"L'ÉTAT C'EST À MOI": LOUIS XIV AND THE STATE

By

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The relationship between king and state in the French monarchy of the Ancien Régime, although generally taken to be one of the plainest pieces of historical knowledge, is actually in an essential respect one of the least understood.[1] The customary picture of French kingship in the centuries before the Revolution may be summed up in two phrases, *"L'État c'est moi"* and *"la grâce de Dieu"* (usually Englished as "divine right"): *"L'État c'est moi"* here implies an administrative monarchy equated with the person of the king, and *"la grâce de Dieu"* is concerned with the justification rather than the description of the monarchy. Yet close scrutiny of the historical literature reveals a current of uneasiness—something has been increasingly pushed into the background, something which ought to be in the very foreground of any study of the monarchy of the Ancien Régime, namely, that the king was the proprietor of the state, that he felt, even if he never literally said, *"L'État c'est à moi."* [2] The practice and

[1] The present study is a slightly expanded version of a paper presented to a meeting of the American Historical Association in New York City on December 30, 1960. There exist no specialized studies of this problem, and a general bibliography concerned with it, being almost undistinguishable from the whole immense range of materials on the history of French (and European) political action and thought during the centuries of the Ancien Régime, is beyond the scope of what is no more than a *prise de position.*

[2] Unequivocal affirmations of the proprietary character of kingship in the Ancien Régime are rare. Noteworthy among them is the statement of L. B. Packard in his brief and presumably elementary *Age of Louis XIV* (New York: Henry Holt & Co., 1929): "Subjects came to recognize this power as belonging to the king and his family. It constituted an hereditary authority rightfully transmitted, as any other property, from father to son, or the nearest heir by blood relationship." (p. 7.) Packard later amplifies this statement: "They (the kings) had owned and controlled their original fiefs as personal property, and now that these had expanded into kingdoms, they regarded both lands and subjects as belonging to the royal dynasty, subject as absolutely to royal authority as a private estate and slave are subject to an owner." (p. 10.)

Otto Gierke, in his *Natural Law and the Theory of Society, 1500 to 1800* (tr. Ernest Barker; 2 vols.; Cambridge: University Press, 1934), discusses the problem of proprietary kingship at various places, but only in terms of political and juridical theory and without special application to France.

the words of French kings and statesmen for many centuries, and most of all during the seventeenth, the zenith century of French monarchy, can be clearly understood only if we accept the principle that the dynastic king was, *among other things*, the owner of the kingdom.[3]

Yet it is not sufficient simply to acknowledge the principle at its face value, as has been usual among those historians who do not neglect the factor of dynasticism; for the concept of proprietary kingship itself turns out to be a source of difficulties.[4] The kingdom was the king's property—but in what sense? It could not be his private property, for the term "private" as applied to property implies a denial of public character, and the problem concerns the ownership of the *public* power. Furthermore, it is beyond dispute that French subjects, those who were truly "private" persons, owned property in fact and in law—how does this square with the property of the king in the state? Lastly, the French king was always seen in political and legal theory as the holder of an office, that is, as the recipient of delegated function and authority, while "property" meant inherent rights, which were one's own, not delegated. How then could *office* and *property* co-exist in the same institution?

Precise definition of terms can to some extent solve the

(See in particular I, 42, 49-50, 161-162; II, 259, note 117, 361-362 note 148, 366 note 160.) Barker's analytical comments are particularly valuable for their insight and clarity of formulation; see also his *Development of Public Services in Western Europe, 1660-1930* (London: Oxford University Press, 1944), pp. 5-6. But even Barker unhistorically condemns as "confusion" that mixture of property and power which was specifically characteristic of dynastic monarchy.

The most cogent criticism of narrowly institutional, theoretical, or literary approaches to the study of dynastic monarchy was made by Marc Bloch in *Les rois thaumaturges* (Strasbourg and Paris: Istra, 1924) (pp. 19 and 344). Bloch's approach may be contrasted with that of Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957) (especially p. 230), which combines extraordinary erudition and subtlety with a persistent unwillingness to examine ideas in the light of institutional practice.

[3] Perhaps the clearest statement of this principle occurs in G. d'Avenel, *Richelieu et la monarchie absolue* (4 vols.; Paris: Plon, Nourrit, 1884-1890), I, 14-16.

