that form of government

¹¹¹Linguet, op. cit., II, 200.

¹¹²Ibid., II, 196-198.

¹¹³Ibid., II, 199.

most reliant on their maintenance. That form of government is absolute monarchy.

The Fundamental Laws Provide for the
Security of the Laboring Class

Linguet's final argument in favor of absolute monarchy is that the interests of the laboring class can best be served by a monarch wielding absolute paternal authority over his subjects. Having demonstrated that absolute monarchy is consistent with the spirit of the fundamental laws, there remained for Linguet to prove that these fundamental laws benefit the laboring class. The purpose of the fundamental laws is to protect the institution of private property. Private property, as has been shown, is based on a master-slave relationship. Linguet's task, therefore, is to argue on behalf of slavery. In doing so he is addressing himself particularly to the philosopher:

Ils disent hautement que le droit d'esclavage est en général un droit injuste: il y a plus, ils le prouvent: à cet égard je pense comme eux, je l'ai déjà dit. Mais entre eux et moi il y a cette différence, qu'ils croient cette injustice nuisible, et qui je la crois nécessaire: qu'ils la reprouvent comme l'ennemie de tous les droits, et que je la considère comme le fondement de tous: qu'ils plaignent le genre humain de l'avoir adoptée, et qu'ils en regardent la destruction comme le premier pas vers le bonheur commun de la société, au lieu que moi en le plaignant aussi d'avoir commis cette imprudence je suis fortement convaincu qu'il ne sauroit la réparer, sans anéantir cette même société qui lui doit l'existence. 114

Not only is slavery necessary, but in its original form, it is a fairly mild institution. The conquered agricultural people forfeited their land, livestock and personal freedom to the hunter. The latter, in turn, allowed the agricultural people remain on their respective plots of land where they continued to raise livestock and grow crops without a great deal of interference from their respective masters. When, however, the masters abandoned a life of simplicity for one of luxury and ostentatious living, the slaves became more and more closely attached to the master in order that they might attend to his new and artificial needs. It was at this stage that the slaves' lot became humiliating and oppressive.¹¹⁵ Not only is slavery, (uncontaminated by luxury), unoppressive, it is also both necessary and beneficial to the slave. Since society is based upon private property, one must either own property or constitute property in order to be a part of society. To be the free son of a slave, for example, is to be a social outcast. As such, one would be unable to provide sustenance for oneself either by working the land or attending to the needs of a master. To give a slave freedom, therefore, is to sentence him to a lingering death by starvation or to force him into becoming a medicant or a brigand.¹¹⁶ There is in slavery,

¹¹⁴ Ibid., II, 280-281.

¹¹⁵ Ibid., II, 257-261

¹¹⁶ Ibid., II, 268-277.

at least, the benefit of economic security since it is in the master's best interests to maintain his property in good condition. On the surface, this whole discussion about slavery seems very theoretical with little relevance to the problems which Linguet was most concerned with in eighteenth-century France. The purpose of Linguet's theorizing on the master-slave relationship becomes discernible as social commentary, however, when one understands his conception of property. First, it will be recalled that Linguet, in theorizing upon the origins of society, stated that at the time of the conquest, all property was held in common by the proprietor class as a whole. It was then parcelled out to individuals, with the understanding that all property ultimately belonged to society as a whole.¹¹⁷ Elsewhere, Linguet points out that ownership does not, in reality, extend beyond the lifespan of the owner. For Linguet therefore, the individual proprietor is nothing more than a custodian of his possessions. The fundamental laws, however, are designed to ensure the inviolability of private property. That which is inviolable and absolute, therefore, is not the ownership of private property but the right of the proprietor custodian to exercise absolute authority over the

¹¹⁷ Since those not of the proprietor class were its property, it follows that the proprietor class and its possessions constitute society.

employment and disposal of his property.¹¹⁸ The model for social organization, therefore, is a family unit within which the authority of husband and father (as proprietor) is absolute. The highest expression of the principle of private property is the Monarch exercising absolute authority over his subjects.

Conclusion

In concluding this chapter I wish to stress the tone of urgency which underlies the Théorie des lois civiles. It is not just the French Monarchy which is in a state of decline. Because absolute monarchy is an integral part of

¹¹⁸What is involved here is a feudal conception of property which A. Soboul describes as follows: "When speaking of landed property and social antagonisms under the old regime we forget too often that it was not a total absolute property such as that which the constitution makers of 1789 included, among the imprescriptible Rights of Man. The lord exercised a right of overlordship (propriété éminente, also called la directe) over the lands of his fief, and especially over peasant tenures. By this right land was subject to those seigneurial rights which were the badge of subjection. The peasant could indeed freely dispose of his land, sell it or give it in inheritance, but he did not own it in theory possessing only what the jurists called domaine utile. Payment to the lord of an annual cens marked the dependence of the non-aristocratic tenures of land (tenures roturières or censives). The structure of landed property thus remained feudal."

French culture, its demise is indicative of a decay which has penetrated to the core of French society: the laws and their administration are in a state of corruption; the family unit, and with it the social structure as a whole, is disintegrating. If those in positions of authority do not heed Linguet's warning and act upon it promptly, revolution and the ruination of French society will be inevitable.¹¹⁹

One of the foremost engines of political and social destruction is the magistrature. It is the magistrates who are undermining the beliefs upon which the monarchy and French society are based by promoting their selfish group interests under the guise of a superficially beneficent body of political doctrine. Having decried absolute monarchy as despotic, their success will place France under the yoke of the worst of all possible forms of despotism--the aristocratic oligarchy.¹²⁰ Where the absolute monarch identified his interests with the welfare of the people, this oligarchy will act solely upon their esprit de corps, and their group interests. For these reasons, Théorie des loix civiles is primarily an attack upon the thèse nobiliaire and its theoretical fountainhead-Montesquieu.

¹¹⁹ Linguet, op. cit., I, 39.

¹²⁰ Ibid., II, 189.

The magistrature, moreover, must share with past legislators the responsibility for having undermined another bulwark of French society--its jurisprudence. The juxtaposition of the fundamental laws, those laws consistent with them and those laws contrary to the spirit of the fundamental laws has produced a chaos within which jurisdictional wrangling, chicanery and the aggrandizement of group interests has free rein. The equitable dispensation of justice, upon which the security of private property (and therefore society) depends, has thereby been compromised.

This tendency for complexities and contradictions to work their way into the legal structure is inevitable. Therefore,

Pour peu qu'on y réfléchisse on verra bien que cette nécessité de rendre aux Loix, à de certains intervalles, la splendeur qu'elles ont perdues, de les nettoyer, pour ainsi dire, comme une machine ordinaire, est en Europe une suite inévitable de la nature mêmes des peuples qui l'habitent, et des changemens continuels qui y arrivent dans la conformation des corps politiques. 121

French jurisprudence, however, is almost beyond restitution since " . . . peu à peu le tems arrive, où cette operation légère se trouve insufficante. Ce n'est bientôt plus une toile qu'il faut nettoyer: c'est un nouveau tissu qu'il faut refaire."¹²²

¹²¹Linguet, op. cit., I, 39-40.

¹²²Ibid., I, 44.

This subversion of the fundamental laws has not only undermined the paternal authority of the monarch; it has practically destroyed absolute paternal authority as a viable principle for social organization, in general. The basis of all social organization, the family, has been seriously weakened by the growing independence of women. This weakening of the principle of proprietorship within the family unit can only result in the eventual destruction of all civil liberties and the institution of some form of despotic government.¹²³ The decline of absolute paternal authority in the family unit has necessarily led to its decline as a principle in social relationships generally, and especially between the leisure and labouring classes. The leisure class no longer identifies its interests with the welfare of the labouring class. The mutually antagonistic interests of the leisure and labouring classes have destroyed the economic security which the latter can only enjoy in a state of social harmony. Consequently high prices, food shortages and an ever growing incidence of poverty and mendicity have become all too prevalent in contemporary French society.

There is a great danger, however, in believing that these social ills can be completely eliminated, since they

¹²³ Ibid., I, 369. "Le despotisme ne peut naître que de la corruption: mais celle--c'est toujours accompagnée, et peut-être même occasionnée par la rupture des liens que les mœurs donnaient aux femmes. Tout qu'une discipline exact les contient dans la retraite, on voit flouir dans une nation le courage et la vertu."

are an essential part of society.¹²⁴ It is possible, however, to keep them well within the bounds of endurance by adhering strictly to the spirit of the fundamental laws of the realm. It has been the failure to do so and the unrelenting criticism of French political and social institutions that has brought about that general disintegration which has served only to aggravate the injustices of society. Rather we should realize that,

Chaque siècle a, pour ainsi--dire, ses abcès, qu'il faut se garder de percer, avant qu'ils soient mûrs. Respectons donc ceux de notre, et laissons à la postérité le soin de les cicatrizer, quand ils se seront ouverts d'eux-mêmes. 125

¹²⁴Linguet, op. cit., II, 282. "C'est la pauvreté qui a produit la richesse: mais c'est l'esclavage qui a produit la pauvreté: et ce n'est qu'à la suite de cette filiation funeste qu'a paru la loi civile "

¹²⁵Linguet, op. cit., I, 6. What Linguet is saying, although extravagantly and with a paradoxical twist, is that a rigidly hierarchical society, central to which is the principle of absolute authority or proprietorship, requires of the individual that he either exercise absolute authority (proprietorship) within a designated jurisdiction or be included within such a jurisdiction (that it, constitute property) in order to be a party of society and enjoy the security provided by the laws. This security, although very real, is rendered minimal, for the majority of society's members by the great economic and social disparity which such a rigidly hierarchical social structure imposes.

CHAPTER III

LINGUET AND THE PHYSIOCRATS

Vers l'an 1750, la nation rassasiée de vers de tragédies, de comédies, de opéras, de romans, d'histoires romanesques, de réflexions morales plus romanesques encore, de disputes théologiques, se mit enfin à raisonner sur les blés. On oublia même des vignes pour ne parler que du froment et du seigle. On écrivit des choses utiles sur l'agriculture; tout le monde les lut, excepté les laboureurs. 1

Probably the most important manifestation of this sudden widespread popular interest in agronomy were the writings and activities of a group of political economists known as the physiocrats. Coming into its own in the 1750's, physiocracy became increasingly a force to be reckoned with in literary and government circles, reaching the apogee of its power and influence under the Controller-Generalship of Turgot.² After 1776, however, its influence declined due to a combination of circumstances, the most important of which was the widespread unpopularity of

¹Voltaire, Dictionnaire philosophique, II, II or XVIII of Oeuvres Complètes (Paris, 1878), 11.

²Turgot, although not a physiocrat, was a fellow traveller along the path of laissez-faire entrepreneurial economic thinking, who was very much in favour of free trade.

Turgot's reforms, leading to his dismissal in that year.³

It shall be our purpose to demonstrate that Linguet's position in his debate with the physiocrats was an expression and elaboration of that politically and socially conservative world view crystallized during his years at the Palais de Justice and given theoretical expression in Théorie des lois civiles.

The Physiocratic School of Political Economy

There has been some disagreement as to the true nature of physiocracy. Some maintain, as does Norman J. Ware, that the physiocrats "were not professional economists but officials ... emerging from the French bureaucracy and climbing into the land-owning and even into the noble classes."⁴ This rising class of officials, noble and non-noble alike, while adopting an aristocratic outlook and style of life, at the same time maintained the essentially bourgeois attitude that it

³Henry Higgs, The Physiocrats, (London, 1897), pp. 58-59. It should be pointed out, however, that physiocrats such as Dupont de Nemours and the Abbé Baudeau were to continue to expound physiocratic doctrine, although, as the years passed, less and less emphasis would be placed on the doctrine that the land was the sole source of wealth and more on the general "capitalistic" (production on a large scale, involving a division of labor, which is geared to a free market economy) approach to production which they felt needed to be taken. See Ronald Meek, The Economics of Physiocracy: essays and translations (London, 1962), p. 347.

was not sufficient for an estate to serve as a source of livelihood or as a mark of noble status--it must yield a profit in the manner of a well-run business.⁵

Ronald Meek, on the other hand, maintains that the physiocrats constituted a school of political economy and that physiocracy represented an attempt to surmount the economic or social problems of the ancien régime in France.⁶ The interests of the class of agricultural entrepreneurs would have coincided with those of the physiocrats only insofar as the former served to alleviate the problem of low agricultural productivity which the physiocrats considered the basis of France's economic and social ills.⁷

Physiocratic doctrine, to be sure, reflected a certain trend in French public opinion in the eighteenth century. Consequently, it represented to a degree a reaction against

⁴Norman J. Ware, "The Physiocrats: A Study of Economic Rationalization," The American Economic Review, XXI, No. 4 (December, 1931), 608. A similar opinion is held by Raymond S. Franklin who contends that the Physiocrats spoke for the wealthy peasants and "hybrid agrarian capitalists" which he refers to collectively as "agrarian entrepreneurs or capitalists." See Raymond S. Franklin, "The French Socio-economic Environment in the Eighteenth Century and Its Relation to the Physiocrats," American Journal of Economics and Sociology, XXI, No. 3 (July, 1962), 299.

⁵Ware, op. cit., 608-609.

⁶Meek, op. cit., pp. 368-369.

⁷Ibid., pp. 392-393.

the merchantilist policies of Colbert and the financial schemes of John Law as well as a nostalgia for an idealized feudal past--the golden age of France during the reign of Henry IV and his minister, Sully.⁸

Similarly, the physiocratic school reflected, to a degree, the interests of this emerging group of agricultural entrepreneurs, inasmuch as the school counted among its members a number of landowners who stood to benefit substantially from an increase in productivity through large-scale agriculture.⁹ Nevertheless, as the generally theoretical and abstract style of their writings will bear out, the Physiocrats were above all academicians approaching the economic and social ills of the ancien régime in France as a problem in political economy for which they proposed a doctrinaire, theoretical and systematic solution--involving large-scale agriculture, free trade in grain and taxation reform.

France in the eighteenth century offered the spectacle of prosperity existing side by side with grinding poverty, agricultural underproduction and a government labouring under a deficit of gigantic proportions. French commerce in the eighteenth century expanded rapidly, prices gradually rose and the currency became stabilized. Hand in hand with

⁸ Ibid., pp. 368-369.

⁹ Ware, op. cit., 614-615.

this commercial expansion went the rapid growth of French cities, particularly those which were seaports.¹⁰

Rural France, however, presented quite a different picture. Briefly the problem facing it was one of over-population and underproduction. France's rapidly growing population numbered between twenty-three and twenty-four millions in the decade before the Revolution, of which only two million resided in the cities.¹¹ French agriculture faced with the task of feeding this growing population was not maximizing its productivity.¹²

¹⁰ Alfred Cobban, *A History of Modern France* (2nd edition, Harmondsworth, Middlesex, 1961), I, 39-41, 48.

¹¹ Henri See, La France économique et sociale au XVIII^e siècle (Paris, 1925), pp. 14-15.

¹² Michel Morineau, "Y-a-t-il eu une révolution agricole en France au XVIII^e siècle?", Revue Historique CXXXIX (April-July, 1968), 299-326. Morineau, cites figures of J.C. Toutain and B.H. Slicher van Bath:
 1700-1750: Agricultural productivity grew at a rate of .3%
 1750-1780: Agricultural productivity grew at a rate of 1.4%
 (See Morineau, 309). Morineau, however, reaches the following conclusion:

"La constance vérifiée des résultats depuis la première moitié du XVIII^e siècle, et, parfois, depuis le début du XVII^e ou depuis le Moyen Age jusqu'en 1840 est frappante et à peu près générale. Il semble donc que la "révolution agricole" n'ait pas eu lieu en France à l'époque ordinairement considérée comme celle du démarrage; mieux, que l'histoire des céréales ait été dominée par la récurrence de rendements normaux (commun au moyens) identiques sur trois, quatre ou cinq centuries, ce qui n'exclut pas, d'ailleurs, des fluctuations périodiques à court et moyen terme" See Morineau, 326.

In the first place, cultivation was conducted largely by the small peasant proprietor, the small fermier (a tenant farmer paying a cash rent), the métayer¹³ (a tenant farmer paying up to one-half and sometimes more of his crop as rent) and those who combined the status of tenant (either métayer or fermier) and proprietor. These peasants for the most part worked only small parcels of land which were often not large enough to support themselves or their families. Consequently, they turned to the "laboureurs", that small number of well to do peasant proprietors 'the coqs du village' for advances of money, seed and bread grain, and the loan of draught animals.¹⁴

Thus the small peasants incurred obligations toward the large ones, and might soon become their wage-labourers. The crises of the old agricultural system thus widened the gap between a minority of the laboureurs . . . and a swollen mass of dwarf peasants and labourers, and simultaneously contributed to the transformation of social relations.¹⁵

The small peasants in the eighteenth century were swelling the ranks of the lowest class in the peasant hierarchy, the

¹³The métayers were the most numerous of the small proprietors, tenant-proprietors, and tenant farmers. Métairies accounted for from two-thirds to three-fourths of the land in France. See Albert Soboul, La France à la veille de la Révolution: I, aspects économiques et sociaux (Paris, 1960), p. 114.

¹⁴For a thorough breakdown and classification of the social structure of the French rural community. See Ibid., p. 112.

rural day labourers, the journaliers, manouvriers, or Brassiers, only a small number of which were fortunate enough to have a small hut and a plot of land, ". . . les plus nombreuses ne possédant pour vivre que leurs bras."¹⁶

Clinging to agricultural methods which hadn't changed since the middle ages, the peasantry obstinately resisted attempts to improve agricultural methods which would involve the enclosure of the common pasture areas upon which they particularly depended for the grazing of their livestock. The French peasantry appeared to be caught in a vice: enclosure would force many to abandon the countryside for the towns and cities in search of work, while, for the great majority, the traditional system of agriculture provided only a marginal existence.

¹⁵ Albert Soboul, "The French Rural Community in the Eighteenth and Nineteenth Centuries", Past and Present, second series, 10 (November, 1956), 86-87.

¹⁶ Soboul, La France à la veille de la Révolution, p. 112. For discussions of the classification of the peasant hierarchy, see Ibid., pp. 112-117; Soboul, "The French Rural Community in the Eighteenth and Nineteenth Centuries"; Henri Sée, op. cit., p. 12.

Only the well-to-do laboureur, or the fermier who could rent a fair-sized farm, could really live on the product of his land. The majority had to eke out a living by working on the lands of others, engaging in domestic industry, migrating seasonally into the towns, scraping a bare living off the commons and waste or else starve. 17

The situation of the peasant (especially the peasant of modest means) was also aggravated by a tax structure which came to reflect the transformation, in eighteenth-century France, from a social hierarchy based on birth to one based on wealth. "Tout noble à la vérité n'est pas riche mais toute riche est noble."¹⁸ Similarly, those who benefitted most from the tax structure were 'les Grands', the wealthiest and therefore the most powerful people in France, whose wealth made them indispensable to a government so reliant on its financier-creditors.¹⁹ The first and second estates and a large segment of the third estate, especially those who resided in the "villes franches" (those cities which had negotiated charters from the Crown involving certain collective privileges) were legally exempt from the servile

¹⁷Cobban, op. cit., I, 49-50.

