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Historical background: the growth of the French state to 1627

> Do you not consider that in Your Majesty consists the entire salvation of your state, do you not understand that many millions of men who surround you only breathe by your lungs, and that if this light is extinguished, we will all live in the darkness of confusion, of misery, and of inestimable ruin.
>
> Guillaume Du Vair, speaking to Louis XIII, at the Parlement of Toulouse, 1621

Henry IV's France was a society in chaos. French people experienced the Wars of Religion as a trauma the likes of which had not been seen since Charles VII drove the English from the kingdom at the end of the Hundred Years' War. Those who lived through the years between 1562 and 1595 never forgot the climate of fear; they longed for order. As Antoine Guyot, one of the presidents of the Paris Chamber of Accounts, put it to the king on 1 June 1598: if the war had continued, "it was the fall, the end, and the certain death of this nation, and of the most beautiful and flourishing monarchy in the world." The extraordinarily tenuous nature of the succession between 1585, the death of the duke of Anjou, and 1638, the birth of the future Louis XIV, often gets obscured in discussions of the "Bourbon dynasty" or dynastic monarchy.

When Jacques Clément assassinated Henry III in August 1589, the nominal heir was Henry of Navarre, a Protestant. Quite apart from that problem, Henry's immediate 'heir' was an infant cousin, the prince of Condé, whom Henry himself believed to be the result of a liaison between the boy's mother, Charlotte de la Trémoïlle, and a lover. Henry long imprisoned Charlotte, under suspicion of murdering her husband to cover up the affair. Henry IV issued a special edict declaring the young boy to be legally legitimate and promised to raise him as a Catholic, one of the key concessions that led to the Pope recognizing the king's 1593 conversion. Until 1601, this child, whom virtually no one believed to be a Bourbon by descent, was Henry's "heir". From 1589 to 1601, Henry IV – a man who constantly risked his life in battle, and who survived repeated attempted assassinations, before falling under Ravaillac's dagger

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in 1610 – alone stood between the monarchy and a civil war of succession. Moreover, as late as 1637, neither of Henry's sons had produced a male heir, so that the selfsame prince of Condé and his heirs looked to be the likely successors to the throne.

The Parlement of Paris and other Sovereign Courts regularly admonished Henry IV in the late 1590s to take more care of his person, citing precisely their fear of renewed civil war. Louis XIII's courageous conduct at the head of his troops in the internal fighting of 1619–21, also led many of his contemporaries to urge him to be more cautious. Guillaume du Vair, keeper of the seals, arguably the preeminent orator of his time, boldly spoke to the young king in front of the Parlement of Toulouse in 1621. He prefaced his remarks by saying that, in view of his age and ill health, it was likely to be the last time he spoke before a Sovereign Court (in fact, he died soon after giving the speech). After praising the king, he "a little imprudently . . . was obliged to speak the truth":[1]

> Sire, you take pleasure in being just and in being called Just, do justice to us against you yourself; you dispose of yourself and of your life as if it was entirely yours and as if God had not given you to your peoples to be the living spirit of your state, from which we take our being, our well being, our sweetness, and our contentment. Why, against the laws of all equitable society, do you wish to dispose at your pleasure of a common [public] thing?

The frontispiece, where we see Henry IV, the last French king regularly to lead his cavalry charges, at the scene of one of his greatest triumphs, the Battle of Arques in 1589, reminds us of the human fragility of the monarchy. The image has another message, too: Henry and his forces wear the "modern" attire of light cavalry; his defeated opponents, led by the grandee duke of Mayenne, are dressed as heavily armored medieval knights.

Here we have in a single visual image the traditional version of the evolution of the French state between the sixteenth century and the Revolution: the "modernizing" monarchy overcoming the "feudal," backward nobility. As the painting suggests, some people (often in the pay of the king) promulgated this view as early as 1620 (the time of the painting). Generations of publicists and historians have called this centralizing state the "absolute monarchy," because, they argue, the king's ability to act had no legal barriers. The king did not have to give a reason for his decision; he had merely to state, in the final operative phrase of so many royal documents, "for such is our pleasure."

[1] Bibliothèque Nationale de France (BN), MSS Fr. 16,517, fols. 25–26v (Du Vair) and fol. 263 (Guyot).

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To these historians, the "absolute monarchy," a term transformed in the nineteenth century into "absolutism," is an historical stage of state-building between the "feudal" monarchy of the Middle Ages and the constitutional governments of the past two centuries. They argue that the "absolute monarchy" attempted, unsuccessfully, to modernize the state. One strain of the absolutists sees the monarchy allying with the "bourgeoisie" to overcome the nobility, another strain sees a monarchy–nobility alliance as the recharged and strengthened final stage of the feudal monarchy.