[4] Among the historians fully aware of the problematical content of the concept and institution is C. H. McIlwain, but even his analysis (see, for instance, his *Growth of Political Thought in the West from the Greeks to the End of the Middle Ages* [New York: Macmillan, 1932], pp. 385-386) is hampered by a primary concern with theory and theorists, rather than with the institution of dynastic monarchy as a whole.

problem by clarifying it. But it must be remembered that the usefulness of historical categories lies in their power to organize and explain specific data and not in their abstract perfection. There can be no better test of our formal analysis in this case than to apply it to the French monarchy in the age of Louis XIV.

The term "property" is now used primarily to mean things —physical objects—over which the owner has rights of use and decision to serve his own advantage and purpose.[5] This usage was frequent in the seventeenth century, but it had not wholly displaced the deeper legal meaning, by which property consists in rights held by a given person or persons to the exclusion of others, rights which are enforceable at law, that is, by the state.[6] This is what is ordinarily meant by "private property." Implicit in both these definitions—the "objective" and the "legal"—is a wider general sense, according to which property consists of exclusive rights ("mine," not "thine") which are of advantage to their holders.[7] These advantages are primarily and ordinarily economic, as producers of revenue; but they may also be social or political, providing glory, power, prestige, self-esteem or even the opportunity to do good and have fun.[8] In this last meaning,

[5] L. T. Hobhouse, "The Historical Evolution of Property, in Fact and in Idea," in *Property, Its Duties and Rights, Historically, Philosophically and Religiously Regarded* (London: Macmillan, 1913), pp. 2, 6; Félicien Challaye, *Histoire de la proprieté* (3rd ed.; Paris: Presses Universitaires de France, 1944), p. 7. Hobhouse's comment on the status of our understanding of property as a historical phenomenon may be noted: "A satisfactory account of the development of property in general has not yet been written, and perhaps in the present state of our knowledge cannot be written. In no department of the study of comparative institutions are the data more elusive and unsatisfactory. The divergence between legal theory and economic fact, between written law and popular custom, between implied rights and actual enjoyment, enables one and the same institution to be painted and, within limits, quite honestly and faithfully painted in very different colors." (p. 3) Cf. Gerhart Husserl, *Der Rechtsgegenstand: Rechtslogische Studien zu einer Theorie des Eigentums* (Berlin: Julius Springer, 1933), p. x: "The literature on the subject of property . . . is incalculable in quantity."

[6] A. D. Lindsay, "The Principle of Private Property," in *Property, Its Duties and Rights* . . . , p. 75; René Gonnard, *La propriété dans la doctrine et dans l'histoire* (Paris: Librairie Générale de Droit et de Jurisprudence, 1943), pp. 2-3.

[7] *Ibid.*, p. 149.

[8] Husserl, *op. cit.*, pp. 15-16: "By 'goods' we understand everything which can serve to satisfy human needs. Every object which receives social valuation possesses the quality of being a 'good.' Even a person whose status as an individual personality is suppressed by coming within the power sphere of another legal entity *(Rechtsgenossen)* can be included in this category." Cf. Challaye, *op. cit.*, p. 5.

"right" embodies a sense of ethical legitimacy as distinct from legal enforceability; and it is this broad meaning which historians have usually failed to see or to use.[9]

The term "state" is no less varied and complex. By the seventeenth century it had already taken on the full panoply of meanings which it still possesses. Its most general significance was that of the community, the "nation," politically organized, with widely varying degrees of ethnic unity implied. From this broad definition derived more specific usages, as the territory over which a ruler has sovereignty, and as the subjects under that sovereignty. Lastly, it was used for the instrument of power and government—the armed forces and the administrative agencies of political authority.

The crossing over of these definitions provides the elements of our problem. The objective meaning of property can be applied only to the territorial meaning of the state; in that case, the description of the state as the king's property would mean that he was literally the owner of all the wealth within its boundaries, which was obviously not true in a society permeated by the fact and the spirit of private property. Yet, as we shall see, this position was indeed maintained, though in a very special sense. The legal definition is more troublesome. The king's claim upon the crown was clearly one of exclusive right; but we can speak of it as "enforceable at law" only if the king did not assert his absolute unshared sovereignty, for the existence of a separate legal authority to enforce his claim would have constituted a denial of his sovereignty, while the notion of the king's enforcing of his own claim at the same time that he was the source of law involves a tautology. The state as the source of economic and other advantages obviously falls within the last of the three kinds of property discussed here. It makes clear sense but does not emerge as distinctly from contemporary theoretical discus-

[9] Among the best studies of the history of the concept of property in Western civilization is Richard Schlatter, *Private Property: The History of an Idea* (New Brunswick, N. J.: Rutgers University Press, 1951) (see particularly the discussion on pp. 75-76). However, neither Schlatter nor Myron P. Gilmore, in his informative and often penetrating *Argument from Roman Law in Political Thought, 1200-1600* (Cambridge, Mass.: Harvard University Press, 1941) (especially pp. 118-121), broadens the concept of property sufficiently to clarify the institution of proprietary kingship.