¹⁸Betty Behrens, "Nobles, Privileges and Taxes in France at the End of the Ancien Regime," Economic History Review, Second Series, XV, No. 3 (1963), 456-457. This statement is attributed to Malsherbes.

¹⁹"Les Grands" included the Fermiers Généraux who administered all indirect taxes, the leading churchmen, nobles of the sword and the robe and the Princes of the Blood. Although many within this group were of high noble rank, the distinguishing feature of "les Grands" was wealth without which the life style expected of them would have been impossible. See Ibid., 456.

obligations of the taille,²⁰ the corvée and militia service. In the case of fiscal exemptions, not legally provided for, but extorted from the administration through string-pulling, bribery and intimidation, those with influence (and therefore wealth) drew the greatest benefits. Consequently, the tax burden weighed down most heavily upon those least able to support it--the poorer elements of the nobility and third estate, among whom the peasantry were the most numerous.

Equally inadequate in this regard, were the customs duties and excise taxes (the aides, traites and the gabelle). Colbert had attempted through his tariffs of 1664 and 1667 to reform what was a disparate collection of custom duties and excise taxes into an integrated system.²¹ Rather than

²⁰ Although legally exempt from paying the taille, the nobility, in reality, shared this burden with the third estate, to a certain extent: "The noble landlord's legal immunities were thus broken through by the fact of economics. Sometimes he paid the taille, or a part of it, out of his own pocket; sometimes it reduced his rent, and all this apart from the fact that when . . . the peasants, failed to transfer the burden, the more it impoverished them, the smaller the landlord's profits." See Ibid., 459.

²¹ J.F. Bosher, The Single Duty Project: a study of the movement for a French customs union in the eighteenth century (London, 1964), pp. 5-6. The tariff of 18 September 1664 sought to create a single customs union throughout France but was accepted only by most of north France. It was administered for customs purpose by an amalgamated company of tax farmers known as the Cinq Grosses Fermes. Those provinces which rejected the customs union proposal and which thus lay outside the jurisdiction of the Cinq Grosses Fermes were known as "provinces réputées étrangères." The tariff of April 1667 imposed a special tariff along the frontiers of the kingdom. Although these tariffs were uniform in the sense that their rates did not change, they nevertheless were not imposed uniformly along the frontier. Areas lying on the outside of these custom barriers were referred to as "provinces traitées à l'instar de l'étranger effectif."

supplanting them, all he succeeded in doing was to superimpose this new system of duties on the already existing ones. Colbert, with the purpose of increasing the efficiency of the collection of these indirect taxes, had also formed the monopolistic company of the General Farm in 1681. While by the middle of the eighteenth century this company had indeed become very efficient in its method of collection, the duties imposed had not been rationalized with the result that an everincreasing burden was being placed on internal and external French trade,²² and, therefore, on the peasantry as consumers.

For the physiocrats, the economic and social problems of an under-developed country like France could only be solved through increased national productivity in agriculture.²³ Meek contends that France's under-development, a) relative to its own position in the past, b) relative to its potential at that time, and c) relative to its position in relation to other countries at that time, was fairly obvious by the time of the physiocrats:

²²Bosher, op. cit., pp. 9-13.

²³Meek, op. cit., p. 318.

The degree of impoverishment caused by a long succession of wars was such as to encourage the belief that things must have been better at some time in the past. The relative prosperity of certain northern provinces where agricultural entrepreneurs had been particularly active was such as to lead to speculations about the possibility of extending the new methods over the whole of the country. And the relative prosperity of Britain, where the agricultural revolution had proceeded much further than in France, was such as to afford a solid basis for these speculations. Not only was France's underdevelopment a fact, but escape from its underdevelopment was also beginning to appear as a practical proposition. ²⁴

That the physiocrats should have seen in a large-scale, entrepreneurial approach to agriculture the principal means of achieving optimum national productivity, was, again, a reflection of the times. In the first place, since France of the eighteenth century was basically a rural, pre-industrial society (it will be remembered that the urban population was only two million of twenty-four millions), a solution to the problem of insufficient national productivity would necessarily have to be sought in the country-side, that is, through agriculture. Secondly, a market-oriented (as opposed to a subsistence) approach to farming had been undertaken with increasing frequency after 1760, mainly in areas cultivated under the system of fermage (primarily on the fertile plains of northern France--in Picardie, eastern Normandie, Brie, and Beauce) by entrepreneurial "grands fermiers" who integrated "fermes" leased from a number of proprietors into a thoroughly

²⁴ Meek, op. cit., p. 369.

rationalized, large-scale agricultural enterprises applying up-to-date methods of agronomy, whose level of productivity was conspicuously higher than equivalent areas of land farmed in the traditional ways.²⁵

The basic premise of the physiocratic doctrine that " . . . la terre est l'unique source des richesses et c'est l'agriculture qui les multiplie "²⁶ was, therefore, less a rationalization of a nostalgia for the past but was, to a large extent, an observable fact if we accept Meek's definition of "wealth" as disposable surplus, and "productivity" as the ability to produce this surplus.²⁷ It was from this definition that the physiocratic distinction between "productive" and non-productive or "sterile" classes was derived. Included in the former group were all those who were concerned with animal husbandry, agriculture, mining,

²⁵ Ibid., pp. 380-382. See also Albert Soboul, La France à la veille de la Révolution: I aspects économiques et sociaux, p. 113. Soboul indicates in a separate article that the "fermiers généraux" were similarly concentrating labor land and capital in share-cropping regions. He does not indicate how widespread a phenomenon the "fermier général" was in the "pays de métayage," however. See A. Soboul, "The French Rural Community in the eighteenth and nineteenth centuries", Past and Present, 2nd series, 10 (November, 1956) 86-87.

²⁶ August Oncken, ed., Oeuvres économiques et philosophiques de François Quesnay (Darmstadt, 1965), p. 337.

²⁷ Meek, op. cit., p. 379.

and fishing.²⁸ Of these, the first two held the most importance in physiocratic doctrine. All those not involved in these pursuits belonged to la classe stérile and would include craftsmen, artisans, manufacturers, shopkeepers, and merchants. The abbé Baudeau, in his Explication du Tableau Economique, underlines the basis for this distinction fairly succinctly in saying that

Le Propriétaire et le Cultivateur sont payés immédiatement par les bienfaits de la nature, par la fecondité de la terre, par la portion que surajoute la récolte au delà des semences. La classe stérile tout entière, même quant à la portion d'Ouvriers qui travaillent aux instrumens oratoires, en est payée médiatement, c'est-à-Dire par le Cultivateur ou Propriétaire. C'est avec lui qu'elle compte, c'est sur lui qu'elle profite; non avec la nature et sur la fertilité de la terre. 29

The abbé Baudeau is careful to point out, however, that

. . . le nom de classe stérile ne signifie point classe inutile, encore moins classe nuisible, comme l'ont cru les esprits ardents et superficiels; il signifie seulement classe non productive, c'est-à-dire classe qui ne travaille pas immédiatement à multiplier les productions naturelles, classes qui ne fait pas à ses frais les avances de l'agriculture. 30

²⁸ Georges Weulersse, La physiocratie à la fin du règne de Louis XV (1770-1774) (Paris, 1959), pp. 14-15.

²⁹ L'abbé Baudeau, Explication du Tableau Economique à Madame ***: extrait des Ephémérides de 1767 & 1768 (Paris, 1776), p. 101.

³⁰ L'abbé Baudeau, "Explication sur le Vrai Sens du Mot Stérile, appliqué à l'industrie," Physiocrates, II, Collections des Principaux Economistes, III, ed. Eugène Daire. (Paris, 1846), p. 868.

In the above citation a distinction is made within the classe productive between the propriétaires and the cultivateurs, or the producer class. The producer class represents the actual cultivators of the soil, that is, tenant farmers and day labourers. The wealth produced by this class was considered to have been of two kinds: that which covered the cost of the producer's labour and expenses (avances annuelles), and that which was paid as rent to the proprietors. This proprietor class "comprend le souverain, les possesseurs des terres et les décimateurs."³¹ Although this is somewhat vague, it can, I feel, be taken to include king, clergy and nobility.³²

This proprietor class was justified as productive by virtue of the fact that it was this class which made the original capital investment on the land, the avances foncières or primitives. It had been responsible for having the land cleared and making it suitable for cultivation, for providing the buildings, livestock and equipment. It was this class and the entrepreneurial "cultivateurs en chef" of the classe productive that were the focal point of the

³¹ Oncken, op. cit., p. 308.

³² L'abbé Baudeau, in his Première Introduction à la Philosophie Economique au Analyse des Etats Policés, makes repeated reference to "la classe noble ou propriétaire." He also makes this observation: "La propriété foncière est donc le caractère général et distinctif de la noblesse dans les Etats policés. En ce sens, tous les nobles sont égaux entre eux, et la richesse fait la seule différence." See Daire, op. cit., p. 691, and Ch. 111.

physiocratic doctrine and it is through them that the régime of large-scale capitalistic agricultural enterprises was to be realized.³³

The rent paid to the proprietor class, or the produit net, represented the national income for any given year. The merchants and the artisans which made up la classe stérile did not in any way augment the national wealth; rather they merely transformed it:

Les travaux de cette classe ne sont pas productifs de richesses, mais le plupart en sont conservateurs. Il n'y a pas plus de production à faire une maison avec du bois et des pierres que du pain avec de la farine donnée. On retrouve dans l'une et dans l'autre des formes nouvelles, qui ne voient que ce qu'elles ont couté et le pain même, dont la consommation est subite, est d'une nature de richesse préférable à celle de la maison. 34

³³ L'abbé Baudeau indicates the type of large-scale agricultural concern which the physiocrats see as the key to increased productivity in his definition of the cultivateur en chef as:

. . . celui qui fait à ses dépens, à ses risques, perils et fortunes, les avances de ces préparatifs et de ces procédés; qui endirige par son savoir tous les travaux journaliers, qui dispose des instruments, des animaux et des hommes, de leur forces; qui conduit enfin, pour son propre compte, tout l'ensemble de l'exploitation. (*Ibid.*, p. 697)

This was a recognition of an existing fact, since this capitalistic approach to agriculture had been undertaken to a limited extent in the north of France, with the use of just such an intermediary, since 1760. See M. Labrousse, Le paysan français des physiocrates à nos jours (Paris, 1963) p. 70. It was also a hopeful prognostication.

³⁴ Weulersse, op. cit., p. 29.

For performing these tasks, they deducted that amount required for themselves, their families' subsistence and for the maintenance of their capital goods.³⁵ They did this, however, only at the expense of the proprietor class. In some cases, this expense was necessary, as in the case of the merchant who through interprovincial or international trade, satisfied the needs of the "classe productive" through local purchasing. The proprietor, in this case, was paying for useful services rendered. There were, however, other elements of the sterile class, such as those merchants dealing in luxury items and those tradespeople making luxury items whose business activities, if overly successful, would, it was felt, have an injurious effect on the community, since their incomes would contribute nothing to the national wealth and would, in fact, represent that part of the income of the proprietor class which was drawn away from reinvestment in the land.³⁶

³⁵ Meek, op. cit., p. 29.

³⁶ L'abbé Baudeau defines luxury as follows:

Cette multiplication excessive des travaux ou dépenses purement stériles, qui se fait aux dépens des travaux utiles et nécessaires à l'entretien de la production, est précisément ce qu'on doit appeler luxe, dans les gouvernements ou dans les personnes privées--car luxe veut dire excès de dépenses stériles. Qui dit excès, suppose une règle, une mesure . . . et en voici: tout ce qui est nécessaire à l'entretien des avances souveraines de l'Etat, à celui des avances foncières de tout héritage, à celui des avances primitives ou annuelles de tout exploitation productive, n'est pas disponible, c'est-à-dire ne peut ni doit être consacré par qui que ce soit à des jouissance purement stériles; il a son

The physiocratic doctrine with its emphasis on agricultural productivity, as opposed to an increased productivity in manufactures, belied a desire for reform tempered by a reluctance to completely abandon the old feudal order. As Meek puts it.

The society which the Physiocrats visualized, in short, was indeed a 'capitalist' society in the broad sense, but a capitalist society in which the landowning classes by accommodating themselves to the new conditions, would be able to retain their old position of predominance. 37

The Issues

There were four issues over which the physiocrats were taken to task by Linguet: the efficacy of large-scale agriculture, free trade in grain, taxation reform and the problem of mendicity. The differences which arose between Linguet and the physiocrats were not just on matters of detail but grew, rather, out of the two different frames of reference from which the issues were approached. The

³⁶ (continued) emploi marqué, son usage indispensable. Le détourner de sa destination, c'est excéder la mesure du revenu disponible. Telle est la véritable définition du luxe.

L'abbé Baudeau, Introduction à la Philosophie Economique, pp. 735-736.

³⁷ Meek, op. cit., p. 395. See footnote 32 supra.

physiocrats' primary concern was that of increasing national productivity, while that of Linguet was the welfare of the poor tenant-farmer and the rural day labourer since their economic security was necessary for the maintenance of social stability.

Given the physiocratic dictum that land was the sole source of wealth, increased national productivity necessarily meant greater agricultural output. The surest means of achieving this goal, it was felt, was through the institution of large-scale agricultural enterprises throughout France. These who would be playing the key role, in this regard, would be "la classe noble ou propriétaire" as assisted by the "cultivateurs en chef". For the physiocrats, therefore, the prime frame of reference was the welfare of the proprietor class whose best interests were synonymous with those of the nation as a whole, for it was the produit net of the proprietor class which constituted the wealth of the nation. Similarly free trade in grain and the single tax on land were advocated as measures which would help achieve optimum agricultural productivity.

This programme, however, was based on the assumption that the laws of nature properly applied to society would necessarily produce a state of social harmony. In such a 'capitalist' society, *man guided by self-interest in a free-market economy would act in the best interests of society.*

For Linguet, social harmony will result only from a return to an unqualified acceptance of that rigid social

hierarchy which is implicit in the fundamental laws of the realm. The institution of a programme of which the guiding principles largely deny the traditional hierarchical structure of French society will only further subvert the fundamental laws, the economic security of the small farmer (who, in a rural society such as that of France, accounts for the majority of the population) and, therefore, social stability. Large-scale agriculture, free trade in grain, and the impôt unique will benefit only the proprietors and the merchants, while compounding the problem of poverty and mendicity amongst the farmers and day labourers.

The Efficacy of Large-Scale Agriculture

The physiocratic advocacy of large-scale agriculture and, similarly, Linguet's response to this programme were not academic. Both were a response to the agricultural revolution and its attendant social and economic effects--a revolution which Marc Bloch defines in terms of its two prime characteristics: the gradual elimination of the rights and obligations of common husbandry and the application of new agricultural techniques. The physiocrats were part of a tradition³⁸ of agricultural reform which went back to the

³⁸Marc Bloch, Les caractères originaux de l'histoire rurale française (Paris, 1960), p. 201.

fourteenth century, a tradition which, for the most part,³⁹ had involved the encroachment by seigneurs on the rights of vaine pâture (the right of the common herd of the seigneurie to graze on all lands in summer fallow) and their attempts to enclose the common lands. In both these cases the goal of the seigneur was greater agricultural productivity through more efficient use of the land, which until the eighteenth century involved a simple biennial or triennial system of crop rotation.⁴⁰ Efforts at agricultural reform were more vigorous and more successful in the eighteenth century as a result of three factors: a gradual polarization in the structure of the peasantry in many parts of France, initiated by the hardships of the Fronde;⁴¹ a significant increase in the price of agricultural produce, accompanied by an even greater increase in rent in the pays de fermages;⁴² the impact of technological advances in agriculture in the eighteenth century. The decimation visited upon the peasantry by the Fronde undermined the already precarious economic situation of the peasantry of modest means who, from that time until the Revolution were to swell the ranks of rural day labourers, upon which the laboureurs came to rely more and more for agricultural hired labor.⁴³ During the eighteenth century,

³⁹ Ibid., pp. 202-217.

⁴⁰ Ibid., pp. 212-217; 30-34.

⁴¹ Pierre Goubert, "The French Peasantry of the Seventeenth Century: a regional example", Past and Present, second series, 10 (November, 1956), 74.

⁴² A. Soboul, France à la veille de la Révolution, p. 113.

⁴³ Soboul, "The French Rural Community in the Eighteenth and Nineteenth Centuries," 87-88.

of course, a new dimension was added to this polarization in the peasant community, with the appearance of the fermiers généraux and grands fermiers. They were encouraged to establish large-scale, profit making agricultural enterprises by the significant increase in the price of agricultural produce during the eighteenth century, while the grand fermiers,⁴⁴ in particular, strove for greater efficiency and productivity in agriculture in order to realize a profit in an economic environment in which the rise in the price of agricultural produce had been very much outstripped by the increase in rent.⁴⁵ Finally, the inability of traditional agricultural methods to provide for the subsistence of the French people, much less provide a surplus, was made starkly apparent by the demographic revolution of the eighteenth century, while for the first time technological advances in agriculture held out the promise of eliminating the gap between the subsistence requirements of the population and agricultural productivity.⁴⁶ However, these techniques, in order to be effective, required that agriculture be undertaken as a large-scale operation.

⁴⁴This increase in the price of agricultural produce began gradually in the third decade of the century, rose sharply between 1764 and 1770 and continued to rise (with wide fluctuation) until 1817. See C.E. Labrousse, Le Paysan français des physiocrates à nos jours (Paris, 1963), p. 113.

⁴⁵The rise in land rents only overtook the rise in the price of agricultural goods in the last twenty years of the monarchy. In that time, however, the increase in rents was 60% as opposed to a 30% increase in prices. See Soboul, France à la veille de la Révolution, p. 113.

