

Empowering Interactions

**Political Cultures and the Emergence of the State
in Europe 1300–1900**

*Edited by Wim Blockmans, André Holenstein and
Jon Mathieu in collaboration with Daniel Schläppi*

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Edited by

WIM BLOCKMANS

University of Leiden, The Netherlands

ANDRÉ HOLENSTEIN

University of Berne, Switzerland

JON MATHIEU

University of Lucerne, Switzerland

in collaboration with Daniel Schläppi

ASHGATE

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Contributors

Peter Blickle is Professor Emeritus of Modern History at the University of Berne. He has published in Legal History: *Landschaften im Alten Reich* (München, 1973); *Kommunalismus* (2 vols, München, 2000); *Reformation History, Die Revolution von 1525* (4th edn, München, 2003) and *Gemeindereformation* (München, 1985). He is the editor of one of the seven volumes of *The Origins of the Modern State in Europe*, 'Resistance, Representation and Community' (Oxford, 1997) and of the *Handbuch der Geschichte Europas* (8 vols to date, Stuttgart 2001–06).

Wim Blockmans is Professor of Medieval History at Leiden University and Rector of the Netherlands Institute for Advanced Study. His publications on European history include *A History of Power in Europe. Peoples, Markets, States* (Antwerp, Brussels, New York and Frankfurt/M., 1997, 1998) (also in French, German, Italian, Spanish and Dutch, Preface by Jacques Santer). Blockmans was also the Editor-in-chief of the twelve-volume series *The Roots of Western Civilization*, published in 1992–94 in Dutch, English and Finnish, with compact editions in French and Dutch, and of the seven-volume series *Origins of the Modern State in Europe*, published by Oxford University Press and Presses Universitaires de France in 1995–99.

Stefan Brakensiek is Professor of History at the University of Duisburg-Essen. His research fields are early modern governance in a comparative perspective (*Fürstendiener – Staatsbeamte – Bürger. Amtsführung und Lebenswelt der Ortsbeamten in niederhessischen Kleinstädten* (Göttingen, 1999); *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, 2005)) and the development of European rural societies, particularly the history of enclosures and of inheritance practices (*Agrarreform und ländliche Gesellschaft. Die Privatisierung der Marken in Nordwestdeutschland 1750–1850* (Paderborn, 1991); *Generationengerechtigkeit? Normen und Praxis im Erb- und Ehegüterrecht 1500–1850* (Berlin, 2006)).

Arndt Brendecke is Dilthey-Fellow of the Fritz-Thyssen-Foundation at the Ludwig-Maximilians-University of Munich and research group leader in the Sonderforschungsbereich *Pluralisierung und Autorität in der Frühen Neuzeit*. His research fields are the history of historiography, scientific and administrative techniques, cultural history, printing history and historical chronology. He just finished an extensive study of the Spanish Council of the Indies and its relationships to Spain's transatlantic territories. His publications include *Die Jahrhundertwenden. Eine Geschichte ihrer Wahrnehmung und Wirkung* (Frankfurt/M., 1999, 2000);

'Tabellenwerke in der Praxis der frühneuzeitlichen Geschichtsvermittlung', in Theo Stammen and Wolfgang E.J. Weber (eds), *Wissenssicherung, Wissensordnung und Wissensverarbeitung. Das europäische Modell der Enzyklopädien* (Berlin, 2004), pp. 157–89; with Markus Friedrich and Susanne Friedrich (eds), *Information in der Frühen Neuzeit. Status, Bestände, Strategien* (Münster, 2008).

Caroline Castiglione is Associate Professor of Italian Studies and History at Brown University in the United States. She has written about the politics of the Roman countryside and is especially interested in the strategies of adversarial literacy employed by villagers in their struggles against their noble lords. Her book *Patrons and Adversaries: Nobles and Villagers in Italian Politics, 1640–1760* (Oxford, 2005) won the Marraro Prize from the Society for Italian Historical Studies. She is currently researching the practices and the politics of early modern motherhood. She has published several articles on this theme, and most recently completed an essay 'Mothers and Children', in John Jeffries Martin (ed.), *The Renaissance World* (New York and London, 2007), pp. 381–98.

Vincent Challet is Maître de Conférences in Medieval History at the University of Paul-Valéry Montpellier-III. His research fields are urban and rural rebellions, rural communes and their political actions and, more generally, political society in southern France in the late Middle Ages. Currently, he is working on a comparative approach to European rebellions and on the political consciousness of peasants' communes. His publications include 'La révolte des Tuchins: banditisme social ou sociabilité villageoise?', *Médiévales*, 34 (1998): 101–12; 'Moyran, los traidors, moyran: cris de haine et sentiment d'abandon dans les villes languedociennes à la fin du XIV^e siècle', in Elodie Lecuppre-Desjardins and Anne-Laure Van Bruaene (eds), *Emotions in the Heart of the City (14th–16th Century)* (Turnhout, 2005), pp. 83–92 and 'Au cœur de la révolte: les conflits paysans et leur résonance en milieu urbain en Languedoc à la fin du Moyen Âge', in François Clément, John Tolan and Jérôme Wilgaux (eds), *Espaces d'échanges en Méditerranée* (Rennes, 2006), pp. 149–62. His PhD thesis: *Mundare et auferre malas erbas: la révolte des Tuchins en Languedoc*, is forthcoming.

Giorgio Chittolini is Professor of Medieval History at the Università degli Studi in Milan and has had numerous visiting professorships. His principal field of research concerns the process of state formation in Italy and Europe during the late medieval period and at the beginning of the early modern age. Among his single-authored and edited works are: *La formazione dello Stato regionale e le istituzioni del contado, secoli XIV e XV* (Milano, 2005, 1st edn 1979); with Dietmar Willoweit (eds), *Statuten, Städte und Territorien zwischen Mittelalter in Neuzeit in Italien und Deutschland* (Berlin, 1992); with Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994); with Dietmar Willoweit (eds), *Hochmittelalterliche Territorialstrukturen in Deutschland und Italien* (Berlin, 1996).

Bertrand Forclaz is a fellow of the Swiss National Science Foundation and guest researcher at the Free University Amsterdam. He earned his PhD from the Ecole des Hautes Etudes en Sciences Sociales in Paris in 2003. His research interests are statebuilding and the social history of justice in early modern Italy, as well as religious coexistence in the Netherlands in the seventeenth and eighteenth centuries. Among his publications are: ‘Le relazioni complesse tra signore e vassalli. La famiglia Borghese e i suoi feudi nel Seicento’, in Maria Antonietta Visceglia (ed.), *La nobiltà romana in età moderna. Profili istituzionali e pratiche sociali* (Roma, 2001), pp. 165–202; *La famille Borghese et ses fiefs. L'autorité négociée dans l'Etat pontifical d'Ancien Régime* (Rome, 2006).

Roy Garré is a judge at the Swiss Federal Criminal Court in Bellinzona and lecturer (Privatdozent) in the history of law at the University of Bern. His particular research fields are the history of civil and criminal law in Switzerland and Italy. His publications include *Fra diritto romano e giustizia popolare. Il ruolo dell'attività giudiziaria nella vita e nell'opera di J. J. Bachofen* (Frankfurt/M., 1999); ‘Patti, confederazioni, federalismi. Profilo storico-giuridico dei rapporti costituzionali fra Ticino e Svizzera’, in *Il Ticino nella Svizzera* (Locarno, 2003), pp. 87–109; “Naturalmente, un manoscritto”. Scoperte, riscoperte, scopritori nella storia del diritto’, in Giorgio De Biasio et al. (eds), *Un inquieto ricercare. Scritti offerti a Pio Caroni* (Bellinzona, 2004); *Consuetudo. Das Gewohnheitsrecht in der Rechtsquellen- und Methodenlehre des späten ius commune in Italien* (Frankfurt/M., 2005); ‘L’interculturalità in un mondo segnato da confini’, in Fabio Merlini and Elena Boldrini (eds), *Identità e alterità. 13 esercizi di comprensione* (Milano, 2006).

Niels Grüne has recently finished his PhD thesis on *Village Society and Political Communication in the Baden Palatinate (c. 1750–1850)* which was funded by the Gerda Henkel Stiftung (Düsseldorf) and supported by a research fellowship from the Institute of European History (Mainz). He is an assistant lecturer in early modern history at the University of Bielefeld currently working on a post-doc project on *Political Corruption in Early Modern Europe*. His publications include ‘Vom innerdörflichen Sozialkonflikt zum “modernen” antiobrigkeitlichen Gemeindeprotest’, *Zeitschrift für die Geschichte des Oberrheins*, 151 (2003): 341–83; ‘Gruppenbildung – Konfliktlagen – Interessenformierung: Marktdynamik und Vergesellschaftungsprozesse im ländlichen Strukturwandel deutscher Regionen (1730–1914)’, *Archiv für Sozialgeschichte*, 46 (2006): 565–91 (with Frank Konersmann); ‘Commerce and Community in the Countryside: the Social Ambiguity of Market-orientated Farming in Pre-industrial Northern South-west Germany (c. 1770–1860)’, *Rural History*, 18 (2007): 71–93.

Sandro Guzzi-Heeb teaches early modern history at the Universities of Bern and Lausanne. His research fields are family and kinship history, gender, social protests and the history of alpine regions, mainly during the early modern

period. Currently he is working on a study on gender, kinship structures and social networks in an alpine valley (Val de Bagnes) between 1700 and 1900. His publications include Jean François Bergier and Sandro Guzzi (eds), *La découverte des Alpes* (Basel, 1992); *Logiche della rivolta rurale. Insurrezioni contro la Repubblica Elvetica nel Ticino meridionale (1798–1803)* (Bologna, 1994); ‘Close Relatives and Useful Relatives. Welfare, Inheritance and the Use of Kinship in an Alpine Dynasty (1650–1800)’, in David R. Green and Alastair Owen (eds), *Family Welfare: Gender, Property and Inheritance since the Seventeenth Century* (Westport, 2004); *Donne, uomini, famiglia, parentela. Casati alpini nell’Europa pre-industriale (1650–1850)* (Torino, 2008).

Mats Hallenberg is a teacher and researcher at the department of history of the University of Stockholm. He specializes in the social and political history of Early Modern Sweden and Finland. While most of his research has focused on government agents in local societies, he has also studied government propaganda, the social basis of the military forces, and the connection between state formation, violence and aggressive ideals of masculinity. His publications include *Kungen, fogdarna och riket. Lokalförvaltning och statsbyggande under tidig Vasatid* (Stockholm/Stehag, 2001, PhD thesis); ‘Kungen, kronan eller staten? Makt och legitimitet i Gustav Vasas propaganda’, in Börje Harnesk (ed.), *Maktens skiftande skepnader* (Umeå, 2003); ‘De vilda vasarna och 1500–talets aggressiva manlighetsideal’, *Ad Familiares Tidskrift för sällskapet för renässans- och barockstudier* (2005). A book on tax-farming, *Statsmakt till salu. Arrendesystemet och privatiseringen av skatteuppbörden i det svenska riket 1618–1635*, was published in 2008.

Randolph C. Head is Professor of History at the University of California, Riverside. His research investigates political and institutional cultures in Switzerland and Europe around 1600 from various perspectives. His first monograph, *Early Modern Democracy in the Grisons* (Cambridge, 1995), investigated democratic practices in one Swiss canton. He recently published another study on the Grisons, *Jenatsch’s Axe: Social Boundaries, Identity and Myth in the Era of the Thirty Years’ War* (Rochester, 2008). Professor Head is now working on a comparative study of archives, their inventories and how they were used across Western Europe in the early modern era. He has been a fellow at the Institute for Advanced Studies in Princeton and of the American Philosophical Society in Philadelphia, and has taught at the UCDC programme in Washington, DC. His teaching interests include the history of republics in Europe, the history of religious conflict and coexistence since the year 1000, and early modern world history

André Holenstein is Professor of Pre-modern Swiss History and Comparative Regional History at the University of Berne/Switzerland. His research fields include constitutional history in the Holy Roman Empire and pre-modern Switzerland and the cultural history of economic knowledge and practices. His publications include *Die Huldigung der Untertanen. Rechtskultur und Herrschaftsordnung (800–1800)*

(Stuttgart and New York, 1991); *Bauern zwischen Bauernkrieg und Dreißigjährigem Krieg* (Enzyklopädie deutscher Geschichte, Bd. 38) (München, 1996); with Peter Blickle, Heinrich R. Schmidt and Franz-Josef Sladeczek (eds), *Macht und Ohnmacht der Bilder. Reformatorischer Bildersturm im Kontext der europäischen Geschichte* (München, 2002); with Frank Konersmann, Josef Pauser and Gerd Sälter (eds), *Policey in lokalen Räumen. Ordnungskräfte und Sicherheitspersonal in Gemeinden und Territorien vom Spätmittelalter bis zum frühen 19. Jahrhundert* (Frankfurt/M., 2002); *‘Gute Policey’ und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der Markgrafschaft Baden(-Durlach)* (2 vols, Epfendorf, 2003); with Sabine Ullmann (eds), *Nachbarn, Gemeindegossen und die anderen. Minderheiten und Sondergruppen im Südwesten des Reiches während der Frühen Neuzeit* (Epfendorf, 2004); with Claudia Engler, Norbert Furrer, Heinrich R. Schmidt, Johanna Strübin Rindisbacher and Andreas Würigler (eds), *Berns mächtige Zeit. Das 16. und 17. Jahrhundert neu entdeckt*, Bern 2006.

Roberto Leggero is Associated Researcher at the Laboratorio di Storia delle Alpi of the Università della Svizzera italiana (Ticino, Switzerland) and at the Maison des Sciences de l’Homme-Alpes (Grenoble, France). His research fields are identities, culture and society in Italy, mainly between the eleventh and the fourteenth centuries. Currently he is working on a long-term project on Italians’ identities. His publications include ‘Il diavolo, le reliquie e la rifondazione di Lodi’, in *La religion civique à l’époque médiévale et moderne* (Rome, 1995), pp. 37–45; ‘La vitalità del corpo santo di sant’Arialdo’, in Marina Benedetti, Grado Giovanni Merlo and Andrea Piazza (eds), *Storie di eretici e vite di frati* (Milano, 1998), pp. 7–31; ‘Il notaio e il demonio: la registrazione di un caso di possessione a Lodi nel XII secolo’, in Raimondo Michetti (ed.), *Notai, miracoli e culto dei santi* (Milano, 2004), pp. 499–518; *Dando eis locum idoneum. Identità politica delle comunità rurali del Novarese in età medievale* (Milano, 2008).

Jon Mathieu is Professor of History at the University of Lucerne. He has been teaching in various Swiss and other universities, and was the founding director of the Istituto di Storia delle Alpi at the Università della Svizzera italiana. His main research interests concern the agrarian, social, and cultural history of the early modern period and the nineteenth century, especially in mountain areas. He has been working on statebuilding issues at several stages, for instance in relation to family history ‘From Ecotypes to Sociotypes. Peasant Household and Statebuilding in the Alps, Sixteenth-Nineteenth Centuries’, *The History of the Family. An International Quarterly*, 5/1 (2000): 55–74.

Adelaide Millán da Costa is Professor of Medieval History at the Universidade Aberta, in Portugal, and a member of the Centro de História da Faculdade de Letras da Universidade de Lisboa. Her research interests concern political analysis of Portuguese urban centres in the Middle Ages and the study of the jurisdictional relationship established between the locally organized communities and the

Crown. Her recent publications include *O Mundo Urbano em Portugal na Idade Média* (Lisboa, 2004); *O burgo portuense quatrocentista: poderes e espaço* (Porto, 2007) and 'Elite Groups and Oligarchies in Late Medieval Portuguese Towns', in *Oligarchy and Patronage in Spanish and Portuguese Late Medieval Urban Society* (forthcoming).

Wolfgang Reinhard is Professor Emeritus of Modern History at Freiburg University in Germany and a fellow of the Max-Weber-Kolleg for social and cultural research at the University of Erfurt, Germany. He initially worked in the field of European religious history in the sixteenth and seventeenth centuries, proceeded to the microhistory of the Roman curia, a general history of European colonialism, and a comparative history of European political systems and then to historical anthropology, which he has considered the focus of his research since the 1960s. At present he is preparing a comparative study on *Textkultur und Lebenspraxis* in seven civilizations, his final book on the Roman curia 1605–21, and a second edition of his four-volume history of the expansion of Europe. Among his publications that may be of interest in this context are *Geschichte der Staatsgewalt* (München, 1999); *Verstaatlichung der Welt?* (München, 1999); 'Was ist europäische politische Kultur? Versuch zur Begründung einer politischen Historischen Anthropologie', *Geschichte und Gesellschaft*, 27 (2001): 593–616; *Geschichte des Staates* (München, 2007).

Endre Sashalmi is Associate Professor and Vice-Chair at the Department of Medieval and Early Modern History, Pécs University (Hungary). His main fields of academic interest and research are comparison of Western and Russian thought on political power in the sixteenth to eighteenth centuries, and state formation in Russia and Medieval and Early Modern Europe. His most recent publications in the fields mentioned include 'Vozniknovenie idei obshchestvennogo dogovora v oficial'noj ideologii tsarskoj vlasti pri Petre I. (The Emergence of the Idea of a Social Contract in the Official Ideology of Tsarist Power during the Reign of Peter I?)' in *Vostochno-evropejskie monografii*, 3 (Moscow, 2005), pp. 186–93; a long study '*Proprietary Dynasticism*' and the Development of the Concept of State in 17th–Century Russia. *Specimina nova* III (Pécs, 2005), pp. 165–202 and two books in Hungarian, *The Outlines of West-European Statebuilding (1000–1700)* (Budapest, 2006) and (in co-authorship) *Divine Right and Absolutism. An Anthology* (Budapest, 2006).

Daniel Schläppi is a researcher at the Institute of History at the University of Berne. In the past decade he has done a great deal of research on guilds and corporations from the late Middle Ages to the twenty-first century. His research fields are Swiss foreign policy in the seventeenth century, the history of elites, the history of Berne and cultural history. Currently he is working on a study of the impact of corporate property and collective resources on early modern politics and society. His publications include *In allem Übrigen werden sich die*

Gesandten zu verhalten wissen’. *Akteure der eidgenössischen Aussenpolitik des 17. Jahrhunderts. Strukturen, Ziele, Strategien am Beispiel der Familie Zurlauben von Zug* (Stans, 1998); *Die Zunftgesellschaft zu Schmieden zwischen Tradition und Moderne. Sozial-, struktur- und kulturgeschichtliche Aspekte von der Helvetik bis ins ausgehende 20. Jahrhundert* (Bern, 2001); *Der Lauf der Geschichte der Zunftgesellschaft zu Metzgern seit der Gründung* (Bern, 2006); ‘Das Staatswesen als kollektives Gut. Gemeinbesitz als Grundlage der politischen Kultur in der frühneuzeitlichen Eidgenossenschaft’, in Johannes Marx and Andreas Frings (eds), *Neue politische Ökonomie in der Geschichte* (Köln, 2007), pp. 169–202.

Barbara Stollberg-Rilinger is Professor of Early Modern History at the University of Münster/Westphalia. Her research fields include the constitutional history of the Holy Roman Empire, the intellectual and cultural history of the Enlightenment, and the cultural history of symbolic practices in the early modern period. In Münster, she is coordinating a Collaborative Research Centre on ‘Symbolic Communication and Social Value Systems from the Middle Ages to the French Revolution’. Her publications include *Der Staat als Maschine. Zur politischen Metaphorik des absoluten Fürstenstaats* (Berlin, 1985); *Vormünder des Volkes? Konzepte landständischer Repräsentation in der Spätphase des Alten Reiches* (Berlin, 1999); *Europa im Jahrhundert der Aufklärung* (Stuttgart, 2000); (ed.), *Vormoderne politische Verfahren* (Berlin, 2001); *Das Heilige Römische Reich deutscher Nation vom Spätmittelalter bis 1806* (München, 2006); ‘Symbolische Kommunikation in der Vormoderne. Begriffe – Thesen – Forschungsperspektiven’, *Zeitschrift für historische Forschung*, 31 (2004): 489–528; *Des Kaisers alte Kleider. Verfassungsgeschichte und Symbolsprache des Alten Reiches* (München, 2008).

Simon Teuscher is Professor at the University of Zurich since 2007. He previously taught at the Universities of Basel (2006–07), California at Los Angeles (2000–05) and Zürich (1996–99), was a *Professeur invité* at the Ecole des Hautes Etudes en Sciences Sociales in Paris, and member of the Institute for Advanced Study, School of Historical Studies, in Princeton. His research interests are personal relationships, rural society and administrative culture in the late Middle Ages in Western and Northern Europe. Teuscher’s publications include *Bekannte-Verwandte-Klienten. Soziabilität und Politik in Bern um 1500* (Köln, Weimar and Wien, 1998); *Erzähltes Recht. Lokale Herrschaft, Verschriftlichung und Traditionsbildung im Spätmittelalter* (Frankfurt/M., 2007).

Reemda Tieben has completed her doctoral thesis in 2007 at the Department of Early Modern History (Prof. Dr. Barbara Stollberg-Rilinger) at the University of Münster. She is especially interested in issues of political identities and gender in early modern Germany and in political theory. Her doctoral thesis on the political interactions between peasants, day labourer cottagers and estates in East Frisia (1594–1744) is scheduled for publication in 2009.