sions as it does from the less self-conscious writings and actions of the monarchs and their ministers.[10]

Approaching the problem from the side of the definitions of the state yields somewhat different results. The notion of the king's ownership of the political community was antipathetic to most seventeenth-century thought no less than to that of our own time. On the other hand, royal ownership of the territory of the state was accepted doctrine. As against other territorial sovereigns, the king was manifestly the "owner" of his State; diplomatic usage recorded this conception by its free use of the term "property" for realms, provinces and lands transferred from one sovereignty to another. As against subjects' property, the king's property in the territory was that of "eminent domain," a term which then included the supreme claims of both suzerainty and sovereignty.[11] Normally, however, such claims outside the royal domain (where the king was proprietor of the land in the same way as, elsewhere in the realm, subjects were owners of "their land") meant only the king's right to take a portion of his subjects' wealth by taxation, or to expropriate it, usually with compensation, for the public use. Since taxation was customarily explained and justified upon the basis of the king's status as supreme office-holder, the debate over his right to levy taxes for his own interest was bitter and unending. The notion of the king's subjects as the "property" of the monarch[12] raised similar difficulties. It was uniformly de-

[10] The sovereign power as a supreme good to be achieved by struggle and endeavor was eloquently depicted by *le Grand* Condé when he went in 1654 to visit the abdicated Queen Christina of Sweden at Antwerp, where she had landed en route to Rome. "Where is that woman," he asked, "who so lightly abandons that for which we have fought and labored all our life and yet cannot attain?" Lieuwe van Aitzema, *Saken van Staet en Oorlog*, vol. II (The Hague: Johan Veeley *et al.*, 1669), p. 902. The French jurist Antoine Bilain expressed the same idea in his *Traité des Droits de la Reyne Tres-Chrétienne, sur divers États de la Monarchie d'Espagne* (2 vols.; Paris: Imprimerie Royale, 1667), I, 104: "Le desir de regner qui est le terme de toutes les benedictions du Ciel sur la terre. . ."

[11] Hedwig Hintze, *Staatseinheit und Föderalismus im alten Frankreich und in der Revolution* (Stuttgart: Deutsche Verlags-Anstalt, 1928), p. 514, note 7.

[12] Louis XIV, "Supplément aux Mémoires de 1661," in Charles Dreyss, ed., *Mémoires de Louis XIV pour l'instruction du Dauphin* (2 vols.; Paris: Didier, 1860), II, 442: "Enfin, comme nous sommes à nos peuples, nos peuples sont à nous, et je n'ai point vu encore qu'un homme sage se vengeât à son préjudice en perdant ceux qui lui appartiennent. . ." It may be noted that the king here "belongs" to his people in a different way than they "belong" to him.

nied that French subjects were slaves, the property of the sovereign like the Janissaries and other members of the government establishment in the Ottoman Empire. Yet the king undeniably possessed a right to command his subjects, a right not easily distinguished from that of the slaveowner over his "living tools" except by the doctrine that the king commanded his subjects in the general interest, that is, for their own welfare. The state as government in the concrete sense presents less of a problem, since the administrators and military officers held their powers by delegation from the crown—they were clearly servants, not slaves.

These distinctions carry us part of the way to a solution of the problem we have posed. It was precisely the "public power," the right of legitimate command, which the king claimed as his own, as his birthright, by the gift of God through the means of inheritance or conquest (these were, it may be noted, the original meaning of the term *"la grâce de Dieu"* as applied to the crown); and it was from his ownership of the State *in this sense* that the king's property in the state *in other senses* was derived. The assent of subjects and fellow-princes to the king's birthright claim upon the crown was an acknowledgment, not a creation of it. Nonetheless the polarity between "office" and "property" persisted, for the notion of "*public* power" never ceased to have as its primary meaning that the kingship was an office, that it was the duty of the king to serve the general welfare, the common good, and not his "own" interests. But this polarity is dissolved to some extent, and to some extent intensified and made explosive, when we realize that dynastic monarchy was in fact these two elements—property and office—at one and the same time.

