

Despite this, nonetheless, it remains arguable that early modern Spain was marked, however variably, by monarchical attempts to undermine the Cortes, and the Cortes was widely perceived as a bastion of noble privilege against the monarchy. This was manifest in the ultimate suspension of the Cortes. It was also manifest in the fact that successive monarchs sought to circumvent the Cortes, either by negotiating with other bodies for supply or by selling charters to corporate actors, usually to towns (Nader 1990: 158). Indeed, a tendency towards the weakening of representative power might also – more arguably – be identified in the system of *pactismo* itself, which appeared, superficially, to support the position of the Cortes. Owing to the model of *pactismo*, the representative functions of the Cortes was at times restricted to the brokering of particular compacts and specific agreements. The establishment of private pacts as the basis of monarchical rule meant that the convoking of assemblies and the recognition of general laws did not, even within a limited political society, involve a process of fully general inclusion or representation: assemblies acted primarily to provide particular legal – or even *civil-legal* – protection for private arrangements and legal privileges (Torres 1989: 126; González Antón 1989: 220). Indeed, it is arguable that *pactismo* privatized the monarchy as a whole, and thus eroded the public integrative structure of the state in its widest dimensions. Under such conditions, the fully representative qualities of the Cortes were diminished, and it acted primarily as a particularistic bargaining agent and source of judicial arbitration. To be sure, even when the meetings of the Cortes became sporadic and less formal, it retained a position within the constitutional order of the state. However, *pactismo* might be seen as a constitutional order that limited the general representative functions of parliamentary organs, and in fact implicitly re-privatized and weakened their abstracted and inclusionary force.⁴³

At one level, in consequence, the model of government in early modern Spain acted as a response to the growing requirement in society for condensed statehood, and during the rise of the Spanish Empire it manifestly established a political apparatus capable of high levels of military mobilization. Indeed, this political system can easily be seen as a distinctive type of constitutional rule, which stabilized the monarchy in its institutional form and used selective means of societal

⁴³ Notably, *pactismo* was despised by the ‘popular mass’ (Maravall 1972: 290). On the particularism implicit in *pactismo* see further González Antón (1989: 220).

interpenetration to generate relatively reliable sources of income for the monarchy. However, the constitutional arrangements supporting the Spanish state had a number of consequences that also weakened unitary state construction, and in many respects they augmented the power of seigneurial actors that had traditionally used their judicial privileges to oppose the elaboration of a strongly abstracted central state. Indeed, although often characterized as following an 'absolutistic' pattern of state building, Spain (albeit with marked distinctions between Castile and Aragon) was the only major European state, which, having transformed itself from a late-feudal aggregate of privatistic interests into an early modern public order, began intermittently, in the sixteenth century, to relapse into the diffusely external and privatistic constitutional structure of the feudal era. It is widely observed that in Spain the ancient immunities granting seigneurial rights were pervasively reasserted in the early modern era. Indeed, by the seventeenth century the monarchical state had been restructured so that it acted in essence as a stratum of directive power above the private and patrimonial competences of the nobility and the separate administrative jurisdictions of the cities, and this period saw a widespread fragmentation of royal power. Through the later seventeenth century, thus, Spanish society was marked by extremely low levels of social integration and legal order (Thompson 1990: 89), and extremely high levels of particular local autonomy.

This internal weakening of statehood in early modern Spain was primarily caused by fiscal pressures resulting from military overstretch and intensified war financing, and the crisis of the Spanish state was by no means solely the result of constitutional defects. Nonetheless, both the privatistic configuration of the Cortes and the acceptance of *pactismo* as a diffusely dualistic model of governance based in recognition of privileges outside the state were distinctive features of early modern governance in Spain, and both these characteristics compounded the crisis of the Spanish monarchy, which became increasingly febrile through the seventeenth century. Indeed, the partial collapse of state power in Spain was at once caused by and symptomatically reflected in the fact that it was a monarchy that never fully integrated its consultative organs and permitted its inclusionary apparatus to persist in partially external structure. This ultimately led, not to a structural reinforcement of a semi-autonomous monarchical or even 'absolute' state, but in fact to a re-particularization of authority both within the state and throughout society more widely. As a result of this, the Spanish monarchs were increasingly bound, not by acceded general or *public* laws, but by the