The physiocrats' contribution to this tradition lay in the fact that they made large-scale farming the sine qua non of what was at once an integrated and systematic programme of reform and a theory of political economy which was based on a firm realization of the social and economic ills of rural France:

Les paysans ne tombent dans la misère et n'abandonnent la province que quand ils sont trop inquiétés par les vexations auxquelles ils sont exposés, ou quand il n'y a pas de fermiers qui leur procurent du travail et que la campagne est cultivée par de pauvres métayers bornés à une petite culture, qu'ils exécutent eux-mêmes fort imparfaitement. La portion que ces métayers retirent de leur petite récolte, qui est partagée avec le propriétaire, ne peut suffire que pour leurs propres besoins; ils ne peuvent réparer ni améliorer les biens. Ces pauvres cultivateurs, si peu utiles à l'Etat, ne représentent point le vrai laboureur, le riche fermier--qui cultive en grand, qui gouverne, qui commande, qui multiplie les dépenses pour augmenter les profits; qui, ne négligeant aucun moyen, aucun avantage particulier, fait le bien général; qui emploie utilement les habitants de la campagne; qui peut choisir et attendre les temps favorables pour le débit de ses grains, pour l'achat et pour la vente de ses bestiaux. Ce sont les richesses des fermiers qui fertilisent les terres, qui multiplient les bestiaux, qui attirent, qui fixent les habitants des campagnes et qui font la force et la prospérité de la nation. 47

Peasants were abandoning the countryside for the towns and those who stayed lived in ignorance and squalour, eking out a bare subsistence by working the land on the basis of primitive agricultural methods. The rectification of this

⁴⁶ Ibid., pp. 221-223

⁴⁷ Oncken, op. cit., p. 189.

situation and increased agricultural productivity required that agriculture be restored to its dignity. No longer should it be considered the most arduous, the least rewarding and the most lowly of occupations.⁴⁸ Instead agriculture should be identified with the rich fermier who, rather than working the land himself, served in the capacity of an entrepreneur making of agriculture a profitable enterprise with his intelligence and his wealth (and that of his proprietor).⁴⁹

Furthermore, it was only through large-scale agriculture that national productivity could be maximized. Métayage it was felt, had proven itself inadequate. The métayer was barely able to produce enough for himself and his family's subsistence, let alone produce a profit that amounted to anything. First, he could not afford the capital goods required for new agricultural methods. Secondly, he did not have sufficient land to abandon the wasteful system of summer fallowing for one of crop rotation. The entrepreneurial cultivateur en chef, however, would have the capital and land at his disposal required by more efficient agricultural methods.

⁴⁸ Ibid., p. 188.

⁴⁹ Oncken, op. cit., p. 219. It should be remembered the abbé Baudeau envisages the cooperation between "la classe noble ou propriétaire" and the "cultivateur en chef" (the former providing the capital, the latter providing the management) as the key to greater agricultural productivity. See footnotes 32 and 33 *supra*.

These methods would involve greater mechanization and, therefore, would require a smaller labour force. The increased productivity and reduced labour costs which would result from this mechanization would be beneficial for all.⁵⁰ Those who would find themselves unemployed could be more profitably put to use in some other aspect of the farming complex or could seek other employment in the towns.⁵¹ These displaced peasants would be better off in the long run since they would stand to benefit from that increased national productivity which would be attained under a régime of large-scale agricultural enterprises.

The institution of the physiocratic agricultural programme would set in motion a cycle which would lead to the maximization of agriculture, of population, and general well-being: increased agricultural production would stimulate an increase in population, which, in turn, would result in an increase in consumption, which would, again, stimulate increased productivity.⁵²

Linguet's differences with the physiocrats certainly were not based on any Panglossian belief in the superior virtues of the traditional agricultural régime in France. Like the physiocrats, he was fully aware of the sad state into which the rural population had fallen:

⁵⁰ L'abbé Baudeau, Introduction à la philosophie économique, pp. 694-696.

⁵¹ Ibid., p. 705. ⁵² Oncken, op. cit., p. 186.

La plus nombreuse portion de la société s'est trouvée, de ce moment, non pas rendue à elle-même, mais livrée essentiellement à la misère, au besoin dévorant, à la nécessité du travail le plus dur et le moins interrompu. L'indépendance de nos manouvriers n'a été qu'un surcroît de charges. Leur prétendue liberté les a soumis aux impôts, aux corvées personnelles, aux vexations de toute espèce, déguisées sous tous les noms possibles. La superstition, l'industrie, la crainte, se sont établis sur eux des revenus qui absorbent la plus grande partie du salaire infiniment modique, auquel ils ont droit de prétendre

Pour subvenir à tant de dépenses, ils n'ont eu d'autres ressources que la solde journalière de leur travail; solde amoindri encore par des jours de fêtes sans nombre, par des non-valeurs réitérées, par les variations des saisons, par les révolutions de luxe, par tous les incidents qui troublent et dérangent la société. Dès-lors leur existence n'a plus été que précaire. 53

While the situation of the small tenant-farmer was considered precarious, neither its mitigation nor increased agricultural productivity was likely to follow as a result of large-scale farming. The only way that agricultural productivity could be increased was through the employment of a larger labour force and not by employing fewer men, as the physiocrats suggested.⁵⁴ It was true that this "Hercule agriculture" would make a large profit, but it would be a profit secured solely by employing fewer men, horses and workers of all sorts. The agricultural entrepreneur's crop would amount to less than the sum total of the harvests

⁵³ Simon Linguet, Du Pain et du bled (Paris, 1774), pp. 209-210.

⁵⁴ Ibid., p. 175.

if the land was still divided into small parcels amongst the métayers, but his expenses would have been cut even more.⁵⁵ Furthermore, the large agricultural concern would proceed to undersell the small proprietor on the grain market. In the end, the agricultural entrepreneur would have established a throughgoing monopoly upon the financial ruination of the small proprietor and métayer, with the result that the former would be able to dictate the price of grain on the market and the price of labour to his own domaines.⁵⁶

Similarly, Linguet did not subscribe to the notion that the institution of large-scale agriculture would set in motion a cycle of ever-increasing productivity. In the first place, of course, these enterprises would not, he reasoned, increase productivity. Secondly, even if Linguet momentarily concedes for the sake of argument that an increase in productivity were to occur, it would not lead to a like increase in population. Therefore, neither an increase in consumption nor a subsequent increase in production would follow.⁵⁷

Although the lot of the peasant was not easy, the traditional system of métairies was still preferable to the

⁵⁵ Ibid., p. 254.

⁵⁶ Ibid., pp. 250, 256.

⁵⁷ Ibid., p. 41.

physiocratic programme. Métaires were cultivated with more care and there was less ruining of the soil.⁵⁸ In addition, they provided work for a greater number of peasants. The proprietor stood to gain, too, since, insofar as the rent accruing to him was paid in kind, he need not fear bankruptcy as a result of inflation. Furthermore, the increased number of hands required to undertake this kind of agriculture would tend to encourage population growth (and therefore consumption) due to employment security.⁵⁹ Lastly, with the system of métairies, security for the peasant-as-consumer was made more likely since, with a large number of metairies, high wheat prices were avoidable. High wheat prices were the result of artificial shortages caused by hoarding. The small métayer was in no position to hoard grain since his lack of surplus funds necessitated regular sales of grain in the market place.⁶⁰

The basis of Linguet's argument was that a system of large-scale agricultural enterprises would fail to realize the physiocratic goal of greater material well-being for the nation as a whole through the achievement of optimum agricul-

⁵⁸Linguet is wrong in his contention that small métairies were cultivated with more care if we are to believe Henri Sée who informs us that:

Les paysans, menés par l'esprit de routine et disposant de peu de capitaux, n'apportent pas grand soin à la culture; ils ne labourent pas assez profondément, ils sarclent les blés avec négligence, font des semailles trop tardives et usent de mauvaise semence.

See Henri Sée, op. cit., pp. 31-32.

⁵⁹Linguet, Du Pain et du bled, pp. 247-248.

tural productivity. His position was not that of a serious student of agronomy. He was unaware, for instance, that a level of productivity beyond that achieved by traditional agricultural methods was even possible. Rather his viewpoint was that of a jurisconsultant whose objections against the physiocratic programme belonged more in the realm of political theory than in economics. Linguet judged the physiocratic programme of large-scale agricultural enterprises not on the basis of efficiency but rather in terms of its effect on social organization. The physiocrats' basic premise that the interests of the entrepreneurial proprietor and the peasantry must necessarily be interdependent rested on the belief that a re-ordering of society in accordance with the laws of nature would yield a state of social harmony. As pointed out before, Linguet was of the conviction that social harmony (which was strictly dependent upon a rigidly hierarchical society in which bonds of authority at all levels were accepted without qualification) had been largely destroyed within French society. Consequently, there was no reason to expect the proprietor class to act in the best interests of tenant farmer and day labourer. Large agricultural enterprises run by men whose only criteria were maximum efficiency and (as Linguet saw it) maximum profits would only serve to

⁶⁰Ibid., pp. 259-260.

undermine what little remained of the traditional social bonds between proprietor, tenant and agricultural labourer.

In every aspect of his debate with the physiocrats, Linguet takes as his primary frame of reference the well-being of the French peasantry. In taking this position, Linguet's overriding concern is the attainment and maintenance of justice and public order. These can only be attained, he believed, in a situation of social stability. Because the peasantry comprise the bulk of French society, a worsening of the already lamentable situation into which they have fallen (as a result of the progressive disintegration of the traditional social hierarchy) would undermine social stability and therefore make public order even more unattainable.⁶¹

Free Trade in Grain

La question de la liberté du commerce des grains est une de celles qui est la plus passionnée à la fin du XVIII^e siècle. Dans les salons il fut de mode, selon le mot de Voltaire, de "raisonner" sur les blés. Une foule d'écrits vit le jour qui défendaient ou attaquaient la liberté; le public, la cour elle-même, prirent parti. Tour à tour des influences contraires se firent sentir sur les différents contrôleurs généraux, qui déterminèrent à plusieurs reprises des changements dans la législation. 62

⁶¹Linguet, Annales, I, 345. The immanence of revolution.

⁶²René Girard, L'abbé Terray et la liberté du commerce des grains, 1679-1774 (Paris, 1924), p. 1.

The policy of free trade in grain first became an issue with the declaration of 1763 and the edict of 1764, the handiwork of Controller-General Bertin and Laverdy respectively --both of whom were followers of the physiocratic circle.⁶³ The first of these regulations established free trade in grain in the interior of France while the second provided for a limited freedom to export grain.

The policy of free trade in grain got off to a rather inauspicious beginning. Commencing in 1764 the harvests were first mediocre and then bad. Grain scarcity became acute and grain prices shot to calamitous heights. While wheat sold for ten to twelve livres a septier in 1763, the same amount of wheat in 1768 sold for as high as forty-two livres.⁶⁴ What had been for many a grudging or qualified acceptance of the new policy was now transformed into open hostility. It was felt that the new legislation encouraged grain hoarding by speculators, who, it was also charged, were responsible for selling grain to the foreigner when the country was faced with starvation. All provisioning operations entrusted to merchants by the law of 1763 were seen as a means of allowing merchants to speculate in grain legally and to establish a monopoly over the grain trade. By 1768 the debate over free

⁶³Ibid., p. 3.

⁶⁴Ibid., p. 9.

trade was out in the open and was being waged fiercely.⁶⁵

Nos tendres Economistes des années dernières, ces affectueux amis du Pauvre peuple, avaient imaginé un moyen beaucoup plus court encore; c'était de renchérir du double, du triple le Pain, seule nourriture à laquelle tant d'hommes ont l'audace de prétendre; et ils raisonnaient ainsi: "Quand le pain sera très cher, ceux qui en vendent seront très riches; quand ils seront très riches, ils ne pourront jouir de leur opulence qu'en faisant beaucoup travailler. Quand le travail sera commun, les ouvriers seront recherchés, et leur salaire deviendra plus considérable: il n'aura donc plus de Pauvres, ni de Mendians et tout le monde sera heureux sur ce globe." En attendant la fin de ce circle, ils avaient commencé par rendre le pain très cher, et pour peu que les choses eurent duré, tous les pauvres seraient morts de faim avant l'époque glorieuse de la félicité publique. 66

What Linguet is describing and criticizing in this citation is the free market economy which the physiocrats envisaged as a central feature of the "royaume agricole"--that is France, transformed in accordance with the laws of nature, where harmony within society would be achieved through social intercourse determined by the enlightened self-interest of each individual. However, in order to understand the differences between Linguet and the physiocrats beyond the basic philosophical cleavage over the possibility of achieving social harmony, it is necessary to examine in detail the physiocratic conception of the freemarket economy.

⁶⁵ Ibid., p. 17.

⁶⁶ Simon Linguet, Annales, II, 80.

First of all, it must be remembered that the national wealth was considered to have been given by the producers to the proprietors as rent. Assuming, as the physiocrats did, that the interests of the proprietor class would be the guide and expression of a larger, universal identity of interests, the greatest good would be achieved for all if the price of grain were allowed to rise to the maximum allowable by the ordre naturel. The maximum price would be "le bon prix", or that permitted by the ordre naturel or "exchange economy" which the physiocrats came to envisage as

A kind of gigantic machine, whose motive force was the desire of men to maximize their receipts and minimize their costs, and whose belts and levers were the activities of individual economic subjects who in effect worked for one another by producing products which they exchanged on a market. Since the prices of the products so exchanged were governed by causes 'independent of men's wills', the behaviour of the machine was not arbitrary but in some significant sense 'subject to law'. 67

The returns from the produit net sold at "le bon prix" would represent the true extent of the wealth of the nation. Any attempt to sell the produit net below le bon prix would be contrary to the ordre naturel and would represent an unnatural diminution of the national wealth. The proprietors, having received less from the produit net than they should, would be able to channel only a correspondingly smaller

⁶⁷ Meek, op. cit., p. 372.

amount back into agriculture. Not only would the proprietors, but the producers and the sterile class, as well, would suffer from wage cuts and price increases. Conversely, an attempt to push the price of grain or other produce beyond "le bon prix" would be equally disastrous. The merchants and artisans of the sterile class would correspondingly charge more for their services, thus cutting into the produit net more than was necessary. This, in turn, would mean that there would be less capital to put back into the land the following year and, again, agriculture would suffer. Ultimately the nation would gain nothing and, in fact, would be the poorer because of this artificial rise in price.

Free trade was necessary for the preservation of the natural wealth of the nation in yet another way. It would maximize the contribution of the classe stérile (and particularly the merchant) toward national prosperity while minimizing its returns. This was considered a necessity given the premise that the purpose of trade was the satisfaction of mutual needs and not to increase the wealth of the nation.⁶⁸ Consequently, a merchant might either be a person performing a useful social task--that of securing, through free trade, those subsistence goods which were in short supply or, by contrast, a dealer in luxury items whose commerce, by going

⁶⁸ Oncken, op. cit., p. 386.

beyond the satisfaction of these basic needs, placed an unnecessary burden on the wealth of the nation. The former, while a burden on the economy, was at least performing a useful service.

It should also be remembered that the merchant, like the artisan or manufacturer, was not producing but merely transforming wealth. His wage for services rendered has to come from somewhere. This wage or faux-frais as it was called would be secured by buying the produit net from the producer below the just price or by selling this produit net to the consumer above the just price. Given the necessity of maintaining an equilibrium in commerce through close adherence to "le bon prix", it was considered of the utmost importance that the remuneration of the merchant be kept as low as possible.⁶⁹ The most natural and efficacious means of achieving this would be through free competition.⁷⁰ This conclusion, however, assumes the existence of a harmony of interests between all those participating in a free market economy--a conclusion with which Linguet was in fundamental disagreement.

To begin with, Linguet's definition of wealth was more mercantilist than physiocratic:

⁶⁹Ibid., p. 669.

⁷⁰Ibid., p. 670.

La richesse d'une nation consiste à avoir beaucoup de productions d'une nature propre à lui procurer par échange, ou par une vente directe, une grosse masse des propriétés des autres nations. Plus qu'elle en accumule, plus elle sera opulente; il en est de même des particuliers. En deux mots, la richesse n'est que le superflu qu'un individu entasse autour de lui; et ce superflu, comme je l'ai dit, ne pouvant résulter que de la réunion de beaucoup de petites parts enlevées à tous les autres, il est clair que le secret d'augmenter les richesses d'un peuple n'est que celui d'augmenter le nombre des malheureux. L'art de multiplier les jouissances est aussi celui de nécessiter les sacrifices. 71

Neither did Linguet accept the distinction made by the physiocrats between the productive and sterile classes; both ran risks and produced wealth, whether it be produce, rent or interest.⁷² Equally absurd for Linguet was the assumption that the nation's wealth was equivalent to the rent received by the proprietor and that, therefore, his interests represented the interests of the state. Rather, the interests of the propertied class and the tenant farmers and day labourers were mutually antagonistic.

For Linguet this antagonism arose from the nature of French agriculture. The staple food of most of the population being bread, agriculture concentrated largely on the growing of grain. Its growing and transformation into bread required a capital investment which placed the poor tenant farmer and

⁷¹Linguet, Du Pain et du bled, pp. 268-269. It can readily be seen how this definition of wealth is very much in keeping with Linguet's theory of the origins of society--property is acquired at the expense of others.

⁷²Linguet, L'Impôt territorial ou la dixme royale avec tous ses avantages (London, 1787). p. 71.

day labourer in complete economic dependence both as producer and consumer, on the proprietor and the towns people (in this case, the miller and the baker).⁷³ Given the decadence into which proprietorship had fallen in France,⁷⁴ this freedom of social and economic intercourse which supposedly would have been a central feature of the "royaume agricole" was nothing but the freedom of the proprietor to exploit the tenant farmer and the agricultural day labourer.⁷⁵

Just as Linguet was unable to accept the physiocratic definition of wealth, so also was he ~~unable~~ to subscribe to their justification of "le bon prix". Selling grain at high prices did not mean that the true magnitude of the wealth of the nation as a whole would stand to benefit. Rather, it was the proprietor and the merchant who gained. Given a market free of price controls, the proprietor would strive for the highest possible grain prices in order to maximize his returns from his rent-in-kind while the merchant would maintain high prices in order to cover all foreseen and unforeseen expenses and yet still make a profit. The tenant farmer and day labourer, therefore, would be exploited both as producers and as consumers.

The benefits of free trade in grain were an illusion for the lower classes of rural France for yet another reason. While a sharp rise in the price of bread could be weathered

⁷³ Linguet, Annales, V, 444-445.

⁷⁴ See the final section of the previous chapter entitled "The Fundamental Laws Provide for the Security of the Labouring Class."

⁷⁵ Linguet, Annales, VII (1779), 208.

by the proprietors with comparative ease, it inflicted great suffering on the tenant farmer and day labourer:

Les gens aisés ont des provisions, où ils recueillent du bled; et quand ce qu'ils consomment acquiert passagèrement plus de valeur, il ne leur en coûte pas davantage; ou ils n'en recueillent pas, mais alors ils choisissent le moment favorable pour acheter ce qu'il leur en faut. La consommation de la maison est toujours prête d'avance dans le grenier et l'on brave avec cette ressource les augmentations éphémères.

Le pauvre ne l'a point ce préservatif utile. Le prix du moment est toujours le sien. Obligé d'acheter à chaque marché, il se sent de toutes les variations qui s'y succèdent. 76

This comparative immunity from market fluctuations enabled the proprietor to speculate in grain to increase his profits, while the merchant for the same reason could afford the attempt to establish a monopoly. Free trade then leads to famine.⁷⁷

Taxation Reform

It is only too well known how the extravagances of Louis XIV in the battlefield and at court proved a fatal legacy to his successors. The problem of how to eliminate a national deficit (which was growing at a staggering rate as the century progressed) and yet not crush the people under the load of increased taxation was grappled with but

⁷⁶Ibid., 209-210.