Angelo Torre is Professor of Early Modern History at the University of Eastern Piedmont. He has been a Research Fellow at Princeton University, Einaudi Chair at Cornell University, and Directeur d'Etudes associé at the Ecole des Hautes Etudes en Sciences Sociales. His areas of research include the practice of historical research and writing; local politics in early modern Europe; religious practices of the laity; and local heritage. Since 1995 he has directed research on the 'Schedario storico-territoriale dei comuni piemontesi', a collective research project on the formation of village territory in Piedmont between the twelfth and the twentieth centuries. He is currently writing a book on the processes of production of places in the early modern period. His publications include 'Feuding, Factions, and Parties: The Redefinition of Politics in the Imperial Fiefs of Langhe in the Seventeenth and Eighteenth Centuries', in Edward Muir and Guido Ruggiero (eds), *History from Crime. Selections from Quaderni Storici* (Baltimore, 1994), pp. 135–70; 'Politics Cloaked in Worship. State, Church and Local Power in Piedmont 1570–1770', *Past and Present*, 134 (1992): 42–92; *Il consumo di devozioni. Religione e comunità nell'Ancien Régime* (Venezia, 1995); 'Faith's Boundaries: Ritual and Territory in Early Modern Rural Piedmont', in Nicholas Terpstra (ed.), *Confraternities and Social Order in Early Modern Italy* (London, 1998), pp. 243–61; 'Faire la communauté: confréries et localité dans une vallée du Piémont, XVIIe–XVIIIe siècle', *Annales H.S.S.*, 62 (2007): 101–36; : 'Un "tournant spatial" en histoire? Paysages, regards, ressources', *Annales H.S.S.*, 63 (2008): 1127–44.

Abstracts

Peter Blickle

*Concepts and Approaches in Recent Scholarship on Statebuilding –
A Critical Review*

An extremely state-centred phase of historical scholarship in the nineteenth and the first half of the twentieth century was followed – in the wake of the definitive democratization of Europe – by a paradigm shift towards the subjects (citizens). The focal points of research that emerged were parliamentarism, resistance, community and public policy. As Europe became increasingly parliamentarized, the importance of the assemblies of estates in limiting centralized power and their significance in the development of the law was highlighted. Preferential attention was given to the representation of cities and communes. Methodologically, the study of the *gravamina* and of the laws they prompted was path-breaking. Where no assemblies of estates existed, there was also no modern parliamentarism. Resistance by the subjects (in city and countryside) is seen as the normal situation within Old European culture. It led throughout Europe to a weakening of intermediate feudal powers, to a ‘juridification (*Verrechtlichung*) of social conflicts’ and to treaties with subjects that rose to the level of constitutional standing. When it comes to the organization of resistance, one institution has been identified as indispensable – the commune. For a long time, the commune in its urban incarnation was regarded as the model for the modern state. In recent decades scholars have placed the village as an analogous institution alongside the urban commune. Shared features lie in autonomous legislating and in independent administration in keeping with the measure of the ‘common good’. For legislating and administration, *gute Policey*, a field of research since half a century, it has become evident how indispensable the active consent of ‘local society’ (commune) was to be successful. Chronologically, communal regulations precede *gute Policey*. The public sphere that is created by statutes and regulations is the sphere that exists between households, and it emerges first and foremost in cities and villages.

Wim Blockmans

Citizens and their Rulers

Historians find it mostly as difficult as the general public to think about public authority in the past without referring implicitly or explicitly to the states as they exist in their own days. It is hard to talk about countries whose names may still be the same as in the Middle Ages, but whose borders and internal structure were

largely different. If, with Charles Tilly, we define a state as a relatively centralized organization, differentiated from others, claiming to control a well-defined, mostly continuous territory, having at its disposal superior means of physical force, then the late medieval and early modern history of Europe saw the long-lasting co-existence of a great variety of types of states and inter- and supra-state-like structures, all exercising some form of sovereign public authority. This chapter offers a typology from the smaller to the largest units, and an overview of the variegated developments of state formation. Norbert Elias described this process along a single path of monopolization, while in reality far from all smaller contenders in the political strife were swallowed by larger competitors. In many cases, smaller units maintained their local and even regional power, and thus influenced the shape of any larger system in which they might have been incorporated. The reasons for this have mainly to do with the level of accumulation of power and capital in local and regional concentrations, relative to those available in the centre of a state. It is true that most dynastic states were much larger and thus offered advantages of monetary unity, protection and career opportunities for the local elites. Their obvious disadvantage, however, was their different rationale in international and internal affairs: the prince's honour drove him into increasingly costly warfare, which did not serve good internal governance nor the economic interest of most of their subjects.

Stefan Brakensiek

Communication between Authorities and Subjects in Bohemia, Hungary and the Holy German Empire, 1650–1800: A Comparison of Three Case Studies

This chapter deals with empowering interactions in three diversely structured European territories that have a rather bad reputation in regard to political openness. It investigates locally how certain princely or monarchical governments in southern Bohemia, eastern Hungary and in the Landgraviate of Hesse-Kassel addressed themselves to their subjects, to what extent authorities used forms of cooperation, and how individual persons or different societal groups were regularly integrated into domainal communication. It reveals that, even here, subjects in subordinate positions participated in the political process either through conflict with their lordships or in the form of consensual proceedings. Dominion rested on some kind of selective cooperation between government and individual people or certain segments of the subjects, and always on regular cooperation with the various unpaid chairmen of the communities. These relations offered considerable opportunities for participation, but even subjects involved in permanent exchanges of communication or cooperation could scarcely claim to hold fixed and documented rights to participate: they had to rely on pragmatic habits of participation, which were a by-product of the everyday business of the practice of dominion. The differentiation between bureaucratic and juridical proceedings, the growing significance of written norms, and the documentation of procedures in writing, and the emergence of competing authorities created

an institutional framework that enhanced empowering interactions. On the one hand the proceedings of the authorities provided channels of communication that widened the scope of action for subjects, and, to some extent, opened the gates for their participation. On the other hand these empowering interactions contributed to the intensification of dominion in the seventeenth and eighteenth centuries.

Arndt Brendecke

Informing the Council. Central Institutions and Local Knowledge in the Spanish Empire

The chapter focuses on the historical relation between idealizations and practices of the ‘informed centre’ in early modern times. Contrasting the absolutist ideal of the omniscient king and historical practices of political communication from below, it tries to analyse the inherent role of local knowledge within the central administration of the Spanish Council of the Indies. Despite the council’s political goal of disposing of full knowledge (*entera noticia*) and the advanced techniques applied (questionnaires, written reports), local knowledge turns out to be inescapably involved in the ways the council, the cosmographer and the king acquired their knowledge. This is not only ascribable to the initiative of locals writing to the court, but to ‘trust’ as a methodically inevitable component of every kind of information and its relation to local authorities and eye-witnesses.

Caroline Castiglione

The Politics of Mercy: Village Petitions and a Noblewoman’s Justice in the Roman Countryside in the Eighteenth Century

By virtue of their ubiquity and their staggering quantity, petitions are among the most common sources for understanding the interactions between rulers and ruled in early modern Europe. In much of the countryside near Rome (as in many rural areas of Europe), aristocrats were also the recipients of petitions, since they controlled the administration of justice. During the 1770s, one Roman noblewoman, Cornelia Costanza Barberini, devoted greater attention than her male predecessors to recording and preserving the petitions she received from her villagers. This chapter focuses on petitions from villagers of the *stato* of Monte Libretti, an extensive semi-independent territory north of Rome, whose governing had long been a serious preoccupation of the Barberini family. Cornelia Costanza’s innovation in record-keeping allows us to chart her consistent waiving of many penalties, as requested by petition-writers, a leniency with many parallels elsewhere in Italy. Thus despite the draconian punishments called for in the laws (including laws issued by the Barberini), petition-writers secured moderation in judicial practice and protection for the poor. These ideals (often associated with eighteenth-century reformers) must thus also be connected to the everyday interactions between rulers and their subjects. Cornelia Costanza also tightly linked her attention to justice to her practice of charity, since money derived from the administration of

justice was allocated for charitable purposes. This attention to piety extended to the villages, where she commanded that the culprits participate in Catholic rituals, and that priests send attestations that the guilty had performed these acts of piety. The noblewoman's intense religious paternalism, however, was clearly intended to counterbalance criticisms of the Barberini circulating in the *stato*. Politically active villagers used the strategies of adversarial literacy to emphasize the social justice embedded in Catholic theology and to argue that the Barberini had failed to deliver justice and land as promised in the village constitution. These villagers thus questioned the religious paternalism and the legitimacy of the Barberini's seigneurial regime. Cornelia Costanza's ledger of mercy attempted to counteract these critiques that inspired the politics and won the loyalty of some villagers in the *stato* of Monte Libretti.

Vincent Challet

Political Topos or Community Principle? Res Publica as a Source of Legitimacy in the French Peasants' Revolts of the Late Middle Ages

From the beginning of the fourteenth century, the principle of *res publica* was commonly used by the French monarchy to legitimate its authority, and especially to raise taxes from its subjects in the context of war. Traditional historiography has always taken a top-down approach to this appearance of *res publica* in political language, citing the influence of Cicero's *De Republica*. Equally, most historians have denied any political consciousness to rural communes and refused to see any principle at work in the peasant rebellions which occurred during this period. Drawing on the example of the revolt of the Tuchins in Languedoc between 1381 and 1383, this chapter examines the pre-existence of such values and principles in a more broadly-conceived political society, which includes urban elites, humble craftsmen and peasants who shared an identical conception of public order, prior to the development of royal propaganda. If the phrase *res publica* itself remains quite unfamiliar to the local population, the expression 'profit and honour' used in the vernacular language seems to be an equivalent. By using and misusing the argument of *res publica* and *utilitas publica* to justify all its decisions, the crown enabled the communes to use the term as a weapon to challenge some of the orders given by the king or his lieutenants: it then became one of the major means of legitimizing rebellions in the French kingdom. Moreover, the counterpart of these rebellions was an evolution of the content of *res publica* and the monarchy was forced to integrate some of the people's claims if it wanted to assert the principle convincingly. As the definition of *res publica* played an important role in modern statebuilding, it proves that, by rebelling against the crown, the communes were able to shape statebuilding in ways more acceptable for themselves.

Giorgio Chittolini

Models of Government 'from Below' in Fifteenth-Century Lombardy. The 'Capitoli di Dedizione' to Francesco Sforza, 1447–1450

The *capitoli* or pacts of submission to Francesco Sforza in the years 1447–1450 analysed in this chapter were of a type found widely in late medieval Italy and throughout the rest of Europe. They were composed of a series of requests presented by a community at the moment of submission to a lord, or to a more powerful community, to ask for, or to agree to, the conditions of surrender and subjection. There had been many pacts of this kind during the formative phase of the city-states in northern Italy, as communities and rural lords were submitting to the city (twelfth and thirteenth centuries), and during the formative phase of the regional states, when larger territories became involved in the process (thirteenth and fourteenth centuries).

After the death of Filippo Maria Visconti, duke of Milan, in 1447, the *condottiere* Francesco Sforza succeeded within three years in conquering the ducal throne. The change of regime and the circumstances of the conquest produced a whole series of capitulations that Sforza, wanting consensual foundations for his authority, made with the communities that submitted themselves one by one: not only the principal cities, but also small towns, villages, *terre* and valleys. The resulting pacts came to form the institutional framework within which the new ruler would operate.

The aim of our analysis is to see what 'models of the state' can be discerned behind these *capitoli*. At the time the pacts were made, rather than an unvarying dynamic from above to below, there was a game with many players of various strengths. It was an analogous situation to that in other societies of the *ancien régime*, in which power was 'diffused', and in which, therefore, it is not easy to distinguish clearly 'above' from 'below', the governors from the governed, and the holders of power from the subjects. The recognized function of the prince appeared to be that of taking cognizance of the weight of the forces involved, to arbitrate in disputes, to guarantee equilibrium, even if this did not impede the prince from acting to maintain the ducal 'stato', and affirm his prerogatives.

Bertrand Forclaz

Local Conflicts and Political Authorities in the Papal State in the Second Half of the Seventeenth Century

By analysing a few local conflicts in the Papal State in the second half of the seventeenth century, I focus on the plurality of political authorities involved in statebuilding in the early modern period, and especially on the role of feudal lords. The affairs presented in this paper take place in lordships held by the Borghese family in Latium – a papal family which became one of the biggest feudal lords on the Roman scene during Paul V (Camillo Borghese)'s pontificate (1605–21). The cases highlight a broadening of the political spectrum: whereas in the 1650s,

notables turned to the feudal lord and to the bishop to arbitrate political conflicts, 30 years later, they also involved the central magistracies of the Papal State. Whereas the arguments mobilized by the villagers to bring in the intervention of these rival authorities differ significantly, the goals pursued by the local actors are quite similar, since faction strives dominate local political competition. Outside authorities, however, also instrumentalize these strategies in order to widen their jurisdiction or enhance their control of the ‘periphery’. By studying these interactions, we can broaden our definition of statebuilding, as both the authorities involved and the local notables shaped the political space of the Old Regime.

Roy Garré

The Dynamics of Law Formation in Italian Legal Science during the Early Modern Period: the Function of Custom

Until the first codifications under the influence of natural law were introduced between the end of the eighteenth and the beginning of the nineteenth centuries, the role of custom was extremely important in the legal systems of Continental Europe. At that time the jurists of the so-called *ius commune* defined it as law introduced by constant use and supported by tacit popular consent. In this context it was a typical source of law from below, while part of a politically ambivalent sphere of power. This ambivalence clearly emerges from the study of legal sources of the period, which provide interesting material about the mechanisms which were common in the formation and functioning of the modern state.

Niels Grüne

Local Demand for Order and Government Intervention: Social Group Conflicts as Statebuilding Factors in Villages of the Rhine Palatinate, c.1760–1810

Research on processes of domination in the late Old Regime has been significantly stimulated by the deconstruction of the absolutism model and by perspectives centred on agents and actions. With these paradigm changes, especially in discussions in the German-speaking world, the focus of classical social history on patterns of inequality and structural divergences of interest has been thrust into the background in favour of individualist and corporatist approaches. This chapter, by contrast, explores the connectivity and explanatory power of analysing fields of collective tension in rural society within the framework of a communicative concept of statebuilding. As an example, one major area of conflict in communities of the Palatinate Electorate in the second half of the eighteenth century is illuminated: the management of communal resources and fees, which divided village inhabitants along the lines of landholding categories. Particular attention is paid to the demand for order by village groups towards official agencies and to the sort and acceptance of administrative interventions in the communal sphere. Generally, the failure of internal mechanisms of settlement proved to be a crucial motive in the densification of communication between local society and the

higher authorities, through the multiplication of group petitions and commission investigations. In the exploitation of the inherent chances for administrative expansion by the bureaucracy, notably the novel alliance between progressive government representatives and land-poor citizens acted as an engine of enhanced state control. The combination of lower class participation and interference by central authorities not only helped to surmount resistance to agrarian reforms at the hands of peasants and district officials. By the same token, it contributed in a wider sense to the informational, regulative and legitimacy penetration of local polities. Finally, it is argued that this development lost its momentum in the nineteenth century and must be characterized as a distinctive feature of the late early modern period.

Sandro Guzzi-Heeb

Joseph-Samuel Farinet and the 'Modern' State: Banditry, Patronage and Resistance in Nineteenth-Century Valais

The protagonist of this paper is Joseph-Samuel Farinet, the notorious falsifier, who was sought by the Italian and Valais police for many years between 1869 and 1880. It is this same Farinet whose image was immortalized in Charles-Ferdinand Ramuz' novel, *Farinet ou de la fausse monnaie* (1931), and afterwards by a successful movie (1938). According to the definition given by Eric Hobsbawm, this would be a phenomenon of social banditry: an outlaw protected by the population, who are somehow expressing their feelings.

I believe it more useful to consider our question as a symptom of a specific logic of state functioning. From this perspective it is possible to speak of a specific state model – which I shall call the 'alpine microstate' – provided that this is not opposed to a rigid definition of the modern state, impersonal and rational.

After 1848, Valais was integrated more fully into the federal Swiss state. However, the attitude of the majority of the population, the distrust of institutions, and creeping resistance continued to affect the establishment and the actions of the local state. On the one hand, obstinate resistance to the expansion of state authority entailed the persistence of a financially and politically weak state with a limited margin of action. On the other hand, institutional weakness compelled the institutions' representatives to make considerable use of patronage – personal and familiar channels for the exercise of power.

Farinet's adventures show that these are not forms of political archaism. The logical alternative to the state – personal collusions inside familiar networks and patronage systems – does not inexorably disappear following political and economic 'modernization'. Rather, it becomes interlaced with the evolution of the institutions, deeply influencing transformations of the state, continuing to act underground to limit, influence and manipulate the institutions and their representatives. It would also be wrong to consider the social networks supporting Farinet's banditry only as the expression of a 'primitive' society, struggling to defend pre-state agricultural logics. The closest collaborators of Farinet were, in

their way, entrepreneurs, looking for opportunities in innovative sectors and acting through networks between small entrepreneurs, tradesmen or tourist operators.

Mats Hallenberg

Peasants and Tax-farmers in Seventeenth-Century Sweden: Local Conflict and Institutional Change

In the early seventeenth century a new system of tax-farming was introduced to the Swedish realm. A private contracting procedure replaced the well-established system of royal bailiffs bargaining with peasants over taxes. The peasants were thus cut off from direct communication with the royal administration at the local level. My contribution will address how the peasants reacted to this by protesting both locally, and at the *riksdag*, the national diet of Sweden. These protests eventually resulted in the abolition of the whole system of leases. Ultimately, the system of tax-farming proved to represent a loss in legitimacy that the Swedish Crown, heavily engaged in the continental war, could not afford.

The tax-farmers' enterprise depended on collecting and selling tax payments-in-kind, but this was in direct conflict with the peasants' claims of controlling their own produce. The peasants of Sweden were quite market-oriented, and they wanted to profit from rising prices for agricultural goods themselves. They reacted bitterly to what they perceived to be a harsher collection of rents, and to the tax-farmers' manipulation of exchange rates. Local protests entailed refusing day-work services and handing in lawsuits protesting against the leaseholders' methods. But the peasants soon came to voice their grievances in more general terms, demanding the right to pay their taxes in cash, without mediators.

The death of King Gustav Adolph in 1632 triggered a massive wave of protests in the diet, where the peasant estate sided with the priests and the burghers, demanding the abolition of the whole tax-farming system. In 1635 the aristocratic government finally declared that from now on no more tax-districts would be leased out. This was a decisive victory for the peasants' political strategy. The system of leases was replaced by a bureaucratic system, which meant that the provincial level of administration that had become so vital for controlling the tax-farmers was institutionalized. The political alliance between the non-noble estates, inspired by the peasants' resistance to the tax-farming system, was to be a major force in Swedish politics for years to come.

Randolph C. Head

Modes of Reading, Community Practice and the Constitution of Textual Authority in the Thurgau and Graubünden, 1520–1660

Diverse foundational documents played a growing role in early modern European political culture, especially in republics. Using the Swiss *Landfrieden* of 1531 and several key Graubünden charters from the 1520s as case studies, this chapter analyses the shifting modes by which such documents were interpreted and deployed

in concrete political conflicts involving both rulers and ruled from the 1530s to the 1650s. In both cases, an early phase during which the documents justified the outcome of specific suits and arbitrations was followed by a much longer period when references to the foundational documents were common, but citations of their texts were not. Nevertheless, these documents remained enormously influential, legitimating legal penumbras that authorized complex new institutional practices, such as biconfessional relations in the Swiss subject territories or evolving rules for decision-making in the Republic of the Three Leagues in Graubünden. Beginning in the 1620s, however, a 'return to the text' took place. Various parties turned back to the specific words contained in foundational documents, reading closely and parsing every phrase in search of legal advantage. In addition, they sought out early interpretations as precedents and celebrated the unifying power of foundational documents. This resulted in increased authority for such documents, as well as spreading knowledge about their contents. One result was new modes of action in which the dominated as well as the rulers could justify their positions from what were becoming truly constitutional texts. By shifting focus away from roles of those 'above' and 'below' and towards the conduits through which political power was negotiated and institutionalized at any given moment, I argue that we can better capture the shifts in empowerment and interaction that produced new modes of politics by the end of the early modern era.

André Holenstein

Empowering Interactions: Looking at Statebuilding from Below

Recent studies devoted to England, Scandinavia, Italy, France and the German-speaking countries have independently suggested conceptualizations of the statebuilding process that imply a perspective from below. The articulation of interests, moral concepts and needs by communities, corporate entities, interest groups and subjects from local society are seen as determining forces in the statebuilding process, because they forced the state instances to react to complex social problems, to answer to the demands and claims of various groups and members of the society, to render services to these groups, and to help bring about what these groups expected from higher political authorities – for instance, the settling of disputes and the solution of conflicts, support for expressing specific interests, or the implementation of specific concepts of public and social order.

In this view, the state was the outcome of communicative processes which might be characterized as 'empowering interactions'. By appealing to state instances and by making use of them, groups and individuals accepted them as sources of legitimate authority and power. In the case of a favourable result, they gained the authoritatively sanctioned support of the state, so that their interests became invested with its legitimacy and power and were thus – in comparison to competing interests – more likely to be accepted. In turn, the position of state instances was steadied by the legitimacy that the subjects' uses and appeals ascribed to them. There was a strong, empowering reciprocity between the use

of state power embodied in officeholders and incorporated in state authorities by groups and members of local society, on the one hand, and the increased authority and legitimized power of the state, on the other hand. 'Empowering interactions' suggests that both the representatives of particular interests *and* the state benefited from such interactions. In a specific sense, both parties became more powerful: the bearers of particular interests received authoritative support, while the state broadened its social acceptance and legitimacy.

Roberto Leggero

The Construction of Local Political Identity in Lake and River Communities in North-West Italy, Twelfth to Fourteenth Centuries

Can one speak of political action by rural communities in the Middle Ages? This question, raised by Italian scholars, is expanded in the present by the problem of state 'from below'. Recent historiography has shown growing attention to the entrenched autonomies of communities with the invitation to overturn the vertical perspective to adopt a perspective 'from below'. The relationship between 'higher' and 'lower' or between centre and periphery is such that it is determined on the basis of the awareness of the two players confronting one another who, according to the force of this self-representation and the possibilities present, will act politically.