countervailing force of seigneurial rights and liberties,⁴⁴ and by the external power of private agents who had managed to purchase and maintain reserves of state power and judicial authority.⁴⁵ By the seventeenth century, therefore, although the powers of the Cortes were limited, royal authority was still checked by powerful counterweights. Yet these were located, not in any inner constitutional apparatus within the state, but in centres of seigneurial authority: in the *señorios*. One historian has argued persuasively that *pactismo* was a cover for the 'absolute power of the *señorios*' and that it directly impeded the formation of a strong central state and a strong uniform judicial order (Latorre 2003: 92). The decline, or particularistic fragmentation, of the power of the Cortes, in short, coincided with a decline in the power of the state. The crisis of the Spanish constitution focused on the Cortes marked a partial return to the medieval constitutional pattern, which led to an extreme lack of state integrity. This tendency was partly redressed towards the end of the seventeenth century, when the monarchy again attempted to decompose seigneurial power. In this instance, too, however, the monarchy did not succeed in elevating itself above its late-feudal structure of residual particularism, and a high level of governmental privatism remained a feature of Spanish government until the twentieth century.

It would be inaccurate to suggest that the so-called absolutistic style of government employed in Spain meant that the early modern Spanish state did not possess a constitution. As discussed, in early modern Spain the monarchical state was powerfully balanced by an amalgam of *pactos*, exemptions and local indemnities that restricted the force of general laws. However, this externalistic constitutional apparatus proved deleterious for the Spanish monarchy, and the 'absolutistic' experiment proved unable to create a powerfully autonomous state with reliable control of judicial or fiscal processes (see Dios 1985: 36; Mackay 1999: 59). It created a state that, despite the precocious rise of statehood in Spain, persisted in a residual dualist form, in which central authority was precariously supported and limited by private and regional powers outside the state, and in which political authority, within and outside the state, was exposed to a process of seigneurial re-privatization

⁴⁴ See analysis in Kamen (1980: 228); González Antón (1989: 220); Castellano (1990: 131); Mackay (1999: 2, 4, 11).

⁴⁵ Thompson set out this argument and claimed that the 'chronic degeneration of effective state power' in Spain saw the creation between 1625 and 1668 of 'at least 169 new lordships or baronies, each with primary and secondary jurisdiction' (1994: 217–22).

(Thompson 1990: 91). One notable historian has argued simply that by the late sixteenth century legal order in Castile had been so fundamentally fragmented by the selling of royal charters and indemnities that there no longer existed a 'law code common to all Castilian municipalities' (Nader 1990: 157). The fact that the constitution of state relied on the sanctioning of diffuse fiscal pacts and legal guarantees through society meant that the inclusionary integrity of the state was undermined, the state was not required or able to bind powerful particular actors into its structure, and it did not elaborate consistent institutional preconditions for unitary integration. On this basis, the 'absolutist' system of government in early modern Spain caused a traumatic degeneration of governmental authority, it obligated the use of state power to private compacts, it failed to produce an adequately articulated pattern of public order – or of *public law* – for the state, and it prevented the state from overcoming the pluralistic structure of social embeddedness that it had assumed in the Middle Ages. The pattern of 'absolutist' political evolution in Spain, in other words, marked one distinctive constitutional process of unitary state formation. However, this process produced a state that possessed limited control over its societal boundaries, that was not able to mobilize power at a level of high public abstraction or generality, and that at times risked forfeiting its quality as an integrally constructed state.