The royal government did try to systematize the state apparatus but our contemporary definition of a "rational" or "modern" state is hopelessly anachronistic when applied to an early modern state. Throughout Europe, elites struggled to determine a new form of political organization at the end of the sixteenth century. European political entities from about the middle of the fourteenth century until the late sixteenth century took the form of a commonwealth (*république*). The definition of commonwealth harkened back to Aristotle, Polybius, and Cicero: a community of citizens living together in justice, ruling themselves, with the presumed goal of attaining the Aristotelian good life for those citizens. Early modern Europeans used the term "public good" (*bien publique*) to refer to this goal. The political units, even relatively united kingdoms such as France, were not modern states; they combined elements of federations and empires (a term much in vogue in the sixteenth century), into what might be called monarchical commonwealths. This commonwealth model, although associated with the old nobility, had nothing "feudal" about it; its intellectual roots lay in Humanist Florence, and in French traditions reaching back to Nicolas Oresme, whose 1370–73 French translations of Aristotle's *Ethics* and *Politics* made him the critical interlocutor of French elites and Classical Republicanism.

Around 1500, the great Florentine political theorists Niccòlo Machiavelli and Francesco Guicciardini redefined "politics" to mean "the art of the state – the art of preserving a state, in the sense of a person's or a group's power and control over public institutions."[2] In France, in the 1580s, Henry III followed the new Italian usage, and invariably referred to "*my* state," but forty years later Louis XIII prefered "*the* state," something profoundly different – the state with which we are

[2] Maurizio Viroli, *From Politics to Reason of State. The Acquisition and Transformation of the Language of Politics 1250–1600* (Cambridge: Cambridge University Press, 1992), offers some European context, as do the two splendid volumes edited by Q. Skinner and M. van Gelderen, *Republicanism. A Shared European Heritage* (Cambridge: Cambridge University Press, 2002). Jean Bodin, for example, relied heavily on two fourteenth-century Italian writers, Bartolus of Sassaferrato and his student, Baldus di Ubaldis.

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familiar. By the time of Henry IV, the king of France had successfully imposed a stunning transformation of the relationship between the state and the commonwealth: in French politics, and political discourse, the state *became* the commonwealth. Thus for seventeenth-century French leaders like Cardinal Richelieu, politics came to mean "reason of state," a ruler's domination over a people. Whereas politics in a commonwealth had meant, by definition, public debate over policy, in the state it meant secrecy. From the 1620s through the 1770s the French state suffered cruelly from the lack of effective public debate about politics.[3] As we shall see, the government publicly repudiated state secrecy only in May 1787.

European elites fought against this identification of state and commonwealth. In some cases, such as the Polish–Lithuanian Commonwealth, the (noble) citizens preserved the old form. One of the new states, the United Provinces of the Netherlands, took the form of a federation of commonwealths, without a king; instead, the seven provinces each had a *stadhouder*, literally state holder, whose chief function was head of the military.[4] In France, as in Poland, the leading proponents of the commonwealth were the nobility, who believed themselves to be its citizens. The three estates of the body politic – the clergy, nobles, and towns – formed the overall citizenry, although the status of townsmen allowed considerable ambiguity.[5]

At the Estates Generals of 1560, 1561, and 1576, the nobility set forth a fully elaborated commonwealth model for the French polity, with local representative bodies holding annual meetings on their own authority, and a national Estates General meeting every three to five years.[6] Urban elites also held citizenship in their town. In the south of France, as in Italy, nobles often belonged to the *civitas* (political community of the

[3] Political debate did take place in France, but it was far more muted than in the sixteenth or late eighteenth centuries. The lack of genuinely representative institutions played the key role. J. Félix, *Finances et politique au siècle des Lumières: le ministère L'Averdy 1763–1768* (Paris: Comité pour 'Histoire Économique et Financière de la France, 1999), opens with a fine discussion of the breakdown of secrecy in the eighteenth century.

[4] The *stadhouders* could be different men, all chosen from the House of Orange-Nassau. For 70 percent of the period 1650 to 1750, the main provinces, led by Holland, had no *stadhouder* at all.

[5] Not all polities had these three estates. In Poland, the three estates were the king, the Senate, and the Sejm; in England, sovereignty likewise rested with the king *in* Parliament (king, Lords, Commons).

[6] I am here changing the view I set forward in the first edition of this work. The change derives from research I conducted between 1993 and 2004, such as the *cahiers* of several parishes of the Chartres region, in BN, MSS Fr. 26,324, fol. 93, for Prunay. The nobles of 1561 made demands, such as confiscation of Church property to pay the monarchy's debts, creation of a uniform system of weights and measures, reform of education, and elimination of jurisdictional confusion, enacted in 1789–91.