This chapter traces the events related to the resistance of Intra, Pallanza and Valle Intrasca to the penetration of the upper Verbano by the city of Novara. Both the political presence in the area of the commune of Vercelli and that of the landlord family da Castello are fundamental for the establishment of this opposition. The open confrontation between the da Castello family and a 'league' of communities on the one hand and Novara on the other culminated in the capture of Pallanza by the Novarese fleet (1223). One may think that more important forces than those of the local communities pulled the strings of politics, but we cannot fail to admit that these communities truly expressed a political vision of their own.

With the rise of Gian Galeazzo Visconti in 1378, the upper Verbano and val d'Ossola received special attention from Visconti, who was well acquainted with the economic and strategic importance of the area. From the point of view of local communities, there was the presence of a political perspective that indicated a new value. If in the past it was *libertas* that produced forms of political action even in non-urban communities, the value that moved towards the new sovereignty represented by the Visconti dominion was that of *securitas*. In the face of this new demand, the political ambition of Visconti then became locally interesting, as he was asked to defend the security of the communities.

Jon Mathieu

Statebuilding from Below – Towards a Balanced View

Wolfgang Reinhard was invited to the Ascona conference on ‘Statebuilding from below’ as a critical commentator, and he delivered a thought-provoking text. Despite the title, his real sparring partners were not bottom-up processes in statebuilding, but the modern state and state-centred research as such. That is why he can agree ‘with almost everything’ André Holenstein says in his introductory paper on ‘Empowering Interactions’ – but still think he is wrong. And he can tell us that Holenstein’s arguments are correct, but his conclusions are ‘not radical enough’. In other words, they are not helpful for thinking away the state. The Ascona conference was engaged in another enterprise, both more modest and more realistic. It started with the question of the balance between different kinds of social forces and actors in the history of European statebuilding. We asked ourselves if we should reconsider the relationship between top-down and bottom-up forces, assigned to it in earlier studies and especially in the great programme on ‘The Origins of the Modern State in Europe’. Maybe the fascination with the most visible aspects of power seduced our predecessors, and still seduces us, to overrate the influence of the elites and to underrate the potential of larger populations. It is up to the reader of this volume and to the research community to judge the idea and its outcome.

Adelaide Millán da Costa

Statebuilding in Portugal during the Middle Ages: A Royal Endeavour in Partnership with the Local Powers?

The aim of this chapter is to question the pertinence of the concept of statebuilding by elements of the medieval political system other than the Crown. When applied to the Portuguese case the issue gains a particular acumen since historiography attributes to the latter a character of precocity in the implementation of power-centralizing measures.

The councils – locally organized communities – are usually perceived as one of the pillars of the royal programme. On the one hand, they constitute diffuse instances of territory-controlling mechanisms (fiscally, administratively and judicially); on the other, their own existence, together with a privileged connection to the Crown, configured a way in which to counterbalance the territorial hold by the lay and ecclesiastical lords. We set out to inquire if these local structures were merely passive vehicles for a royal strategy or if it is possible to grant them an active, self-conscious, role in the construction of the state. Therefore, this chapter focuses on the following topics:

- summary of statebuilding during the Portuguese Middle Ages as viewed from above
- statebuilding in Portugal during the Middle Ages as viewed from below
 - Definition of the operative concept ‘below’

- Political geography or the plural standing of territorial communities
- Institutional dialogue between 'high' and 'low': moments, forms, political actors, language
- The political values of 'below': opponents or partners in state-formation?

Wolfgang Reinhard

No Statebuilding from Below! A Critical Commentary

The critical commentary consists of three fundamental arguments. It first points at several aspects of current research on statebuilding which were not represented in due fashion at the Ascona conference (the micro-politics at the centres of commonwealth; the role of the churches and their ministers; the meaning of political language and symbols; the effects of popular resistance). In a second move the commentary presents a general objection to the conference's basic assumptions which can be summed up in the sentence: 'By definition, statebuilding is a top-down process because it originates from and is based upon the interests of the people in the centre'. Eventually, the commentary pleads for the emancipation of historical research from obsession with the idea of the state and for the search for historical alternatives to the *Moloch* state, that might be found in political worlds with immediate participation of citizens older than the state.

Endre Sashalmi

'God is high up, the Tsar is far away'. The Nature of Polity and Political Culture in Seventeenth-Century Russia. A Comparative View

If statebuilding 'from below' is 'the perspective of estates, communes, guilds', then one can simply conclude that there was no statebuilding from below in Muscovite Russia since (in the Western sense) there were neither social nor political estates nor corporations in Muscovy. Consequently, from the perspective of statebuilding, the categories used for early modern Western states (*polity of estates* and *absolute monarchy*) are irrelevant with regard to Muscovite Russia. Because of the lack of corporations and the great variety of in-built privileges, the *political structure* of seventeenth-century Muscovy was an *autocracy* hardly comparable to Western absolute monarchies.

Statebuilding and political ideology had always been closely related to each other in the West. Seen in this perspective, it is even questionable to what extent Muscovy was a state. For until the end of the seventeenth century the ideology of Muscovite rulers, the *divine right of the tsars* (but the not divine right of kings!) lacked the notions of *state* and *public good* and even a clear concept of *office* which is firmly proven by the lack of a coronation oath in Muscovy.

Still, there was some room for the 'from below' perspective in Muscovy, but in a very special way. Crucial to Muscovite political culture was one's right to submit petitions to the tsar, and petitioning until 1649 could be done even directly, by

handing the petition or the *written humble request* (a more exact translation of the Russian *chelobitnaya gramota* conventionally referred to as *petition*) personally to the tsar. From the early seventeenth century the activity of different social groups surfaced in *collective petitions*, which eventually exerted some influence on the Law Code of 1649 as H.-J. Torke has pointed out.

I contend that *petitions* in Muscovy played a role similar to that which *grievances* played in Western Christendom, but petitioning rested on a conceptually different theoretical base. Petitions and the Muscovite assemblies (which were not parliamentary types of assemblies) were sometimes interrelated, as grievances and the assemblies of estates in the West. But in so far as petitioning and the assemblies could occasionally influence government policy and legislation, it was *not based on the right to express grievances*. Social groups could simply express their problems in a humble manner which the tsar might or might not take into account.

Daniel Schläppi

Corporate Property, Collective Resources and Statebuilding in Older Swiss History

During the seventeenth and eighteenth centuries the Bernese *Gesellschaften* (the autonomous corporations of citizens in the city of Berne) took charge of state functions at their own expense. The corporations financed their administration by using their own resources. The state administration was based on collective resources. Collective goods generated symbolic as well as objective integration forces. Citizens could obtain financial benefit thanks to their right to make use of common goods. Individuals were integrated into the community of the state by economic bonds.

According to Elinor Ostrom, political institutions can be described as *a number of rules for work and proceedings*, defining who is to take decisions on certain levels and which acts are permitted or prohibited. The Bernese *Gesellschaften* created this kind of work rule in order to regulate social life as well as to have effective management and expenditure of the common goods. As the example of Berne shows, this legal framework became part of the fundament of governance in the early modern age. In view of the circumstances of the early modern age Swiss confederation, it becomes obvious that it was also common property that was responsible for the centuries of institutional constancy of this construction. Even in times of confessional tension, a dialogue within the confederation was guaranteed to go on, at least concerning the annual accounts.

State institutions made a number of common goods available. The authorities were expected to manage them in an economical way. A balanced handling of common resources was one of the most important requirements for authorization in the political economy of republican institutions. Conflicts and revolts were sparked off when the handling of common goods practiced by the authorities was in discrepancy with the general public's understanding of *moral economy*.

Finally, collective resources were also of great importance in social relationships. The republic of enlightenment as well as foreign trade relations could only develop with well-functioning networks that can be interpreted as common goods. Collective resources were a central category for political and social acts in the early modern ages. They had a catalytic effect on statebuilding. The types of collective resources described lead one to assume that there is a great heuristic potential.

Barbara Stollberg-Rilinger

The Impact of Communication Theory on the Analysis of the Early Modern Statebuilding Processes

This chapter proposes a critical assessment of the heuristic potential of communication theory for research in political and constitutional history. Drawing on the theoretical premises of the work of Anthony Giddens, Roger Chartier, Pierre Bourdieu, Alfred Schütz, Ernst Cassirer, Peter Berger, Thomas Luckmann, Erving Goffman and also Niklas Luhmann, it puts forward some converging assumptions of communication theory which lead to an altered apprehension of the emergence and perpetuation of institutions as the result of communicative practices. Applied to the history of statebuilding, these theoretical influences ‘blur established institutional categories and allow abstract structures to be seen as flexible social practices’. Communication theory furthermore enlarges our understanding of pre-modern institutionalization processes by increasing our attention to the basic structuring effect of symbolizations of all types. It also sharpens ‘the sense for the internal logic of communicative action, for certain autonomy of the communicative dynamic with regard to the intentions and purposes of the actors’, and teaches us to be sceptical about simple end-means models of action. Against the often-raised objection that the application of communication theory in historical research may induce the general deconstruction of the ‘master narrative’, this contribution states that, quite on the contrary, it offers the opportunity to bridge the gap between macro-history and micro-history.

Simon Teuscher

Threats from Above on Request from Below: Dynamics of the Territorial Administration of Berne, 1420–1450

In the light of debates about statebuilding from below, this chapter asks how late medieval territorial lordship was negotiated among central authorities, their officers, and the local population. The article examines how the city of Berne and its central authority, the city council, ran their rural territory through the mediation of local officers. In the archives of Thun, the chef-lieu of one of the roughly twenty districts that belonged to the Bernese territory in the early fifteenth century, there are more than 2,000 letters from a 30-year period with orders of the city council to its local bailiffs. It can be established that the council sent most of these letters in

response to requests or complaints from men and women from the district of Thun. These individuals, many of whom belonged to the lower classes, made their way especially for this purpose, journeying about five hours on foot, from their homes to Berne. This is certainly a good example of how impulses from below could be at the root of many of the activities of a central authority and its attempts to strengthen its control over its local officers. But contrary to what some models of statebuilding from below suggest, this was not due to the fact that subjects, almost like consumers of justice, deliberately chose central agencies as the ones that settled conflicts according to superior, more legalistic and formalized methods. In fact, the city council primarily tried to relegate cases back into their local context and dealt with them much like a patron in an informal dispute would have done. Rather than examining the validity of reproaches and complaints that people from Thun made about each other or the local bailiff, the council in its missives almost always sided with those who had approached it and advised local bailiffs to support them – at the risk of having to do the same thing for their opponents as well as soon as they complained to the council. Such procedures point to a political culture characterized by many more institutions than the ones that can be seen as the precursors of the modern state and that cannot be adequately grasped if the origins of the state remain the main focus of historical research into past systems of organizing society.

Reemda Tieben

Statebuilding with the Participation of the Estates? East Frisia between Territorial Legislation and Communalist Ritual, 1611–1744

In the seventeenth and eighteenth centuries the quasi-autonomous rural communes of the territory of East Frisia were entitled to send delegates to the territorial Diets (Landtage). Active and passive voting rights were limited to a certain group of residents in the commune. Two different competing modes of generating entitlement existed: on the one hand, in the communes themselves, the entitled housefathers were distinguished from other domiciled residents by a ritual. This assignment of rights applied to all matters of communal life, therefore also including the elections to the territorial Diets. On the other hand, the East Frisian Estates and the Count, at their territorial Diets in 1620, passed resolutions regulating the active and passive voting rights to the Estates. The comparison of these two modes shows to what extent the Count and the Estates, in which the housefathers participated, were able and willing to implement the resolutions in the communes. The involvement of Estates, and especially communal delegates in the legislative process, did not cause acceptance of the legislation in the communes. Actually, the communes were not able to follow the legislation, because it was contradictory to their consuetudinary and ritually generated order. The Estates and the Count enacted the resolutions primarily to guarantee their political legitimacy and representation of the whole state. Yet the new regulation of voting rights did not correlate with the communes' structural realities. Therefore the Count and the Estates could not seize greater

legislative competency to organize political entitlement for the whole territory on their own. Standardization and monopolization failed because of ritual.

Angelo Torre

Empowering Interactions and Intertwining Jurisdictions

The review of recent Italian historiography on local society presented in this chapter leads to a heuristic-hermeneutic reflection on the potential of a historical ethnography conducted at the topographical scale. If the process of state formation is to be viewed as the outcome of 'empowering interactions' and as a matter of communication, then the factors in this communication process need to be highlighted. The coexistence of different jurisdictions competing in the same area and the intertwining of jurisdictions have to be taken into account as the determining conditions of social and political practices in local societies. This must induce historians to look closer at jurisdictional sources where they can grasp people's disputes over a 'way of doing' or a 'way of saying', thereby detecting 'the interaction between the practical aims of those who were depicted (observed, surveyed, named ...) in the documentation in the act of saying or of doing something, and the practical aims of those who transcribed them'. Therefore, a proper analysis of local politics open to the world outside the village will have to reflect on the jurisdictional culture of the Old Regime and the specific sources it generated.

Preface

The emergence of the state in Europe, a topic that has engaged historians since the very beginning of history as an academic discipline, has often been looked at in a particular way – from above. From this perspective, the formation and the consolidation of public institutions and authorities appear to be the outcome of activities of princes with their entourages and the military and civil personnel at their disposition, down to the humble folk. Up to the present, many historians and social scientists have conceived of statebuilding as such a top-down process, characterized by distinct roles both for the rulers and the ruled. This book chooses a different approach to the subject by investigating the importance of local and individual initiatives for statebuilding from the late Middle Ages to the nineteenth century. It is based on the observation, made by an increasing number of studies, that popular claims and initiatives could force public authorities in Europe to develop new institutional structures. These findings raise important questions and deserve careful collective reflection.

A milestone in statebuilding research was set by the grand project on *The Origins of the Modern State in Europe, Thirteenth to Eighteenth Centuries*. Backed by the European Science Foundation, the project involved more than a hundred scholars from 18 countries. It began in the 1980s and resulted in a series of seven volumes published from 1995 to 2000. These impressive publications offered fresh interpretations of the state, especially with regard to its variability and organizational layout: ‘Not only were more variegated models brought to the fore’, the general editors concluded, but ‘we also learned that in practice the level of centralization, bureaucratization and absolutism remained far below that assumed by earlier historians’.¹ In certain ways, however, many authors who contributed to the *Modern State* series remained within the limits of the earlier theories and assumptions. Privileging the role of warfare and of elite coercion and extraction for statebuilding, they rarely questioned the traditional top-down model and did not make much of the insight that central agencies might have been more important for state representation than for state practice.

It is at precisely this point that recent studies have opened up new perspectives. Recent scholarship conceives of domination as a communicative relationship between central agencies and local societies, that is, between actors in unequal

¹ Wim P. Blockmans and Jean-Philippe Genet (eds), *The Origins of the Modern State in Europe, 13th to 18th Centuries* (7 vols, Oxford, 1995–2000), the quote is from their preface on p. vii. The editors of the single volumes are: Peter Blickle, Richard Bonney, Janet Coleman, Philippe Contamine, Allan Ellenius, Antonio Padoa-Schioppa and Wolfgang Reinhard.

hierarchical positions. Put in this way, the emergence of the state can be grasped through changes in communication and its preconditions. The long-term trend was characterized by a massive growth in interaction between various levels of governance, which greatly increased the control that state officials could exercise over communities. Yet intensifying patterns of communication could also increase the control that communities had over state officials and thus result in empowerment on both sides. In any case, it seems methodologically indispensable to control in a systematic way for the agency that can be attributed to the great part of the population in this important field.

The studies on this subject we present here treat many parts of Europe and deal with different phases in the period between the late Middle Ages and the nineteenth century. The introductory chapter, after offering a critical review of state historiography in European countries, proposes the concept of 'empowering interactions'. The case studies that follow are arranged first according to regional and then to chronological criteria. In the last section, the reader will find a series of contributions that discuss historiographical, methodological and theoretical aspects of the topic in a controversial way. As a result, we can certainly say that the 'variegated models brought to the fore' through earlier projects are enriched in this volume through new information and perspectives.

The volume grew out of an international conference entitled 'Statebuilding from below: Europe 1300–1900', which took place at the Monte Verità in Ascona (Switzerland) in September 2005. It does not, however, represent the proceedings of that meeting, since the richness of the papers at the conference required the editors to take a selective approach. Additionally, several contributions underwent considerable revisions between the version heard at the Ascona conference and the present publication. Finally, the editors wished to integrate several additional essays in order to round off the treatment of various issues. The goal of the book is to offer the reader multiple approaches, not necessarily concordant, that all focus on the question of how to choose a fruitful perspective for understanding the state. This question is time-honoured but still extremely important and indeed may become even more so in the future. The consequences of failing states in the contemporary world are felt in many parts of the world in ways only too acute.

Our endeavour to rethink the relationships between top-down and bottom-up processes in the history of the European state would not have been possible without the generous support of several institutions and their staff: the Swiss National Science Foundation, the Istituto di Storia delle Alpi at the Università della Svizzera italiana and the History Department of the University of Berne. We are also grateful to Ashgate Publishing Ltd. for paying so much attention to this book. Last but not least, we would like to thank the participants at the Ascona conference, our translators and the authors of the articles, who have contributed their share of innovative historical scholarship from different parts of the continent.

The editors

Introduction: Empowering Interactions: Looking at Statebuilding from Below

André Holenstein

Introductory Remarks

The starting point of this book was the Ascona conference on ‘Statebuilding from below’, which, not accidentally, took place in Switzerland owing to the initiative of scholars of Swiss history. Some brief remarks about the history of the Swiss Confederation and its political culture may furnish evidence for our proposition that the Swiss case illustrates important aspects of successful state formation ‘from below’ in Europe.¹

In the late Middle Ages, rural and urban communities in the area that later came to be called Switzerland set themselves at the head of the regional public peace movement. From the fourteenth to the sixteenth centuries, most of them expanded into territories of considerable size, reinforcing at the same time the communal basis of their territorial rule by gradually forming a complex network of sworn alliances. Such alliances secured the communities’ inward and outward autonomy – an autonomy underpinned by theoretical and iconographical features of republicanism and republican sovereignty after the middle of the seventeenth century.² The pre-modern phase of Swiss state formation can therefore be described

¹ My thanks to Randolph C. Head for his careful reading and mending of a first English version. Hans Conrad Peyer, *Verfassungsgeschichte der alten Schweiz* (Zürich, 1978); Johannes Burkhardt, ‘Die Schweizer Staatsbildung im europäischen Vergleich’, in Günter Lottes (ed.), *Region Nation Europa. Historische Determinanten der Neugliederung eines Kontinents* (Heidelberg and Regensburg, 1992), pp. 271–86; Wolfgang Reinhard, *Geschichte der Staatsgewalt. Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (München, 1999), pp. 251–4. For the peculiarities of Swiss state formation during the nineteenth and twentieth centuries see Hanspeter Kriesi, ‘Introduction. State Formation and Nation Building in the Swiss Case’, in Hanspeter Kriesi, Klaus Armingeon et al. (eds), *Nation and National Identity. The European Experience in Perspective* (Chur and Zürich, 1999), pp. 13–28.

² Thomas Maissen, ‘Eine “absolute, independente, souveraine und zugleich auch neutrale republic”’. Die Genese eines republikanischen Selbstverständnisses in der Schweiz des 17. Jahrhunderts’, in Michael Böhler et al. (eds), *Republikanische Tugend. Ausbildung eines Schweizer Nationalbewusstseins und Erziehung eines neuen Bürgers* (Genf, 2000), pp. 129–50; Thomas Maissen, *Die Geburt der Republic. Staatsverständnis und Repräsentation in der frühneuzeitlichen Eidgenossenschaft* (Göttingen, 2006).

as the outcome of a highly developed communalism, which expanded territorially at an early stage and was strengthened by networks of alliances. Communalism and federalism, however, both appear to be outcomes of a statebuilding-process from below.

The early modern Swiss cantons developed none of the characteristic features of the tax-state or of the fiscal-military state. They defended themselves without raising a standing army; at the same time they formed security alliances with the neighbouring European powers – above all with France and Spain. It was this peculiar combination of the cantons' military outsourcing in favour of European powers with the interest of the latter in a military buffer zone in the centre of Europe that saved the Swiss cantons from getting involved in the wars that accelerated European state formation during the seventeenth and eighteenth centuries. Such a defence organization appeared to be quite cost-effective. Furthermore, the Swiss republics lacked a ruling dynasty that might strain public finances with its extravagant court life. Finally, the cantons did not greatly enlarge their bureaucracies. Important features of the typical early modern state were lacking, therefore, and the cantons could generally afford to forego the direct taxation of their citizens and subjects. The magistrates were encouraged in this approach by the fact that their few timid attempts to base public finances on direct taxes had met serious opposition from their subjects in a series of revolts and upheavals in the sixteenth and seventeenth centuries. Even so, the Swiss cantons managed to accumulate considerable state treasuries. In the seventeenth and eighteenth centuries, they invested these funds on the important European financial markets, thereby making the annual interest payments from the notoriously underfinanced European debtor states an increasing part of state revenues.³

It was only after a brief civil war and the revolution of 1847/48 that this pre-modern network of federated sovereign republics transformed itself into a modern federal state with centralized prerogatives. From that moment onwards, state sovereignty in Switzerland has characteristically been graded and shared between two levels – the cantons and the federal state. Article three of the current Swiss federal constitution of 1999 states: 'The cantons are sovereign, as far as their sovereignty is not limited by the federal constitution; they execute all rights that are not transferred to the federal state.'⁴ Therefore, the delegation of state competences to the national level takes place exclusively through the sovereign renunciation

³ Martin Körner, 'The Swiss Confederacy', in Richard Bonney (ed.), *The Rise of the Fiscal State in Europe, c. 1200–1815* (Oxford, 1999), pp. 327–57; Stefan Altorfer, *The Canton of Berne as an Investor on the London Capital Market in the 18th Century* (Working Papers/London School of Economics, Economic History Department; 85) (London, 2004).