⁷⁷Ibid., 204.

not solved. The physiocratic solution to this problem was the impôt unique, a single tax which was to be levied upon the rent of the proprietor. That proposed by Linguet was the dîme royale, a tax first proposed by Louis XIV's fortress-builder, Vauban.

The starting point of the physiocratic rationale of the single tax on land was, again, their definition of wealth. Since the land was the source of all wealth and the proprietors its custodians, it was considered only right that the proprietors, and not the producers nor the sterile class, should carry the tax load.⁷⁸ To tax the sterile class would gain nothing. The first and most obvious reason for this was their inability to create wealth. Secondly, and most important, was the effect that taxation of the sterile class would have had upon the faux-frais. The merchant or artisan, if taxed, would simply have considered the imposition as an addition to his expenses which would have been defrayed by raising the price of his goods or his services. In actuality this would have represented a real although indirect tax on the proprietor class.⁷⁹ Taxing the tenant farmers and day labourers would, however, have had a more serious effect in that the strain placed on them by the tax would have rendered them less capable of securing each successive year's fund of wealth from the soil. This, in turn, would result in a

⁷⁸ Oncken, op. cit., pp. 337-338.

⁷⁹ Weulersse, op. cit., p. 72.

smaller produit net for that year.

Above all, the single tax on the produit net was proposed by the physiocrats due to their belief that such an imposition would not constitute a personal income tax at all. Rather, it would be a levy on the land which alone had the capacity to yield a surplus over and above costs. The propriétaires merely drew a salary in return for providing the avances primitives and part of the avances annuelles.⁸⁰ Similarly such a tax was to be considered a contribution to national productivity in that it provided the necessary funds for public programmes such as road and canal construction and maintenance and for the general costs of administration without which both production and marketing would be made very difficult. The tax would impose no personal hardship on any individual and yet would serve the best interests of all.

It was because of this insistence that only the produit net be taxed that the physiocrats were so adamant in their rejection of the dîme royale which Linguet supported. The dîme royal was envisaged as a single non-progressive tax which would be collected from all subjects of the realm and which would replace all other direct and indirect taxes. The taxation of the tenant farmer or day laborers would not

⁸⁰ Oncken, op. cit., p. 332.

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⁸⁰ Oncken, op. cit., p. 332.

lead to their enervation nor to the dissipation of the rest of the capital of the proprietor nor would it lead to a decline in agriculture. For Linguet there were only two ways in which the returns from a harvest would fail to cover the original capital investment: crop destruction due to a natural calamity (as for instance a hailstorm), or poor results from agriculture attempted on marginal land. In the case of the first eventuality the dîme royale would not compound the damage done. Rather an inspection of the damage by a local official would suffice to insure exemption from the tax.⁸¹ The individual finding himself in the second dilemma would not be grievously inflicted upon by the tax since the dîme would be levied on the basis of a fixed percentage of the harvest.⁸²

The crucial difference between Linguet and the physiocrats on this issue, as with others, was that Linguet did not believe, as did the physiocrats, that a harmony of peoples' interests could be achieved in a free market economy. While a physiocrat would argue that to impose a tax on the producer would be to levy an even more grievous imposition in terms of a diminution of the proprietor's rent or produit net, Linguet would counter that the interests of the day labourer and the tenant farmer and those of the proprietor were mutually

⁸¹Linguet, Annales, VIII, 88.

⁸²Ibid., 33-36.

antagonistic rather than interrelated. Why then should Linguet support a tax applicable to all? After all, what is a burden upon the proprietors, must needs be a weight off the shoulders of the rural labouring classes. Linguet explains himself, however:

En réduisant l'impôt unique à une légère portion des gains du propriétaire, les économistes ont autorisé les Gouvernements à regarder leurs promesses comme des chimères . . . L'Assemblée de Versailles de cette année 1787 a confirmé solennellement ce que j'avais pronostiqué en 1778, à ce sujet . . . Ils ont très bien vu que la dixme levée uniquement sur le produit net, et associée à toutes les autres mangeries qui extenuent déjà en tant de facons ce produit, ne serait qu'une source d'incertitudes, des débats, de chicanes, de vexations nouvelles; que ce ne serait qu'une surcharge illimitée, quant à ses mauvais effets, quoique infiniment bornée dans son rapport. 83

Since both the redistribution of the tax burden and an increase in the tax yield⁸⁴ seemed unlikely the government would in the end have found it necessary, again, to resort to the circuit-

⁸³Linguet, L'Impôt territoriale, p. 66. Here, Linguet is obviously referring to the unfavorable reaction of the Assembly of Notables to Calonne's systematic program of reform which among other things involved a graduated tax on land rents to be levied in kind in lieu of the vingtième which would be administered by a system of parochial, district and provincial assemblies of rural landowners. Basically Linguet is saying that any attempt to shift a greater part of the burden of taxation on to the large noble landowner would be futile given the previously demonstrated adeptness of the large proprietor at tax evasion.

⁸⁴Calonne hoped that the imposition territoriale would yield twice the amount which had been forthcoming from the vingtième. A. Goodwin, "Calonne, The Assembly of French Notables and the 'Révolte Nobiliaire'" English Historical Review, VXi (May, 1946), 212.

ous means of acquiring revenue which could not but bear down even more upon the day labourer and the tenant-farmer.⁸⁵

Linguet also noted that this need to resort to round-about methods of securing revenue had arisen due to the diminishing returns from traditional taxes levied in specie because of inflation. With the dîme royale this problem would be eliminated since the tax would be levied in kind.⁸⁶ To prevent speculation the government need not sell their taxes-in-kind, immediately, since this would flood the market. Rather, sales could be made more gradually with the government making up the funds needed immediately for its business through credit.⁸⁷

Linguet was not held back from proposing that the "sterile classes" be taxed as well. The problem of the faux-frais was meaningless for someone who did not believe in a universal interdependence of interests in a free market economy. In levying a property tax upon the "citadin" to be paid in specie, a considerable load would have been lifted from the countryside. This tax would have been set at a fixed rate while the amount paid would have been determined by a classification based on the size of each building, its

⁸⁵ It is possible that Linguet is referring to excise taxes and internal customs duties.

⁸⁶ Linguet, L'impot territoriale, pp. 24-25.

⁸⁷ Ibid., p. 37.

function and its utility.⁸⁸ Linguet felt that a tax on the city-dweller was particularly justifiable, for in this way,

. . . le marchand inutile, le faiseur de bagatelles superflues, qu'on appelle artiste; le vendeur, souvent très avide, de conseils ruineux qui s'intitule Avocat noble et libre; le distributeur, presque toujours aveugle, de recettes et d'Ordonnances, qui se fait nommer Docteur ou Medecin; enfin tous ceux qui n'ont d'autres fonds que de prétendus arts et des talents souvent suspects 89

would be made to contribute to the general welfare.

Linguet, it seems, shared Quesnay's distaste for the city and its inhabitants. Linguet, for instance, holds out the possibility that such a tax levied on the citadin might set in motion a return to the countryside.

Et quand même il serait vrai que cette opération pût diminuer le nombre des bâtimens dans les villes, je demande si ce serait un mal? Ou iraient loger ces habitans qui quitteraient Paris? A la campagne sans doute. Mais dans un village on ne vit que d'une industrie utile. Le charrue, la beche, le rateau sont les seules ressources que le travail y presente aux hommes. Quel bonheur si la misère, qui aujourd'hui fait refluer les habitans des champs! C'est alors que l'agriculture pourrait se flatter de l'emporter bientôt sur l'orgueil de luxe, et sur le faste. 90

Such a return to the countryside would undermine the luxurious life style of the rich or noble proprietor living in

⁸⁸ Ibid., p. 30.

⁸⁹ Ibid., p. 31.

⁹⁰ Ibid., p. 36.

the city, by removing those whose task it was to attend to the demands of this life-style. It has been luxury which has, to such a large degree, undermined the traditional relationship between the proprietor and the peasantry.⁹¹ Luxury's demise may serve to promote a return to the traditional social structure of France and therefore to social stability.

Mendicity

La Mendicité est aujourd'hui un des plus redoutable fléaux qui tourmentent l'Europe, et sa propagation n'a pas de principe, plus active que la Guerre. Les ravages qu'elle produit, les impôts qu'elle nécessite, le ralentissement de la circulation et du commerce, la cessation des travaux, l'augmentation du prix des denrées qui en sont l'effet indispensable, se sont sentir sûr tout aux classes indigentes: deux cens milles hommes se pressent sur un seul point pour s'y déchirer avec fureur; 92

Mendicity, which had been a serious problem in the seventeenth century, grew to even graver proportions in the last century of the old regime.⁹³ In the seventeenth century, the response to mendicity had led to the founding

⁹¹Pursuit of luxury and the desire to live nobly had drawn both the proprietor and those feudal dues he received from the peasantry away from the countryside: "Toute le mouvement économique de l'époque était au service de la Cour, de la noblesse, des prélats de la grande Bourgeoisie, oligarchie foncière, partie prenante essentielle de l'ancien regime: étrangère à toute activité productrice, elle vivait en parasite sur le corps social, le monde paysan L'agriculture ne reçoit pas en investissements ce qu'elle donne:

of numerous "general hospitals" throughout France

Uniting the functions of police and charity, these institutions were devised to rationalize almsgiving and to discipline the poor through a regimen of work and religious observance for inmates, and, for the vast majority remaining at large, through the deterrent effect of such incarcerations. 94

Originally " . . . a congerie of mild and somnolent institutions . . .", the "general hospitals" were transformed by the royal decree of May 4, 1656, into a thoroughly rationalized system of workhouses at the hub of which was the Hôpital Général des Pauvres in Paris.⁹⁵ This system, however, was unable to cope with the virulent growth of mendicity in the eighteenth century.

Since the means of relief were trifling against these seas of destitution, the administration of charity became, like that of all privileges under the old régime, lax and corrupt. In the General Hospital of Paris, although a monastic schedule of prayers, masses, and catechisms were still enforced in the eighteenth century, the workshops fell into desuetude The General Hospital thus reverted to a confusion of indolent refuges, schools, prisons, informaries, orphanages and asylums, which retained nonetheless a harsh penal reputation.⁹⁶

⁹¹(continued) le produit agricole est finalement gaspillé en domesticités trop nombreuses, en consommation de parade, en dépenses stériles. Les bénéficiaires, en consommant au lieu d'investir faisaient obstacle à la croissance économique." Albert Soboul, "La Révolution française et la féodalité", Revue Historique, CCXL (juillet-septembre, 1968), 56.

⁹²Linguet, Annales, III, 338.

⁹³Emanuel Chill, "Religion and Mendicity in Seventeenth Century France," International Review of Social History, VII (1962), 419.

The eighteenth century, however, witnessed the appearance of the dépôts de mendicité. Inspired by the physiocrats, they were designed not so much to maintain public order through incarceration and the inculcation of religious piety, but to contribute towards the expansion of France's productivity by transforming their inmates into useful members of the labour force.⁹⁷ The expectations which the physiocrats, placed in the dépôts de mendicité did not materialize, however, with the result that these institutions became little more than workhouses in the tradition of the "hospitaux générales".⁹⁸

Linguet was well aware of the failure of traditional institutions to solve the problem of mendicity:

⁹⁴ Ibid., 403.

⁹⁵ Ibid., 414.

⁹⁶ Ibid., 419-420.

⁹⁷ Ibid., 420. The creation of these dépôts de mendicité were ordered by the edicts of 1764 and 1767. Prior to that, edicts handed down in 1724 and 1750 had commanded mendicants capable of working to find work or to return to their place of origin within a month, after which time they would be detained in authorized "hospitaux". See J. Kaplow, "Sur la population flottante de Paris à la fin du l'ancien régime," Annales Historiques de la Révolution Française, XXXIX (1967), 8.

⁹⁸ Chill, op. cit., 420.

Il n'y a pas d'administration qui n'ait été, qui ne soit encore, sujette à cette maladie dévorante, connue sous le nom de mendicité: il n'y en a point qui n'ait multiplié les efforts pour s'en guérir, et il n'y en a pas qui aient réussi. Les unes ont pris le parti d'imposer les riches, de les forcer à des contributions considérables, destinées au soulagement des malheureux: on a surchargé les villes d'hôpitaux de fondations de toute espèce; établissemens utiles, sans doute, pour des infortunés qui n'ont pas d'autre ressource; mais trop souvent flétris par l'humiliation, dénaturés par le despotisme, empoisonnés par l'avidité. 99

This failure was due primarily, Linguet maintained, to a lack of precision in existing legislation designed to curb mendicity. It was required by law that each parish be responsible for its own mendicant population. The law, however, failed to define with precision whether this responsibility should be assumed by a mendicant's place of origin or his last place of residence, a legal shortcoming which, because of the reluctance of parochial charitable institutions to recognize their respective responsibilities toward the care of mendicants, had resulted in the dissipation of a third of the alms destined for the poor in fruitless wrangling.¹⁰⁰

The dépôts de mendicité were hardly an improvement upon the efforts of the traditional charitable institutions,

⁹⁹Linguet, Annales, II, 79.

¹⁰⁰Ibid., 81.

and this again, because of a lack of precision in existing legislation. Because the law had provided no precise distinction between those reduced to mendicity by adverse circumstances and those who were mendicants out of an unwillingness to work, the dépôts de mendicité had become

. . . des enceintes, où l'on entassait, sans choix et sans distinction, tous les malheureux que les surveillans de la tranquillité publique recontraient sur les chemins, ou dans les rues, sans avoir, où des cautions de leur aisance, ou de l'argent qui en tint lieu. 101

The dépôts de mendicité, however, represented a retrograde step since their treatment of mendicants was extremely harsh:

L'intention était bonne, sans doute: mais l'établissement de ces receptacles d'hommes dont souvent la misère n'était que le moindre mal, n'ayant été précédé d'aucun soin pour en assurer l'entretien; l'accès en était interdit à la charité, qui, en général, aime, non sans raison, à veiller par elle-même à l'emploi de ses bienfaits, ils étaient devenus des théâtres effrayans de toutes les calamités humaines, le siège des maladies les plus dégoûtantes, du désespoir et de la mortalité. Comme par malheur leur établissement a concouru avec le triomphe momentané du système économique, la société n'en a pas été soulagée. Chaque jour enfantait plus de mendiens que ces dépôts n'en pouvaient dévorer. 102

¹⁰¹ Ibid., 81.

¹⁰² Ibid., 81.

In criticizing the dépôts de mendicité, Linguet as usual, however, did not propose any sort of a new régime which would dissipate this problem. Rather he supported those small-scale attempts at practical reform which he found appealing. He felt, for instance, that much positive good might still be accomplished through the traditional charity of the church as administered through the parish priest.¹⁰³ Mendicity would be less of a problem if the proprietors would aid the church in its charitable work. This, however, seemed unlikely for Linguet:

Je suis convaincu qu'il est possible, non pas d'enrichir tout le monde; non pas de rendre la société entière heureuse comme le promettent les charlatans de la philosophie, mais d'adoucir les maux de ceux des membres de cette société, que sa nature condamne à n'avoir rien, tandis que d'autres ont tout; je suis persuadé qu'il y a un tempérament à prendre entre le parti d'assassiner les pauvres, comme le faisaient les Athéniens, malgré l'Aréopage et l'Académie, et celui de les confondre, dans les cachots avec les scélérats, qui aspirent moins à avoir du pain, qu'à le ravir, enfin celui de les encourager, comme en Espagne, en Italie, et même en Angleterre, par des distributions plus propres à nourrir la fainéantise, qu'à soulager la misère. 104

¹⁰³ Linguet, Annales, III, 263-264.

¹⁰⁴ Linguet, Annales, II, 87.

Conclusion

Linguet's differences with the physiocrats arose, first, from his concern for the welfare of the poverty-stricken peasantry and, secondly, from the conviction that, given the state into which the French rural community had fallen in the eighteenth century, their interests were incompatible with those of the proprietor class. His championship of the poor tenant farmer and day laborer was based on the conviction that, representing the largest group in French society, the stability of that society depended very much on their accepting their lot. The disruption of traditional social relations and the economic dislocation which fell upon the French rural community in the eighteenth century encouraged class antagonisms and created a situation which begged the peasant to question his social and economic situation. Linguet's central frame of reference, therefore, in his differences with the physiocrats was that ideal of the rigidly hierarchical society in which all levels of authority were strictly delineated and yet interrelated by virtue of their common source: the monarch by the Grace of God, father of his people. The realization of the physiocratic program of agricultural reform, instead of ushering in an era of social harmony, would have led French society even further astray from that ideal of society which alone was capable of yielding social

harmony. The resulting social disruption would arise not only from the economic dislocation of the lives of the peasantry but also from the peasants' intellectual detachment from his traditional rôle (and, therefore status) in society:

Qui labourera son champ, tandis qu'il étudiera
une meilleure manière de labourer? Les bras
sont vigoureux et dociles qu'en raison de ce
que sa tête est vide et son âme dans l'inaction.
Le prône de son curé lui suffit. Toute espèce
de lumière qui excédera cette mesure sera
pour lui un germe de découragement et pour la
société un commencement de troubles. 106

¹⁰⁶ Linguet, Réponse aux docteurs modernes, II, 40, 42,
cited in Weulersse, op. cit., p. 119.

CHAPTER IV

LINGUET AND THE PHILOSOPHES

Linguet's debate with the philosophes, like his opposition to the political pretensions of the parlements and to the physiocratic program of reform, can only be fully understood in the light of

- (a) his belief that society, because of the very nature of its origins, ought to be strictly hierarchical, and
- (b) that French society, in deviating from that norm, was moving progressively toward complete social and political disintegration, that is, towards revolution.¹

¹ Annales, I, 345. The following is a clear cut statement of Linguet's belief that revolution was imminent.

"Jamais les privations n'ont été plus universelles, plus meurtrières pour la classe qui y est condamnée; jamais peut-être, au milieu de sa prospérité apparente, l'Europe n'a été plus près d'une subversion totale, d'autant plus terrible que le désespoir en sera la cause, ou d'une dépopulation d'autant plus effrayante que nous n'aurons plus pour la réparer les ressources qu'ont eues nos ancêtres dans des cas à peu près pareils. Nous sommes arrivés par un chemin directement opposé, précisément au point où se trouvent l'Italie quand la guerre des esclaves l'inonda de sang et porta la carnage et l'incendie aux portes de la maîtresse du monde."

Although, in this passage, the economic causation of this forthcoming catastrophe is immediately apparent, Linguet's frequent emphasis elsewhere of the decadence of society, with reference to politics, religion, literature, and jurisprudence would seem to suggest that Linguet was thinking that total corruption would lead to violent change.