The hollowed-out feudalism of the early modern period provided the means for the combination of these two elements in a single institution. Feudalism involved specifically the merger of economic and political powers; the rise of the sovereign territorial state did not destroy this merger in the case of the dynastic monarchies but confined it increasingly to the monarch. Significantly, however, it was just in France that the government machinery had become permeated by

the seventeenth century with the practice of venal office, which made almost all lesser offices in the state the personal property of individual holders. But there was a fundamental difference between the king's property in his office and the lesser office-holders' in theirs: Subordinate officers in the French state could buy and sell their offices (hence the description of these offices as "venal," without implication of corruption), while the king received his office by the automatic operation of the law of succession. The rejection of the principle of property-kingship by such historians as Olivier-Martin[13] rests upon a misunderstanding of this limitation. It was frequently denied that the king's office was his "patrimony," by which was meant that he could not interfere in the pattern of succession, that the kingship was not his to bequeath by testament or to transfer by other personal decision; even the king's right to abdicate was questioned, and it was clear in any case that in the event of abdication the legal heir would at once receive the crown. The king was the usufructuary of the crown, not its freehold possessor: he enjoyed its powers and revenues for his own lifetime, to pass on undiminished and unimpaired. But these limitations upon the monarch's power to dispose of the crown did not remove the royal office from the status of property but only placed it in that of an entailed estate, a conception familiar at the time as a means of conserving the property of a family.[14]

The principle of the king's property in the state was explicitly and vigorously affirmed by the foremost French legal theoretician of the seventeenth century, Charles Loyseau.

[13] F. Olivier-Martin, *Histoire du droit français des origines à la Révolution* (2e tirgae; n.p. [Paris]: Domat Montchrestien, 1951), pp. 218, 263, 307, 315. See Paul Watrin, *La tradition monarchique dans l'ancien droit public français* (Paris: Arthur Savaète, n.d.), pp. 14, 16; Robert Holtzmann, *Französische Verfassungsgeschichte von der Mitte des neunten Jahrhunderts bis zur Revolution* (Munich: R. Oldenbourg, 1910), p. 184; Gaston Zeller, *Les institutions de la France au XVIe siècle* (Paris: Presses Universitaires de France, 1948), p. 71; Roger Doucet, *Les institutions de la France au XVIe siècle* (2 vols.; Paris: A. et J. Picard, 1948), I, 81; and J. N. Figgis, *The Divine Right of Kings* (2nd ed.; Cambridge, Eng.: University Press, 1934), p. 125, for similar statements.

[14] *Traitez touchant les droits du Roy tres-Chrestien sur plusieurs Estats et seigneuries possédés par divers Princes voisins . . . composé et recueilly . . . par Monsieur Dupuy Conseiller du Roy en ses Conseils* (new ed.; Rouen: Laurens Maurry, 1670), p. 135: "Car en France le Roy ne peut oster la Couronne à son fils ou plus prochain heritier, s'il ne luy oste la vie, encore luy mort elle viendra à ses enfans masles s'il en a."

Though Loyseau wrote his great works, notably the *Traité des Seigneuries* and the *Traité des Offices*,[15] during the reign of Henri IV, they were repeatedly reprinted during the following century. Loyseau tackled the difficult problem which had puzzled his predecessors, how to reconcile the institution of property-kingship with the conceptions of Roman law, which distinguished absolutely between the state and property. Loyseau recognized that this antinomy falsified the practice of feudalism, and so he rejected it in favor of the concept of *seigneurie*, which he defined as "property in the public power." The king's supreme *seigneurie* constituted sovereignty in its dual aspect, as the king's right of sole and supreme command over his subjects and within his realm (sovereignty, that is, in Bodin's sense); and as the possession of that right not as his patrimony but as an entailed estate. Although Loyseau preferred not to apply the term "office" to this highest authority, but only to delegated power not held as property, he recognized that the king's property in the state was part of a coherent general system in which portions of the public power belonged to individuals as part of their private or family property, either as *seigneurs* or as holders of venal office.

Nonetheless the distinction between "office" and *seigneurie* made by Loyseau did not take hold among political theorists.[16] Only scattered descriptions of property-kingship are to be found after him, and there are few significant attempts to discuss the implications of the institution. Instead it became common for political theorists to describe kingship only as an "office," given to the monarch as a kind of fief by God, to be

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[15] *Les œuvres de maistre Charles Loyseau . . . Dernière édition* (Lyons: La Compaignie des Libraires, 1701, *passim.*)