⁴ The author's translation. The German original version of article three: 'Die Kantone sind souverän, soweit ihre Souveränität nicht durch die Bundesverfassung beschränkt ist; sie üben alle Rechte aus, die nicht dem Bund übertragen sind.' – Kriesi et al., *Nation and National Identity*, pp. 14–16.

of cantonal rights, which is precisely what has happened since 1848 in numerous partial revisions of the Swiss federal constitution. The historical experience of a federative network of allied republics transforming and modernizing itself into a federal state in 1848 thus has become a constitutional norm and practice.

A last introductory remark concerns the current political culture of Switzerland. Swiss citizens not only go to the polls to elect a new parliament every four years, but they also have to decide on average four times per year about a variety of political issues concerning their municipality, canton or the Confederation. They decide about urban and rural planning, they approve municipal or cantonal budgets, they decide about the tax rate and even whether or not to abolish the army or to join the European Union or the United Nations. For the politically active citizens, therefore, politics possesses a strong participative character and appears as a system of negotiations and procedures intended to reconcile the interests of the different parties, associations, regions and cultures of the country. Consequently, most Swiss citizens may have – perhaps more than people elsewhere – a vivid idea about being participants in the state, about sharing sovereignty and thus representing themselves as a constitutive element of state authority.

This statement might arouse the suspicion that I have been taken in by a naïve concept of people's sovereignty – in effect, reading Jean-Jacques Rousseau's brilliant invention of the identity of rulers and subjects all too trustingly and optimistically.⁵ Critics might also object that the Swiss case is precisely not representative for the process of state formation in Europe, and they may well cast doubt on Switzerland's character as a state at all, at least for the period before 1848.⁶

My brief portrait, however, is not intended to define the Swiss case as a paradigmatic point of reference for the question of statebuilding from below. Rather, I wanted to highlight the fact that historians' questions are more or less rooted in their own cultural experiences. This applies in particular for questions as broad as the one of statebuilding. Experiences and positions, however, inevitably imply perspectives. Asking about processes of statebuilding from below means raising the question of perspectives. 'From below' not only means the point of origin of specific forces, it also points towards a certain direction in which their influence becomes effective. At the same time, 'from below' fixes the historian's point of view and perspective. Both aspects are necessarily connected with each other.

⁵ For the articulation of quite an opposite state-experience see Wolfgang Reinhard, who denounces the impressive strengthening of state power made possible by introducing the fiction of people's sovereignty in the French Revolution (Wolfgang Reinhard, 'Frühmoderner Staat – moderner Staat', in Olaf Mörke and Michael North (eds), *Die Entstehung des modernen Europa 1600–1900* (Köln, 1998), pp. 1–9, here pp. 1 and 9).

⁶ Wolfgang Reinhard, 'Moderne Staatsbildung – eine ansteckende Krankheit', in Wolfgang Reinhard (ed.), *Verstaatlichung der Welt? Europäische Staatsmodelle und außereuropäische Machtprozesse* (München, 1999), pp. VII–XIV, here p. X.

The Topic: Perspectives, Inclusions and Limitations

Why should we approach the issue of statebuilding ‘from below’? How does this particular perspective fit with earlier research on the history of statebuilding? Which aspects of the subject can be grasped more clearly by taking this perspective? And what new problems do we get in exchange? What elements of the subject might become obscured or even invisible when looking from below? These questions will be addressed in the following conceptual, theoretical and historiographical reflections.

Recent historians in studies devoted to England, Scandinavia, Italy, France and the German speaking countries⁷ have independently suggested conceptualizations of the statebuilding process that imply a perspective from below. As a common denominator – very generally and provisionally speaking – they have identified the articulation of interests, moral concepts and needs by communities, corporate

⁷ The following, chronological list is not intended to be exhaustive: Hilton L. Root, *Peasants and Kings in Burgundy. Agrarian Foundations of French Absolutism* (Berkeley and Los Angeles, 1987); Gerald L. Harriss, ‘Political Society and the Growth of Government in Late Medieval England’, *Past & Present*, 138 (1993): 28–57; Harald Gustafson, *Central Power and Local Society in the 18th-Century Nordic States* (Lund, 1994); Giorgio Chittolini, ‘The “Private”, the “Public”, the “State”’, in Julius Kirshner (ed.), *The Origins of the State in Italy, 1300–1600* (Chicago, 1995), pp. 34–61; Elena Fasano Guarini, ‘Centre and Periphery’, in Julius Kirshner (ed.), *The Origins of the State in Italy, 1300–1600* (Chicago, 1995), pp. 74–96; Osvaldo Raggio, ‘Visto dalla periferia. Formazioni politiche di antico regime e Stato moderno’, in Maurice Aymard (ed.), *Storia d’Europa. L’età moderna. Secoli XVI–XVIII* (Torino, 1995), vol. 4, pp. 483–527; Heinrich R. Schmidt, *Dorf und Religion. Reformierte Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart, Jena and New York, 1995); Gerald E. Aylmer, ‘Centre and Locality. The Nature of Power Elites’, in Wolfgang Reinhard (ed.), *Power Elites and State Building* (Oxford, 1996), pp. 59–77; Paul Griffiths, Adam Fox and Steve Hindle (eds), *The Experience of Authority in Early Modern England* (Houndmills, London and New York, 1996); Peter Blickle (ed.), *Resistance, Representation and Community* (Oxford, 1997); Peter Blickle (ed.), *Gemeinde und Staat im Alten Europa* (München, 1998); Sheilagh Ogilvie, ‘The State in Germany. A Non-Prussian View’, in John Brewer and Eckhart Hellmuth (eds), *Rethinking Leviathan* (Oxford and New York, 1999), pp. 167–202; Gerald L. Harriss, ‘War and the Emergence of the English Parliament, 1297–1360’, in Clifford J. Rogers (ed.), *The Wars of Edward III* (Woodbridge, 1999), pp. 321–42; Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge, 2000); Steve Hindle, *The State and Social Change in Early Modern England, c. 1550–1640* (Basingstoke, 2000); Achim Landwehr, *Policey im Alltag* (Frankfurt/M., 2000); Caroline Castiglione, ‘Political Culture in Seventeenth-Century Italian Villages’, *Journal of Interdisciplinary History*, 31 (2001): 523–52; André Holenstein, ‘Gute Policey’ und lokale Gesellschaft im Staat des Ancien Régime. *Das Fallbeispiel der Markgrafschaft Baden(-Durlach)* (Epfendorf, 2003); Markus Meumann and Ralf Pröve (eds), *Herrschaft in der Frühen Neuzeit. Umriss eines dynamisch-kommunikativen Prozesses* (Münster, 2004); Caroline Castiglione, *Patrons and Adversaries: Nobles and Villagers in Italian Politics, 1640–1760* (Oxford, 2005).

entities, interest groups and subjects from local society as determining forces in the statebuilding process. From this perspective, statebuilding – that is the extension and strengthening of state institutions, courts and authorities and the activity of the state itself – no longer appears to be the exclusive achievement of dynasty members and their ministers, civil servants and generals. It rather seems to be the unintended outcome of interactive processes, which brought about and fostered the emergence of the state. Such processes occurred because specific state instances reacted to complex social problems, because they answered to the demands and claims of various groups and members of the society, because they rendered services to these groups and helped bring about what these groups expected from a higher political power – for instance the settling of disputes and the solution of conflicts, support for carrying through specific interests, or the implementation of specific concepts of public and social order.

By looking at the state and its formation from below – that is from the perspective of estates, corporations, communities and subjects – we fix one decisive structural feature of the pre-modern state as the systematic starting point for analysis. This approach would have been quite judicious and comprehensible for early modern politicians, lawyers and political theorists, too.

One of the most specific characteristics of the early modern state was the absence of a uniform state authority. We observe instead a complicated, fragmented and multi-layered structure of authority and political agency; political power in the sense of public power was exercised on many different levels and in many different social contexts and fields. The houses, the guilds and corporations, the communities, the estates and various groups of functional elites participated in the process of rule, thereby inducing a significant layering and fragmentation of political power.⁸ Early modern jurists and political philosophers rightly described this phenomenon as a ‘societas civilis cum imperio’. The exercise of authority was inseparably connected to its social substratum: it was a ‘socially deeply embedded state’, as Giorgio Chittolini emphasized in his pertinent article about the ‘private’, the ‘public’ and the ‘state’.⁹

⁸ Wim Blockmans, ‘Les origines des états modernes en Europe, XIIIe–XVIIIe siècles. Etat de la question et perspectives’, in Wim Blockmans and Jean-Philippe Genet (eds), *Visions sur le développement des états européens. Théories et historiographies de l’état moderne* (Rome, 1993), pp. 1–14; António Manuel Hespanha, ‘Pré-compréhension et savoir historique. La crise du modèle étatiste et les nouveaux contours de l’histoire du pouvoir’, in *Juristische Theoriebildung und Rechtliche Einheit. Beiträge zu einem rechtshistorischen Seminar in Stockholm im September 1992* (Lund, 1993), pp. 49–67, here pp. 59–64; Chittolini, p. 48; Raggio; Wolfgang Neugebauer, ‘Staat – Krieg – Korporation. Zur Genese politischer Strukturen im 17. und 18. Jahrhundert’, *Historisches Jahrbuch*, 123 (2003): 197–237; Reinhard Blänkner, ‘Strukturprobleme des frühmodernen Staates’, in Frederick S. Carney, Heinz Schilling and Dieter Wyduckel (eds), *Jurisprudenz, Politische Theorie und Politische Theologie* (Berlin, 2004), pp. 399–435.

⁹ Chittolini, esp. pp. 42f. and 46.

Such observations should prevent us from forming the idea of the state as a monolithic entity, and it should encourage us to take the existence of a plurality of power relations within the society of the *ancien régime* as a starting point of our research. We should be careful not to view the early modern state as detached or isolated from society. Instead of reproducing a distinction between state and society, so typical for modernity since the nineteenth century, we should seriously consider that within a 'societas civilis cum imperio', 'societas' always appeared in conjunction with 'imperium' and vice versa. Society was transfused by a multitude of power relations of political and public character, and political power was at the same time always rooted in specific social situations.

The specifically pre-modern character of such a state embedded in the 'societas civilis cum imperio' is more systematically taken account of when we choose a perspective 'from below'. Ideally, such a perspective helps us to avoid the heuristic and conceptual difficulties connected with approaches that have up to now predominantly informed research on statebuilding. Some historiographical remarks can exemplify this point. Historians have always been inevitably focused on a particular perspective when they have asked about the origins of the state, about the people involved in statebuilding and about the elements that make up a state's definition. Especially with this topic, which has stirred the interest of generations of historians, it is easy to recognize how different research approaches have been anchored to the contemporary positions and the culturally determined perceptions of the scholars involved.

Some Major Perspectives in the Historiography on Statebuilding

Historical research on statebuilding has not only been subject to different perspectives.¹⁰ Often it has also been more or less strongly marked by narrow teleological assumptions. One reason for this lies in the intention of many historians not to write the history of *the* state in general, but the history of *their* state. Another

¹⁰ See the historiographical surveys in Blockmans and Genet (eds), *Visions sur le développement des états européens*; Wolfgang Reinhard, 'Introduction', in Wolfgang Reinhard (ed.), *Power Elites and State Building* (Oxford, 1996); Thomas Ertman, *Birth of the Leviathan. Building States and Regimes in Medieval and Early Modern Europe* (Cambridge, 1997), pp. 10–19; Giovanni Levi, 'The Origins of the Modern State and the Microhistorical Perspective', in Jürgen Schlumbohm (ed.), *Mikrogeschichte, Makrogeschichte: komplementär oder inkommensurabel?* (Göttingen, 1998), pp. 53–82; Thomas Ertman, 'Explaining Variation in Early Modern State Structure. The Cases of England and the German Territorial States', in John Brewer and Eckhart Hellmuth (eds), *Rethinking Leviathan* (Oxford and New York, 1999), pp. 23–52; Reinhard, *Geschichte der Staatsgewalt*; Markus Meumann and Ralf Pröve, 'Die Faszination des Staates und die historische Praxis. Zur Beschreibung von Herrschaftsbeziehungen jenseits teleologischer und dualistischer Begriffsbildungen', in Markus Meumann and Ralf Pröve (eds), *Herrschaft in der Frühen Neuzeit. Umriss eines dynamisch-kommunikativen Prozesses* (Münster, 2004), pp. 11–49.

reason is to be seen in the fact that since the nineteenth century historians have identified the development of the state as a constitutive element of nation-building and of the process of modernization. This in turn implied a teleological way of looking at the problem, by assuming that the modern, that is the national state of the nineteenth and twentieth centuries, should provide the guiding criteria for historical analysis.¹¹

Historians have quite justly been warned about the Weberian trap, in which they might be caught when treating Max Weber's rational-bureaucratic state as a reference point and therefore inevitably focussing on criteria such as centralization, territorialization and bureaucratization.¹² If they decide to look for a state's achievements in implementing an internal and external monopoly of authority, in extending its bureaucratic institutions and in centralizing its power, they will doubtlessly find empirical evidence that confirms their supposition that these developments were crucial. They will point out the early modernity of the state they study, and therefore speak about an early modern state in the early modern period, but at the same time they will fail to notice that this state rarely had a clearly defined territory or population before the age of revolutions, nor was the ruling authority undivided or monopolized in a single hand.¹³ Declaring Weber's ideal type of the rational-bureaucratic centralized state to be the yardstick for state modernization furthermore means excluding other criteria, which could just as legitimately be defined as constitutive attributes of state modernity. We should think for instance about the perspicacious prediction of Alexis de Tocqueville, for whom the development of the modern state was inseparably linked to an increasing democratization of state authority.¹⁴ Democratic legitimacy as a feature of modernity, however, is not to be found in Weber's concept of the modern state.

There is another scholar whose research has massively influenced the history of statebuilding in the first half of the twentieth century and whose individual biography plainly reveals the impact of his researcher's perspective. The German historian Otto Hintze initially dealt with statebuilding from the aspect of the power state (*Machtstaat*). His fascination for the powerful national state of the nineteenth and early twentieth century and his experience with imperialism are easily detectable in his earlier writings before the First World War. For Hintze, the early modern state developed and asserted itself primarily as the effect of a competitive

¹¹ Blockmans and Genet (eds), *Visions sur le développement des états européens*; Fasano Guarini, p. 84; Blänkner, 'Strukturprobleme des frühmodernen Staates'.

¹² Anthony Molho, 'The State and Public Finance. A Hypothesis Based on the History of Late Medieval Florence', in Julius Kirshner (ed.), *The Origins of the State in Italy* (Chicago, 1995), pp. 97–135, here p. 101; John Brewer and Eckhart Hellmuth, 'Introduction: Rethinking Leviathan', in John Brewer and Eckhart Hellmuth (eds), *Rethinking Leviathan* (Oxford and New York, 1999), pp. 1–21, here pp. 18f.

¹³ Raggio; Blänkner, 'Strukturprobleme des frühmodernen Staates'.

¹⁴ Alexis de Tocqueville, *De la Démocratie en Amérique*, ed. by Eduardo Nella (Paris, 1990).

situation between the European monarchies. The state's main instruments in this struggle were diplomacy, the army and the bureaucracy, which extracted the necessary funding from the subjects' pockets. War between the states was identified as the major driving force for statebuilding. Hintze therefore explained Prussia's absolutist mode of statebuilding by noting the country's geopolitical position, which exposed it – much more than England – to warlike hostilities and literally forced it to set up a standing army and an efficient bureaucracy.¹⁵ Here, once more, the same verdict can be passed: historians who believe geopolitics to be the decisive factor in motivating states to set out on the absolutist way of statebuilding – that is developing large armies and bureaucratic structures – will doubtlessly find empirical evidence for this view and hold the corresponding features to be crucial. They will measure the modernity of an absolutist state by its militarization, bureaucratization and the elimination of representative assemblies of estates, but they will fail to notice that England – the classic comparative example in Hintze's typologies – despite its representative constitution, by no means renounced the development of its army and bureaucracy. They will totally fail to see that England's development – as demonstrated in John Brewer's fundamental studies – was by no means obstructed by its parliament. On the contrary, the English state was much more efficient than the absolutist states of the Continent, and it was so *because* of its strong representative assembly, which enabled the English state to base the funding of army and bureaucracy on a system of a politically broadly consolidated national debt.¹⁶

After the First World War – in a peculiar parallelism to the democratization of the German political system in the early Weimar Republic – the same Otto Hintze began to dedicate his typological studies to the estates' and proto-parliamentary assemblies in old Europe. From now on, the differences between the constitutional foundations of the British bicameral system and the three curiae of Continental estates' assemblies became decisive for Hintze's theory of the two basically different approaches to statebuilding in Europe.

Again, it does not seem to be a mere coincidence that after the power state had been discredited by the catastrophic experience of the Second World War, historians focussed their discussions about the driving forces in the process of statebuilding on internal and social forces instead of external factors. By doing so, historians once again stressed very different aspects of the underlying process. In his influential approach, Gerhard Oestreich asked about the disciplining of administrative and

¹⁵ Otto Hintze, 'Staatsverfassung und Heeresverfassung' (1906), in Otto Hintze, *Staat und Verfassung*, ed. by Gerhard Oestreich (Göttingen, 1970), pp. 52–83. For a historiographical appreciation see Blockmans, 'Les origines des états modernes en Europe', pp. 4f.; Ertman, *Birth of the Leviathan*, pp. 11f.; Brewer and Hellmuth, pp. 2–4.

¹⁶ John Brewer, *The Sinews of Power: War, Money and the English state, 1688–1783* (London, 1989); Ertman, *Birth of the Leviathan*, pp. 24f.; Brewer and Hellmuth, pp. 2–8; Ertman, 'Explaining Variation in Early Modern State Structure', pp. 23–52; Reinhard, *Geschichte der Staatsgewalt*, p. 325.

functional elites in the service of the state, and about the disciplining of the subjects, as major aspects of early modern statebuilding. Oestreich conceived this disciplining process not only as a characteristic manifestation of the early modern state that penetrated widely into society, but also as a condition for the subsequent fundamental democratization of the nineteenth century.¹⁷ The repertory of police ordinances newly compiled by the Max Planck Institute for European Legal History in Frankfurt/M. actually reveals explosively expanding legislation in the German territories, which appears to be an essential indicator for the dynamism of early modern state authority.¹⁸ Since the sixteenth century, ever more areas of religious-cultural, social and economic life became subject to state legislation and intervention. Finally, prosopographical social history has examined networks of patron–client relations and focussed on the dynamic members of power elites in very different social fields, who as patrons and clients took advantage of public and state institutions and resources in order to promote their own interests.¹⁹

We can thus plainly recognize in these important historiographical approaches specific aspects of state politics in the second half of the twentieth century: the state of police surveillance, the legislative state and the state of parties or trade-unions characterized by the lobbies of interest- and pressure-groups seeking to influence the decisions of state authority from outside and below the formal state institutions.

As the final chapter of Wolfgang Reinhard's magisterial work on the history of state authority makes evident, today's evaluation of the history of state authority has been particularly influenced by the global experience of the state's 'crisis and transformation'.²⁰ The decolonization process demonstrated the serious difficulties that emerged from the transfer of the European state model to countries outside the European-Atlantic sphere. National states are increasingly integrating themselves into supranational organizations, renouncing thereby their classical national sovereignty rights. At the same time, the limited carrying capacity of the social- and welfare state becomes ever more clearly recognizable. For these reasons, a history of state authority interpreted as a story of runaway success is becoming subject to ever greater critical distance.

Looking from Below: Historiographical Traditions

Pointing to the effects that different perspectives have had on the historiography of European statebuilding is likely to make one aware of the methodical and

¹⁷ Gerhard Oestreich, 'Strukturprobleme des europäischen Absolutismus', *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte*, 55 (1968): 329–47.

¹⁸ Karl Härter and Michael Stolleis (eds), *Repertorium der Policeyordnungen der frühen Neuzeit* (Frankfurt/M., 1996).

¹⁹ Reinhard (ed.), *Power Elites and State Building*.

²⁰ Reinhard, *Geschichte der Staatsgewalt*, pp. 480–536.

conceptual implications that the topic carries. According to their positions and perspectives, historians have declared different structural constellations to be the factors crucial for statebuilding. According to their different points of view, they have also rendered various activities and institutions as the defining features of the state. We can continue our methodical inquiry into different perspectives with an initial reflection upon the perspectives linked to 'looking from below'. Again, a historiographical approach seems to be useful.

The view from below has already been put into practice several times, always with a more or less systematic unfolding of the implications that this approach may carry for a general understanding of statebuilding. Looking at statebuilding from below means devoting special attention to the internal social forces and constellations of problems that accompany the development of state institutions and structures. We can discern three fields of research where social constellations have been systematically taken into account for the explanation of the internal development of the state:

1. studies on estates and estates' assemblies;
2. studies on social conflicts and popular resistance;
3. studies on elite-networks and political clientelism.

