

Office as a Royal Entail.

The system of venal & hereditary office-holding can be likened unto an entailed estate. The usufruct is never the proprietor. In English entail, the proprietary right is placed in trust for a future generation, but before that person gets the usufruct he is persuaded to put the proprietary right in trust for another future generation. So, the proprietary right is always in trust for the future, and the living generation is a series of usufructors, or rather perhaps tutors (but in fact, outside tutors were used, to escape the rules of English law against perpetuities.)

So, offices in France were always the property solely of the king, and it is the usufruct of them which was allowed to be hereditary within a family, or saleable by them to qualified buyers. If Louis XIV ever said "*L'état, c'est moi*", he is quite correct: he owns all the offices in terms of right of appointment, creation and elimination; he has simply delegated the usufructory power to individuals and made this part of their patrimonial power on good behavior. The *paulette* was nothing more than a tax upon the hereditary right to usufruct; and if the officeholders were noble, then it was a tax on nobles. (Note the exemption of the *Parlement* as a corps from *Paulette* in 1732 [?] changes this, and makes them less clearly bound to the king than other officers. The only way they could be dispossessed was by gross malfeasance--although technically they could still be bought out by the abolition of the offices, as Maupéou tried to do in 1771.)

This technicality of the law of office-holding was probably quite clearly seen in the first generations of office-holding, in the 16th and 17th centuries, but after two centuries in which abolition of offices and removal from office just had not taken place, the very idea that it could be done was shriveled. How much different would have been the attitude towards the venal offices in the 18th century if the king had regularly repurchased certain offices--even whole classes of them--and reformed the government by creating new kinds of offices which he then put up for sale? If the notion of offices being the device for the moment had been as prevalent as the idea of offices given for perpetual transference within the family, or sale, then the idea of service for the ± king would have been much more solid. It might well have been the the same people who were bought out would be the ones to buy the offices in the new reformed part of the administration, so that the personnel would not have changed that much. But the idea of family possession of the particular office would have been broken, and the idea much more prevalent would have been that this class of people are the ones from which the governing class is to be chosen, to fill high offices as they are decided by the king at a given moment. It might even happen that during a reform the new offices would not be venal, and that the dispossessed venal officeholder, if he was to get the equivalent function in the new system, would have to do it on a salaried basis. Such was, in effect, what Necker wanted to do.

It is clear, however, that regular major reforms of the administration on this basis would have been as much chaotic as reformative. Especially in the legal sphere, tradition is all important and procedure cannot be changed drastically ever. That is to say, the judge-advocate-*greffier* system was not to be altered instantly. If the king had set about simply to repurchase the offices, and make them non-venal in the future, he would still have had to allow incumbent judges live out their tenure of office, for they were guaranteed perpetuity on good behavior long before they had got hereditary contro of their offices. So, no drastic revision of the personnel of the judiciary could have been achieved on a short term basis except by outright abolition of the offices and repurchase , à la Maupéou. Had the monarchy been capable of seeing a very long term of reform, they would have set about deliberately to repurchase all offices and so deny all hereditary right of transmission. If fathers managed to work their sons into the same position, as

they had in many offices before successions by *survivances*, and then venality, became the law, there is not much that could be done; but the royal power of appointment would have become truly important, as it had failed.