[16] Loyseau's conception is sharply attacked by André Lemaire (*Les lois fondamentales de la monarchie française, d'après les théoriciens de l'Ancien Régime* [Paris: Albert Fontemoing, 1907], pp. 152-154) for its failure to distinguish sovereignty and the state, a confusion he calls "singulièrement dangereuse." Unlike Lemaire, Gilmore (*op. cit.*, pp. 121-142) interprets Loyseau to mean that "public power" and "private property" are separate and distinct, but, as has been remarked above, the question is not one of "private" or *absolute* property, but of *familial* and *entailed* property. Cf. Georges Weill, *Les théories sur le pouvoir royal en France pendant les guerres de religion* (Paris: Hachette, 1891), pp. 273-274, and Rudolf von Albertini, *Das politische Denken in Frankreich zur Zeit Richelieus* (Marburg: Simons Verlag, 1951), pp. 37-38.

used only for the service of those whom the king ruled. Bossuet fundamentally derived his analysis of the king's office from this conception of a grant by God, although we may note that he also described the office as a *"charge,"* a term which in his day meant a venal office, one held as property, and not as a *"commission,"* that is, a revocable office not held as property.[17] (It seems to have escaped the attention of most later theorists that medieval legists had fitted freehold property, or allod, into their structure of feudal relationships, by describing it as a fief held directly of God, or *Sonnenlehn.*)

Practicing statesmen—the kings and their ministers—did not for their part falter in their adherence to the principle that the realm belonged to the king. The use of the possessive form in speaking of the state is so common in their documents and correspondence, without the least sign of embarrassment or need to explain or justify, that it would be proving the obvious to give instances; nor can it be maintained that the usage was only metaphorical or symbolic, nor that it was limited to the occasions when any of us would speak naturally of "our country" or "our government" without claiming to possess the state as property. It is true, on the other hand, that the relation of the king to the state cannot be summed up in either phrase, *"L'État c'est moi"* or *"L'État c'est à moi."* Richelieu and Mazarin, Louis XIV and his ministers, and their successors down to the Revolution, all assumed the validity of both ideas--*L'État c'est moi* in the sense of the king as the symbol of the nation and the sole source of authority in the state; and *L'État c'est à moi* as the concept of property-kingship.[18]

In 1666 Louis XIV put many of the elements of the problem in a nutshell in a famous assertion in his "Memoirs for the Dauphin." "Kings," he declared, "are absolute lords and by nature have complete and free disposition of all wealth

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[17] Jacques Béninge Bossuet, "Politique tirée des propres paroles de l'Écriture Sainte," in *Œuvres* (Paris: Firmin Didot Frères, 1870), I, 307, 323-324, 355, 402. Bossuet, it may be remarked, described Justice and Judgment as the *property* of God, who gave them to kings (p. 416).

[18] Some writers take the phrase *"L'État c'est moi"* to express the idea of proprietary kingship (e.g., Friedrich Piechocki, *Wesen und Arten der Thronfolge, insbesondere das Hausrecht als verfassungsmässige Grundlage der Thronfolgeordnung* [Berlin: E. Brückmann, 1911], p. 9); my own usage is admittedly no less arbitrary, but serves to make a useful distinction.

owned either by churchmen or by laymen, for them to use at all times as prudent managers, that is, according to the general need of their state."[19] "Absolute lordship" is here equated to "complete and free disposition" of the wealth of the nation, including that of churchmen (that is, the revenues of their benefices), but it should be used without waste and for "the general need of their state." "Complete and free disposition" means taxation, as the context of the passage indicates; but the right of "complete and free disposition" when held by any one other than the sovereign is exactly identical with the right of property. On the other hand, Louis XIV takes it for granted that subjects have their own individual right of property in particular "goods,"[20] but this is not an absolute right; it is subject to the higher royal right to claim a portion of these goods for "the general need."[21] Indeed, in a preceding passage, Louis XIV specifically rejects the customary absolute distinction made by the legists between the royal domain and the rest of the national wealth. "Some princes," he wrote, "commit a major error when they take possession of certain things and certain persons as if these belonged to them in a different way than the remainder of what they rule. Everything within the boundaries of our states, no matter what its kind, belongs to us by the same title and should be equally dear to us. The moneys in our own coffers, those remaining in the hands of our treasurers, and those which we permit to remain in the trade of our peoples—all should be used by us with the same equal prudence."[22] We may compare this royal assertion with the observation made by a Venetian ambassador in France a century earlier, to the effect that the property of subjects in France "was no more than the treasury of the prince distributed among many purses."[23]

[19] Dreyss, *op. cit.*, I, 209.

[20] Cf. the instructions of Louis XIV to Amelot, his ambassador to Madrid, regarding an emergency fiscal edict of Philip V, in which the French king warned his grandson against seizing "sans droit" the wealth of private persons ("des particuliers") for his own use. (Dispatch of Dec. 19, 1706; Alfred Baudrillart, *Philippe V et la Cour de France,* I [Paris: Firmin-Didot, 1890], p. 280.)