Estates' and Representative Assemblies and Statebuilding

The historiography about estates and pre-modern representative assemblies reaches back to the political struggles between 'constitutionalism and the monarchical principle' in the first half of the nineteenth century.²¹ Assessments of the specific contribution of estates' assemblies to the development of the state varied considerably, according to the political standpoint of the beholder.²² After 1815 and during the restoration era, a predominantly critical view of the estates and their assemblies prevailed among historians. In the second half of the nineteenth century, however, Otto von Gierke stressed their positive contribution to the state's development.²³ Other historians followed Gierke in emphasizing the achievements of the estates as co-rulers during dynastic crises and as collaborators in state legislation and administration; they also pointed to their considerable share in arranging the public tax-system and their efforts to promote the country's interests and unity, if necessary even against the political designs of the dynastic

²¹ For a survey of the German historiography see Kersten Krüger, *Die landständische Verfassung* (München, 2003); Blänkner, 'Strukturprobleme des frühmodernen Staates', p. 403. See also Barbara Stollberg-Rilinger, *Vormünder des Volkes? Konzepte landständischer Repräsentation in der Spätphase des Alten Reiches* (Berlin, 1999).

²² Neithard Bulst, 'Rulers, Representative Institutions, and their Members as Power Elites. Rivals or Partners?', in Wolfgang Reinhard (ed.), *Power Elites and State Building* (Oxford, 1996), pp. 41–58, here pp. 57f.

²³ Krüger, pp. 36–45.

rulers. However, this positive historiographical evaluation of the estates' role was often limited to the early period of the territorial state in the Late Middle Ages and up to the early sixteenth century. For the subsequent period – the era of the so-called absolutism – historians tended to attribute much less importance to the estates. They even reduced them to an obstacle in the way of powerful monarchs, who were identified as the sole bearers of the state ideology and the unique driving force for state formation. Whereas the estates had formerly been described as representatives of the country and negotiating partner of the princes – with clear reference to the idea of representation found in the modern parliamentarism and constitutionalism of the nineteenth century – they were now declared to have been selfish representatives of their own particular privileges and interests.

Throughout the interwar years and after the Second World War, historiographical interest in estates' assemblies as early forms of representative and parliamentary political systems increased steadily. The authoritative researchers on the history of estates' assemblies (Otto Hintze, Otto Brunner, Werner Näf, Dietrich Gerhard) once more turned to a positive, if not entirely undisputed, assessment of the estates' contribution to statebuilding. Werner Näf, for example, emphasized the effect of the estates' cooperation on the unfolding of the state's activities since the late Middle Ages: 'Even when the "principality ... was leading the state" and "the estates were of only secondary importance", neither was able to succeed with its plans independently; they had to work together.' Krüger correctly noted the fact that Näf thus freed the estates from the odium of selfish hostility towards the state.²⁴

During the last decades, thanks to the research of Peter Blickle and Wim Blockmans, the historiography on estates and estates' assemblies has concentrated even more strongly than before on the social forces involved in 'statebuilding from below'. Peter Blickle's studies about the so-called 'Landschaften' enlarged the social spectrum of analysis by integrating the representative corporations of rural housefathers.²⁵ Wim Blockmans suggested a typology for European estates' assemblies that turned away from the usual fixation on the forms of representation, looking instead for the interaction between a society's specific social and economic structure on one side, and the respective forms of representation on the other. He has widened the spectrum of representative forms to include all procedures and institutions 'where the subjects by themselves could force their governments to share power by the means of institutionalized consultations'.²⁶

Two recent observations corroborate the thesis that research on estates can at least partially be perceived as an effort to understand statebuilding as a process from below. Johannes Burkhardt has qualified the wars of the early modern period

²⁴ Quoted in Krüger, pp. 60f.

²⁵ Peter Blickle, *Landschaften im Alten Reich* (München, 1973); Krüger, pp. 70f.

²⁶ Wim P. Blockmans, 'A typology of representative institutions in late medieval Europe', *Journal of Medieval History*, 4 (1978): 189–215; Krüger, pp. 73–6, quotation p. 74.

as wars of statebuilding (*Staatsbildungskriege*), that is wars that substantially shaped the process of statebuilding in Europe. For Burkhardt the wars of the seventeenth and eighteenth century brought about two major results: first, the definitive failure of all attempts by the great monarchies to establish themselves as hegemonies in Europe; second, Europe saw the emergence of a system of middle-sized states. Within this framework, Burkhardt interpreted both the war of independence between the Dutch Republic and Spain and the war of the Bohemian estates against Habsburg that marked the beginning of the Thirty Years' War as two strong attempts at statebuilding borne by the estates, a 'statebuilding from below'. The former turned out successfully, and gave rise to a state with a republican constitution based on the estates, whereas the latter failed.²⁷

Other recent studies on the history of pre-modern estates and parliamentary assemblies seem to be of even greater importance for our topic. It has been pointed out that the very existence of representative assemblies accelerated statebuilding in England and the Low Countries compared to the process in the classic absolutist monarchies of Europe. Strong parliaments and estates' assemblies provided these states with much more efficient possibilities for state funding, because the state's credit (in the literal sense of credibility and trustworthiness) was essentially higher than it was in absolutist monarchies. England and the Dutch provinces could therefore raise money at relatively low interest rates on the public financial markets, financing the expansion of their armies and bureaucracies through an attractive system of national debt.²⁸ These observations are especially instructive, because they refute a key position in the debate on statebuilding during the so-called absolutist period, for which the suppression of estates or parliamentary collaboration represented a precondition for an increase in state resource extraction. The classic argument that war and its funding generated momentum for statebuilding turns out to be one-dimensional, because it does not take into consideration the specific opportunities and methods of state funding offered by and connected to different political systems.²⁹ Unlike England or the Netherlands,

²⁷ Johannes Burkhardt, 'Der Dreißigjährige Krieg als frühmoderner Staatsbildungskrieg', *Geschichte in Wissenschaft und Unterricht*, 45 (1994): 487–99, esp. pp. 491–4; Burkhardt, 'Die Schweizer Staatsbildung im europäischen Vergleich', pp. 271–86.

²⁸ Brewer; Ertman, *Birth of the Leviathan*; Ronald G. Asch, 'Kriegsfinanzierung, Staatsbildung und ständische Ordnung in Westeuropa im 17. und 18. Jahrhundert', *Historische Zeitschrift*, 268 (1999): 635–71; Ertman, 'Explaining Variation in Early Modern State Structure'; Patrick K. O'Brien and Philip A. Hunt, 'England, 1485–1815', in Richard Bonney (ed.), *The Rise of the Fiscal State in Europe, c. 1200–1815* (Oxford, 1999), pp. 53–100; Reinhard, *Geschichte der Staatsgewalt*, p. 325; David Stasavage, *Public Debt and the Birth of the Democratic State. France and Great Britain, 1688–1789* (Cambridge, 2003). For the Holy Roman Empire see Neugebauer, pp. 197–237.

²⁹ Brian M. Downing, *The Military Revolution and Political Change. Origins of Democracy and Autocracy in Early Modern Europe* (Princeton, 1992); Molho, pp. 102–4; Ertman, *Birth of the Leviathan*; Ertman, 'Explaining Variation in Early Modern State

the absolutist monarchies of France and Spain financed their wars in a way that did not promote statebuilding, but rather the erosion of the state.³⁰

Communalism, Popular Resistance and Statebuilding

A perspective from below has always been a significant feature of the historiography on social conflicts, popular protest and resistance. We have learned that resistance and revolts of citizens and peasants against rulers and authorities had their own specific rationality, that these movements followed specific norms and moral concepts and that they cannot be regarded as unsuccessful or without consequences for the process of statebuilding, even if they were actually often suppressed by military means.³¹

The general editors responsible for the research project of the European Science Foundation devoted to 'The Origins of the Modern State in Europe, Thirteenth to Eighteenth Centuries' also shared this view. In the larger context of the whole project, several European historians under the direction of Peter Blickle examined the significance of 'Resistance, Representation and Community' for the process of statebuilding. Their research provides a variety of empirical evidence for the leading thesis that the great mass of the population – commonly called the subjects – participated in various ways and by different means in the process of shaping the state's policy, or as Blickle characterized it, in the 'modernization of the state by its subjects'. 'Resistance, Representation and Community' are actually three separate columns that together support Blickle's view on the subjects' motives and their role in the process of statebuilding.³² The contributors to the ESF volume under Blickle's editorship succeeded in identifying various forms of political representation that allowed citizens and peasants to become involved in the negotiations between the authorities' taxation claims and their own complaints. Even in territories where the subjects could not dispatch representatives to an estate assembly, petitioning offered them the means to intervene in legislation and political issues.³³

Structure', pp. 19–34, 156–223 and 317–24; Asch, p. 643; Richard Bonney (ed.), *The Rise of the Fiscal State in Europe, c. 1200–1815* (Oxford, 1999), p. 9.

³⁰ Ertman, *Birth of the Leviathan*, pp. 90–155.

³¹ Peter Blickle, *Unruhen in der ständischen Gesellschaft* (München, 1988); Blickle (ed.), *Resistance, Representation and Community*; Andreas Suter, *Der schweizerische Bauernkrieg von 1653* (Tübingen, 1997), pp. 563–82.

³² Blickle (ed.), *Resistance, Representation and Community*, pp. 1–4 and 325–38.

³³ *Ibid.*, pp. 325–38; Peter Blickle, 'Einführung. Mit den Gemeinden Staat machen', in Peter Blickle (ed.), *Gemeinde und Staat im Alten Europa* (München, 1998), pp. 1–22, here pp. 14–16; Cecilia Nubola and Andreas Würzler (eds), *Suppliche e 'gravamina'. Politica, amministrazione, giustizia in Europa (secoli XIV–XVIII)* (Bologna, 2002); David M. Luebke, 'How to Become a Loyalist. Petitions, Self-Fashioning, and the Repression

The formal plea to a higher court was another procedure used by subjects of the early modern period to defend their interests. In the Holy Roman Empire since the sixteenth century, social conflicts were increasingly fought out by legal means, whereas the use of force diminished. This meant that lawsuits from dissatisfied subjects before higher courts helped to establish the juridical procedures of the early modern state. Furthermore, according to Blicke it can also be said that revolts and the subjects' lawsuits 'were more of an advantage than a threat to the process of state centralization, because they were mostly directed against the immediate rule of nobles or clerics. The kings thus became arbitrators between the subjects and their feudal lords and could enormously strengthen and expand their juridical competence.'³⁴

From Blicke's point of view, the subjects had been shaping the process of statebuilding even *before* they were represented in estates' assemblies, before they handed in their grievances or petitions, and before they took legal actions before higher courts or even put up resistance. Blicke sees urban and rural communities as constitutive elements in the architecture of the state in old Europe. As such, communities were 'genuine creations of the subjects'. Kings and princes might found cities, but it was only through 'a voluntary act of the citizens' that cities became communities and autonomous institutions.³⁵ The community thus served as the major institutional setting for the subjects' policy: resistance by citizens and peasants, the policy of parliamentary representation and the lawsuits initiated by subjects were all rooted in the community.³⁶

Before considering a systematically adopted perspective from below, one might want to comment that Blicke's theory of communalism seems to conceptualize the community in a too homogenous or holistic manner that tends to disregard the hierarchies within communities. At least, the specific limits of communal cohesion should be examined in periods of stronger demographic, economic and cultural stress, when only parts of the local population were still integrated in the community, whereas those groups excluded from the institutional setting of the community had to look for other ways to bring forward their interests and needs.

Political Clientelism, Elite-networks and Statebuilding

Though taking a perspective from below as well, the methodological approach of political network analysis is completely different from that adopted in Blicke's model of communalism. Certainly, network analysis provides a useful approach to investigating – in a certain sense – the political agency of actors in various

of Unrest (East Frisia, 1725–1727)', *Central European History*, 38 (2005): 353–83. For England see Brewer, pp. 233–6.

³⁴ Blicke, 'Einführung', p. 17.

³⁵ Ibid., pp. 18f.

³⁶ Ibid., pp. 17f.

social groups.³⁷ But network analysis is less interested in the institutional or collective actions of communities or subjects' groups; its focus is rather on the relational behaviour of social actors. Relational behaviour takes place within networks characterized by informality, which are 'held together by relations of kinship, friendship, common homeland or clientelism'.³⁸ The focus is on the concrete contexts for actions that establish and strengthen these relations and that are used by the members of the networks – according to their position – in order to articulate their interests or exercise their influence. In so far as network analysis also observes the relations between peripheries and centres and the 'critical interfaces between local systems and larger entities',³⁹ these studies contribute in their specific way to understanding political culture and the statebuilding process as based on interactions.⁴⁰ Network analysis relies on the assumption that the pre-modern political system 'was hardly based on abstract, institutionalized relations and structures' and that it therefore can only be adequately understood by analysing the relational behaviour of individuals, families, patrons and clients. Scholars taking this approach emphasize this point, because relational behaviour in networks 'strongly limited the institutionalization of rule and the functionalising of the authoritative apparatus'.⁴¹ Therefore network analysis includes a whole range of actions that established or maintained friendship, helped to obtain an office, position, sinecure or a title, or promised an increase of influence and social prestige. From this interactive perspective, Wolfgang Reinhard described the role of power elites as reliable supporters of the expansion of state authority: by serving

³⁷ Wolfgang Reinhard, *Freunde und Kreaturen. 'Verflechtung' als Konzept zur Erforschung historischer Führungsgruppen* (München, 1979); Chittolini, pp. 40–2; Reinhard (ed.), *Power Elites and State Building*; Aylmer; Stefan Brakensiek, 'Lokale Amtsträger in deutschen Territorien der Frühen Neuzeit. Institutionelle Grundlagen, akzeptanzorientierte Herrschaftspraxis und obrigkeitliche Identität', in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 49–67; Stefan Brakensiek et al. (eds), *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, 2005).

³⁸ Julia Zunckel, 'Handlungsspielräume eines Mailänder Erzbischofs. Federico Borromeo und Rom', in Wolfgang Reinhard (ed.), *Römische Mikropolitik unter Papst Paul V. Borghese (1605–1621) zwischen Spanien, Neapel, Mailand und Genua* (Tübingen, 2004), pp. 427–567, here pp. 563f.

³⁹ Christian Windler, 'Beziehungen makeln. Gemeinde und königliche Gerichte in Spanien im ausgehenden Ancien Régime', *Zeitschrift für Historische Forschung*, 24 (1997): 53–87, here p. 56.

⁴⁰ This becomes evident in the conceptualization of the micro-level in Wolfgang Reinhard's explanatory model for the growth of state power see Reinhard (ed.), *Power Elites and State Building*, pp. 3–9; Reinhard, *Geschichte der Staatsgewalt*, pp. 20, 23 and 136; Wolfgang Reinhard, 'Kommentar: Mikrogeschichte und Makrogeschichte', in Hillard von Thiesen and Christian Windler (eds), *Nähe in der Ferne. Personale Verflechtung in den Aussenbeziehungen der Frühen Neuzeit* (Berlin, 2005), pp. 135–44, here pp. 142–4.

⁴¹ Zunckel, pp. 563f.; Reinhard, *Geschichte der Staatsgewalt*, pp. 132–40.

their princes, these elites could climb up the social hierarchy; in consequence, increasing the power of their princely employer seemed to be in their own best interest.⁴²

These three briefly characterized approaches all show a more or less clear distancing from the perspectives that long dominated in historical research. They ask about social and local forces in the process of statebuilding, which is no longer understood as the development of a supra-structure that has exclusively been pushed ahead 'from above' – that is by dynasts and political or military elites. Statebuilding is no longer viewed as a process that penetrated or befell the society of estates and corporations 'from above'. Finally, these perspectives include a theoretical perspective – admittedly of varying conciseness and consequence – that includes a praxeological or micro-historical approach to institutions and explains their emergence as the outcome of the social and political practices of various actors.⁴³

Statebuilding from Below – the Topic

To look at statebuilding from below first of all means turning away from the perspective of traditional historiography of diplomacy, war, administration, and turning away from dynasts and functional elites as the principal players acting on these fields. As long as historians treated bureaucratization, the institutionalization of jurisdiction, the expansion of fiscality or warfare as the crucial features of the early modern state, they concurrently tended to designate princes and the administrative and military elites at the top of the state as the sole driving and guiding forces for its development. According to this view, the state was 'covering' the society of estates and corporations by forcing its way through it 'from above'. During the so-called 'Age of Absolutism', this view saw competing bearers of authority and political power within the 'societas civilis cum imperio', such as the nobility, the church, the estates, the cities and rural communities, becoming dependent and marginalized by the state. The state eventually monopolized legitimate political power in its hands and established itself as the sole sovereign power over an increasingly disempowered 'societas civilis (sine imperio)'.

One feature of this narrative should by no means be denied: statebuilding did mean an increasing concentration of legitimate political authority and the accumulation of power in the hands of those political players who mastered the enhancement and redistribution of power more successfully than their rivals, and who eventually found themselves among the very few actors remaining on the

⁴² Reinhard, 'Introduction', pp. 6f.; Reinhard, 'Frühmoderner Staat – moderner Staat', pp. 3f.

⁴³ Reinhard Blänkner, 'Überlegungen zum Verhältnis von Geschichtswissenschaft und Theorie politischer Institutionen', in Gerhard Göhler (ed.), *Die Eigenart der Institutionen. Zum Profil politischer Institutionentheorie* (Baden-Baden, 1994), pp. 85–122, here p. 104.

stage of sovereign states in Europe. But we have good reason to question the often underlying assumption that this process was passively accepted, endured or suffered by an apolitical society of subjects, which was not much more than a recipient of state ordinances and orders, an object of social disciplining through criminal, religious and moral courts or a victim of fiscal skimming or warfare.⁴⁴ This view would only reaffirm the dichotomous concept of rule, and thereby ignore the fact that in the early modern society, power was exercised on many different levels.⁴⁵ The findings of some recent international research should lead us to ask critical questions about the idea of statebuilding as a one-way top-down process.

Statebuilding from Below: Fields of Research

Although statebuilding can be described as the concentration of legitimate political authority and as the accumulation of power in the hands of certain political players, it is important to establish a critical objection to a conclusion that is often drawn from this observation. Many accounts of statebuilding rest on mistaken assumptions when they describe the effects of this process on the relations between local societies and state authorities, between periphery and centre. This misleading assumption states that the total amount of power and political authority was fixed, so that an increase in power exercised by one player *must* have been balanced by corresponding losses on the part of the remaining players. This is the classical assumption of a zero-sum game.⁴⁶ A well-known area where this assumption may

⁴⁴ Oestreich; Hans Maier, *Die ältere deutsche Staats- und Verwaltungslehre* (2nd edn, München, 1980); Charles Tilly, *Coercion, Capital, and European States, AD 990–1990* (Cambridge, 1990); Rudolf Vierhaus (ed.), *Das Volk als Objekt obrigkeitlichen Handelns* (Tübingen, 1992); Michael Stolleis et al. (eds), *Policey im Europa der Frühen Neuzeit* (Frankfurt/M., 1996); Wolfgang Reinhard, 'Sozialdisziplinierung – Konfessionalisierung – Modernisierung', in Nada Boškovska Leimgruber (ed.), *Die Frühe Neuzeit in der Geschichtswissenschaft* (Paderborn et al., 1997), pp. 39–55; Heinz Schilling, 'Profil und Perspektiven einer interdisziplinären und komparatistischen Disziplinierungsforschung jenseits einer Dichotomie von Gesellschafts- und Kulturgeschichte', in Heinz Schilling (ed.), *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa* (Frankfurt/M., 1999), pp. 3–36; Reinhard, *Geschichte der Staatsgewalt*.

⁴⁵ David W. Sabeian, *Das zweischneidige Schwert. Herrschaft und Widerspruch im Württemberg der frühen Neuzeit* (Frankfurt/M., 1990), pp. 38f.; Chittolini; Raggio. – The underlying theoretical concept has been developed by Michel Foucault, 'Wie wird Macht ausgeübt?', in Jan Engelmann (ed.), *Michel Foucault. Botschaften der Macht* (Stuttgart, 1999), pp. 187–201. See also Michael Maset, *Diskurs, Macht und Geschichte. Foucaults Analysetechniken und die historische Forschung* (Frankfurt/M. and New York, 2002), pp. 80–103; Achim Landwehr, 'Diskurs – Macht – Wissen. Perspektiven einer Kulturgeschichte des Politischen', *Archiv für Kulturgeschichte*, 85 (2003): 71–117, here pp. 110–12.

⁴⁶ For critical objections to the assumption of a zero-sum game see Molho, p. 101; Brewer and Hellmuth, pp. 18f.; Braddick, *State Formation in Early Modern England*, p. 93;

be found is in the historiography on estates' assemblies, where many historians have established a necessary link between the rise of central monarchies and the decline of the estates' political participation during the so-called Age of Absolutism.

This assumption seems to be far too static. It fails to notice that statebuilding not only corresponded to a redistribution of authority and power within a certain area, but that it was also specifically linked to an increasing intensity of formalized authority and power relations between centres and local societies. Local societies confronted new and increasing demands from state authorities, courts and officeholders, who sought to make the fiscal and military resources in local societies accessible for the aims of the state. The early modern state furthermore intended to educate its subjects, to make their way of life more Christian and to reform their manners and culture. Further basic elements of this intensified communication included the construction of school systems and legislation in sumptuary matters.

The intensifying communication associated with statebuilding also becomes evident with the introduction of new administrative procedures and techniques and the emergence of new media and channels of communication between centres and localities.⁴⁷ Now, it has obviously been a shortcoming of many older studies that they unilaterally attributed such intensifying communication and strengthening institutional structures solely to the initiative of actors and bodies at the top respectively at the centre of state authority. Constitutional and legal historians in particular have long worked primarily with normative sources. In their studies, they therefore tended to reproduce the hierarchical top-down perspective that is commonly inscribed in normative sources, so that they ended up with simplistic and one-sided assumptions about the working and agency of complex institutions and diverse actors.