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town): thus the first consul of Toulouse had to be chosen from the city's noble citizens. In most French provincial estates, only specific towns had the right to sit for the "Third Estate."[7] Just as these townsmen used the vocabulary of the public good, so, too, did peasants, whether the Croquants in their uprising of the 1590s or the farmers of Prunay Le Gillon, near Chartres, in their *cahier* for the Estates General of 1576. They instructed the bailiwick assembly, when choosing deputies for the national meeting, to avoid "an avaricious legal practitioner [who] like a gentleman or any other person subject to avarice has so little concern for the public good."

If we want to make the "bourgeoisie" (however defined) the ally of the monarchy against the nobility or if we want to claim that the absolutist monarchy represented the final stage of a feudal monarchy, we will have to bend reality. The state (and society) obviously had feudal elements – the ruling class remained landlords with feudal rights – but the increasing importance of non-feudal forms of property, including simple ownership rights over land, meant that the French state of the seventeenth century had to consider interests broader than those of the feudal nobles. The state also had to attack directly the key interest of the feudal lords by increasing its income from direct taxation, paid overwhelmingly by the tenants of those same landlords. Although the landlords remained the ruling class until the middle of the nineteenth century, the share of the land held by owners without feudal rights grew steadily in the last two centuries of the monarchy. The king allied with local elites, a shifting coalition that varied by time and place, to get things done. In the tax system, he allied mainly with the world of commerce; in the military, he relied on the landed nobility; in the judiciary, we can recognize the compromise worked out with the landed elites, one in which the interests of landlords remained paramount. Royal judges, who invariably owned estates, had much closer economic ties to landowning nobles than they did to the merchants.

If we cannot accept the idea of the absolutist state and reject the monarchy-against-the-aristocracy model, what then are we considering here? A monarchical state. The monarchy's emphasis shifted over time, from judicial, to legislative, to executive. The judicial phase, in which the king *discovered* the law, lasted until the Hundred Years' War (1337–1453), which undermined this system because it forced the king to create a whole series of new structures – a permanent army, lasting taxation, a

[7] The idea of specific "citizens" representing an estate had its firmest expression in the Estates of Languedoc: 22 specific towns had the right to sit; 22 specific barons represented the nobility.

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state administration. The *legislative* stage took firm root under Francis I; he focused on *making* the law, not discovering it. The third stage began in the early seventeenth century, when the monarchy's focus shifted to *administering* the law, although its full shift from repression to information gathering and administration did not take place until the eighteenth century The French monarchy at all three stages of development contained judicial, legislative, and administrative elements. Medieval kings made law; sixteenth-century rulers continued to judge; Bourbon kings also judged and, of course, issued a wide range of laws. What they and their officials added to the definition of the state, however, went far beyond making law and judging; they actively interfered in more and more aspects of daily life. In the eighteenth century, they made the state a part of everyone's daily existence. Kings sought to make the state itself be the political community. Nowhere is that more clear than in public processions, in which the political community took public form: in the commonwealth days, that meant the citizens themselves, but in the monarchical state, it meant soldiers. Citizens marched; subjects watched: public ceremonies played "a hegemonic role in repeatedly thrusting representations of the church and monarchy before the populace."[8]

The French state evolved in clear directions between the early seventeenth century and the late eighteenth century. That state became stronger, in the sense that it could accomplish much more of what it set out to do. Action requires information; the state increasingly gathered (relatively) accurate information about its society. The state became more centralized: initiatives increasingly came from Paris, from one of the great ministries in charge of the administration of the kingdom. Yet we must keep in mind the symbiotic relationship with localities: most of those "central" initiatives originated with proposals generated in the provinces. In the eighteenth century, the government expanded into those activities we associate with the state. The state administration got much larger, involving substantial numbers of nobles, lawyers, merchants, and even ordinary farmers and artisans, who literally collected their neighbors' taxes.

[8] R. Schneider, *The Ceremonial City. Toulouse Observed, 1738–1780* (Princeton: Princeton University Press, 1995), 5. As for the differences between this newly intrusive Bourbon state and its nineteenth- and twentieth-century successors, one can point to several key distinctions, among them: (1) lack of active consent by the governed; (2) lack of a coherent definition of property; and (3) lack of the rule of law, in the sense of public laws made by a representative body, as opposed to by the will of an individual. This last distinction should receive special emphasis, because it provides the basis for the original use of the term "absolutism" to describe the Bourbon state.