[21] See Schlatter, *op. cit.*, p. 118.

[22] Dreyss, *op. cit.*, I, 250.

[23] Willy Andreas, *Staatskunst und Diplomatie der Venetianer im Spiegel ihrer Gesandtenberichte* (Leipzig: Koehler & Amelang, 1943), p. 131.

But, to return to Louis XIV, this latter statement of his makes even clearer his feeling that although the king and his subjects share rights of property it is the royal property which is primary and unconditional, that private property is something conceded by him[24]; thus taxation ceases to be a claim of the sovereign upon the support of the nation for the public good and becomes merely the action of the monarch in transferring his wealth from one pocket to another. There is in this statement the same equation of sovereignty and property which most of the legists and political theorists refused to accept; there is also a refusal on the king's part to permit himself to be limited by the jurists' distinctions when these interfered with his own powers of decision and utilization over the wealth of France.[25]

The conception that the king owned his realm played an essential part in the history of European international relations. Dynastic wars were no accident, nor were they purely and simply the guise in which conflicts arising out of the clash of quite different interests were presented to the world; they arose specifically from the peculiar uncertainties resulting from the application of the European family pattern, with its enormous complication of agnate lines, to the system of power-holding. To treat wars of dynastic succession as needless tragedies[26] may be obvious and proper under the ideological assumptions of our own age, but to apply such conceptions to the seventeenth century without qualification is to assign to the political personages of that time a notion just beginning to emerge from their experiences, and which was not to become clear and firm for another century and more. Some of the most famous episodes of the reign of Louis XIV can be adequately explained only upon the basis that one

[24] This is recognized by Lavisse (*Histoire de France depuis les origines jusqu'à la révolution*, VII, part I [Paris: Hachette, 1906], p. 315).

[25] The analysis of these passages made here reaches conclusions opposite to those of Fritz Hartung in his article, *"L'État c'est moi"* (*Historische Zeitschrift*, CLXIX, no. 1), pp. 17-18. The political ideas of Louis XIV are also examined in some detail by Paul W. Fox, "Louis XIV and the Theories of Absolutism and Divine Right," *The Canadian Journal of Economics and Political Science* (XXVI, no. 1), pp. 128-142.

[26] Typical of this attitude is the outburst of Lavisse (*op. cit.*, VII, part I, p. 75): ". . . ces unions entre personnes propriétaires de peuples . . . ont engendré de terribles maux qui n'étaient pas nécessaires et ne furent utiles à rien ni à personne."

of the primary driving motives of the monarch and his ministers was the honest belief that he possessed proprietary claims which he had the right and the duty to enforce by his armies when the occasion presented itself. The traditional cynicism of historians regarding the sincerity of royal claims in the War of Devolution and the War of the Spanish Succession is unwarranted. To say, as does Tapié, that the right of devolution—a particular pattern of family inheritance in a part of the Spanish Netherlands—as applied to political authority in these provinces was not "given serious consideration anywhere,"[27] is simply not true. It was seriously defended by the French jurist Bilain, in his *Traité des droits de la reine,* in which he proclaimed that the French queen "asks only what belongs to her by the strictest rigor of the custom of succession from father, mother, and brother."[28] "Hereditary (sovereignties)," he specified, "are true patrimonies, which are transferred and controlled by customs like other inheritances."[29] In 1670 Dupuy's forty-year-old *Traités touchant les droits du Roy très-chrétien,* which explicitly defended the doctrine that the king held his crown and his territory as entailed property which came down to him from his ancestors, was republished. Dupuy explained that although French practice barred women from the throne, wherever the so-called "Salic Law" was not in effect, as in the Spanish monarchy, there the rules of inheritance holding for private individuals applied with equal force to the reigning dynasty.[30] This assertion was not an invention of the French publicists. It was a standing practice in the Low Countries dating back beyond the Habsburgs to the Burgundian dukes and counts.

[27] Edmond Préclin and Victor-L. Tapié, *Le xvii^e siècle: Monarchies centralisées (1610-1715)* (Paris: Presses Universitaires de France, 1943), p. 369. Cf. the similar statement by Louis André (*Louis XIV et l'Europe* [Paris: Albin Michel, 1950], p. 100) that devolution "n'était qu'un usage de droit privé" which Louis XIV "n'eut aucun scrupule à . . . transporter dan le droit public."

[28] Bilain, *op. cit.*, I, 20.

[29] *Ibid.*, vol. I, p. 12. Bilain recognized that States and Crowns were ordinarily "entailed," not absolute property (*ibid.*, I, 174-175, 181-183).