The philosophes were condemned as both manifestations and as active agents of this decay. Their literary output represented a decline in French letters which mirrored the more general decline of French and indeed, European, civilization. By maintaining that the way to a better society was through the enlightenment of the general population and the destruction of the Roman Catholic church as an institution committed to the preservation of ignorance, superstition and fanaticism amongst the people, the philosophes had not only shown themselves to be more intolerant than the church which they sought to destroy, but by striving to undermine its authority, they were attacking one of the most efficacious forces of social cohesion in France, at a time when this force was most needed. Finally their ill-founded enthusiasm for the English form of government could only serve to reinforce the parlementary offensive against that ultimate source of political authority and keystone of the social structure, the French crown.

Linguet's Views on the State of French Letters

D'Alembert is reputed to have remarked that the world of French letters possessed "many thistles, a few flowers and little fruit".² For reasons both subjective and phil-

²Ronald Grimsley, Jean d'Alembert (1717-1783) (Oxford, 1963), p. 105.

osophical, Linguet shared this opinion. His deprecation of French letters in the eighteenth century, to be sure, was strongly colored by his inability to establish a position for himself in that literary firmament. Having cultivated his literary abilities from early manhood, he had been embraced enthusiastically by literary circles as a writer of great promise.³ This original expression of goodwill was soon replaced by one of concern and outright hostility when Linguet confronted this community with a more explicit expression of his social and political views in his Théorie des lois civiles, (1767). Henceforth branded as an apologist of slavery and despotism, Linguet's attempts to further his literary career were frustrated, most notably in the instance of the rejection of his application for membership in the Académie Française by the new permanent secretary, d'Alembert⁴--one suspects for philosophical reasons.⁵

³See letters 12, 264, and 12, 544, Nicolas Thieriot to Voltaire, dated 1766, Voltaire's Correspondence, Theodore Besterman editor, 60, 62 (Geneva, 1961). Thierrot describes Linguet as a, " . . . jeune homme plein de Génie, imagination et de savoir et je serai, bien étonné si vous n'en concevez pas de grandes espérances." 12, 544 (July, 1766, Vol. 62), 44.

⁴D'Alembert's rejection of Linguet's application for membership took place, as near as can be ascertained, at some time between d'Alembert's appointment as permanent secretary of the Académie in 1772 and Linguet's expulsion from the Ordre des Avocats in 1774-1775.

⁵R. Grimsley, op. cit., p. 105. L.G. Michaud, Biographie Universelle ancien et moderne, (Paris, 45 vols. 1854-1865), Vol. 24, 565.

Not surprisingly, therefore, much of Linguet's criticism of the philosophes was purely an expression of vindictiveness: the issues of both his journals abound with virulent personal attacks against individual philosophes and, most especially, against d'Alembert. Nevertheless, there emerges in Linguet's writings a body of criticism of the philosophes which cannot be dismissed as merely the product of personal pique. It is a polemic which clearly emanates from that world view given theoretical expression in the Théorie des lois civiles, a world view which can by no means be considered exclusively a response to the challenge posed by the philosophes.

Linguet deplored the "grossiereté licencieuse" of contemporary literature and held the philosophes responsible for what he considered the shallowness and the pedantry of the Encyclopédie, the éloges academiques, and the romans philosophiques.⁶ Linguet chose to see the root cause of French literature's demise in the growing laxness of the traditionally rigid social distinctions between the nobility and the bourgeois intellectual and man of letters. A closer relationship between the aristocrat and the bourgeois man of letters had indeed developed.⁷ It had been made possible,

⁶Annales, I, 168-170.

⁷"Of all the bourgeois, only the intellectuals and the financiers had very close social relations with the nobility". Elinor G. Barber, The Bourgeoisie in 18th Century France (Princeton, 1955), p. 21.

first, by the unprecedented degree of social mobility in eighteenth-century France, and, more specifically, by the great prestige bestowed upon the intellectual, a prestige commensurate with the importance attached to his role by French society at a time when interest in the natural and physical sciences and the ideological ferment characterized by a questioning of the traditional cosmology and social hierarchy were widespread. For Linguet, therefore, the decay into which French literature had sunk was symptomatic of that more general process of social and political disintegration which it was his primary concern to combat.

For Linguet the position of the man of letters in the seventeenth century had been much different and infinitely superior. While an author at this time, appealed to and reflected the elegance of taste of the courtisan, he did not presume to bridge the social gap separating them. As a result, the best qualities of both were encouraged: the courtier conversed with the intellectual in order to acquire rapidly the knowledge which otherwise would have been unattainable due to the all-consuming nature of the intrigue and general dissipation of court life: the savant, on the other hand, acquired through the courtier, that polish and elegance of taste which was the virtue of the courtier without acquiring the latter's proclivity for intrigue and habits of dissipation.⁸

⁸Linguet, Annales, IV, 276-277.

Linguet felt that in his own time this beneficial relationship between bourgeois intellectual and noble was being corrupted with the result that the court nobility and the savant brought to each other their worst qualities:

Les Littérateurs sont devenus bas, faux, hypocrites, ambitieux, ardens à suppléer par l'intrigue au talent, ennemis de l'étude et du travail: des gens du monde ont pris les prétentions, la susceptibilité, l'envie de dominer sur les esprits, le ton impérieux dont leur commerce guérissait autre fois les hommes d'étude; enfin les vices de la Cour ont passé dans la Littérature, et le pédantisme littéraire dans la bonne compagnie. ⁹

It was especially the savants' acquired proclivity for intrigue was the most ominous result of this change in roles. Consequently the world of letters had become embroiled in factional struggles which was serving to bestow recognition not on the great and independent mind who remained aloof from such proceedings, but upon the individual graced not with any significant literary ability, but motivated by a talent for intrigue and an ability to gather around himself a group of followers. These sectarians were bestowing their unswerving loyalty upon and solicited public approbation for, their group and leader in the hope that such

⁹Linguet, Annales, IV, 277-278.

respect might be transferred to themselves.¹⁰ Moreover, from this esprit de corps¹¹ was emanating an intolerance of which the philosophes had been far more guilty than the church which they had abused.

Pourquoi, dans les fausses Religions, les Prêtres sont-ils si ardens prédicateurs de leurs idoles, et en apparence si fanatiques de leur dogmes: C'est que la vénération qu'inspire le fantôme s'étend jusqu' à ses ministres; ils s'associent aux honneurs qu'on rend à leurs dieux. 12

¹⁰ Annales, VI, 147.

¹¹ Esprit de corps, arose in situations where the jurisdiction, status and role of a given group were not strictly defined. This situation, in turn, rendered flexible the status of its members and aroused in them a desire to enhance their status by expanding the group's role, status and jurisdictional boundaries. The esprit de corps of the magistrature involved an attempt to extend all three of these. In the case of the philosophes and physiocrats, it involved efforts to increase their influence by spreading their ideas, thereby enhancing their status and role.

Finally esprit de corps was not a phenomenon confined to corporations or any other body whose jurisdiction had at one time been legally established. Since esprit went hand in hand with jurisdictional uncertainty, it was only natural to expect its occurrence in groups whose existence and jurisdictional limitations had not been established by law, for example, schools of thought such as that of the physiocrats or a community of writers, such as the philosophes, held together by a common world view.

¹² Annales, VI (1779), 147.

This esprit de corps had not only discouraged literary quality and made impossible that progressive enlightenment of the population which the philosophes had claimed as their goal, but to a large degree through the success of two sects within its possession,¹³ this spirit threatened to undermine the social and political structure of France. The "economistes" and the encyclopédistes, between them had succeeded in completely dominating the worlds of literature and journalism, the government administration and the magistrature while even the clergy had, to a degree, come under their influence:¹⁴

C'est une singularité unique dans l'Histoire ... qu'alors l'Administration entière d'un grand Royaume, toutes ses forces, ses ressources, aient été livrées sans réserve à une petite Aristocratie philosophique, composée surtout de Femmes séduites, et de Beaux pédans; qu'enfin ce que Platon avec son Eloquence, Confucius avec sa sagesse, Julien avec toutes ses forces de l'Empire, n'ont pu exécuter, quelques sectaires obscurs, avec de l'intrigue et du fanatisme, aient été à la veille de le réaliser; c'est-à-dire, d'opérer un changement absolu dans la constitution d'un grand Royaume, une subversion totale dans son Gouvernement. 15

¹³"Enfin l'esprit de Corps ces méprises de confraternité, ces ligues dont on se trouve faire partie, sans le vouloir, sans s'en douter sont autant d'obstacles aux progrès de l'esprit: il ne marche qu'autant qu'il est indépendant: la moindre chaîne le réduit à l'inaction." Journal de Politique et de Littérature, I, 466. See also Annales, I, (1777), 62.

¹⁴Annales, VI, 386-387; I, 64.

¹⁵Annales, I, 62-63.

There was only one body which had not been corrupted and which could, therefore, oppose the philosophes from a position of strength: the clergy, which, despite the defection of members of the upper clergy, "séduits par l'ambition du bel esprit", stood as a powerful corporation with a long tradition and a greater degree of unity within its ranks than enjoyed by their rivals. In a better position than these sectarians to exert an influence upon literature, the church had, however, squandered its advantage by attacking its adversaries' philosophical position while failing to question the philosophes' literary abilities. Consequently the clergy had been making its task all that much more difficult.¹⁶

Ecrasez-L'Infâme

"Ecrasez-l'Infâme", Voltaire's battlecry in his war with the church, brought together in one phrase the underlying purpose behind the philosophes many sided activities. In its narrow sense, "l'imfâme" was taken to represent the spirit of persecution manifested by a church bent on protecting barbarism, ignorance and superstition from the strict scrutiny of reason.

Although the church's intolerance was a favorite theme of the philosophes and especially of Voltaire, martyrs

¹⁶ Annales, VI, 387-388.

at the hands of the church were few in the eighteenth century: only the names of Calas and La Barre come readily to mind. This was only to be expected in the context of eighteenth-century France which was as Peter Gay succinctly put it, " . . . a Christian culture that was rapidly losing its Christian vocation without being fully aware of it."¹⁷ Although still basically a religious age, the Enlightenment witnessed the slow displacement of religious institutions and religious interpretations of events from the centre to the periphery of French life.¹⁸

Within the church itself, the crusading zeal of the previous century had been displaced by a tendency towards " . . . a bland piety, a self-satisfied and prosperous reasonableness, the honest conviction that the church must, after all, move with the times".¹⁹ And, the thought of the times, profoundly influenced by Newtonian science and its findings, was abandoning the traditional Christian world view, dominated by the image of hierarchy: science had demonstrated the fallacy of the hierarchical conception of nature and had thereby sown doubt in lay minds about its validity in explanations of the supernatural, society and its laws, and the church as an institution.²⁰ Moreover,

¹⁷ Peter Gay, The Party of Humanity, (New York, 1964) p.120.

¹⁸ Peter Gay, The Enlightenment: the rise of modern paganism, Vintage Book Edition (New York, 1968), p. 338.

¹⁹ Ibid., p. 343.

Newtonian science, as popularly conceived in the eighteenth century, assumed a rational order underlying the world of nature.²¹ It was but a step to posit the existence of a rational order by which contemporary society could be judged. What confronted those who sought to apply the standards of a rational order to society was a chaos in which new laws, institutions, jurisdictions and beliefs had been superimposed upon the vestigial.²² This chaos was the barbarism, the ignorance and the superstition which the philosophes felt the church was serving to perpetuate and upon which they were trying to impose reason and order. This was "l'infâme" in its broadest sense. Of these two dimensions of l'infame", that of the church's intolerance, was the more concrete and therefore, the more obvious target against which public opinion could be mobilized.

Linguet, chose to defend the church by doing battle with the philosophes primarily over the question of toleration. To begin with, Linguet observed that religious per-

²⁰Peter Gay, Party of Humanity, p. 120.

²¹Henry Guerlac, "Where the Statue Stood: divergent loyalties to Newton in the eighteenth century", Aspects of the eighteenth century, ed., Earl R. Wasserman (Baltimore: 1965), 333.

²²R.R. Palmer, Catholics and Unbelievers in Eighteenth Century France (New York, 1961), p. 3.

secution was not consonant with the temper of the age:

En général, la fureur de dogmatiser est éteint
chez les particuliers. Celle de punir des mépris
spirituelles par le fer et par le feu, n'agite
plus les hommes Puissans 23

His intimate involvement in the La Barre affair had taught
Linguet that non-religious motives lay behind ostensible acts
of religious persecution.²⁴

[La Barre] n'était pas coupable de la mutilation
du Christ d'Abbeville: il n'a pas même été puni comme
tel. Sa condamnation, comme je le ferai voir dans le
détail de cet horrible procès . . . fut le résultat
d'une pique entre deux hommes de robe, de quelques
ressentimens particuliers qui dirigèrent les premiers
juges, et de l'art avec lequel on fit valoir, pour
décider les secondes, l'alarme générale inspirée aux
partisans de la Religion par les atteintes redoublées
qu'il lui voyoient porter, par l'espèce de conjuration
formée pour la détruire " 25

Moreover, the "pique" between these two "hommes de robe" in-
volved a rivalry centering around the retention of the office
of mayeur of d'Abbeville. The La Barre affair and Linguet's

²³Linguet, Annales I, 54.

²⁴In the proceedings against La Barre and his three
co-defendants, Linguet served as defense attorney. Having at
one time lived in Abbeville and having served as a tutor to
a group of youths which included the young La Barre, Linguet
was well aware of the intrigue which formed the background of
this trial. See Jean Cruppi: Linguet, un avocat journaliste
au XVIII siècle (Paris, 1895), pp. 32-37; 69-154.

²⁵Linguet, Annales, IV, 197.

difficulties with the Ordre des Avocats were probably responsible, to a large degree, for bringing Linguet to the conclusion that (a) it was not the church but the laity that was guilty of intolerance and (b) that the latter were motivated not by religious zeal but out of loyalty to an esprit de corps.²⁶

Linguet also set out to clear the clergy of any responsibility for past acts of religious persecution--the Inquisition, the Saint Bartholomew Day Massacre, and the Revocation of the Edict of Nantes--one presumes for the good reason that the philosophes had added these to their arsenal as examples of "l'infâme". The Inquisition initiated and established by the laity attained a high degree of cruelty and ferocity which was mitigated after it had been taken over by the church.²⁷ The Saint Bartholomew's Day Massacre was not instigated by the clergy but by such people as the dukes de Guise, d'Angoulême, d'Aumale and de Montpensier, by the Swiss and French colonels and by the magistrature of all ranks.²⁸ At this juncture Linguet was careful to point out that " . . . Au milieu de cette complication de bassesse et de barbarité c'est toujours par des Magistrats que vous entendez ordonnez, ou ratifier les meurtres. . . ." ²⁸ He did so to challenge the philosophes' characterization of the

²⁶ Linguet, Annales, III, 108.

²⁷ Ibid., 103.

²⁸ Ibid., 105.

robe as "la plus sûre sauve--garde des peuples, contre les vexations du clergé."²⁹ Finally, in the case of the Revocation of the Edict of Nantes, Linguet demonstrated that it was not an unnecessary and capricious act inspired by the Jesuits, but rather a necessary surgery performed upon the French state which was attended by shameful excesses. It was necessary by virtue of the fact that the Protestant minority as protected by the Edict represented

. . . un foyer toujours prêt a s'enflammer de séditions, de défiances, et de scandales. C'était une République conservée dans la sein d'une Monarchie: c'étaient des sujets reconnus independans, et exposés à la tentation de se faire justice eux-mêmes, chaque fois qu'ils se croiraient lezés, puis qu'ils avoient des assemblées des Synodes, ou en veillant aux désordres spirituels, il était impossible qu'on ne s'occupât des intérêts temporels. 30

Linguet condemned the expulsion of Protestants and the tyranny of forced conversions.³¹ Louis XIV and his ministers carried out an operation requiring political astuteness with "la rigueur, le despotisme, la fureur, qui accompagnent la guerre, et la superstition."³² Instead the revocation of the Edict should have involved the elimination of the following privileges: the Protestant's right to a place of public

²⁹ Ibid., 106-107.

³⁰ Linguet, Annales, II, 119.

³¹ Ibid., 122.

³² Ibid., 122-123.

worship (although worship in private should have been permitted), the right of their clergy to wear clerical garb, and their right to assume public office. Their civil rights should, however, have been guaranteed, among them the right to a civil marriage, and the rights of property and succession.³³

What emerges here, then, is a definition of toleration which has as its basic principle the assumption that public order can only be insured by an undivided temporal authority. It is a legalistic conception of toleration: public order can only be assured if the laws of the realm are universal in their application and derive their authority solely from the Prince. A law which is not universal in its application invites jurisdictional discord: if a law is held to be onerous there will be a struggle amongst people to place themselves outside its jurisdiction; if a law is held to be beneficent there will be a corresponding struggle amongst people to place themselves within its jurisdiction. Similarly if the authority of a given law does not emanate from a single temporal source within the area of that law's jurisdiction, the resolution of any debate arising from that law either through reform or through the clarification of its terms will not be possible. Thus, the universality of a

³³Ibid., 123.

law requires that the source of authority cannot be questioned. In purely temporal affairs and in properly constituted states, this source is the monarch, God's temporal agent. In matters of religion, however, it is impossible and harmful, to assume the ultimate authority of God in matters under dispute when there are a number of contesting sects, each of which claims God's authority as its own, and each believing itself to be the true vehicle of God's word.³⁴ For this reason there must be only one church within the realm which may claim to be the vehicle of God's will; there may be only one official religion. Toleration, therefore, involves granting the religious non-conformist the full enjoyment of his civil liberties while withholding the right to hold any office to which the King has delegated a portion of his authority.³⁵ Stated a little more broadly,

La tolérance se borne à ne point gêner les opinions intérieures, ni mêmes les actions extérieures, autant qu'elles n'intéressent pas l'ordre public, à laisser chacun, dans ce qui le concerne personnellement, suivre sa conscience et sa volonté, mais non pas à lui permettre de travailler à changer, à maîtriser celles des autres. 36

An act of intolerance, therefore, is both an unwarranted encroachment upon the civil rights of the individual and

³⁴ Ibid., pp. 111-112.

³⁵ Ibid., 113.

³⁶ Linguet, Examen raisonné des oeuvres de m. de Voltaire, considéré comme poète, prosateur et philosophe (Paris, 1817), p. 224.

disruption of public order. These two aspects of Linguet's definition of intolerance are inseparable: acts which disturb the public order involve an encroachment upon the civil liberties of the individual and vice versa.

This correlation can be more clearly understood if we translate "civil rights" into terms more appropriate to Linguet's thought. First, it must be remembered that for Linguet the basic constituent in society was not the individual but the family, which was society in microcosm. Secondly, it must be remembered as well, that there was an equation in Linguet's mind between property and absolute paternalistic authority. Consequently, civil rights could more appropriately be expressed as the protection by civil law of the father's absolute authority within his own area of jurisdiction, that is, within his family and over anything else which constituted his property. Civil law in order to fulfill its function in this respect required the presence of the absolute, paternalistic authority of the Monarch. Because the monarchical authority must be absolute and indivisible, there must also exist for the reason stated above, only one official church, in this case the Roman Catholic Church.