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Allowing all these changes, however, the state also preserved many of its traditional qualities: it satisfied the needs of elites (still overwhelmingly landlords); it preserved order, above all property; it systematically sought to disempower women and to place them under male authority. Gender played an extraordinarily important role in the highly personalized, patriarchal French monarchy. Henry IV made great political use of his "masculine" qualities, which his propaganda machine invariably contrasted with the "effeminate" weakness of his predecessor, who scandalized his contemporaries with his penchant for crossdressing. Louis XIII, too, was bisexual, so his counselors carefully sought to dispel worries about his masculinity (and potency – Louis had no child until the twenty-eighth year of his reign). Du Vair's 1621 speech contains one of the most transparent efforts to put such fears to rest. Louis was then twenty, and, much to the relief of his advisors, had just begun a healthy sexual relationship with his wife, Anne; their intimacy stopped in 1622, when her first extended pregnancy ended in a miscarriage. Du Vair found so many masculine qualities in the king because

> it is a necessary consequence of a childhood nourished in the fear of God, a youth passed in male and noble exercises, and by regulating his affections by the laws of decency (*pudeur*) and chastity. And further this way of living in which he has always taken pleasure in the exercises of the hunt and other military action, does it not demonstrate that nothing soft and effeminate must ever enter into this male and martial soul.

The real Louis XIII had perennial problems with his male "favorites"; the last internal crisis of his reign centered on the marquis of Cinq-Mars, Louis's "cher ami" of his final years, who lost his head after getting involved in a plot to assassinate Richelieu. Monarchs could grant wealth to their favorites, female or male; however, male favorites could also compete with older, more powerful nobles for important positions. Henry III had set a damaging precedent with his "mignons" in the 1580s; memoirs and letters of Louis XIII's time show that his courtiers greatly feared the shift of his affections from Mlle. de Hautefort to the marquis of Cinq-Mars for precisely that reason. Alongside its regulation of the society of orders, based on traditional socio-legal classifications, and a society of classes, based on economic activity and wealth, the patriarchal state made extraordinary efforts to reinforce the authority of men in an age of rapidly expanding economic and social roles for women.

The societies of classes and orders often blended seamlessly; the ruling class, the landlords, was also, by and large, the ruling order, the nobility. Those who owned enough land would eventually end up as nobles. In other, fundamental ways, however, the two social paradigms proved

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irreconcilable. The society of orders rested on families and groups, often organized into corporations (the Church, the nobility, towns, guilds, etc.). That society rested on the fundamental principle that everyone was unequal, in law as well as in social life. As the lawyer of the count of Tonnerre put it, rendering the count's homage to the king in 1646: "the light of our understanding . . . makes us avow that this order is the great art of God, the most beautiful expression of his ideas, the most perfect image of his reason, and of his intelligence . . . he wished to compose this admirable harmony of the superiority of some, and the submission of others."

The society of classes, however, rested increasingly on individuals, acknowledged as fundamentally equal in certain ways. In the philosophical sense, all men (men only) had reason; in the legal sense, the king sought to treat all French people as equally subject to his law, that is, he regularly sought to overcome or circumvent privileges. Those protected by such privileges (the corporations listed above) viewed them as "liberties."[9] The king thus struggled to preserve inequality and, simultaneously, to establish equality. In its effort to balance these contradictory elements, the French government created the prototype of the modern state.[10]

In order to understand how that state differed from its predecessors, we must begin with a brief summary of the institutional structure of the French state (*c*. 1625). Rather than introduce each major institution, one at a time, it is easier to provide an overview at the beginning. The study of the historical background will make clear the rational basis of these seemingly irrational institutions, which corresponded to the political exigencies of French particularism. Rather than thinking of France as a coherent nation-state, we might do better to consider it a polyglot empire, with a wide range of local institutions adapted to the many local cultures.

The early development of French state institutions

> Every body holding the executive power strongly and continually tends to subjugate the legislative power, and sooner or later succeeds.
>
> J.-J. Rousseau, *Considerations on Poland*

[9] When provincial estates or towns sought to have their charters renewed by a new king (obligatory in this state resting on *personal* ties, because the new king was not bound by his predecessor's promises), they invariably requested that the king continue their "rights" (*droits*), franchises, and liberties. When the king wrote back agreeing to their request, he invariably emphasized their "privileges."

[10] Be forewarned against applying *our* ideas of consistency to Old Regime France; one must accept contradictions and inconsistencies, the social and political reality of a system of this *and* that, not this *or* that. In fairness, our society contains a fundamental contradiction that would have baffled most early modern French people: we believe all people are equal, yet insist that the fruits of social labor should be unequally distributed. For early modern people, the fundamental belief that all people were unequal gave a logic to the empirical reality that some people had more than others.