France

In France, similarly, the later period of early modernity was defined by the formation of a state that attempted to sustain its unitary structure by suppressing sources of dispute over political functions, and by eliminating articulated constitutional checks on royal prerogative.

At the beginning of the seventeenth century, French society as a whole was still perceived as regimented around a plurality of hierarchically organized orders or corporations and estates, each of which had its internal privileges, legal distinctions and administrative functions. This meant that societal structure was determined by multiple forms of power and status, and that the judicial and fiscal power of the central state could only be applied as proportioned to a highly pluralistic sectoral landscape of liberties, privileges and immunities. Charles Loyseau's argument that orders formed a quasi-natural social hierarchy, in which the 'state' (*estat*) of each person was determined by affiliation to an order and by the particular marks, signs and ornaments pertaining to this order, precisely captured the decentred and particularistic fabric of French social

structure at this time (1665 [1610]: 4). Most notably, the society of orders in France militated against the formation of a strongly abstracted political system. That is, the fact that in this society power was tied to local and professional distinctions and legal and fiscal exemptions impeded the formation of a unitary fiscal and judicial apparatus in the state, and, in allocating governmental authority to corporate actors and estates, it ensured that basic functions of the state remained under private control. Throughout the early decades of the seventeenth century, however, the French monarchy began progressively to consolidate itself above the society of orders: it did this by combating the local and sectoral division of society, by strategically weakening hereditary orders and sources of immunity, by bringing the disparate orders of society under more immediate and evenly inclusive state jurisdiction, and by reducing the authority of estates.

In the aftermath of the Reformation era and the religious wars, in consequence, the instruments of corporate representation were employed with increasing rarity in France, and the constitutional structures of the later Middle Ages were allowed to fall into disuse. Most notably, the Estates-General were not called after 1614 until 1789, and as early as the first decade of the seventeenth century, Henri IV began consciously to curtail the power of organic institutions and, above all, to limit the corporate bodies that conventionally served the political interests of the nobility. In pursuing these policies, the French monarchy, in particular after the accession of Louis XIII, attempted (with only partial success) to rectify the fiscal problems that it suffered through protracted involvement in warfare by imposing larger and more uniform taxes throughout society, by ensuring that taxes were collected by a distinct class of royal officials (i.e. not by the estates themselves), and in some cases by simply ignoring the fiscal powers and privileges of regional assemblies and securing taxation by regularly mandated means.⁴⁶ At the core of this process was a progressive suppression of social orders and seigneurial distinctions, and royal policies reflected an endeavour, especially in fiscal matters, to restrict singular exemptions under law, and to apply fiscal edicts uniformly across society. In particular, this meant that the monarchy was obliged to construct an internal administrative apparatus that allowed it (to some degree) to detach taxation from

⁴⁶ The origins of this strategy have been plausibly traced to the religious wars (Hickey 1986: 30, 31, 45).

traditional or structurally enmeshed groups of rights and exemptions and instruments of approval, to separate contribution to tax revenue from social standing, and to establish centrally the levels of revenue required from particular regions and persons (Moote 1972: 99; Ranum 1993: 28–9). The transformation of the state's fiscal system led to a growing depersonalization of the state's administrative order, and it articulated an increasingly general line of exchange between the state and the economy, in which economic functions and obligations were constructed as relatively independent of hereditary or personal status. In this respect, the 'absolutistic' structure of the French monarchy clearly served to reinforce the state's unitary form and the positive abstraction of its power, it suppressed diffuse or dualistic elements in the state, and it helped, vitally, to clarify the lines of intersection between the state and the economy and, gradually, to detach forms of legal address and inclusion from private spheres of activity. The 'absolutistic' design of the state clearly heightened the positive force of the state's power, and it enabled the state to legislate more autonomously across society and simply to construct the categories in which it integrated its addressees.