Linguet envisaged the existence of an underlying principle uniting society, that of absolute paternal authority, or, if you will, proprietorship. Any act which violated this principle by encroaching upon the rights of private property

(understood in its broadest sense to include absolute paternal authority), whether it be a transgression upon the proprietary right of an individual, an infringement upon the jurisdiction of a communauté or corporation, or a questioning of the authority of the church or the Monarchy, jeopardized public order and was consequently an act of intolerance.

According to this standard therefore, it was the laics who were guilty of intolerance and fanaticism:

Il n'y a point de société religieuse qui ait jamais enseigné que l'on pût égorger un hérétique en sûreté de conscience. Ce sont des laïques, ne nous laissons pas de la répéter, qui ont donné au monde l'exemple de ce fanatisme atroce. Ce sont les Parlements de Paris, de Toulouse en France, qui ont ordonné, par ARRÊT, de massacrer, les Protestants, sans forme de procès. 37

In this instance the parlements were acting against the public order by violating the sanctity of the lives and property of these Protestant victims. In more recent times the parlements had violated the public order by attacking the church.³⁸

³⁷ Linguet, Annales, II, 178.

³⁸ Linguet, Annales, I, 55. Linguet is probably referring to the parlements' part in the Jesuit-Jansenist dispute over the Bull Unigenitus which plagued French political and religious life for almost half a century. In the course of the dispute the original issue between Jesuit and Jansenist became merely the front for what was essentially a struggle between Gallicanism and the forces of Ultramontanism as represented by the Jesuit. The association of this religious dispute with the question of public order by Linguet is entirely understandable, since the government, by trying to protect the Jesuits, came under attack from the parlements, who in conjunction with the philosophes, pressured Louis XV into having the Jesuit order expelled from France in 1762. See Alfred Cobban, A History of Modern France I, 88-90; Gerald R. Cragg, The Church and the Age of Reason (1648-1789) (New York, 1961), pp. 195-199.

They did so, Linguet seems to be saying, in pursuit of gains in terms of jurisdiction, wealth and power. It is implied in the following statement:

La Robe et le Clergé sont deux états utiles,
quand ils sont contenus chacun dans leurs
limites, et qu'ils se bornent à leurs
fonctions 39

He is more explicit, however, when he presents these parlementary ambitions as part of a more general assault upon the church:

L'esprit général du siècle est d'attaquer les richesses de ce Corps celebre, [the Roman Catholic Church] qui a conservé dans les pays Catholiques tant d'influence sur l'administration. La jalousie ancienne des Compagnies de Magistrature qui, au fonds, n'ont jamais combattu la tyrannie sacerdotale, que pour faire prévaloir la leur; l'avidité des Courtisans; les Besoins réels et sans cesse renaissans des Gouvernemens, sont autant d'ennemis acharnés et infatigable qui menacent le temporel de l'Eglise. La Philosophie moderne leur a fourni des armes, par des réflexions et des arguments qui auraient la même force contre toute espèce de possession, contre toute nature d'autorité. Les mêmes petits Esprits, que la superstition rendoit autre fois furieux et qui faisaient gémir la Religion de leur excès, en croyant la servir, sont aujourd'hui fantiques de la prétendue gloire de la renverser. 40

It would seem, then, that for Linguet the intolerance of the parlements had its root cause in that jurisdictional fluidity and overlapping which accompanied a weakening of

³⁹ Linguet, Annales, III, 3.

⁴⁰ Linguet, Annales, I, 55.

that principle of absolute, paternal authority or proprietorship upon which society was based.⁴¹ Arising from and, in turn, aggravating this jurisdictional chaos was that esprit de corps which Linguet saw as the immediate cause of intolerance.⁴²

The philosophes were also contributing to this assault upon the church "par des réflexions et des argumens qui auroient la même force contre toute espèce de possession, contre toute nature d'autorité." Linguet, therefore, made a connection between the authority of the Church and the principle of proprietorship (absolute paternal authority) which bound society together. By participating in this assault upon the church, the philosophes were acting in a manner prejudicial to the public order and were consequently guilty of intolerance. For Linguet this intolerance manifested itself in the philosophes' program of toleration and in their Deism. Their program of toleration threatened the status of the Roman Catholic Church as the established church by calling for the suppression of any distinction between cults and for the extension of eligibility for public office to members of religious minorities.⁴³ By attacking the Catholic

⁴¹In Chapter II it was mentioned that Linguet was convinced that society became decadent in proportion to the degree of complexity and contradiction present in its laws. And it is the laws which establish the jurisdictional limits of the family, communautés, and corporations and their place in the social hierarchy). See Linguet, Théorie des lois civiles, I, 13.

⁴²See Ch. I, pp. 16-18. ⁴³Linguet, Annales, II, 115.

Church as an institution, by ridiculing many of its doctrines and by providing an alternative in Deism, the philosophes and particularly Voltaire were destroying other peoples' religious faith and thereby disturbing public order.⁴⁴

As pointed out earlier, this assault upon the church and its authority was intimately connected with a rejection of that social order of which that church was an integral part. Embodied in that social order was that traditional Christian and hierarchical conception of nature and law which the philosophes had rejected in favor of a philosophy central to which was the theory of natural rights. The campaign first for toleration and then disestablishment,⁴⁵ on the one hand, and the espousal of deism or atheism on the other hand, both followed from and were essential to this theory of natural rights:

Two obstacles had to be overcome and two mighty enemies defeated if this fundamental thesis of natural law was to gain acceptance. On the one hand, law had to assert its originality and its intellectual independence of theology; on the other, the pure sphere of law had to be clearly determined and separated from the sphere of the state, and its unique nature and specific value had to be protected from state absolutism. 46

⁴⁴Linguet, Examen de Voltaire, pp. 224-225.

⁴⁵"In 1715, when Louis XIV died, the most imaginative French anticlericals confined themselves to private impiety and calls for reforms within the Church: their ideal was a king of Anglicanism--a reasonable, respectable established church with little political power, no passion for repressing the free commerce of ideas, and no religious fervor. In 1788, when Louis XVI convoked the Estates General, the surviving philosophes were asking for complete disestablishment, a laic state." Peter Gay, The Enlightenment, p. 371.

The aim of the philosophes, therefore, was to establish an authority for law and ethics (the two being inseparable) which both transcended society and made the individual its primary centre of reference.

Because of the French church's intimate relationship with the state and its integral part in French society, its defense required Linguet to address himself to the basic tenets of the new philosophy. But the full significance of Linguet's differences with the philosophes, can be gained only by looking at the implications of the traditionally Christian hierarchical orientation and relating them to the new philosophy. To begin with, this hierarchical outlook was characterized by a concept of nature which involved the active participation of God. God reigned absolutely over a celestial and natural order which was structured hierarchically. God exercised this dominion through the bestowal of grace, the initiation of miracles, and the issuance of revelation through the Church. Opposed to this conception of nature was that of the philosophes which confined God's role to being that of a creator. God did not actively reign over this natural order. Rather, it was governed by the laws of nature which, beyond the act of creation, existed independently of God's will. Moreover, there existed a non-

⁴⁶ Ernst Cassirer, The Philosophy of the Enlightenment, trans. Fritz C.A. Koelln; James P. Pettigrove, (Princeton, 1951), p. 238.

hierarchical, geometric relatedness between phenomenon in this natural order.⁴⁷

A concomitant of both the traditional and the enlightenment conceptions of nature was the concept of Reason. The Christian conception of reason denoted God's structuring of the universe, that is, the will that conceived this structure and which existed within it as an active agent. The fact that reason indicated God's will would seem to imply a purpose or goal toward which this will was ultimately directed. Because the Christian view of history, initiated by the Fall of Man, punctuated by the advent of Christ and completed by the Second Coming, established this goal as being the salvation of the righteous,⁴⁸ God's will or

⁴⁷ Ernst Cassirer, op. cit., p. 16. As the eighteenth-century progressed this geometric conception of relatedness gave way to a developmental relationship between phenomena which nevertheless did not again involve the concept of hierarchy. Ibid., pp. 34, 77-78, 86.

⁴⁸ Karl Löwith, Meaning in History (1949), pp. 183-184; See also Ibid, pp. 112-113. I am making the assumption that, despite variations and developments in Christian doctrine, according to time and place, there are certain central elements of this doctrine which are constant, even if they exist only as unobtrusive assumptions. One of these, I feel, is the Christian view of history which Karl Lowith characterizes as follows:

"The theological principle which determines this formal scheme of the historical process as a history of salvation is man's sin against God's will and God's willingness to redeem his fallen creation. In this theological perspective the pattern of history is a movement progressing, and at the same time returning, from alienation to reconciliation, one great detour to reach in the end the beginning through ever repeated acts of rebellion and self-surrender. Man's sin and God's saving purpose--they alone require and justify history as such, and historical time. Without original sin and final redemption the historical interim would be unnecessary and unintelligible."

reason (if you will) was seen as an ethical or moral concept.⁴⁹ Understood as a human faculty, it referred to the individual's innate moral knowledge or his conscience. This faculty of reason did not allow the individual to grasp the principles which lay behind the inter-relatedness of natural phenomenon. Such principles were of the will of God and therefore inscrutable. Only through revelation and grace could one achieve a more intimate knowledge of God and his will.⁵⁰

For the philosophes, however, "reason" expressed the geometrical relatedness of phenomena and the belief that human intelligence existed as an integral part of that order.⁵¹ Consequently, "reason" as a human faculty was man's ability to discover the laws of nature through empirical research. This concept of reason, although it grew out of phenomenalist psychology, went one stage beyond it: where Locke distinguished two phases in the learning process, sensation and reflection, the philosophes combined these into one.⁵² To have a knowledge of natural phenomena (of which man was a part) was to comprehend the ways of nature. This was the meaning of enlightenment.

⁴⁹ R.R. Palmer, op. cit., p. 207.

⁵⁰ A.P. D'Entreves, Natural Law: an historical survey (New York, Torchback Edition, 1965), pp. 40-41, 45.

⁵¹ Cassirer, op. cit., pp. viii, 55, 65-67.

⁵² Ibid., pp. 14-15, 17.

The epistemological implications of this concept of reason were intimately related to the disagreement on whether the salvation or temporal perfection of man was the purpose underlying history. The church held as a ~~c~~corollary of its doctrine of original sin that man could not attain salvation except through the grace of God. Despite the fact that the Catholic Church and especially the Jesuits, had, in the eighteenth century, been moving steadily toward a Molinist point of view which maximized the area in which the free will of man was operative,⁵³ the Church could not abandon this limitation. To do so would be to deny the Church's role as a vehicle of God's revelation and grace, that is, to deny its authority.⁵⁴

This authority was denied by the philosophes' belief in the perfectability of man through enlightenment. The church attributed to man an innate knowledge of Christian morals while placing strict limitations upon his unaided ability to comprehend the laws of nature, that is, the will of God, or to gain a more intimate knowledge of God. The philosophes, on the other hand, tended to dismiss the existence of any such innate knowledge while at the same time believing in man's infinite capacity for gaining

⁵³R.R. Palmer, op. cit., pp. 31-39.

⁵⁴Ibid., p. 221.

knowledge concerning natural phenomena (of which knowledge of self was considered a part since eighteenth-century man was considered an integral part of nature.)⁵⁵ Given phenomenalist psychology, to have knowledge of natural phenomena was to have a knowledge of the principles behind their interrelatedness.⁵⁶ To the Christian concept of salvation the philosophes opposed that of human perfectibility.

There was another dimension in this conflict between the concepts of the salvation and the perfectibility of man in which more was at stake than the authority of the church. The idea of salvation did not require the transformation of man's environment since it made the relationship between God and the individual paramount and all others secondary.⁵⁷ In this relationship the individual was abstracted from his environment. The belief in the perfectibility of man, however, was based on the assumption that man existed as an integral part of nature: human and social perfectibility went hand in hand. The belief in the perfectibility of man posed a threat to the ancien régime by providing an ethos for both an ethical and social transformation.

The purpose which lay behind this general reorientation of thinking was two fold: (a) the establishment

⁵⁵Cassirer, op. cit., p. 25.

⁵⁶Henry Guerlac, op. cit., p. 333; Cassirer, op. cit., pp. 21-22, 65.

of a system of ethics which was not arbitrary but based rather on the facts of human nature; (b) the creation of an awareness of an alternative to the existing social order, one in which the laws governing it would no longer be arbitrary but which would again be based upon the facts of human nature and more generally upon the laws of nature.⁵⁸ What established the prevailing system of ethics and social order as arbitrary was the fact that their purpose did not provide for the welfare and the self-realization of the individual. Despite the fact that the church has ascribed to man an innate sense of what was morally right and had extended the bounds within which free will was operative, the doctrine of original sin, with its conception of human nature as basically corrupt, remained. Human nature was at best a fact to be accepted and dealt with in the interest of attaining salvation for the soul through the Grace of God; it was certainly not the basis upon which to build a system of ethics. Salvation involved neither the temporal self-realization of nor the transformation of the social order but rather the individual soul's transcendence (and therefore rejection) of a corrupted human nature and the human condition.

Similarly, a social order in which vestigial and modern institutions weltered in jurisdictional chaos, where feudal privileges had outlived the society which had given

⁵⁷In Christianity the history of salvation is related to the salvation of each single soul, regardless of racial, social, and political status" Karl Lowith, op. cit., p. 195.

⁵⁸Peter Gay, The Party of Humanity, pp. 19, 124, 129, 135.

birth to them, where these privileges were enjoyed by a minority at the expense of the majority of the population, was not unjustly considered arbitrary and having no basis in reason. The social hierarchy embracing as it did so many contradictions and inconsistencies and which bore no relation to the needs or potential of the individual stood as a sharp denial of what had been concluded from the discoveries of the sciences and from the phenomenalist psychology of the eighteenth century.⁵⁹

This iniquitous social order was upheld against change by the traditional Christian world view in which this order necessarily had to be rigidly hierarchical, static, and socially rather than individualistically-oriented, since it was bound together by a chain of authority leading ultimately to God. The Monarch, as God's temporal agent, was bound to uphold and carry out God's will made itself known was, aside from being a religious authority, also an indispensable bulwark of, and participant in, the monarch's authority. From this source all authority emanated. Delegated authority was secure only if that of the church, the monarchy and ultimately that of God was accepted on faith. On the other hand a failure to respect the absolute nature of the authority

⁵⁹Cassirer, op. cit., p. 26.

exercised within the family, the communauté or the corporation would have its repercussions on the authority of crown, church and God. To question or to contravene any of these levels of authority was to jeopardize the social order.

The philosophical touchstones of the enlightenment challenged not only the authority of the church but the validity of what was held to be an arbitrary ethical and social structure. A defense of the church and the ethical, and social and political environment of which it was a part required a refutation of the theory of natural right and its concomitant conception of nature, reason, and human perfectibility. One of the cardinal points Linguet set out to make in his Théorie des lois civiles is the fact that the laws of society bear no relation to natural law.⁶⁰ In this instance, Linguet did not employ the term natural law to mean a body of law emanating from and in no way and at no time enjoying a distinct and separate existence from God. Rather he was referring to the enlightenment theory of natural rights, the alienable rights of the individual which were based upon and drew their authority from the laws of nature. These rights were an integral part of natural law by the virtue of the fact that man was himself an integral part of nature. The central link in the chain of reasoning which proceeded from the above assumption to the belief in the

⁶⁰ See Chapter II, pp. 20-24.

perfectibility of man was that tenet of the phenomenalist psychology of the eighteenth century which maintained that to perceive was to comprehend. Enlightenment led to an understanding of self, of nature and, therefore, to a harmonization between one's perception of self, one's morals and one's actions with the laws of nature. To question this epistemological assumption, therefore, was to strike at the heart of the aspirations of enlightenment philosophy. This Linguet did:

Que connaissons nous de la nature, et dans la nature? Des effets, et encore y en a-t-il bien peu qui ne pussent occasioner des disputes. Le seul baton qui nous ait été donné pour nous conduire dans ces ténèbres, l'expérience, engendre encore des querreles. Il n'y a point d'imposture qui ne l'ait eue pour soi, point d'erreur qu'elle n'ait justifiée d'abord. Ce qu'on appelle le progrès des lumières, n'est souvent qu'une variation de préjugés. Les derniers citent des faits, comme ceux qu'ils détruisent; et malgré cette pierre de touche, si sûre en apparence, il faut presque en tout en revenir au fameux que-sais-je? 61

Not only does man's reason have strict qualitative limitations, but its application is limited . . .

. . . parce que des tous les actes de l'esprit humain la réflexion est peut-être le plus rare, ou du moins le plus subordonné à l'habitude. 62

⁶¹ Annales, V, 157.

⁶² Annales, III, 114.

More important, however, are the dangers inherent in the use of the human intellect:

Mais l'organe le plus nécessaire et le plus précieux, celui qui donne à l'homme un des droits de la divinité, est aussi précisément celui dont l'usage, même modéré, peut amener le plus de regret et de remords. Il ne faut qu'un instant pour empoisonner la vie la plus réglée. 63

Linguet considered this belief in enlightenment as a vehicle for the regeneration of society on the assumption that such a process would involve a well organized, sensible citizenry. Linguet doubted whether

. . . le peuple, ce peuple que vous croyez essentiel d'éclairer, et qu'il est au moins très important de contenir, ce peuple pour qui tout est tentation, parceque dans sa vie tout est privation; ce peuple qui n'a pas une minute sans besoins, et un mouvement sans contrainte, sera-t-il capable des mêmes réflexions et des mêmes ménagements 64

as the ideal type of citizenry envisaged by the philosophes.⁶⁵
The acquisition of knowledge which God did not intend them to have would create great discontent and threaten the social order since such knowledge would reveal the arbitrary nature of the social hierarchy.

This arbitrariness of the social hierarchy was based

⁶³ Linguet, La Cacamonade, histoire politique et morale, traduite de allemande du docteur Pangloss, par le docteur lui-même depuis son retour de Constantinople (Cologne, 1766), p. 21.

⁶⁴ Linguet, Examen de Voltaire, p. 235.

⁶⁵ Cacomonade, pp. 22-23.

on the assumption that it was incumbent upon society to uphold the natural rights of the individual. It ceased to be arbitrary if it could be attributed to the will of God. For this reason the Church, at once the vehicle of the will of God and an integral part of this social hierarchy, by bringing the people to accept its authority through religious faith, was the most efficacious means of reconciling the people to their lot in society. The Catholic religion fulfilled a social purpose which was at least as important as its exclusively religious one:

J'ai toujours cru et dit qu'il a été permis aux.
Prêtres de parler aux consciences que pour les
rappeller à la paix, à la resignation! Voilà
uniquement pourquoi elle a été créée. 66

It was for this reason and not out of any genuine religious attachment to the Church in France that Linguet came to its defense. Although Linguet was doubtless within the pale of Catholic orthodoxy, the intensity of his religious beliefs was, at the most, moderate. Nowhere did Linguet defend church doctrine exclusively as religious truth: it was always dealt with as a function of the church's authority, that is, of the church's social utility. Moreover, Linguet was certainly not an unequivocal friend of the clergy: he had nothing but contempt for the monastic orders;⁶⁷ he

⁶⁶ Linguet, Annales, XVIII (1791), 360.