However, other research makes it clear that the newly established apparatus of administration and the new media and channels of communication did not serve exclusively to communicate the demands and instructions of dynastic leaders and their elites to their estates, communities and subjects, but that – this is a truism of communication theory – they could be used in various ways by the estates, corporations, communities and subjects as well. New structures and channels not only confronted people with duties and burdens, but also created new opportunities for agency, since they were a priori open to multiple appropriations and usages, and offered starting points for new forms of interaction between centres and local societies.

Such widening communication, and the transformation of interfaces between centres and peripheries, opened up entirely new fields for political action and for the exercise of political power. Within the structural framework of the early modern state and its '*societas civilis cum imperio*', a general intensification of politics affected all levels of the state, that is houses, corporations, communities

Hindle, *The State and Social Change in Early Modern England*, pp. 12f.

⁴⁷ Holenstein, '*Gute Policey*' und lokale Gesellschaft im Staat des Ancien Régime; Blänkner, 'Strukturprobleme des frühmodernen Staates', pp. 430f.

and estates. Political communication and interaction between the different levels of the ‘societas civilis cum imperio’ did not cease, but rather changed its quality and became more compressed and intense. This qualitative change of interaction between local society and the bearers of sovereign authority deeply influenced the process of statebuilding.⁴⁸

This conclusion appears as the common denominator among a series of recent studies on the process of statebuilding in different European countries. They all have in common a thematic focus on aspects of internal state activity, and a noticeable scepticism about what Steve Hindle criticized as the ‘long-standing obsession of historians of state-building with the evolution of bureaucracy and taxation’ – an obsession that prevented such historians from understanding the exercise and experience of ‘governance’ within a society in its actual importance for the unfolding of state institutions.⁴⁹

Local initiatives in legislation and administrative measures For England and the territories of the Holy Roman Empire, recent research has emphasized the impact of what early modern German political theorists came to call ‘gute Policey’ (‘good policy’)⁵⁰ on expanding state activity. This impact becomes easily tangible in the explosive increase of ordinances and mandates from the sixteenth to the eighteenth century.⁵¹ Such territorial legislation stood for a novel understanding of politics

⁴⁸ ‘Indeed, there is an increasing sense that the growth of government and the imposition of a new range of public functions upon governors, however humble, might have had a more ambiguous impact at local level. The strengthening of the hand of local elites might well have reinforced local communities. Far from being regarded as intrusive and alien, new vertical ties and demands might well have fostered the incorporation of narrower into wider public identities. Central to this novel understanding of the relationship between centre and localities is the idea that the early modern polity comprised a series of elaborate overlapping social and political communities, “an incredibly complex set of planes which may or may not overlap”. The interests of centre and periphery were not, therefore, mutually exclusive, and political power was not necessarily a zero-sum game between them’ (Hindle, *The State and Social Change in Early Modern England*, pp. 12f.).

⁴⁹ Hindle, *The State and Social Change in Early Modern England*, p. 236; Braddick, *State Formation in Early Modern England*, pp. 13f.

⁵⁰ Maier; Marc Raeff, *The Well-Ordered Police State* (New Haven and London, 1983); Stolleis et al. (eds), *Policey im Europa der Frühen Neuzeit*; Reinhard, *Geschichte der Staatsgewalt*, pp. 363f.; Karl Härter (ed.), *Policey und frühneuzeitliche Gesellschaft* (Frankfurt/M., 2000); André Holenstein, Frank Konersmann, Josef Pauser and Gerd Sälter (eds), *Policey in lokalen Räumen. Ordnungskräfte und Sicherheitspersonal in Gemeinden und Territorien vom Spätmittelalter bis zum frühen 19. Jahrhundert* (Frankfurt/M., 2002); Holenstein, ‘Gute Policey’ und lokale Gesellschaft im Staat des Ancien Régime.

⁵¹ *Ibid.*; Karl Härter, *Policey und Strafrecht in Kurmainz. Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat* (Frankfurt/M., 2005).

and government on the part of the state – a ‘governmentality’ (Michel Foucault)⁵² – which no longer contented itself with being the protector of the law and of smoothly running jurisdiction, but began to use ‘Policey’ – that is politics – as an instrument to guide and control social, economic and cultural developments.

This political concept created new opportunities for political communication between central state authorities and the local society. Whereas the older research – following a simple and mechanistic concept – had been satisfied by establishing that the sovereigns enacted laws and proclaimed them to the subjects, the studies of Steve Hindle and Michael Braddick on social and moral legislation in late sixteenth and early seventeenth-century England have asked about the social forces that initiated such legislation in the first place. In the period of demographic expansion and strong social differentiation during the decades before the Civil War (c.1640), the English government made considerable efforts to fight dearth, hunger, epidemics and social disintegration by the means of poor law and moral legislation. ‘In all this the role of local initiative was crucial. National initiatives frequently followed local ones.’⁵³ The impetus was often given by the part of the local population that English social history named ‘the middling sort’, a class of socially integrated and economically subsistent housefathers who dominated local politics and felt especially threatened by increasing poverty and its consequences, such as alcoholism, illicit sexual relations and criminality. Braddick and Hindle convincingly show that these local elites also programmatically influenced social legislation and poor law. Legalization and state authorization legitimized their patriarchal concept of social order and put it into practice.⁵⁴

In my own study on the interrelation of state government and local society in the eighteenth-century margraviate of Baden, I showed how the government’s legislation rested on a sophisticated system of information channels installed between local societies and the central authorities. In order to govern through legislation and administration, the rulers had to obtain knowledge about the living conditions of their subject population and the rural communities; therefore, the gathering of information became crucial and the establishment and implementation of bureaucratic techniques such as periodic visitations, commissions, reports, enquiries, indictments and presentments became a necessary corollary of the early modern ‘police state’. Information about the subjects’ world and their living conditions had to be obtained locally; in consequence, collaboration with representatives of the local society was decisive. Without the many-sided

⁵² Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France, 1977–1978*, ed. by Michel Senellart (Paris, 2004), pp. 91–377.

⁵³ Braddick, *State Formation in Early Modern England*, pp. 128f.; Hindle, *The State and Social Change in Early Modern England*.

⁵⁴ Hindle, *The State and Social Change in Early Modern England*, pp. 146–75; Braddick, *State Formation in Early Modern England*, pp. 101–75; Holenstein, ‘*Gute Policye*’ und lokale Gesellschaft im Staat des Ancien Régime, pp. 778–80.

cooperation of members of local society, these information-channels would not have worked.⁵⁵

The practices of state officeholders in local societies Our understanding of how the early modern state apparatus functioned has become more clearly defined in the course of studies about the practical experiences of officeholders in local societies. Their agency crucially influenced the state's significance and efficiency on the spot, since they – in the true sense of the word – embodied the state. Both Stefan Brakensiek and Michael Braddick have stressed how the 'room for manoeuvre [by officeholders] was quite essentially dependent on their social and cultural environment'. For the implementation and the enforcement of state orders and measures, the officeholders acted as the decisive 'interface between authorities and population'.

From this point of view, local officeholders no longer appear to be the exclusive tool and executive of a monarch or central authority, but rather as mediators of rule who had to move carefully on confusing fields to maintain their position. ... The territories' capacity for implementation very substantially depended on the professional behaviour of their local representatives. ... The 'management qualities' of local officeholders, their position as 'brokers of power' who controlled processes of negotiation and balanced diverging interests [was] decisive ... for the specific shaping of the early modern state.⁵⁶

This performance in turn depended on the officeholders' ability to integrate their activities within the complex network of relations and the local power structures in their administrative districts. Both lower officeholders, who were recruited from local elites of a village or parish, and middle or higher officeholders, who came from outside the local society and embodied 'state authority' for a fixed period, had to take account of these. Because of the ambiguity of their position – that is their 'double character as representatives of authority on the spot and as representatives of the local community against authority' – the lower officers in particular had to balance the demands and requirements of their office against their consideration of local circumstances. But even the direct agents of the central authorities, according to Wolfgang Reinhard, had to make use of 'micro-political

⁵⁵ Holenstein, 'Gute Policy' und lokale Gesellschaft im Staat des Ancien Régime.

⁵⁶ Brakensiek, 'Lokale Amtsträger', p. 50. For further evidence see Braddick, *State Formation in Early Modern England*; Thomas Klingebiel, *Ein Stand für sich? Lokale Amtsträger in der Frühen Neuzeit. Untersuchungen zur Staatsbildung und Gesellschaftsentwicklung im Hochstift Hildesheim und im älteren Fürstentum Wolfenbüttel* (Hannover, 2002); Holenstein, Konersmann, Pauser and Sälter (eds), *Policy in lokalen Räumen*.

techniques' and 'often became clients and patrons at the same time' if they wanted to achieve something while holding office.⁵⁷

The great significance of the officeholders' 'discretionary power' originated structurally in this conflict between the duties of office and the social, cultural, political and also technical circumstances among their charges. Discretion meant assessing if and how every general order from a higher authority could be put into practice under local circumstances.⁵⁸ For Michael Braddick, this feature was the special challenge and strength of local administration: 'The great strength of government by officeholders was this discretion – fitting central policy to local needs.'⁵⁹

Specific features of the early modern state and its political practice are rooted in this challenging constellation. A first feature is the great importance of different forms of unequal treatment that characterized the legal and administrative measures of the state. The spectrum of inequality reached from legally standardized dispensations, exemptions and privileges to the highly varied articulation of what nowadays is commonly called preferential treatment or partiality. The importance of discretion also helps us understand the observation that state laws and measures were very differently received and put into action by local societies. Discretionary power had to take into account local constellations of interest. In other words: local doors opened to the state when its measures respected and served local interests.⁶⁰

The subjects' uses and appropriations of state courts and offices In the course of their research about individuals and groups using state institutions and authorities on their own initiative, German, French, English, Italian and Swiss historians have been able to show under which circumstances and because of whose initiatives the state gained access to local society. Substantial research now analyses how local groups and subjects made use of the state's legal institutions for their own purposes.⁶¹ Members of all classes of local society appealed to legal authorities

⁵⁷ Wolfgang Reinhard, 'Zusammenfassung: Staatsbildung durch "Aushandeln"?', in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 429–38, here p. 430.

⁵⁸ Braddick, *State Formation in Early Modern England*, pp. 27–32, 82, 114, 128–35, 156 and 161; Hindle, *The State and Social Change in Early Modern England*, pp. 22, 121 and 171–3; André Holenstein, 'Die Umstände der Normen – die Normen der Umstände', in Karl Härter (ed.), *Policey und frühneuzeitliche Gesellschaft* (Frankfurt/M., 2000), pp. 1–46.

⁵⁹ Braddick, *State Formation in Early Modern England*, p. 142.

⁶⁰ *Ibid.*, p. 177; Holenstein, 'Gute Policey' und lokale Gesellschaft im Staat des Ancien Régime.

⁶¹ A classical reference is Arlette Farge and Michel Foucault (eds), *Le désordre des familles. Lettres de cachet des Archives de la Bastille au XVIIIe siècle* (Paris, 1982). See also: Fasano Guarini, pp. 91–3; Michaela Hohkamp, *Herrschaft in der Herrschaft*.

for very different reasons. For late sixteenth and early seventeenth-century England, a strong increase among both criminal proceedings in courts and civil litigation has been observed.⁶² Steve Hindle calls such broadly legitimized use of legal mechanisms, in order to settle disputes and resolve local conflicts, ‘popular legalism’.⁶³ This included not only the countless lawsuits that clarified conflicts of neighbourhood, disputed rights of use, or actions for debt and appeals to a court in order to prevent violence and maintain peace in the village. An even more illuminating explanation for the attractiveness of state courts suggests that when numerous common villagers and burghers denounced their neighbours for criminal offences or for the violation of ordinances, they did so in order to transfer an already existing quarrel to another level, thereby to acquire the support of state authority for their own private ends.⁶⁴

For both England and the territories of the Holy Roman Empire, the decisive role that the local population took in the initiation of criminal prosecution of alleged witches has become evident. The witchcraft theories developed by intellectuals and adopted by state organs of prosecution were taken over by the villagers, who used the denunciation of unpopular neighbours as witches to carry out their individual

Die vorderösterreichische Obervogtei Triberg von 1737 bis 1780 (Göttingen, 1998), pp. 21f. and 157–215; Simon Teuscher, *Bekannte – Klienten – Verwandte. Soziabilität und Politik in der Stadt Bern um 1500* (Köln et al., 1998), pp. 235 and 265; Martin Dinges, ‘Justiznutzungen als soziale Kontrolle in der Frühen Neuzeit’, in Andreas Blauert and Gerd Schwerhoff (eds), *Kriminalitätsgeschichte* (Konstanz, 2000), pp. 503–44, here pp. 537–9; Braddick, *State Formation in Early Modern England*; Hindle, *The State and Social Change in Early Modern England*.

⁶² Ibid., pp. 136–71; Hindle, *The State and Social Change in Early Modern England*, pp. 13–15, 87–93 and 94–115; Steve Hindle, ‘Law, Law Enforcement and State Formation in Early Modern England’, in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 209–33.

⁶³ Hindle, *The State and Social Change in Early Modern England*, pp. 13, 32 and 97; Hindle, ‘Law, Law Enforcement and State Formation in Early Modern England’, pp. 218 and 220.

⁶⁴ Sheila Fitzpatrick and Robert Gellately (eds), ‘Practices of Denunciation in Modern European History, 1789–1989’, *Journal of Modern History*, 68 (1996): 747–967; Braddick, *State Formation in Early Modern England*, pp. 161f.; Friso Ross and Achim Landwehr (eds), *Denunziation und Justiz* (Tübingen, 2000); Hindle, *The State and Social Change in Early Modern England*, pp. 141–5; Renate Blickle, ‘Denunziation. Das Wort und sein historisch-semantisches Umfeld: Delation, Rüge, Anzeige’, in Michaela Hohkamp and Claudia Ulbrich (eds), *Der Staatsbürger als Spitzel. Denunziation während des 18. und 19. Jahrhunderts aus europäischer Perspektive* (Leipzig, 2001), pp. 25–59; André Holenstein, ‘Normen und Praktiken der Anzeige in der Markgrafschaft Baden-Durlach in der zweiten Hälfte des 18. Jahrhunderts’, in Michaela Hohkamp and Claudia Ulbrich (eds), *Der Staatsbürger als Spitzel. Denunziation während des 18. und 19. Jahrhunderts aus europäischer Perspektive* (Leipzig, 2001), pp. 111–46.

conflicts on a new battleground with the support of the weapons of justice.⁶⁵ Such observations should remind us that looking at statebuilding from below should not be confused with a romantic glorification of the ‘people without history’. Our intention should not be to contrast in a naïve way the many good and weak people in local societies with a few perfidious powerful villains at the top.

By appealing to courts, authorities and officeholders, subjects took up an offer and an opportunity provided by the state. In doing so, they pushed the state into the position of a mediator with sufficient authority and legitimacy to decide a conflict. Communities, corporations and individuals were most likely to adopt such instruments when local mechanisms to maintain order and to settle disputes were under pressure and reaching their limits.⁶⁶ By calling on the state’s legal authority, the litigating parties from a local society sanctioned state authority as a whole. The uses of state power eventually promoted the centralization of state authority, though not necessarily owing to any initiative from the central power.⁶⁷ To quote Michael Braddick:

The use of legal process was often the continuation of dispute by other means, but by the same token it was the continuation of negotiation by other means. In resorting to the law, English people invited the state in and their engagement with the formal authority of national government was intensified.⁶⁸

Braddick’s conclusions on the topic are central to understanding statebuilding from below:

a study of the process by which the state-acquired agency is simultaneously a study of the uses of state power. We often read that the state did things and even sometimes that it wanted things, and yet the state is nothing that can be touched or seen, let alone questioned about its motives. It is argued here that the state does not want or do things; people want the state to do things, and they have varying degree of success in achieving their ends. ... The state ... was useful to all sorts of people in early modern England and far from having to penetrate the localities [the state] was frequently invited in – state power pervaded the localities, embodied in the actions of innumerable individuals invoking its authority.⁶⁹

⁶⁵ Dinges, pp. 537f.; Braddick, *State Formation in Early Modern England*, pp. 146–55, 164 and 172–5.

⁶⁶ Michael Frank, *Dörfliche Gesellschaft und Kriminalität. Das Fallbeispiel Lippe 1650–1800* (Paderborn et al., 1995), p. 352.

⁶⁷ Braddick, *State Formation in Early Modern England*, p. 163.

⁶⁸ *Ibid.*, p. 162.

⁶⁹ *Ibid.*, pp. 90–3. – The argument of the usage and appropriation is essential in Reinhard’s model of the agency of power elites, too. Power elites enhance the growth of

‘Empowering Interactions’ – A Conceptual Proposition

The studies briefly described above start from specific theoretical assumptions about the qualities and the effects of interactions between individual actions and the shaping and reproduction of institutions. From a heuristic perspective, it might therefore be useful and promising to scrutinize them in this second-last section of the article.

Michael Braddick summarized an essential observation from his studies on ‘State formation in early modern England’ in the following way:

The state consisted of a network of offices exercising political power coordinated under the Tudor and Stuart crown. It has not been defined in terms of particular institutional forms, or functions, but in terms of the kind of power that these offices embodied. No single will or interest lay behind the use that was made of these offices. Instead, agency was given to the state by activists, both officeholders and those who could influence them. These people responded to the problems and opportunities that they perceived around them by designing and implementing political innovations. ... Political initiatives, and the administrative routines to which they gave rise, reflected the interests of those who promoted them, and social interests therefore patterned state activity.⁷⁰

This state did not stand above and outside society acting upon it, but was closely engaged with it, the routines of administration being conducted within a much larger web of social relations and expectations.⁷¹

In this view, the state resulted from the initiatives of officeholders and all the other local actors, who were able to influence and instrumentalize it for their interests. This state was the outcome of a multitude of practices, which succeeded in transforming individual and group interests into court judgements, laws or administrative measures, so that these particular interests gained authoritative validity and legitimacy. This state was the outcome of communicative processes which might be characterized as ‘empowering interactions’.⁷² The concept of

state power by using their position within the state apparatus to their own profit (Reinhard, ‘Introduction’ (1996), pp. 6f. and 9).

⁷⁰ Braddick, *State Formation in Early Modern England*, p. 427.

⁷¹ Michael Braddick, ‘State formation and political culture in Elizabethan and Stuart England. Micro-histories and macro-historical change’, in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 69–90, here p. 84.

⁷² ‘Empowering interactions’ is a terminological and conceptual proposition which emphasizes reciprocities between a multitude of interacting actors while avoiding the shortcomings connected with alternative, dichotomous concepts and terms such as the concept of ‘Aushandeln’. In contrast to the English ‘Negotiating’ the German ‘Aushandeln’ not only suggests a specific transparency and awareness of the communication but also the

‘empowering interactions’ describes a specific communicative situation emerging from diverse, but nevertheless reciprocal interests and demands from both the state’s representatives and members of local societies. By appealing to state instances and by making use of them, groups or individuals also accepted them as sources of legitimate authority and power. In the case of a favourable result, they gained the authoritatively sanctioned support of the state, so that their interests became invested with its legitimacy and power and were thus – in comparison to competing interests – more likely to be accepted.⁷³ In turn, the position of state instances was steadied by the legitimacy that the subjects’ uses and appeals ascribed to them. There was a strong, empowering reciprocity between the use of state power embodied in officeholders and incorporated in state authorities by groups and members of the local society, on the one hand, and the increased authority and legitimized power of the state, on the other hand. ‘Empowering interactions’ suggests that both the representatives of particular interests *and* the state benefited from such interactions. In a specific sense, both parties became more powerful: the bearers of particular interests received authoritative support, while the state broadened its social acceptance and legitimacy.

Gunner Lind’s observations about the ‘win-win-logic’ of patron–client relations may help to explain the specific logic of ‘empowering interactions’. The state embodied by its judges and officeholders became a patron, whereas the bearers of particular interests were the clients:

Both parties are attracted by the prospect of advantages. ... Typical benefits to a client were income and protection, while the patron gained obedience. ... They might also obtain other income, or protection against litigation, disfavour, or violence. Patrons acquired information and compliance to their will. ... In sum, the relationship was a resource converter. Both parties acted within their own power, in order to get things done through the actions of their ‘friend’. If well

existence of a communicative situation between two principally egalitarian partners (Dagmar Freist, ‘Einleitung: Staatsbildung, lokale Herrschaftsprozesse und kultureller Wandel in der Frühen Neuzeit’, in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 1–47, here pp. 13–17 and 41). For a very critical assessment of the concept of ‘Aushandeln’ see Reinhard, ‘Zusammenfassung’, p. 434, who nevertheless used the term with its underlying idea without any reservations in other contexts (see for example Reinhard, *Geschichte der Staatsgewalt*, p. 22; Wolfgang Reinhard, ‘Einleitung. Mikropolitik und spanisches Mittelmeer’, in Wolfgang Reinhard (ed.), *Mikropolitik unter Papst Paul V. Borghese (1605–1621) zwischen Spanien, Neapel, Mailand und Genua* (Tübingen, 2004), here p. 4).