In conjunction with this, the earlier seventeenth century also saw a transformation of the internal constitutional features of the French state. Instead of seeking to obtain monetary supply by negotiating with the assemblies or corporate estates, the monarch began to utilize the *parlements* (that is, the sovereign courts, designed to register laws and initially endowed only – or primarily – with judicial functions) as organs for transacting and documenting fiscal arrangements. One main motive for this, at least until the middle of the seventeenth century, was that the monarch was able to treat the *parlements* in much more peremptory style than the corporate estates, and he was able to use *parlements* to conduct fiscal business with limited resistance.⁴⁷ This policy of elevating the constitutional status of the *parlements* was not an ultimate success, and the role of the *parlements* in the construction of the compact, post-feudal state in France remained deeply ambiguous. In the early seventeenth century, the *parlements* gradually assumed limited representative competence and, as the estates became weaker, they began to act as the primary focus of political/constitutional controversy and opposition to the monarch. Owing especially to the fact that, as sovereign courts, they were authorized to submit remonstrances regarding new acts of law and

⁴⁷ Members of the *parlements* initially viewed themselves as 'king's men' (Jouanna 1989: 33).

fiscal measures introduced by the monarchy, they increasingly used their power to block the wider concentration of the governmental apparatus. This was especially the case because the members of the *parlements* were normally office holders, whose position could be held as a private venal privilege in a family for a long period: in consequence, the *parlements* became a forum for private, vested or even neo-seigneurial resistance to the construction of a centralized state. Nonetheless, the relocation of constitutional exchange from the estates to the *parlements* marked an attempt on the part of the monarchical executive to internalize sources of conflict within the state, to stabilize the executive apparatus in a relatively impermeable form, and to administer the vital interests of the state in a more internally controlled institution. Indeed, the French monarchy repeatedly attempted to bring the *parlements* under its direct influence, to limit the independence of judicial actors in the state, and to restrict the powers of budgetary remonstrance exercised by the *parlements*. In this respect, too, the formation of the state as an 'absolutist' monarchy reflected both the heightened differentiation and the unitary construction of the state apparatus, and it reflected the wider stratificatory transformation of the corporate structure of society as a whole.

In addition to this, the formation of a more 'absolutistic' state in seventeenth-century France was reflected in the expansion of the state administration, in the gradual formation of a semi-professionalized civil service, and in the progressive expulsion of centrifugal private interests from the state's administrative structure. For example, through the course of the seventeenth century the French monarchy gradually eroded the political functions and status of locally privileged or corporate actors by creating a specialized administrative body, first, of judicial and financial office holders (*officiers*) and, second, of personally appointed *commissaires*. Both the *officiers* and the *commissaires* were agents who executed royal business through the realm, especially in matters concerning taxation, jurisdiction, and religious observance, and they gradually set the foundations for the emergence of a class of professional functionaries. The corps of office holders, who usually obtained offices by venal transaction from the monarch, was first established as part of an attempt both to expand royal revenue and to preserve delegated public functions (especially responsibility for raising revenue) under direct royal control and to escape the privatization or renewed enfeoffment of public authority characteristic of feudal political order (Mousnier 1945: 2–4). Indeed, although by 1789 office holders were habitually derided as agents of feudal reaction, the allocation (often for

money) of state offices in justice or finance was initially a strategy devised by the monarchy expressly to promote the *de-feudalization* of public power – that is, at once to obtain revenue for the public purse, and to remove state authority from the ancient nobility possessing judicial powers strongly rooted in land and seigneurial entitlement (Jouanna 1989: 98; Bien and Godneff 1988: 401; Bossenga 2006: 63). As a result, the formation of a class of *officiers* reflected the ambition, of defining prominence for the constitution of later medieval France, to separate administrative power from feudal jurisdiction, and this class formed the administrative core of the state during its first period of consolidated abstraction. By the middle of the seventeenth century, however, the number of offices had escalated and the rights and tenures over public duties attached to different offices had become more solidified, so that the office holders began to hold private stakes in state administration and to threaten the cohesion of the state. In consequence, they were in part supplanted by a new class of functionaries: the *commissaires*. The *commissaires* obtained strictly specific and temporary royal commissions, issued immediately under the king's great seal, their functions were classified direct enactments of royal will, and their institution was designed, once again, to minimize private alienation of royal power.⁴⁸ Notably, Jean Bodin made a clear distinction under public law between state servants holding *offices* and state servants holding *commissions*, and he underlined the risks accruing to the state through the granting of permanent venal offices, especially in the judiciary (1986 [1576]: 45, 61).