⁶⁷ Linguet, Annales, II, 406.

despised the upper clergy for being parasitical and, worse, for being the most powerful auxiliaries of the philosophes.⁶⁸ Only for the curés " . . . partageant alors la bassesse de la partie du peuple auprès de laquelle ils étaient le plus employés" did he have any regard.⁶⁹ It was through the village curé that the church was fulfilling its role in society, a role which was more one of police than of religion.

The curés were responsible for the reconciliation of the impoverished masses to their lot in society, first, by teaching acceptance of the hardships of their existence as answering the will of God, and secondly, by offering them the hope of eternal salvation.⁷⁰ The role of the clergy was especially necessary because of the latent antagonism in society between the proprietor class and that class which had only its labour upon which to rely:

Partout se déployé, sans trop de mystère, la grande querelle, l'intarissable querelle de ceux qui n'ont rien, contre ceux qui ont quelque chose: ce dénuement d'un côté, cette abondance de l'autre, est un fruit nécessaire de l'état social. Il n'y a point de société si la subsistance de la plus nombreuse portion des individus qui la composent, ne dépend pas d'un travail journalier. Ce principe est vrai, il est incontestable: il en résulte dans tous les coeurs dont il semble éterniser la dépendance, un fond inextinguible de ressentiment, dont le seul but des loix est de contenir sans cesse l'explosion. 71

⁶⁸ Linguet, Annales, IX, (1780), 121; XVII (1790), 406.

⁶⁹ Linguet, Annales, IX, 121.

⁷⁰ Ibid., 120; Linguet, Examen de Voltaire, 239.

This concept of the latent class struggle was a natural outgrowth of Linguet's theory of the origins of society as set down in Théorie des lois civiles. Society was the product of an act of conquest as ordained by God. Arising out of this act of conquest, the institution of private property was the basis of the social order. The arbitrary nature of this institution and the social hierarchy of which it formed the basis had to be concealed from the masses.⁷² This task was most efficaciously and benignly achieved by the church working through the curé.

Because all forms of authority in society were inter-related,⁷³ the church, by teaching submission to the will of God, and the acceptance of its authority as the sole vehicle for the expression of this will, was able to secure the adherence of the masses to all levels of authority. By thus imbuing the masses with a proper respect for the "moeurs" of society, the church provided a means for ensuring their observance at all levels of society:

⁷¹Linguet, Annales, XVI (1790), 529.

⁷²Linguet, Annales, XVIII, 484.

⁷³Linguet, Examen de Voltaire, p. 233.

La Religion, malgré sa décadence, malgré ses outrages dont l'accable une philosophie peu réfléchie, rend encore aux moeurs un service que cette philosophie ne leur rendrait pas; elle les soutient: elle nourrit le préjugé des petits qui sert de frein aux grands; car, quoiqu'il soit vrai de dire que la corruption passe des seconds aux premiers, il ne l'est pas moins que la censure de ceux--ci est un obstacle qui retarde la dépravation des autres. 74.

The establishment of the "moeurs" of society, the fundamental laws of the realm, as the expression of God's will, acted as a restraint not only upon the masses but upon all levels of the social hierarchy, including the King himself. Indeed it was essential for monarchs to recognize God as a power superior to themselves and to whom they were responsible. Only in this way might kings be moved to observe the limits established by the fundamental laws of the realm upon their authority.⁷⁵ Therefore, by serving as the agent for God's will within the social order, the church acted as a second magistrature, one in fact, which was more efficacious and benign than its counterpart of the "Robe".⁷⁶

⁷⁴ Annales, I, 75. Linguet is coming very close here to the Thomistic conception of the right of resistance: Man is bound to obey secular rulers to the extent that the order of justice requires. For this reason if such rulers have no just title to power, but have usurped it, or if they command things to be done which are unjust, their subjects are not obliged to obey them, except perhaps in certain special cases, when it is a matter of avoiding scandal or some particular danger. Summa Theologica, la 2ae, 95, 2. Cited in A.P. D'Entreves, Natural Law: an historical survey, p. 43.

⁷⁵ Linguet, Examen de Voltaire, 226.

⁷⁶ Linguet, Annales, IX, 124; XVIII, 359.

The church's role as magistrature was based on the assumption that all forms of authority were interrelated. This interrelatedness existed because of that underlying principle uniting society, proprietorship, or, as Linguet saw it, absolute paternal authority, which was the basis of the fundamental and positive laws of the realm. This conception of society, although expressed by Linguet in a rather original fashion, was an integral part of the traditional Christian position which understood everything in terms of hierarchy; and it was the waning⁷⁷ of both the conception and reality of a rigidly hierarchical society which lent such urgency to Linguet's disputes with not only the philosophes, but with the physiocrats and the parlementaires. Linguet's condemnation of the philosophes and parlementaires for intolerance, a term he equates with the disruption of public order, should be seen as more than an ingenious, although extravagant, exercise in semantics. For Linguet, the ancien régime, laboring under literary, moral and political decadence, and living in the shadow of the imminent eruption

⁷⁷.. . . what Troeltsch has called the 'church directed civilization' was crumbling. Christians lived by the image of hierarchy: as God, his angels, and his creatures were arranged in an order of rank, so by analogy the skies, the family, the law, society and the church were naturally hierarchical. Now as natural scientists demonstrated that the hierarchies of terrestrial and celestial motion, or the spheres of the heavens were absurd, other revolutionaries were exposing the absurdity of other hierarchies." Peter Gay, Party of Humanity, p. 120.

of hitherto latent class antagonisms,⁷⁸ was very vulnerable to any force, whether intellectual, political or economic, which was foreign to its nature. It was because of this vulnerability that Linguet chose to defend the authority of a church toward which he did not seem to have any great religious attachment but which stood as a bulwark of social order against anarchy and despotism.⁷⁹

Enthusiasm for English Institutions

And Parleментарary Ambitions

That which belongs essentially and uniquely to reason and which consequently is uniform among all peoples is our duty toward our own kind. Consciousness of this duty is what one calls morality Few sciences have a more extensive object and principles more susceptible of convincing proofs. All these principles meet in a common point, concerning which it is difficult to delude ourselves; they tend to procure for us the surest means of being happy by showing us the intimate connection between our true interest and the performance of our duty Societies owe their birth to purely human motives; religion had no part in their original formation The philosopher is responsible only for placing man in society and leading him there; it is the missionary's task then to bring him to the foot of the altar. 80

⁷⁸Linguet, Annales, I, 102, 345.

⁷⁹"Vous voulez détruire le sacerdoce! Vous ne voulez que des magistrats et de soldats." Linguet, Examen de Voltaire, p. 225.

⁸⁰D'Alembert, Elements de Philosophie, sect. vii, Mélanges de Littérature, vol. iv, p. 79. Cited in Ernst Cassirer, The Philosophy of the Enlightenment, p. 248.

As this citation implies, there is a hope that a new system of ethics and a renovated social order will produce a reconciliation between two hitherto divergent demands, that on behalf of human freedom and that on behalf of public order. Man's participation in society can be achieved without placing external restraints upon him if the social order is in harmony with the laws of nature, that is, if this order reflects the laws that govern human nature. The attainment of this reconciliation is only possible through the process of enlightenment. A necessary precondition of this process is the establishment of true freedom of thought,⁸¹ which embraces freedom of speech (or freedom to influence others) and freedom of religion. As a result of this reconciliation, the laws will serve not as external restraints upon the will of the individual: they will reaffirm this identity of interests between the individual and society. This can only be so if the laws are based upon and enshrine certain natural and inalienable human rights: those of personal security, property, equality before the law, and the right of every citizen to hold governmental office.⁸²

The connection between Anglomania and this program arose from the fact that the philosophes held England up as an example of a state whose subjects experienced freedom

⁸¹Ernst Cassirer, op. cit., p. 252.

⁸²Ibid., p. 252.

as the philosophes defined it. There were, however, two schools of thought amongst the philosophes. One, which included Voltaire, Helvetius and Condorcet, while not wholly unappreciative of the British system of government, placed primary emphasis upon English civil liberties--freedom of speech, freedom of worship and security from arbitrary arrest, trial and imprisonment as guaranteed by British law and by the British jury system.⁸³ A second body of opinion, whose chief spokesman was Montesquieu, showed particular interest in the British Constitution as the embodiment of the principle of the separation of powers, as the guarantor of the political liberty of Englishmen. For both schools, liberty involved the protection of man's rights; it was only over the means of guaranteeing these rights that they differed. For both, however, freedom required an emancipation from that form of state absolutism whose authority was inextricably dependent upon the authority of the church.⁸⁴

Conservatives, therefore, were obliged to defend the traditional political and social order by attacking the philosophes on two fronts, questioning the reality of both the political and civil liberties of the English. Linguet waged his war against Anglomania, chiefly, by attacking

⁸³D. Williams, "French Opinion concerning the English Constitution in the 18th Century", Economies, X (1930), 297.

⁸⁴See A. Cobban, Dictatorship: Its History and Theory (New York, 1939), pp. 35, 41; Cassirer, op. cit., p. 238.

the second body of opinion, that which endorsed the separation of powers as set down by Montesquieu in his Esprit des lois, because it provided a rationale for the parlementary assault upon the authority of the crown.⁸⁵ Because of the increasingly vociferous nature of this assault upon the crown which stood, in Linguet's mind, as the paramount temporal embodiment of that principle of absolute paternal authority which bound society together and because of Linguet's intimate association with the parlements, the ambitions of the magistrature must have appeared to him as being the most concrete and imminent threat to the ancien régime.⁸⁶

Linguet's critique of the separation of powers thesis sprang from the general conservative view that the British constitution was much more complicated in reality than in theory. This body of opinion held that the balance of powers in the British body politic was always precarious: it might easily be inclined towards the crown, producing royal des-

⁸⁵ "(Montesquieu) a préféré à établir entr' eux (the executive and legislative powers) une incompatibilité, afin qu'il en restât au moins un à sa chère Robe" Linguet, Annales, XVI, 312.

⁸⁶ This urgency is, born out by the following comment by Linguet upon the ambitions of the parlements: " . . . cette aptitude à dénaturer les fonctions des Offices, cette facilité à confondre les titres, cette hardiesse à usurper des droits sont assurément un des plus grands abus et un des plus grands dangers de l'existence actuelle de la Magistrature en France. C'est un de ceux qui exigeraient la plus prompte et la plus active réforme." Linguet, La France plus qu'anglaise., p. 87.

potism, or it might be inclined to favor the establishment of a parliamentary despotism,--the latter being by far the worse eventuality since it was assumed that the tyranny of many was worse than that of a few.⁸⁷ This instability accounted for the factiousness and corruption of British political life.⁸⁸

Linguet shared the conservative distaste for the factiousness and despotic proclivities of the British system of government.⁸⁹ He considered such tendencies as being present in British political life not as a result of any separation of powers, however. Rather the British parliament constituted a single corporation (corps) comprising three parts--the King, the House of Lords and the House of Commons,⁹⁰ which were distinct and yet inseparable. Since it was parliament within which sovereignty resided and not within any one of its constituent parts, there was a constant contest among the latter for the acquisition of this sovereignty through control of parliament.⁹¹

⁸⁷Frances Acomb, Anglophobia in France, 1763-1789; an essay in the history of constitutionalism and nationalism (Durham, 1950), pp. 22-23.

⁸⁸Ibid., p. 76; Williams, op. cit., 301-302.

⁸⁹Linguet, Annales, I, 294, 369-370.

⁹⁰Linguet, Annales, I, 369-370; La France plus qu'anglais, p. 131.

⁹¹Linguet, Annales, I, 369-370.

Of the three parts that shared this sovereignty, it was the crown which, if not the most powerful, was, in fact, potentially so by virtue of the powers attributed to it by the constitution. Whereas neither the House of Lords nor the House of Commons had the right to depose (le déstituer) the king, the king had the right to dissolve both houses of parliament at his pleasure, a right which Linguet felt gave the crown both legislative and executive powers.⁹² The king was, according to the law, infallible; only his ministers were considered culpable or could be impeached.⁹³ According to criminal law most crimes were felonies, that is crimes against the crown; " . . . non seulement le monarque, aux yeux de la loi, est un Dieu par l'infailibilité; mais il l'est encore par la grandeur: c'est un contre lequel il n'ya pas de petite offense."⁹⁴ Furthermore, the King had at his disposal "tous les moyens de corrompre et de subjuguier": he was commander of the armed forces; he had the sole right to declare war and make peace; he might arbitrarily dispose of all offices and sinecures (les bénéfices); he had the right, not, to be sure, to impose new taxes without parliament's consent, but to require that all existing taxes be collected; it was to him and not to parliament that his ministers were

⁹²Linguet, Annales, XVI, 312.

⁹³Annales, I, 296.

⁹⁴Annales, I, 297.

responsible. That form of government enshrined by the British constitution was royal despotism. If British monarchs since the time of the Tudors had not always ruled despotically over parliament and the nation, it was only because they had failed to avail themselves of their prerogatives to the best possible advantage, either because of weakness of character, poor rapport between themselves and their subjects to whom they were foreigners, or of more compelling commitments and interests elsewhere.⁹⁵

What rendered the British system of government potentially despotic was not simply these extensive royal prerogatives, however, but their coexistence with sovereignty, the absolute nature of which was not dependent upon the delegation and strict delineation of authority amongst incorporated bodies. Sovereignty in the British system of government lacked the limitations inherent in the sovereignty exercised by a truly monarchical regime which rendered it absolute: the absolute sovereignty exercised by a true monarch was an integral part of a chain of authority which bound society together and which ultimately emanated from God. It was absolute monarchy's intimate relationship with the church which rendered its sovereignty absolute.⁹⁶ Because the sovereignty of the king of England emanated not from God but from parliament

⁹⁵ Linguet, Annales, I, 295-296.

⁹⁶ For a succinct exposition of absolute monarchy which emphasizes this relationship see A. Soboul, Précis d'histoire de la Revolution Francaise, (Paris, 1962), p. 62.

. . . le Roi n'est qu'un Magistrato chargé de l'exécution des ordres de l'Assemblée Nationale: ce n'est pas précisément du faste dont il est environné, au contraire, rien de si simple que sa vie ordinaire. Cependant, dès qu'il paraît en public, c'est moins le respect que la terreur dont on cherche à lui procurer le tribut. Il ne marche qu'au bruit du canon; des mousquillons levés le précèdent même à la campagne: il n'est servi qu'à genoux 97

The exercise of power without such a religious validation had a Janus-like aspect: there were no constitutional limitations which might be placed before its extension; there were no means constitutionally, of preventing its usurpation. Both aspects encouraged despotism. On the one hand, the possibility of extending the powers of the king encouraged ministerial despotism:

J'ai vu que partout les Grands étaient despotes dans la coeur; qu'ils tendoient, par le voeu commun, à 'l'aristocratie', parce que ne pouvant tous être Rois, leur ambition se console ou s'amuse de l'espèce de dépendance où ils tiennent la Royauté; et que par le voeu particulier, ils sont prêts à tout faire pour l'affranchissement du trône, parce qu'il leur faut un Monarque tout puissant, pour en recevoir le prix qu'ils mettent à leurs services. 98

Ministerial despotism as implied by the above citation was also, in a sense, a usurpation of the power of the monarch: the ministers exercised real power behind the facade of royal authority. The power of the king might also be usurped

⁹⁷ Linguet, Annales, II, 26.

⁹⁸ Linguet, Annales, I, 304.

by those not partaking of the king's authority. Here, Linguet had in mind the example of ministerial and parliamentary despotism in his own country as much as in Britain.

Linguet's analysis of the British system of government tells us a great deal about his own conception of monarchy and of his attitude toward the problems facing the French monarchy under Louis XVI. First it is clear from his characterization of the British parliament as an inseparable trinity within which the power of the king predominated, that Linguet could not conceive of sovereignty in general, and true monarchical authority, in particular, as constitutionally divisible. Authority could only be delegated and then only to an incorporated body. Neither the British nobility, clergy, nor magistrature could claim to constitute such a body.⁹⁹ It was the delegation to and the strict jurisdictional delineation of power between such bodies which distinguished monarchical from despotic rule. This distinguishing feature of monarchy was only possible if sovereignty was seen as ultimately emanating from God. Despotism, on the other hand, involved a departure from such a regime and was attended and encouraged by the development of esprit de corps within and factional struggles between incorporated (and unincorporated) bodies. The result was a lack of stability in the body politic which was characteristic of

⁹⁹Linguet, La France plus qu'anglais, pp. 131-135.

the British system of government and, indeed, of despotism, in general.¹⁰⁰

Linguet's conception of monarchy was not based on the French monarchy as it existed under Louis XVI. The French throne at this time was susceptible to ministerial despotism¹⁰¹ and struggling against the forces of parlementary despotism. The latter manifested itself not only in the parlementary assault upon the crown but in the unfettered ability of the magistrature to perpetrate injustices upon individuals: the "humiliation of the throne" had resulted in " . . . l'affaissement absolu de toutes les digues autre fois élevées contre l'injustice armée des formes Parlementaires".¹⁰²

The despotism of the parlements then, involved the imposition of injustice, directly upon the individual, and indirectly through its assault upon the monarchy. It was the preservation of justice, liberty and public order to which society and the monarchy had to be dedicated.

¹⁰⁰Linguet, Annales, I, 300.

¹⁰¹Linguet felt that his incarceration in the Bastille from 1780-1782 was the work of d'Aiguillon and Maurepas, both royal ministers. Linguet, Mémoires sur la bastille, (London, 1783), pp.116-117; Annales, XII, 55.

¹⁰²Linguet, La France plus qu'anglaise, p. 148.