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What is the state? How difficult it is to answer that question for a period in which the term's fundamental meaning underwent a dramatic shift. In a broad sense, the state is a set of functions, the oversight and governance of what Bodin would have called the public sphere. Few ideas are more pernicious than the equation of "state" with "commonwealth." Once that happens, those in control of the state can claim to act *as*, rather than *for*, the commonwealth: opposition to the government becomes an attack on the commonwealth. The monarchy used the term *lèse-majesté*, an assault on the king's majesty, thus deliberately tying the offense to Roman political theory, and the *maiestas* of the Emperor.[11] Louis XIII and Richelieu made the first extensive use of *lèse-majesté* as grounds for executing prominent rebels, such as the duke of Montmorency: Louis XIII carried out more political executions than any other French king. At the time of the French Revolution, the crime became *lèse-nation*; modern governments use the confusion state–republic to define opposition to their policies as "unpatriotic."

In medieval and Renaissance polities, the set of functions related to the public sphere remained divided among many hands, especially the nobles with rights of justice, the towns, and the Church (i.e., precisely the three groups in the various representative estates). That remained true until the end of the Old Regime, but the central government took control over more and more of these functions. The most important function, in terms of share of government spending, was protection: the central state systematically imposed its monopoly on legitimate large-scale violence, a goal essentially attained in France with the capture of La Rochelle in 1628, although one threatened by the Fronde.

The central government thus achieved by the time of Louis XIII the two key hallmarks of modern sovereignty: Bodin's right to make law binding on all, with respect to public space, and Max Weber's monopoly on legitimate violence. The central state did not achieve any real right to make binding law with respect to property, over which the citizens held jurisdiction. In the courts, with respect to civil justice, such as inheritance of property, judges appointed by the king (although owning their offices) ruled in his name, but applied local customary laws, not royal statutes. In the fiscal system, in much of France, the king levied taxes on his subjects with only the flimsiest fig leaf of the legally obligatory consent

[11] Cicero located the *maiestas* of the Roman Republic in the people as a whole, so *lèse majesté* as a term harkens back to an attack on the whole political community. The concept of *lèse-majesté* became a prominent French reality only in the 1630s; see the splendid article by R. Giesey, L. Haldy, and J. Millhorn, "Cardinal Le Bret and Lese Majesty," *Law and History Review*, 41 (1986): 23–54.

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of the taxpayers.[12] Fig leaf or no, the legal niceties mattered a great deal: the king did not collect the *taille* in the areas, such as Brittany or Provence, which had not been represented at the Estates Generals of the 1430s. Louis XIV's 1695 creation of the capitation,* initially to be levied on everyone in France except the king himself, marked a radical departure from the legalism of a political theory, and practice, derived from the principles of the commonwealth. From 1695 onward, the French monarchy had a profoundly different relationship with its subjects, both in theory and in practice; the eighteenth-century state, although an outgrowth of its predecessor, thus must be treated as a fundamentally different polity.

The early modern state had three basic attributes: (1) it promulgated and executed laws; (2) it fought wars; and (3) it raised money, primarily to pay for the wars. Many of our contemporary ideas of the responsibilities of the state – such as poor relief, education, or transportation – are anachronistic with respect to early modern states. In early modern France, the Catholic Church and local communities ran almost all education and doled out the largest share of poor relief. The king shared responsibility for the transportation system with a bewildering array of local authorities, including provinces, towns, landlords, and village communities. The royal government's efforts to improve that system proved sporadic at best. Military costs and debt service, the latter invariably the repayment of borrowings for earlier military expenses, formed the two largest governmental expenses. We might profitably begin, therefore, with a consideration of the origins of three royal institutions: the judiciary, the army, and the fiscal system.

The judicial system

The Bourbon monarchy inherited a bewildering variety of institutions and customs from the various monarchical configurations that France had taken since the time of Charlemagne. The weak kings of the ninth through eleventh centuries had had to share public power with an ever-widening group of individuals, who later became what we call the feudal nobility. Even in 1789, in the countryside, these people were often the first level of the "state." Several thousand feudal nobles had judicial

[12] The three main taxes – the *tailles* (direct taxes), *gabelles* (salt taxes), and *aides* (sales and manufacturing duties) – had been approved by medieval estates. The Crown claimed, for example, that the Estates General of 1439 had authorized the permanent collection of the *taille*. No documentation survives from the Estates General of 1439. Local assemblies in the early 1440s did vote a *taille* to pay for the war against England. This *taille* had become permanent by 1445 at the latest.

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