Salient among the ranks of the *commissaires* were the *intendants*. Originating under Henri II and obtaining formal commissions in the later sixteenth century, during the reign of Louis XIII the *intendants* were formed as an independent elite body of mainly non-venal functionaries, who, although often of noble provenance, played a key role in the attempted eradication of private power from the administration of the French state. Receiving orders directly from the general controller of finance, the *intendants* were commissioned to impose royal demands in respect of taxes and justice in the provinces,⁴⁹ and they were utilized to

⁴⁸ The grand *ordonnance* passed by Louis XIII in 1629, and sometimes known as the Code Michau, clearly explained both the levels of obedience due to bearers of *lettres de committimus* and the temporal and functional specificity of the commissions (Ordonnance 1630: 57–8). This document played an important role in weakening the consultative dimensions of French government.

⁴⁹ For samples of the vast literature on the *intendants* see Laferrière (1896: 153, 161); Dupont-Ferrier (1930: 190); Gruder (1968: 70); Kiser and Linton (2001: 422).

transmit royal power immediately from the monarchical centre to the social periphery: notably, their rise coincided with the concentration of fiscal and judicial authority in the *conseil du roi* and other personal councils around the king. The legal status of the *intendants* changed over time. By the middle of the seventeenth century, the *intendants* with responsibility for financial administration had begun to assume more personal powers, analogous in some ways to ministerial appointments, and this was eventually formalized by statute (Antoine 2003: 194–5, 461, 568). However, as royal agents with formal duties, the *intendants* acted throughout the seventeenth century to relieve the estates of their responsibility for gathering taxes, and they gradually became primary pillars of royal authority throughout France.⁵⁰ In general, in fact, through the seventeenth century the *commissaires* began to approach a functional condition of administrative specialization (i.e. they were allocated very particular royal duties to conduct), and they brought many social functions previously covered by provincial corporations under the sway of the monarchy (or the state) (Mousnier 1974: II, 495, 566). In this regard, the construction of the early modern French state revolved around a recognition that the functions of political administration traditionally conducted at a local level or effected through arrangements based on local privilege and private entitlement had to be regulated in a specifically and independently political manner. The initial development of a specialized and semi-professionalized civil service formed part of a process in which the political system assimilated those functions in a society that possessed a distinctively political content, and the nascent state administration both segregated itself from private sources of power and status and eliminated the need for local or personal agreement in the particular acts of its exercise of political power. Through this development, the resources of power within society were clearly delineated against private functions or marks of personal status, and groups bearing distinct and particular social rights (usually the nobility) were gradually either suppressed or transformed into commissioned organs of state power.

In all these respects, in sum, the basic structure of the French monarchy in the earlier seventeenth century was integrally shaped by the processes of political abstraction, legal generalization and unitary institutional formation that more generally accompanied the formation of early modern states and early modern societies. The French monarchy consolidated itself as a state that suppressed both estate-based legal/

⁵⁰ For samples see Kettering (1978: 84–8); Smedley-Weill (1995: 121); Major (1997: 283).