⁷³ Cf. Braddick, *State Formation in Early Modern England*, pp. 18, 24 and 27; Hindle, *The State and Social Change in Early Modern England*, pp. 15f. Chittolini points in a somewhat similar direction with his idea of an osmosis operating between private and public interests and thus strengthening public institutions and procuring them a certain autonomy towards private claims (Chittolini, pp. 50f. and 54–6); Aylmer.

managed the converter operated as an amplifier, allowing new resources to be controlled.⁷⁴

The conceptual proposition of ‘empowering interactions’ owes a great deal to Pierre Bourdieu’s and Anthony Giddens’ sociological theories and their suggestions how institutions emerge from individual agency. At the same time, it is rooted in praxeological approaches of recent cultural history, as represented by the French historian Roger Chartier, for whom guidelines, rules and institutions are reproduced and perpetuated through their invocation and appropriation by numerous individual actors.⁷⁵

‘Analysing the structuration of social systems’, for Anthony Giddens,

means studying the modes in which such systems, grounded in the knowledgeable activities of situated actors who draw upon rules and resources in the diversity of action contexts, are produced and reproduced in interaction. ... The constitution of agents and structures are not two independently given sets of phenomena, a dualism, but represent a duality. According to the notion of the duality of structure, the structural properties of social systems are both medium and outcome of the practices they recursively organize. Structure is not ‘external’ to individuals: as memory traces, and as instantiated in social practices, it is in a certain sense more ‘internal’ than exterior to their activities in a Durkheimian sense. Structure is not to be equated with constraint but is always both constraining and enabling.⁷⁶

Heuristically and methodically, Giddens’s view leads to the rejection of the ‘unbalanced interest in structures and long-term processes that previously dominated institutional history’; this interest is now ‘replaced by ... the attention on the people and their social and political practice ... out of which the institutions emerge as achievements of order and orientation that are intended to remain steady’. Accordingly institutions originate from and are reproduced by interactions. This also applies to the state. An objectivistic idea of institutions as ‘reified entities,

⁷⁴ Gunner Lind, ‘Great Friends and Small Friends: Clientelism and the Power Elite’, in Wolfgang Reinhard (ed.), *Power Elites and State Building* (Oxford, 1996), pp. 123–47, here pp. 124f.

⁷⁵ Roger Chartier, *Les usages de l’imprimé* (Paris, 1987); Roger Chartier, ‘L’Histoire Culturelle entre “Linguistic Turn” et Retour au Sujet’, in Hartmut Lehmann (ed.), *Wege zu einer neuen Kulturgeschichte* (Göttingen, 1995), pp. 29–58, here pp. 34f., 48. For further evidence for the effects of the ‘uses of state power’ see Braddick, *State Formation in Early Modern England*; Dinges; and Landwehr, ‘Diskurs – Macht – Wissen’.

⁷⁶ Anthony Giddens, *The Constitution of Society. Outline of the Theory of Structuration* (Cambridge, 1984), pp. 1–40, here p. 25.

seemingly independent of humans and equipped with a history ... and logic of their own' blurs the view on the essential.⁷⁷

From this perspective, the state seems to be the outcome of players' activities, which are in turn subjected to the structural conditions of their environment. Within this agency-oriented concept, rule or governing and administering can be understood as an interaction between hierarchically unequal players. Thus, state formation becomes comprehensible through changes in such communication and its basic conditions. This further implies that *both* the macro-level of the whole social system *and* the micro-level of local society have to be examined as interrelating fields. However, interest about the micro-level must not be limited to the local pole of this system.⁷⁸ It is essential to show, furthermore, how various players used the structurally and institutionally predetermined opportunities available to them.⁷⁹

Conclusions and Perspectives

What general hypotheses and perspectives for further research on statebuilding in Europe can one draw from these considerations? What do we discover by looking from below, and at 'empowering interactions' between state authorities and individual or group actors? What are the potentials of this approach, and what its shortcomings?

'Statebuilding from below': the title of the Ascona conference consciously accentuated the problem, and some participants may even have felt it to be provocative. This introduction should have made clear that the proposition that it is worthwhile to look at statebuilding from below should not be mistaken as an

⁷⁷ Blänkner, 'Überlegungen', p. 104. Chittolini, pp. 43f. with reference to Roberto Bizzocchi respective Paul Veyne: 'Our error, as Paul Veyne would say, is to believe in the state or in states, instead of studying the practices that generate objectivizations which we then take to be the state or some kind of state.'

⁷⁸ Ogilvie, p. 172; Mark Häberlein, 'Konfessionelle Grenzen, religiöse Minderheiten und Herrschaftspraxis in süddeutschen Städten und Territorien in der Frühen Neuzeit', in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 151–90, here p. 152 note 4: 'Unter Herrschaftspraxis wird hier die Summe obrigkeitlicher Normsetzungs-, Regierungs- und Verwaltungsakte verstanden, wobei Untertanen nicht nur passive Objekte obrigkeitlichen Handelns waren, sondern durch die Artikulation eigener Interessen und Forderungen auf dieses Handeln Einfluß nahmen. (Lokale) Herrschaftspraxis bildet somit eine Schnittstelle zwischen herrschaftlichen Ordnungskonzepten, Disziplinierungs- und Regulierungsbestrebungen einerseits, den Ordnungsvorstellungen und Partizipationsforderungen der Untertanen andererseits.'

⁷⁹ '[In order to] account for structural change it has to be shown how social groups as collective actors exercise pressure on existing constraints and, through acting upon interests of their own and by mobilising distinctive resources, make use of the enabling aspects of the environment' (Roland Axtmann, *The Formation of the Modern State*, p. 295, quoted by Braddick, *State Formation in Early Modern England*, p. 427).

invitation to reproduce in reverse the old mistakes found in the research adopting the top-down perspective. Rather, ‘looking from below’ was intended as an appeal to strategically decentre our research perspectives without losing overall view of the problems involved.⁸⁰ For now – so the hypothesis – only the perspective from below will allow us to grasp the ‘empowering interactions’ between local societies and state authorities systematically, so that the historian can avoid reproducing the bias of the ‘top-down’ approach in his new framework of analysis.⁸¹

The Ascona conference was intended to produce further evidence that supports our approach. Detailed praxeological studies often concern single cases and small groups. In order to assess their general value, it seemed necessary and promising as well to enlarge their number and scope. Much attention will have to be paid to the expanding field of legislation and administration, known in some periods and regions as ‘good police’, but it will be essential to include evidence about legitimization, finance and other aspects of state policy as well.

To look from below probably guarantees a more acute perception of the specific features of states in the pre-revolutionary period, while also preventing us from turning the state of the early-modern period into a proto-modern state. Our perspective on the statebuilding process appropriately takes into account the forces and logics of estates, communities and the forces within local societies.

It also includes a critical interrogation of interpretations of early modern constitutional history that actually re-project nineteenth-century constitutional conflicts and constitutionalism onto the early modern period, and therefore analyse the relations between monarchs and estates, between state authorities and local communities, primarily in terms of a fundamental opposition between state and society (or even a subordination of the latter under the former). Such an approach views early modern developments as a process of decadence, characterized by the disempowerment or even abolition of the estates and by communities’ loss of power, and thus, *nolens volens* reproduces a central interpretation of the classical absolutism paradigm and thus runs the risk of leaving the ongoing traditions of estates, corporations and communities out of its consideration. The simple juxtaposition between princely state and subjects’ society in the so-called early-modern state anticipates the modern dichotomy of state and society, so that constitutive features of the state of the *ancien régime* – when estates, corporations and communities were politically and functionally integrated into the state – get lost.

It seems quite clear that asking our questions ‘from below’ stresses the importance of internal factors, compared to the formerly emphasized conditions

⁸⁰ Ibid., p. 93.

⁸¹ Hindle, *The State and Social Change in Early Modern England*, p. 10: ‘The focus on institutional and administrative aspects of government has magnified the role of central agencies, at the expense of local interests, in initiating policy. ... Through the central lens, local politics appear only as an episodic series of responses, and their creative and negotiative nature is all but invisible.’

and events of foreign policy and war.⁸² Social developments and crises become prominent structural conditions for the political activities of diverse players, whereas older conclusions that emphasized the importance of the dynamic interstate conflicts will be strongly relativized. A similar shift in perspective also applies to the assumption that the state of the early modern period developed mostly as a 'fiscal-military state' – as a machine for warfare and tax extraction.⁸³

By setting the focus on statebuilding practices and constellations inside the 'societas civilis cum imperio', the linkage of results among different fields of research will be improved. Political history and the history of administration will come into fruitful contact with social history (for example gender history or poverty research), with the findings on witchcraft trials and prosecution, and with the history of crimes and consistory courts.

If centripetal forces and movements from the local society must be taken into consideration in a better understanding of statebuilding in Europe, then certain questions about statebuilding will consequently arise. I would like to name some of them, without claiming to present an exhaustive list.

In which situations did local groups make use of the authoritative and legitimizing resources that the state offered through its officeholders, courts and laws? Should social crises with their disintegrating effects receive special consideration, as Braddick and Hindle have shown for the case of England around 1600? Which groups within the local society were especially active in such cases? What were their aims when embarking on the process of 'empowering interactions' – and were they successful? What were the expectations that social groups ascribed to the bearers of state authority? And has the legitimacy of the state possibly been influenced by its readiness to maintain peace, to help in situations of need, to ensure legal stability or to implement concepts of social order? In which points did the government and the bearers of local interests have overlapping or complementary concepts of order?⁸⁴

How does the bottom-up model change our thinking on the whole process of state formation? The conference wanted to contribute to a chronological and systematic differentiation and periodization using this approach. With an enlarged empirical basis as our background, we further tried to distinguish among different forms of 'statebuilding from below', and to compare diverse popular initiatives and their outcome in different sectors of political life. Rethinking the chronology and periodization of statebuilding from this new point of view remains a challenging task, however. On a more theoretical and general level, the conference sought to deal with the question of how bottom-up approaches can be integrated into a comprehensive vision of European state development. Since these approaches, so far, focus primarily on internal relationships within single territories, it seems especially important to confront them with externalist theories that concentrate on

⁸² Braddick, *State Formation in Early Modern England*, pp. 13–16.

⁸³ Tilly. Warfare as driving force is still prominent in Reinhard, 'Introduction', pp. 9f.

⁸⁴ Dinges, p. 507.

international state activities such as warfare and diplomacy. Whether or not the shift of perspective will be rewarding can only be judged after one has compared the spectrum, the width and the variety of the panoramas offered by different points of view. The Ascona conference sought to approach the view from below without bias. For this reason, critical voices were also invited to the conference, and their valuable objections will be found in Part IV.

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PART I

SOUTHERN EUROPE

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Chapter 1

The Construction of Local Political Identity in Lake and River Communities in North- West Italy, Twelfth to Fourteenth Centuries

Roberto Leggero

Can we speak of political action by rural communities in the Middle Ages? The question is one of defining what can be understood by the expression ‘political action’, which is not secondary, as in the context of this volume it also takes on a particular problematic aspect represented by the *question* of the ‘construction of the State from below’.¹

It is worth considering that the concepts of ‘higher’ and ‘lower’ are not, in themselves, absolute indications but are placed in a perspective where each is defined only in a reciprocal relationship and according to the level being considered. There may be a higher and a lower level within local communities, where the former term indicates the local elite. And there may be, as in the case considered in this chapter, a higher and a lower level which refer to an immediately higher political level that includes the relationship between local and urban communities.

It is no coincidence that the topic of political action is linked with the topic of identity: only a *corpus* that recognizes itself as unitary can adopt an action that is conceived by all its members as lawful. The great encomiastic portraits of the power of the urban communes were also a way of making a locally perceived and shared identity visible outside the community. There are no reasons that lead one to believe that there was not a similar self-awareness in minor communities, caused by the multiple factors which converged to define the identity of a human group. On the contrary, there are very many factors that make the process of construction of an identity clear: the need to procure resources to survive, to exploit a territory, to fight competing human groups, to identify the relationships of property and

¹ On this problem in Italian studies, see Giovanni Tabacco, *Egemonie sociali e strutture del potere nel medioevo italiano* (Torino, 1979); Giovanni Tabacco, *Le ideologie politiche del medioevo* (Torino, 2000); Mirella Montanari, *Villaggi nuovi nel Piemonte medievale. Due fondazioni chieresi nel secolo XIII: Villastellone e Pecetto* (Torino, 1991); Giorgio Chittolini, Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994); Luigi Provero, *L'Italia dei poteri locali. Secoli X–XII* (Roma, 1998); Alessandro Barbero, *Il ducato di Savoia. Amministrazione e corte di uno stato franco-italiano* (Roma-Bari, 2002).

possession amongst the members of the group and the territory, to establish family bonds, to decide on the necessity to move or to continue living in the same place.

It was precisely the encounter between community solidarity and exploitation of the resources in the territory² that was to bring about the genesis of the political culture of the countryside, as these are the two elements of those very politics.

The relations of solidarity within rural communities were structured in relation to the activation of territorial resources. Political cultures would therefore be expressed through practices that derive from the most elementary needs of survival, complicated and developed in the network of relations (with the territory, the other members of the community and the surrounding communities) which allow local communities to give stability, continuity and the 'right' to the claim of exploiting (and preserving) natural resources. This can be called a decisively pragmatic view of 'political' activity, but it cannot be considered less important or less refined than other political actions. We can distinguish a difference between the politics of large urban centres (connoted moreover by considerable pragmatism) and rural settlements in the greater ideologizing capacities of the former with respect to the latter. It is also true that this urban ideology (or part of it) is absorbed by non-urban communities which understand it very well and do not hesitate to support it (or to oppose it).³ This is also because the same founding concepts of urban politics were the product not of the urban culture but of ecclesiastical culture. The concept of *libertas* (freedom) was at the disposal of the ruling urban classes and easily let itself be transformed into something new and different without this causing its upheaval. The ideology of freedom 'was already widely effective in defending the ecclesiastical system and the individual churches ... and liable to be extended in the political world to all levels'.⁴

The Political Configuration (Twelfth Century)

The pattern proposed is easy to apply to the resistance of Intra, Pallanza and Valle Intrasca to the penetration in the upper Verbano by the city of Novara. These communities are located on Lago Maggiore near the modern border between

² Luigi Provero, *Percorsi dell'identità comunitaria nelle campagne del Duecento*, 23 June 2005, seminar of the Research Centre on Medieval Institutions and Societies, University of Turin.

³ As it appears evident in the case of the new burghs on which the local populations express their support by populating them or decreeing their failure: Mirella Montanari, 'I borghi nuovi come fulcri dell'espansione commerciale urbana: il caso di Novara (secc. XII–XIII)', in Renato Bordone (ed.), *Le Villenove nell'Italia comunale* (Carmagnola, 2003), pp. 119–32; Mirella Montanari, 'L'invenzione del territorio. Dal comitato di Pombia al contado di Novara', in Mirella Montanari (ed.), *Una terra tra due fiumi, la provincia di Novara nella storia* (Novara, 2002), pp. 75–107.

⁴ Tabacco, *Le ideologie politiche*, p. 94.

Italy and Switzerland. Both the political presence in the area of the commune of Vercelli and that of the landlord family da Castello were fundamental for the establishment of this opposition. Yet it must not be assumed that this is a sign of absolute subjection of the local (rural or not) communities to the two players whose anti-Novara position is obvious: for Vercelli, as a neighbouring commune and adversary of Novara whilst the possibilities of expansion for both gravitate in the same area, and for the da Castellos, as their condition as *domini loci* is in itself in opposition to the expansionist claims of an urban commune. In fact, although they ultimately recognized the role of *dominus* of the commune of Novara in the early 1180s, the da Castello family continued to nurture political ambitions that exploited the decentralized position of their possessions with respect to the city. They played a match in which the commune of Vercelli was involved, thanks to the numerous members of the family that allowed the clan to implement several political lines at the same time.⁵ Political skill and the two characteristics mentioned (the distance from Novara and the complexity of the family clan) allowed the da Castellos to play an ambiguous game for a long period of time. It is, however, unthinkable that the local communities were not involved in this, both because they expressed complex and significant representations (in which consuls, *credendari* or councillors and notaries appear), and because these representations were summoned to swear to make war on the city of Novara, thus entering directly into the political affairs that lead to open warfare.

The two largest places in the territory covered by the possessions of the da Castellos, Intra and Pallanza, although close and adjacent, each had a different history. Pallanza had been a royal *curtis* and this determined the autonomy of that territory and its churches and chapels, from the parish of Intra. Pallanza also had a very significant position from the political point of view for a long period, due to the presence of a fortification built on the islet facing the settlement, the *castrum* (castle of) *Sancti Angeli*⁶ and the powerful da Castello family, who had built another fortification on the land.⁷ The *castrum* of Sant'Angelo, the Pallanza

⁵ This behaviour, which was absolutely normal for a family clan settled in the territory included in international political games, has an explanation not only in the need to 'differentiate investment' (ensuring, through loyalty sworn to different institutions by different branches of the family, political and economic survival), but also in the conditions of war in the Middle Ages, which privilege capture (and the ransom) over killing peers (or, those who are recognized as being able to pay). This leads, in many cases, to making relations between family nuclei who are theoretically enemies as belonging to different urban communes but who are related by bonds of hospitality and mutual recognition. Jean-Claude Maire Vigueur, *Cavaliers et citoyens. Guerre, conflicts et société dans l'Italie communale, XIIe–XIIIe siècles* (Paris, 2003).

⁶ Giancarlo Andenna, *Andar per castelli. Da Novara tutto intorno* (Torino, 1982), pp. 649f.

⁷ The *castrum* stood on the hill of Castagnola. See Pierangelo Frigerio and Pier Giacomo Pisoni, 'Tracce di sistemi difensivi verbanesi nell'alto Medioevo', *Verbanus*, 1 (1979): 138.

shore and the hill of Castagnola thus limited the area which represented the heart of the domain of da Castello family,⁸ who also had a *castrum* in Intra. This domain, according to the Imperial diploma of 1152, which decreed royal protection over the family property, was exercised over wealth of a beneficial and allodial nature, founded on the possession of *castra*, courts, villages and ports, rivers, churches, houses, fields and vineyards.⁹

Between the eleventh and twelfth centuries Pallanza underwent significant economic and demographic development, so that in documentation after 1164 it was shown as a *burgus* whilst in earlier documentation Pallanza was simply called *locus*.¹⁰ Scholars attribute to the initiative of the da Castello family the process of economic and population growth leading to the transformation of the *locus* into a *burgus* with its prosperous and lively market. This transformation, however, is also significant in terms of the growth of the local ruling classes who, although in the presence of *domini* like the da Castello family, succeeded in expressing a political will of their own, represented by the different names of the place, which reveals the presence of an articulated social and political structure. The da Castello family even appointed a *podestà* with the task of administering the *burgus* itself; it corresponded to a concentrated nucleus of dwellings not fortified by walls and to the *villa*, namely an extensive dwelling area pertaining to Pallanza. Moreover, the definition of *universitas*, which from the sources often appears to have been used as a synonym for commune, refers to a settlement structure of the communities of the upper Verbano which, especially for orographical reasons, is dispersed in cantons which nevertheless identify themselves as part of a single territorial body. As Giancarlo Andenna has written:

the political importance and the administrative autonomy of the *curtis* of Pallanza came to an end [at the beginning of the thirteenth century] as from that time the Novarese sent a *podestà* they had appointed with the task of ruling over the lake centres that had rebelled, to the territory of Intra, Pallanza and Valle Intrasca, unified from the political and fiscal point of view.¹¹

This was the outcome of the clash with Novara, of the defensive alliance against Novara's expansion involving Pallanza, Intra, Suna, Cambiasca, Biena, Antoliva and the Valle Intrasca, the city of Vercelli and the da Castello family. The patronages and the economic and political bonds that the da Castellos had formed with the local ruling classes had been of great importance in establishing the alliance locally, although reasons exist for stating that the front that had been created was not compact.

⁸ Giancarlo Andenna, 'Il San Remigio di Pallanza nel contesto territoriale ecclesiastico verbanese (secoli X–XVI)', *Verbanus*, 20 (1999): 11–28, here p. 16.

⁹ Andenna, *Andar per castelli*, p. 650.

¹⁰ Andenna, 'Il San Remigio', pp. 14f.

¹¹ Andenna, 'Il San Remigio', p. 16.

In the authoritative study by Francesco Forte about the opposition to Novara by the local communities, he concluded that the hostility to

Novarese domination by the populations of Intra, Pallanza and Vall'Intrasca, as well as the lower Ossola and the Riviera d'Orta, was highlighted, although inaccurately referred to at different historical moments, by almost all the writers who dealt with the subject. Moreover, it has deep roots: on the one hand, the secret influences of the Archbishop of Milan acted against Novara, through the local clergy; on the other, that very lively spirit of freedom which, following the example of the nearby large cities, was spreading to minor centres as well. It was probably not hatred of Novara: it was only the expression of a desire of the populations to decide their fate on their own and their disappointment when they saw themselves transferred from the da Castello domination to that of Novara.¹²

Developing these reflections it could be stated that the political ambition of the da Castellos was of greater interest to the communities facing Lake Maggiore compared to the Novarese political will, if only because the latter was played out locally. The recognition attributed by the communities to the da Castellos and the prolonged contact with them had certainly developed into a political culture and a capacity to act in relation to them, whether in favour of, or against, their projects. Furthermore, through the ramifications of the da Castello family clan, local communities could address, through diplomatic channels, 'international' interlocutors such as the commune of Vercelli, which recognized the da Castello family as an 'authorized' interlocutor but could have had less interest in dialogue, as a political interlocutor, with the local communes in an external and peripheral area of its own urban district. It is possible to recognize, in the stratification of the rural communities and in the struggles and negotiations within the community to have a 'political voice', one of the elements that forms the identity of the community. Obviously this phenomenon was to be repeated at a supra community level, when the *universitas* of the communities was established and organized. The same phenomenon of refusing Novarese political ambition also appears in 1209 in the case of the communities of the Riviera d'Orta, which preferred a *dominus* that was known and certainly less awkward than an urban commune, such as the Bishop of Novara, rather than adhering to Novarese ambition, which was not interesting for communities that already formed, together, a network of economic, juridical, political and military relations. It is clear that dealing with an urban commune is much more complicated than establishing negotiations with a *dominus* like the Bishop, however prestigious and powerful. In the mutual exchange between the *universitas* and the episcopal see, the former received from the prelate a condition

¹² Francesco Forte, *Per la storia del Lago Maggiore e delle valli circonvicine* (Milano, 1949), pp. 49f.

of autonomy favourable for its development and the latter the recognition of a temporal and political role: it was an agreement that suited both parties.