[30] Dupuy, *op. cit.*, pp. 15, 34, 172, 220-221, 293. However, Dupuy denied (p. 135) that the rule of exclusion of females from the royal succession in France derived in fact from the Code of the Salic Law: "Les loix de la succession des Rois dépendent plus de l'ancienne observance, que non pas de l'establissement par écrit; et cette antiquité est de plus grand poids, son origine incertaine plus auguste & venerable, pour estre colligée par une immémoriable observance inviolablement gardée durant tant de siècles."

Indeed, we may remark that the reply of the Habsburg diplomat Lisola to the assertions of Bilain in his famed pamphlet, *Le Bouclier de l'État et de la Justice,* which claimed that private law did not apply to the succession to the crown in the Low Countries,[31] ran against the whole proprietary character of the Habsburg monarchy itself.[32] Of course, such issues as these were ultimately decided not by the debate of publicists but by the conflict of armies. This was recognized by the French foreign minister Croissy in 1683 when, in reply to a sly question from an Austrian diplomat about how much honor and money France had spent to rebut Lisola, he snarled: "We fight with weapons, not books." [33] This was not quite true. French diplomacy had indeed recognized that the argument in law was significant, that there was a world of difference between seeking aggrandizement without a color of right, which was plain robbery, and enforcing a claim in dispute, which was one of the principal grounds for waging a "just" war.[34]

In 1700, Louis XIV did not scruple to accept the testamentary bequest of the Spanish monarchy by Charles II to the grandson of the French king, the duke of Anjou who became Philip V of Spain. The proprietary character of the Spanish crown was openly accepted[35]; its inheritance was subject to

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[31] Paul Viollet's observation (*Le Roi et ses ministres pendant les trois derniers siècles de la monarchie* [Paris: Sirey, 1912], p. 21) that the distinction between private and public law "était assez peu conforme aux traditions" has unfortunately been neglected by most subsequent historians.

[32] This was acknowledged by Lisola when he called Charles V "the proprietarie Prince" of the Low Countries (*The Buckler of State and Justice* . . . [Eng. trans.; London: Richard Royston, 1673; original French edition 1667], p. 196), and described the Spanish Netherlands as "Eight of the most flourishing and rich Provinces of the ancient Patrimonie of her Family" (*ibid.*, p. 66).

[33] Onno Klopp, *Der Fall des Hauses Stuarts und die Succession des Hauses Hannover in Gross-Britannien und Irland im Zusammenhange de europäischen Angelegenheiten von 1660-1714* (14 vols.; Vienna: Wilhelm Braumüller, 1875-1888), I, 177.

[34] Charles Patin, the son of the famed doctor and memorialist Guy Patin, had to flee from France in 1667 because a copy of the *Bouclier* was found in his home. A. Chéruel, ed., *Journal d'Olivier Lefèvre d'Ormesson, et extraits des mémoires d'André Lefèvre d'Ormesson* (2 vols.; Paris: Imprimerie Impériale, 1860-1861), II, 525-526. Paul Pellisson, the royal histographer, drafted in 1668 a plan for a historical treatise to refute Lisola. Dreyss, *op. cit.*, I, clxiii-clxiv.

[35] Le marquis de Courcy, "La renonciation des Bourbons d'Espagne au trône de France," *Revue des Deux Mondes,* LXXXVIII, 309; Watrin, *op. cit.*, p. 59.

the wills and testament of a decedent monarch, and the official title of the ruler was "king proprietor of the realm."[36] The debate during the negotiation of the Utrecht peace treaty over the renunciation of his successory rights to the French throne which the maritime powers demanded of Philip V, illustrated the nature and limitation of the French king's property in his kingship and kingdom, as distinct from that of the Spanish monarch in his. The French authorities consistently denied that the right of succession in France was subject to renunciation, or that any human act could modify the law of succession[37]; but in so doing they were not denying that the crown was the property of the royal family but simply that it was the unlimited and absolute property of the reigning king, his "patrimony" in the narrow sense of the term. The French negotiators held that a French king could at most abdicate but that he thereby passed on the crown to his successor as determined by law and not by his will.[38] The reply of Bolingbroke, the English negotiator at Utrecht, was to suggest that any national law was subject to modification as a result of military defeat (a doctrine which he preferred to forget when he was in his own later Jacobite phase). The truth of the French assertion was soon reaffirmed, however, though at the expense of the purposes of Louis XIV himself. The Sun-King granted to his bastards a right of succession to the throne from which illegitimate royal progeny has previously been excluded[39]; yet, although none dared to defy

[36] The Spaniards, indeed, applied this term to the French crown as well as to their own. In 1593, the representatives of Philip II to the *Ligueur* Estates General in Paris proposed that the infanta Isabella and her prospective French husband be made "roys propriétaires de ceste couronne" (Lavisse, *op. cit.*, VI, part I [Paris: Hachette, 1904], 378).