monetary privilege and late-feudal opposition by seeking to assimilate the noble class into the state bureaucracy, by endeavouring to purchase the support of this class by offering distinctions and privileges that had immediate remunerative benefit to the state, and – most importantly – by conferring venal office on people outside this class, in order to undermine noble dominance (Giesey 1983; Beik 1985: 337). These processes of administrative transformation were also reflected in the increasing generalization of the law in France in the second half of the seventeenth century. The ordinances imposed by the Code Louis of 1667–70, most particularly, still preserved special distinctions of status for the nobility and recognized certain noble jurisdictional privileges. However, this code laid down a general order of hearings and legal procedures, it formed a legal apparatus that was relatively indifferent to status, and it expanded the functions of royal councils as courts of last resort, able to override the judicial rulings of the *parlements* (1670: 19). At its core, thus, the emergence of French ‘absolutism’ was a process that suppressed the diverse and pluralistic constitutional dimensions of later feudal society in order to generate distinctively abstracted and internally consistent stores of power for society, and in which specifically commissioned political actors were designated to circulate political power through society in even and generalized fashion. As a result of this, the state evolved a form in which, to an increasing degree, it could apply power to different social strata in relatively uniform and generalized manner, and the preconditions of state power (especially fiscal revenues) could be secured without incessant personalistic controversy.

It would, in consequence, be absurd to deny that the emergence of ‘absolutism’ contributed dramatically to the modernization of French society: self-evidently, the balance between administrative centralization and office-holding patrimonialism at the centre of the monarchy brought a rapid intensification of state power, and it clearly consolidated the French monarchy in the international arena. Like Spain at the same time, however, the formation of ‘absolutism’ in France also revolved around two distinct paradoxes, which ultimately, over a long period, depleted its power. First, the rise of the absolutist governmental style and weakening of inherited instruments of representation did not involve a thorough suppression of the state’s constitutional structure. In fact, second, in its attempt at centralization the French monarchy not only failed to eliminate constitutional counterweights to its power; it was also forced to assume a constitution that ultimately obstructed its emergence as a fully developed and autonomous political actor.

First, most manifestly, the French monarchy retained a residual constitutional order because it was widely presupposed that, for all its growing power, the monarchy was bound by a number of basic laws and norms, which continuously defined the structure of the state. These laws were rather diminished variants on the fundamental laws acknowledged in the sixteenth century. However, the expectation of royal adherence to laws of succession, laws of religious obligation, laws of majority and laws regarding the inalienability of the French territory remained strong. Moreover, it was also assumed that certain positive laws constrained monarchical power, and that the monarch could not arbitrarily contravene time-honoured institutional conventions (see Lemaire 1907: 271; Saguez-Lovisi 1984: 25). Even those theorists who supported monarchical 'absolutism' clearly insisted that France possessed a constitution that ensured that the state was juridically distinct from the person of its monarch and placed limits on the exercise of power. Close to the origins of the absolutist state, Jean Bodin and, later, Cardin Le Bret, both of whom are seen as staunch advocates of absolutism, were emphatic that monarchical legislation remained subject to customary constraints (Bodin 1986 [1576]: 193; Le Bret 1635 [1632]: 14–15).

Second, limits were placed on the power of the absolutist state by virtue of the fact that the reinforcement of the state bureaucracy, itself reflecting the anti-privatistic policies of the French monarchy, also contained constitutional implications. The bureaucratic intensification of the state structure was marked, in fact, not only by an incipient de-privatization of the civil service, but also by a reduction of the private status of the monarchy itself. During the early period of 'absolutism', a clear distinction was made between the administrative order of the state and the natural/physical will of the monarch, and the French monarchy created an administrative system that, although enacting a royal chain of command, possessed a distinct and abstracted permanence against the monarch. Above all, the administrative reforms that formed the basis for governmental 'absolutism' saw the final transformation of the monarch from a personal bearer of high seigneurial privileges located within a mass of private societal agreements into a pivotal focus of public authority, and they redefined royal power as a constant political resource that was insensitive to, and able to prevail over, privileges and personal entitlements. The main architect of early French absolutism, Richelieu, was notably committed to the formation, not of a political order using power as a personal/monarchical property, but of an abstract rational state, in which the concentration of power around the king was intended