Dans son véritable sens, justice et liberté sont synonymes, puis-que la liberté qui n'est pas justice, est license. Il y a toujours dans une nation un petit nombre d'hommes qui ne lui parlent que de sa grandeur pour qu'elle ne voie pas leur ambition, et l'efforcent de couvrir leur intérêt particulier des apparences de l'intérêt général; mais l'intérêt général est la justice. La justice est la plus grand bien fait de la société. C'est elle qui a fait les cités. Sans elle, dispersés et pareils entr'eux aux différentes espèces d'animaux, les hommes feraient sans cesse la proie du plus fort. C'est elle qui a fait les monarchies, et chez tous les peuples comme chez les juifs, les rois ont succédé aux juges. C'est elle qui protège le berceau de l'enfance, defend l'héritage du riche, veille au salaire du pauvre, est l'appui de faible et le premier besoin du tous. 103

Not only were justice and liberty synonymous, they were also consonant with public order which required that . . . "dans la société chacun a son rôle, auquel il doit exclusivement s'attacher."¹⁰⁴ This, in turn, required that the authority to which each person was entitled by virtue of his particular role be protected, and yet be kept within its proper bounds. It was this purpose to which the general laws, and the fundamental laws (upon which the former are based) were dedicated. Since this chain of authority emanating ultimately from God was enshrined by these laws, the sovereignty of the monarch, being an integral part of this chain, was of necessity limited both by the fundamental laws and by its intimate connection with the church. The

¹⁰³ Linguet, Entretien, (1788), pp. 17-18.

¹⁰⁴ Linguet, Du Pain et du bled, p. 300.

exercise of sovereignty rendered absolute by these limitations must necessarily be just.

This conception of the French monarchy was an ideal which, for Linguet, had its basis in a historical reality from which the monarchy, in its decadence had departed. Absolute monarchy had a tradition which far preceded that form of royal absolutism nurtured by Richelieu and consummated by Louis XIV.¹⁰⁵ Therefore the French monarchy as he conceived it was an integral part of French society. To undermine the authority of this institution, even in its present state, would be to invite social and political revolution.

The philosophes, consequently, were agents of social disruption (and, therefore, of despotism) in a three-fold manner: they were undermining the authority of the monarchy, the chief support of which was the intimate connection between itself and the church; again indirectly, they endorsed, through their anglomania, the pretensions of the parlements of France which, if realized, would result in the rule of "l'aristocratie la plus despotique, la plus injuste. Le Roi appellé le premier citoyen de l'état, n'aurait pas même les privilèges de la cité."¹⁰⁶

¹⁰⁵Linguet argues that Bodin's doctrine of the predominance of the throne in the lit de justice was not a purely theoretical statement but was a recognition of a long-standing fact. Linguet, Annales, XV, 163.

¹⁰⁶Linguet, Annales, XVI, 313.

CHAPTER V

CONCLUSION

Linguet has been variously portrayed as an apologist of royal absolutism, a social critic whose social concern for the lot of the poor anticipated nineteenth-century socialism, and a theorist whose concept of the origins of society was similar to that of Engels, and who was purported to have postulated the iron law of wages. In this study Linguet has been revealed as a critic of French jurisprudence and an opponent of the physiocratic program of economic reform, the ideology and program of the enlightenment and the political ambitions of the parlements of France. Behind this diversity there exists a unifying conception, that of absolute monarchy, to which Linguet devoted his energies as a lawyer, a man of letters and as a journalist. Although expressed in an original fashion, Linguet's conception of absolute monarchy, in its general content, was no different from that which had served as the political mythology of this institution during its development from the late middle ages until its decline in the eighteenth century. It was a conception of monarchy which served not only to bolster the authority of the throne but to judge the works of its occupants.

Central to this conception of absolute monarchy was the image of the king as father of his people.¹ This image was dependent on the assumption that the family unit was the social order in microcosm.

A family may be defined as the right ordering of a group of persons owing obedience to a head of a household, and of those interests which are his proper concern . . . the family is not only the true source and origin of the common wealth, but also its principal constituent Thus the well-ordered family is a true image of the commonwealth, and domestic comparable with sovereign authority. It follows that the household is the model of right order in the commonwealth. And just as the whole body enjoys health when every particular member performs its proper functions, so all will be well with the commonwealth when families are properly regulated.²

Binding the family together are the familial affections of its members and the authority of the father. The authority of the father emanates from his position as head of the

¹G. Behrens, "Nobles, Privileges and Taxes in France at the end of the Ancien Regime," Economic History Review, 2nd series, XV, No. 3 (1963), 466. "For the absolute monarch was seen as the father of his people with the powers and duties of a father. He alone had the right to make positive law and this carried with it the right to except individuals and groups from its operation. On the other hand it was held that he was bound by 'fundamental law', which in effect meant that he was bound to respect the rights which he and his ancestors had granted or recognized."

²Jean Bodin, The Six Books of the Commonwealth, abridged and trans. M.J. Tooley (Oxford, n.d.), pp. 6-7.

household, a position which involves strictly defined proprietary rights:

The proper organization of the household requires the separation and distinction of the goods, the women, the children, and servants, of one family from another, and that which pertains to each from that which is common to all, or in other words pertains to the public good 3

The authority of the head of the household (the absolute nature of which is based on the elementary distinction between his area of authority and that of his neighbour) is the principle of organization for the social order and the body politic..

The government of all commonwealths, colleges, corporate bodies or households whatsoever, rests on the right to command on one side, and the obligation to obey on the other, which arises when natural liberty which each man has to live as he chooses, is exercised subject to the power of another. 4

Upon this principle is based a conception of sovereignty which involves (a) the delegation but non-alienation of sovereign authority and (b) the mutual obligation between sovereign and subject. The first is based on the strictly proprietary aspect of the father's position as head of the household and may be expressed in terms of the liege lord's right of subinfeudation:

³ Ibid., p. 9.

⁴ Ibid., p. 9.

The true sovereign remains always seized of his power, just as a feudal lord who grants lands to another retains his eminent domain over them, so the ruler who delegates authority to judge and command, whether it be for a short period, or during pleasure, remains seized of those rights of jurisdiction actually exercised by another in the form of a revocable grant, or precarious tenancy. 5

Sovereignty thus constituted places an obligation upon the subject to render "faith and obedience" to the monarch as one would to one's liege lord. The monarch, as the liege lord, "must do justice and give counsel, assistance and encouragement, and protection to the subject." It is this mutual obligation between himself and the sovereign, and not "the right and privileges which he enjoys which makes a man a citizen".⁶ Similarly, an integral aspect of the exercise of sovereignty is an active concern for the welfare of one's subjects.

This concept of sovereignty is consonant with the feudal conception of proprietorship which involved the right to exercise authority but which also involved the limitation of this same authority by the fact of its dependency for its own validity on other manifestations of authority. In the case of the monarch's authority this dependency is upon God.

⁵ Ibid., p. 25.

⁶ Ibid., p. 21.

The authority exercised by all other constituents of the social order, however, is exclusively dependent for its validity (with the exception of the church) upon that of the king since it is authority delegated by the king. It is this interdependency of authority which binds families, communautés, corporations, the church and the state together into an organic unity.

It is in this sense that Linguet's equation of absolute paternal authority and proprietorship as well as those central assumptions based on this equation must be understood. By asserting that "L'esprit des institutions sociales, . . . est beaucoup moins la conservation des personnes que celle de la propriété des biens,"⁷ by virtue of the fact that "Toutes les propriétés ensemble depuis celle du souverain jusqu'à celle du plus vil de ses vassaux forment la chaîne qui le compose (le lien de l'état)"⁸ Linguet is, in fact, restating the assumption that the tranquillity of the social order and the state are strictly dependent upon the maintenance of that chain of authority which emanates ultimately from God through the crown and the church. The rigidly hierarchical nature of the social order requires the strict delineation of authority between areas of jurisdiction.

⁷Linguet, Theorie des lois, II, 367.

⁸Linguet, op. cit., I, 81.

The France of Linguet's time had departed from the ideal of monarchy and of the social order which these assumptions represented. This decline was being encouraged according to Linguet, by the chaotic state of French jurisprudence, the economic and intellectual dislocation engendered by the physiocrats and philosophes respectively, and by the parlementary assault upon the crown. For fighting what he considered to be the forces of political and social disintegration Linguet was seen by contemporaries and by historians as either an apologist of absolutism or as a strident critic of French society. Because of the manner in which he viewed his age, however, he was both of these.

Others, however, have portrayed Linguet as a precursor of socialism because of his indignation at the condition of the rural poor which made up the bulk of French society. By taking this attitude however, Linguet was, like others before him, simply judging the reality of the ancien regime in France during the reigns of Louis XV and Louis XVI by ideals based on the political mythology of absolute monarchy central to which was the image of the King as father of his people. The stature of the King, like that of father and head of a household, was dependent upon the size and well-being of his family, that is the subjects of his realm. We find this expressed by Le Pretre de Vauban towards the end of the reign of Louis XIV:

Il est constant que la grandeur des Rois se mesure par le nombre de leurs sujets; c'est en quoy consiste leur**s** bien, leur**s** Bonheur, leur**s** richesses, leurs forces, leur fortune, et toute la considération qu'ils ont dans le monde. On ne scaurait donc rien faire de mieux pour leur**s** service et pour leur**s** gloire, que de leur remettre souvent cette Maxime devant les yeux: car puisque c'est en cela que consiste toute leur Bonheur, ils ne scauraient trop se donner de soin pour la conservation et augmentation de ce Peuple qui leur doit être si cher. 9

Moreover, not only the stature of the Monarch but, the security of his throne requires that he not allow the well-being of the majority of his subjects to be jeopardized by too great a disproportion of wealth for as pointed out by Bodin, "The commonest cause of disorders and revolutions in commonwealths has always been the too great wealth of a handful of citizens, and the too great poverty of the rest."¹⁰

Social concern, therefore, is not the exclusive preserve of ideologies which assume the existence of inalienable human rights. Apologists of absolute monarchy maintained that individuals possessed rights only by virtue of their membership in society and not by virtue of laws which transcended society. Moreover they maintained that the preservation of the social order took priority over the preservation of the individual. Nevertheless, those beliefs were not incompatible with a genuine concern for the condition

⁹ Le Prêtre de Vauban, Projet d'une Dîme Royale, ed. E. Coornoert (Paris: Librairie Felix Alcan, 1933) (1697-1707), p. 21.

¹⁰ J. Bodin, Commonwealth, p. 158.

of the "menu peuple." Linguet by proclaiming that "la grande loi, la plus sacrée de toutes les lois, c'est le salut du peuple"¹² was echoing a tradition which included Bodin, Richelieu,¹³ Vauban, and Fénelon,¹⁴ all staunch upholders of absolute monarchy.

¹² Journal de Politique et de Litterature, I, 232.

¹³ Cardinal de Richelieu, Oeuvres, Introduction and notes by Roger Gaucheron, Jacques Bainville (Paris, 1929), p. 60. "Les intérêts publics doivent être l'unique fin du prince et de ses conseillers, ou du moins les uns et les autres sont obligés de les avoir en si singulière recommandation, qu'ils les préfèrent à tous les particuliers."

¹⁴ Fénelon, Directions pour La Conscience d'un Roi (Paris, 1825), p. 106. "L'amour du peuple, le bien public, l'intérêt général de la société est donc la loi immuable et universelle des souverains Le père commun de la grande famille ne lui a confié, ses enfants que pour les rendre heureux: il veut qu'un seul homme serve par sa sagesse à la félicité de tante d'hommes, et non que tant d'hommes servent par leur misère à flatter l'orgueil d'un seul."

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A P P E N D I X I

APPENDIX I

There is a striking resemblance between Linguet's justification for absolute monarchy and that of Hobbes, which Linguet recognizes. They both agree that an absolute, paternalistic monarchy is necessary to hold society together. Both associate violence with the origins of society in order to justify the absolute sovereignty of one person as necessary for the preservation of public order. Hobbes maintains that society may arise out of conquest or be instituted through a contract between those who willingly exchange their freedom for the security of their lives. For Linguet, society originates solely in conquest.

For Linguet, however, there is this basic difference between his position and that of Hobbes. Hobbes does not make a distinction between the natural and civil orders, whereas, for Linguet, the fundamental laws are the exact antithesis of the laws of nature. In Théorie des lois civiles, Linguet chooses to differ with Hobbes primarily on the nature of the family unit.¹ For Hobbes primarily there is a link between the natural and civil orders in that natural law

¹This question of the nature of the family is central to Linguet's system of thought as it is for that of Hobbes, since both conceive of the family unit as social and political organization in microcosm.

which dictates that man, in the interests of self-preservation, shall seek peace.² Given the natural physical equality of men and the natural conflict of interests which exists between them, the state of nature is a state of perpetual war wherein "each man is an enemy to that other whom he neither obeys nor commands." Therefore in a state of nature the mother has control over her child since " . . . it is manifest that he who is newly born, is in the mother's power before any others, insomuch as she may rightly and at her own free will either breed him up, or adventure him to fortune."³ Furthermore, since those not bound to each other as lord or subject are enemies and since it is natural for the mother to strive for her continued preservation through peace, she will strive to remain both " . . . mother and lord" to her offspring. This authority is neither relinquished nor transferred to the father voluntarily since " . . . the inequality of their natural forces is not so great, that the man could get the dominion over the woman without war . . . "⁴ In a state of nature, therefore, the authority of

²Thomas Hobbes, De cive; or the citizen, Intro. Sterling P. Lamprecht (ed.), (New York, 1949), p. 30.

³Ibid., pp. 105-106.

⁴Ibid., p. 106.

the mother over the child is transferred only to he who forcibly establishes his dominion over her. This is not necessarily to establish the authority of the father, since he who has command of a woman may or may not be the father, since he who has command of a woman may or may not be the father of her children. If indeed it is the father who has established his dominion over his own children and their mother, this authority is not necessarily permanent since it may be usurped at any time.⁵

The mother's authority over he offspring will be voluntarily transferred to the father with that most fundamental law of nature which is that "peace is to be sought after, where it may be found. . . . "⁶ Derived from this law is that natural law that holds " . . . that the right of all men to all things, ought not to be retained, but that same certain rights ought to be transferred, or relinquished. For if everyone should retain his right to all things, it must necessarily follow that some by right might invade, and others, by the same right, might defend themselves against them "⁷ Therefore, a mother will relinquish her control over her offspring only to an absolute authority.

⁵ Ibid., pp. 27-28. "Nature hath given to everyone a right to all; that is, it was lawful for every man in the bare state of nature, or before such time as men had engaged themselves by any covenants or bonds, to do what he would and against whom he thought fit, and to possess, use and enjoy all what he would or could get."

The state in which this absolute sovereignty resides may originate either by conquest or by contract.⁸ That state which originates in conquest is the family wherein sovereignty rests with the husband and father.⁹ This natural state based on patriarchal power is impermanent, however.¹⁰ Such permanence can only be provided by a state whose absolute authority is based on the will of those who have contracted to form society.

For Hobbes therefore absolute monarchy is based on the will of the people. The people confer absolute sovereignty upon the monarch with the understanding that he will assure the security of their lives. If he does not provide this security the people will transfer sovereignty to he who is able to through superior power.¹¹ Hobbes is going beyond

⁶ Ibid., p. 32.

⁷ Ibid., p. 33.

⁸ Alfred Cobban, Dictatorship; Its History and Theory (New York, 1939), p. 44.

⁹ Hobbes, op. cit., pp. 110-111. "A father with his sons and servants, grown into a civil person by virtue of his paternal jurisdiction is called a family. This family, if through multiplying of children and acquisition of servants it becomes numerous, insomuch as without casting the uncertain die of war it cannot be subdued, will be termed an hereditary kingdom; which though it differ from an instituted monarchy, being acquired by force, in the original manner of its constitution; yet being constituted, it hath all the same properties, and the right of authority is everywhere the same, insomuch as it is not needful to speak anything of them apart."

¹⁰ Cobban, op. cit., p. 44. It is impermanent because in a state of nature his authority may be usurped at anytime since each individual has a right to all that is within his power to acquire. See Hobbes, op. cit., pp. 27-28.

a justification of absolute monarchy in terms of natural law. Absolute monarchy is ostensibly based on natural law. Natural law, however, may be reduced to one basic principle of human nature--a fear of violent death.¹² The justification is in terms of human psychology and natural right rather than natural law. It is this fear of violent death which determines the nature of the social contract: people demand the right to security from violent death as a condition for entering into society.

It is this concept of natural rights which Linguet objects to and for two very good reasons, given his viewpoint. First, the concept of natural rights maintains that society exists for the individual. Those rights which the individual possesses become standards by which society is judged. If society is found wanting, these standards become a program of reform. Secondly, to maintain that all individuals in society possess certain rights is to implicitly deny the hierarchical nature of society. For Linguet the social and political order must be based firmly on the fundamental laws. Any reforms which ignore the nature of the fundamental laws will encourage social disintegration, violence and anarchy.¹³

¹¹Cobban, op. cit., p. 46.

¹²Loc. cit.

¹³Linguet, op. cit., I, 34-36.

These fundamental laws do not enshrine any individual rights but rather, preserve the institution of private property. Since proprietorship is equivalent to custodianship, the distinguishing feature of private property is the right to exercise absolute authority. Because the proprietor is merely a custodian he exercises this absolute authority only because it has been conferred and affirmed by a superior authority. Furthermore, while property is owned by individuals, it ultimately belongs to society as a whole. Therefore, each individual in a position of authority exercises that authority through the sufferance of the state in the person of the king who has conferred this power. Society, therefore, must necessarily be hierarchical: it must be bound together by ties of authority and respect, rights and duties. In order that the social order be maintained intact with a minimum of physical force, this chain of authority or social hierarchy must not be susceptible to change: each link of authority in this chain must be without qualification. Only in this way can narrow group interests and esprit de corps be kept from disrupting social harmony. It is only in this way that the security of the common people from excessive economic hardship may be provided for.

The similarity between these two conceptions of the origins and basic nature of society and the state have a similarity which arises from a purpose common both to Hobbes

and Linguet--the justification of absolute monarchy. A belief in absolute monarchy involves the view that all forms of authority in society are absolute within the area of their jurisdiction and interdependent, the one to the other. This view is, therefore, shared by both Hobbes and Linguet. It is, however, not peculiar to them but constitutes an integral part of the political mythology of absolute monarchy as expounded by such men as Bodin, Richelieu, Fénelon and others. Hobbes justification of absolute monarchy differs from that of Linguets inasmuch as Hobbes seeks to eliminate the close association between absolute monarchy and the church. He, therefore, presents that chain of authority which binds society together as emanating not from God but from natural law and the social contract. Linguet, on the other hand, upholds this association between church and throne and, therefore, accepts the traditional belief that this chain of authority emanates ultimately from God. If Linguet's conception of social relationships is traditional his manner of expressing their nature is not. Whereas the other apologists of absolute monarchy consider the family as society in microcosm and absolute paternal authority as the operating principle in society, Linguet, agreeing with both of these assumptions, expresses this authority as proprietorship. This particular mode of expression is evidence of an insight which establishes Linguet as an important thinker in the eighteenth century. Linguet,

unlike most of his contemporaries, clearly perceived that the ancien régime in France constituted a social, economic and political unity; absolute monarchy, the church, the communautés and corporations, the social hierarchy in general, the feudal system of property, and the laws, both fundamental and general, formed an integral whole. Because of the clarity of his perception, Linguet saw, like few of his contemporaries did, that the social, economic and political transformations of the eighteenth century could only violate this unity and lead to the destruction of the ancien régime.