[37] Courcy, *art. cit.*, p. 320; Watrin, *op. cit.*, pp. 159-160; Baudrillart, *op. cit.*, I, 531.

[38] *Mémoires du marquis de Torcy, pour servir à l'histoire des négociations, depuis le traité de Riswick jusqu'à la paix d'Utrecht* (Michaud and Poujoulat, eds., *Nouvelle Collection des mémoires pour servir à l'histoire de France*, 3rd series, vol. VIII) (Paris: Chez l'éditeur du commentaire analytique du Code Civil, 1839), pp. 710-711; Watrin, *op cit.*, pp. 82-83; Courcy, *art. cit.*, pp. 325-326. See the penetrating remarks of J. Hitier, "La Doctrine de l'Absolutisme," *Annales de l'Université de Grenoble*, XV, 425-426) about Louis XIV's reluctance to call upon this "fundamental law" before the hour of greatest urgency; cf. Courcy, *art. cit.*, p. 321.

[39] Watrin, *op. cit.*, p. 122; Hitier, *art. cit.*, pp. 425-426, 428, 437-438; Jacques Roujon, *Louis XIV* (2 vols.; Paris: Éditions du Livre Moderne, 1943), I, 19.

him while he lived, this edict was annulled after his death as part of the rearrangements at the beginning of the Regency[40]; and there is something of ironic fate and something of sad age in the expectation of Louis XIV that his will would not be done, but that the edict would spare him during his final years the importunings of those of his children who were born not of marriage but of love.[41]

A century later, a historical personage for whom a dynastic throne was a dream which after a while and for a time became reality, summed up the proprietary character of his royal predecessors. "Consider well," declared Napoleon Bonaparte while still First Consul in 1802, "that a First Consul does not resemble those kings by the grace of God who looked upon their states as a heritage."[42]

The significance of the property-kingship issue lies not only in clarifying the character of the monarchy of the Ancien Régime. It is also an instance of the perennial problem in the political thought and practice of the West, the tension between the function assigned to the state by political theory—the service of the common welfare; and, on the other hand, the utilization of the state for their own advantage by the holders of political power, or by the individuals or groups able to influence them. For the tendency of such groups and individuals has always been to define the "common interest" in terms of their own advantage, thereby reinforcing the doctrine at the same time as they undermine it in practice. Louis XIV himself, in a rare moment of insight, wrote in 1670: "Furthermore, my son, never be mistaken about this, we have to do not with angels but with men to whom excessive power almost always gives the temptation in the end to use such

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[40] Holtzmann, *op. cit.*, p. 310; Olivier-Martin, *op. cit.*, p. 325, citing an edict of July 1717 in the name of Louis XV revoking Louis XIV's edict of legitimization; but the very words of the 1717 edict affirming the character of the French crown as entailed property are turned by Olivier-Martin into a denial of proprietary kingship.

[41] Roujon, *op. cit.*, II, 396-397.

[42] (A. C. Thibaudeau), *Mémoires sur le Consulat, 1799 à 1804.* (Paris: Ponthieu, 1827), p. 391. Elsewhere (p. 298) Thibaudeau cites a penetrating comment by Napoleon on the interrelationship between proprietary kingship and venal office.

power."[43] He had, of course, the magnates and the servants of the crown in mind, but need it be said how well his own attitude and acts illustrated his warning[43]—or that it applies with equal force in other ages and other places?

For the historian and the political thinker, there is another, separate question here. Is there actually an empirically definable "common interest" apart from that of specific groups, or groups-of-groups, as is usually assumed in both political theory and in historical writing? If there is not—and no effort to define it to date has withstood the criticism of those hostile to the particular groups doing the defining—then the definitions of historical institutions based on the conception of "common interest" in the abstract lack utility for historical analysis in the concrete. But it cannot be denied that the belief of almost all men that the state ought to serve the "common interest," however defined, has been one of the most powerful forces molding historical events that the modern world has known.

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[43] *Œuvres de Louis XIV* (4 vols;. Paris: Treuttel et Würtz, 1806), I, 149-150.

[44] It was Olivier-Martin's failure to recognize that the king was a man no less than the least of his subjects which enabled him to accept without a quiver of questioning the doctrine of the king as the pure and simple servant of the state and the public welfare (*op. cit.*, p. 334).