The Confrontations (Thirteenth Century)

The events which led in 1223 to open confrontation between the da Castello family and a 'league' of communities on the one hand and Novara on the other, and which culminated in the capture of Pallanza by the Novarese fleet, had been prepared at least since the 1180s. The political complexity of the da Castellos and the opportunity represented by the two competing urban communes allowed the family group to play on several fronts at the same time, having to fear only the creation of peace between Novara and Vercelli, which in fact occurred in the mid 1190s. In the early thirteenth century, however, Novara established an agreement with the da Castellos according to which they promised to make war on behalf of the urban commune and to administer justice against malefactors in an area covering Arona, Gozzano and the mountains.

In 1209 Novara was forced to give up the Riviera d'Orta, which returned to the bishop of Novara, and the control of Omegna by the city also seemed doubtful. The expansionist ambitions of Novara failed in this area, as it did not gain ground with the local populations. Once again, as its predecessors had done, the imperial authority (Otto IV) confirmed to the da Castellos in 1210 Imperial protection for their property and, although it was no longer the epoch of Frederick I, the Imperial privilege showed that the prestige of the family was intact.

At the end of the 1220s, the situation between Novara and Vercelli once again deteriorated to an extent that required the intervention of Milan as a mediator between the two communes. Examining the events of those years externally, the commune of Novara appeared to be in objective difficulty with regard to the Vercelli situation. It is in this context that a league was established (1222), fostered by Vercelli, between the da Castellos and the communities of Pallanza, Suna, Intra, Valle Intrasca and the lower Ossola, with the objective of making war on Novara.¹³

From the point of view of Vercelli, these communities were peripheral compared to its district, and the *cittadinatico* agreements they made with the city can be seen as a standard procedure which, as has been maintained, must not have had very significant implications for Vercelli:

with some of these [collectively organized valley communities] – Pallanza, Intra, Suna, the Ossola communities – Vercelli stipulated political *cittadinatico* agreements ... nothing more than an alliance, in conclusion, that saw these

¹³ For a general picture see Rosaldo Ordano, *Storia di Vercelli* (Vercelli, 1982), pp. 111–28; *Vercelli nel secolo XIII. Atti del primo congresso storico vercellese*, ed. by the Società Storica Vercellese (Vercelli, 1982).

rural communities – peripheral with regard to the ideal *districtus* and therefore difficult to control – with the commitment of paying the city the *fodrum* on the basis of a fixed appraisal, taking part in certain military operations of the urban commune, purchasing a house in the city as a guarantee of the respect of the agreements.¹⁴

Francesco Panero, who wrote these lines, whilst underlining the condition of subjection in which these collectively organized communities found themselves, nevertheless remarks that there is in them the expression of a condition of freedom which is not to be seen as the consequence of acquired citizenship, but as a precondition for its acquisition. However, the interest of Vercelli in the lakeshore communities could be deemed not so limited if it is true that the commune undertook, before the confrontation with Novara, to give 350 *lire* to Pallanza and this sum was regularly paid and, at the end of the war, to carry on a complex operation with the Archbishop of Milan. Vercelli established an agreement with the Archbishop according to which the latter undertook to offer those who wanted, from the *da Castellis* and the *homines* of the communities of Pallanza, Valle Intrasca and Ossola, protection and dwellings on the territory under its jurisdiction, giving them a *locum idoneum* in which to live.¹⁵

That the operation was much more complex can also be seen from the large number of *homines* who were summoned to swear in public – between the end of 1222 and early 1223 – to honour the agreements made with Vercelli which made them citizens and obliged them to pay a tax to the city, to collectively purchase a house with a value of 100 *lire* in Vercelli, to take part in the wars, and to obey the *podestà* and the orders regarding the free circulation for Vercelli merchants. About 500 *homines* took the oath on the pacts (without counting that many of them took the oath also for other members of their families), and they came from various communities participating in the agreement, including in particular Pallanza, Intra, outstanding both for their large numbers and for the evidence of the local administrative bodies and because the representatives of these two communities also took a separate oath.

The pact not only committed the communities of upper Verbano, of course, but also the inhabitants of Vercelli, who brought together the *credendari* (more than 150 *homines*) and swore, through them, to respect the agreement binding them to the communities that had been incorporated into citizenship. We may think that more important forces than those of the local communities pulled the strings of politics in the upper Verbano, but we cannot fail to admit, looking at such numbers, that these communities truly expressed a political vision of their own.

¹⁴ Francesco Panero, *Comuni e borghi franchi nel Piemonte medievale* (Bologna, 1988), p. 249.

¹⁵ For the documents referred to here and below, see Giulio Cesare Faccio and Maria Ranno (eds), *I Biscioni* (Torino, 1939), t. I, vol. II, p. 175 and Rosaldo Ordano (ed.), *I Biscioni* (Torino, 1970), t. II, vol. I, pp. 125f., 141–7, 157–63, 168–74 and 174–81.

Moreover, places not directly mentioned were presumably involved in the looming war. In any case, the statutes of Intra, Pallanza and Valle Intrasca provide a list of the communities which were connected with the *universitas*. They add up to more than 50.¹⁶

However, the alliance was defeated; the Novarese, having prepared a fleet, landed near Pallanza and took the *burgus*; the *castrum Sancti Angeli* was severely damaged and was abandoned by the da Castelllos, who in the thirteenth century built a new *castrum* putting it inside the *burgus* of Pallanza, near the basilica of San Leonardo.¹⁷

The victory of Novara had the effect of weakening Pallanza to the advantage of Intra. The role of Pallanza in the affair should have been significant, also due to its greater population compared to all the other places, and this is highlighted by the eminent role played by the community in the sources. For example, Pallanza is always mentioned first compared to all the other communities and it was to Pallanza that the Vercellese assigned the 350 *lire* promised in view of the oath. In addition, it is Pallanza that was explicitly named both in the remission of the oath of 1224 and in the perspective of creating the new burgh that should have come into being under the aegis and in the territories of the Archbishop of Milan, Enrico da Settala. In fact it was granted to the da Castelllos and the other *nobiles et homines Palancia e Valentrascha et Oxola*, assigning, providing and giving them a suitable place to live with a market, the *curariam* of which was to be entrusted to the Archbishop. The Vercellese, on their part, undertook to oppose any hostile initiative by the Novarese against the new foundation. This political proposal came into being under the aegis of the *podestà* of Vercelli, Beltramo da Lampugnano¹⁸ and, with some reservations, it can be placed precisely in what has been recognized as the last phase of 'urbanization' activity of the commune of Vercelli (1210–27).¹⁹ Mandelli states that the Vercellese adopted this stratagem as they could not open up to the most compromised of the *homines* of the rebel communities to Novara and to the da Castello family 'asylum in their own jurisdiction' as this would have violated the peace agreements stipulated between Vercelli and Novara.²⁰ Indeed, the document allows this interpretation but also the interpretation that there existed, on the rebel side, positions that were less compromised.

¹⁶ Claudio Mariani (ed.), *Verbania premesse medievali. Gli Statuti del 1393 secondo un'antica stampa e nell'interpretazione italiana di Pier Giacomo Pisoni. Con un saggio introduttivo di Claudio Mariani* (Intra, 1987), pp. 240f.

¹⁷ Andenna, *Andar per castelli*, p. 651.

¹⁸ Forte, p. 77.

¹⁹ Giuseppe Gullino, 'Inurbamenti ed espansione urbana a Vercelli tra XII e XIII secolo', in *Vercelli nel secolo XIII. Atti del primo congresso storico vercellese* (Vercelli, 1982), pp. 279–325.

²⁰ Vittorio Mandelli, *Il comune di Vercelli nel medioevo* (Vercelli, 1857), pp. 128–30.

Moreover, the visibility of Pallanza is confirmed not only in the documentation originating in Vercelli but also in that of Novara if, in the document that decrees the end of the hostilities, the city defines in the first place the situation of the da Castello family with respect to the commune and immediately afterwards deals with the question posed by Pallanza, warning the commune and the men of Vercelli not to help the commune and the men of Pallanza against Novara.

The problem of the foundation of the new burgh of Sant'Ambrogio, about 50 years after the confrontation between Novara and the communities of the upper Verbano, is the result of this situation. It is clear that, from the point of view of a large urban commune, the area of upper Verbano was crucial for the traffic and movement to and from the plain. However, if Vercelli remains decentralized compared to this area and above all without the formidable waterway represented by the basin of the Lago Maggiore and the river Ticino, Novara is objectively fairly distant from the places considered and pressed by a metropolis such as Milan. In addition, before being able to define once and for all the situation of the territory on the lake shore, the presence of Novara in Ossola had to be reinforced and protected, where it was decided to found the commune of Novara, in the mid-thirteenth century, the new burgh of Pietrasanta, after the destruction, by flooding, of the burgh of Vergonte.²¹ The condition of *burgus* was also granted by Novara in the mid-thirteenth century to the commune of Mergozzo, which was to obtain recognition of its statutes in 1379.²² Moreover, this action by Novara corresponds, on the right bank of the Sesia, to activities by Vercelli which in 1242 created the free burgh of Gattinara and in 1255 Serravalle.²³

From the point of view of local communities organized in supra communal structures, the rivalry and the political games between the urban communes, the metropolis and the local family clans, was solved to the advantage of the communities. If the role that they played in the direct conflict between Novara and Vercelli appeared evident, at the same time it appeared equally obvious that the Novarese did not want to or could not immediately use excessive force on their hold over the portion of rebellious territory after having overcome military resistance. The foundation of Borgo Sant'Ambrogio, however, is proof that Novara could definitively establish its political presence in the upper Verbano only through the foundation of a new settlement. The new burgh, built between the bank with a port and the basilica of San Vittore, was named Sant'Ambrogio, and this unusual choice left open many questions about a possible role for Milan. When it was founded in 1270, although, it fairly rapidly lost this name as its structures were

²¹ Cf. Alessia Tonet, *Da Pieve Vergonte a Vogogna. Insediamenti e istituzioni nell'Ossola inferiore*, Università degli Studi di Pavia, Facoltà di Lettere e Filosofia, a. a. 2002–3, relatore Aldo Aangelo Settia.

²² Angela Viotti, “Anno domini ... in burgo Mergotii ...”. *Aspetti di vita civile e materiale a Mergozzo fra XIV e XVI secolo*, in Gruppo Archeologico Mergozzo, *Storia di Mergozzo dalle origini ad oggi* (Mergozzo, 2003), pp. 143–59.

²³ Cf. *Vercelli nel secolo XIII*, pp. 139–202 and 227–62.

incorporated by those of Intra and from the fourteenth century it was simply called burgh of Intra.²⁴ From the point of view of the cities involved, it appears obvious how the use of the new burghs was exquisitely political and how, through them, there was an attempt to assert the effective limit of territory. From the point of view of the local communities the situation could appear different: we can perhaps use the above-mentioned pattern noting how the communities of upper Verbano did not follow the Novarese ambitions because there were local plans pursued by a locally known and acknowledged political actor, the da Castellos. But then, after the defeat of 1224, the city that had appeared distant and extraneous, had established without any uncertainty the legitimacy of its political presence and, as a consequence of building a new settlement, the limit of its *districtus*. Alongside this, there was the 'administrative' reconfiguration of the territory 'detaching the lower Ossola from Valle Intrasca and this from Stresa. Lower Ossola and Valle Intrasca were incorporated into a separate commune, whilst Stresa had special jurisdiction over the region of Vergante'.²⁵

The Novarese summoned a certain number of families from Valle Intrasca to settle in this new settlement, which was probably fortified from the beginning, also in consideration of the rather late date of its foundation. Both these elements were rather unusual for the new burghs which, in general, were not fortified and their demographic development was entrusted to advantages for the settlers. It is interesting to note how the inhabitants of the burghs, when they complained to Novara about the depopulation of the settlement, stated that it had been built for the common defence of the Novarese and of the entire Valle Intrasca. This statement, which obviously has a meaning with respect to the request that the burgh dwellers made for a reduction of taxes through the control of those who, by leaving, made the lives of those who remained more difficult, nevertheless recalls the reasons that were at the basis of the new settlement. The defence that the new burgh of Sant'Ambrogio had to guarantee seems to be precisely of this type: a sentry fortress which, like a boundary stone, marks the limits of a territory, with the foresight of giving it a name that would not fail to find favour with those who were the most feared rivals in that area, the Milanese or their Archbishop.

We can therefore assume the existence of family groups of valley dwellers against (or indifferent to) the decision taken by the local communities to oppose Novara's policy to form an alliance with Vercelli. In fact, it was not usual for the local populations to be forced to settle in a newly founded burgh, although cases of this have been attested. Indeed, it would appear improbable that the order to move can be considered a sort of punitive measure against family groups hostile to the Novarese but rather the decision to bring together families who were favourable or not hostile to the dominion of Novara. It would have been, in short, an attempt by the commune of Novara to integrate favourable and indifferent family groups, by

²⁴ Andenna, *Andar per castelli*, p. 653.

²⁵ Forte, p. 74.

placing them in a settlement which presented economic and juridical advantages and had the aim of forming a new identity.

Almost all those who have dealt with the problem of the new settlement of Sant'Ambrogio have noted its failure, with the return of the families to the settlements in their home valleys, but this took place in a certain period of time after the foundation of the burgh. This created the juridical condition of the *extrinsic burgh dwellers*, exempted from paying taxes to the communities where they reside.

Which communities of Valle Intrasca did the inhabitants of the new burgh of Sant'Ambrogio come from? Documentation from the late Middle Ages and from the modern period, published by Carlo Müller, allows us to form an idea in this regard. The oldest document can be dated to 1341 and showed extrinsic burgh dwellers residing in about 15 communities.²⁶ That the operation enacted by Novara with the foundation of the burgh of Sant'Ambrogio may not have had punitive characteristics for the local populations can also be inferred from the fact that the original conditions of sharing taxation between Sant'Ambrogio and Valle Intrasca were favourable to the former. It could be asked whether this condition of sharing taxation is not at the origin of the phenomenon of the return to the original communities by the descendants of the original inhabitants of the new burgh.

However, after the rebellion in Novara, at least from the ecclesiastical point of view, the territory of Pallanza continued to be separate from that of Intra despite the pre-eminence of the latter, which ended up by incorporating the new burgh of Sant'Ambrogio as well. This had important repercussions for the 'separate identity' of the two communities although they were so close.

In 1309 a clear distinction was made between the parish of San Vittore of Intra, the church of the castle of Sant'Angelo di Pallanza, and the parish church of Pallanza San Leonardo. There is a description of the ecclesiastical circumscription of Pallanza from a little later (1341). According to it, the territory of Pallanza was intersected by various cart roads and by a *Communis* road. Vines were also cultivated and there were meadows, fields and woods. The church of San Remigio, built on the hill of Castagnola, near the *castrum* that the da Castello family had built there, was still active at that time and it was probably the ecclesiastical foundation with the closest relations to the da Castellos.²⁷

In the development of the two settlements the different organizations of power certainly had an influence. However, if the thirteenth century marked the end of the political importance of Pallanza, it was only from this century that the structuring of the economic physiognomy of Intra can be seen, taking on characteristics of crafts and production as a consequence of the claim on the rights of the waters taken from the da Castellos. The attempt by Vercelli to take the areas of the upper Verbano had failed and Novara had been able to implement a process of

²⁶ Carlo Müller, 'Fondazione del Borgo di S. Ambrogio', *Archivio Storico Lombardo*, XX-XXX (1903): 23.

²⁷ Andenna, 'Il San Remigio', p. 20.

reorganization of the communities present in that area. In the expansion of the Milanese influence and the change in its political structures, these areas followed the Visconti's plans, as shown by the recognition of the local statutes.

The Consequences (Fourteenth Century)

The years between 1372 and 1376 saw harsh confrontations between the Visconti, the lords of Milan, and the anti-Visconti coalition to which the Pope also adhered. In the Novara area, Galeazzo II had been able to count on the loyalty of Bishop Oldrado, who succeeded to the episcopal cathedral in 1355, thanks to whom he had been able to obtain control of the Ossola valley, taking it from the Bishop's estate. However, after 1372, the anti-Visconti propaganda solicited by Gregory XI found fertile ground in a portion of the Ossola valley, which rebelled against Milanese domination. With the end of the hostilities and the rise of Gian Galeazzo Visconti in 1378, a new phase in Milanese politics opened and the upper Verbano and val d'Ossola obtained special attention from Visconti, who was well acquainted with the economic and strategic importance of that area: 'in the duchy of Milan a special and different condition with respect to the communities of the plain was recognized to many communities in the Alpine area, or at least close to these, on the shores of the lakes and in the valleys which go towards the upper Lombardy plain.' In addition, the government of the prince appeared inclined to create a new situation, with respect to the political action of the urban communes: to offer new areas of autonomy 'to those centres and territories that have sufficient force to claim it with some foundation, and to grant immunity, exemptions and privileges of exemption'.²⁸ It was thus possible to see, in the pre-Alpine and Alpine area that goes from the upper Verbano towards the Val d'Ossola, a vast operation thanks to which a series of communities 'requested and obtained the recognition of their statutes'.²⁹

Looking at the situation from the point of view of the local communities and not from that of the prince, these demands could be interpreted as the fading out and rarefaction of control by the city and as the presence of a political perspective tending towards a new value. If in the past it had been *libertas* that produced forms of political action even in non-urban communities, the value becoming associated with the new sovereignty represented by the Visconti dominion was that of *securitas*. In the face of this new demand, the political ambition of Visconti then becomes locally interesting, as he was asked to defend the security of the communities. The statutes of Intra, Pallanza and Valle Intrasca were drawn up in honour of the prince and to ensure a *status* (condition) of wellbeing and peace to the community and its inhabitants. Consequently, on the act of his oath, the

²⁸ Giorgio Chittolini, *Città, comunità e feudi negli stati dell'Italia centrosettentrionale (secoli XIV–XVI)*, *Premessa* (Milano, 1996), pp. XVIII and 130.

²⁹ Tonet, p. 155.

podestà was obliged to declare that he would serve and govern those communities to the good of the magnificent lord Galeazzo Visconti.³⁰

The 'service' requested to the lord by wording of this type implied a close relationship with an obligation of discipline and obedience taken by the *universitas*, and it is worth noting how these concepts also had an ecclesiastical and, more particularly monastic, derivation, although the recovery of the concept of discipline is not absent from the ancient military tradition.³¹ Moreover, when considering the fact that the statutes existed before the lord's concession, it has to be acknowledged that the theme of discipline is not an element that comes from outside but from within the community, whilst the problem of the uniformity of the law of the state as a discipline which all the subjects and all the communities must obey was yet to come. Indeed, the fact that the late medieval and early modern state was not defined in terms of uniformity of application of a law 'equal for all' is a recent acquisition in historiography; it is a form of mediation between different laws, like a structure that allows, within a single political identity, the coexistence of different institutions.

The late medieval state thus appears as a hegemonic place of sovereignty offering instruments of expression to different authorities and powers, guaranteed not so much by 'areas of privilege',³² but by the formal recognition of the value and efficacy of ancient laws and local life and traditions; there was a very precise policy imposed from above but it finds a clear correspondence at the local level.³³ According to Giorgio Chittolini, the medieval state 'is a system of institutions, powers and practices ... which includes in its main characteristics a sort of programmatic permeability by different forces and intentions ... although in an overall unit of political organization'.³⁴

But what happened when the statutes of the *universitas* formed by Intra, Pallanza and Valle Intrasca were acknowledged in 1393 by Galeazzo Visconti? Firstly, it should be noted that these statutes, unlike those of other communities, were not defined as extracted from pre-existing statutes even if statute 45 outlines a situation previous to the Visconti statutes, where it says that

³⁰ Mariani, *Verbania premesse medievali. Gli Statuti, liber primus*, pp. 1f. On the use of the term 'status', see Pierangelo Schiera, 'Legittimità, disciplina, istituzioni. Tre presupposti per la nascita dello Stato moderno', in Giorgio Chittolini, Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994), pp. 17–48, here pp. 28f.

³¹ *Ibid.*, pp. 36f.

³² Isabella Lazzarini, *L'Italia degli Stati territoriali. Secoli XIII–XV* (Roma-Bari, 2003), pp. 166f.

³³ *Ibid.*, p. 172.

³⁴ Giorgio Chittolini, 'Il "privato", il "pubblico", lo Stato', in Giorgio Chittolini, Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994), pp. 553–89, here pp. 569f.

the men of the aforementioned communities will not be obliged to observe other statutes other than those transcribed in this volume. They also decided to hold null and without value all the individual statutes that were not included in this volume. However, the burghs, the *degagne* and the communes of the communities can keep their statutes and special structures, on condition that they are approved and do not oppose this volume.³⁵

The fact that the statutes are not related to a special legislative activity could be a sign of the desire not to grant to the authority of the prince more than what is due to him in terms of legitimization of the *universitas*. In fact, recalling what John Najemy has written,

the *universitas* remained the same; as the jurists said, a *universitas* never dies ... the *universitas* could govern and give themselves their own laws, issue codifications of laws called statutes, appoint officials with the proxy of applying them and punish the members who refused to comply. And a *universitas* did all this without deriving the right to do so from any higher authority.³⁶

Moreover the *podestà* is obliged by oath to protect the rights and the prerogatives (*honores*) of the communities and to ‘govern them in harmony with the statutes and the ordinances issued by the whole *credentia* – or two thirds of it – with the confirmation of the aforementioned lord’. It is also very interesting to note that the *camparius* (rural guard) is assigned the duty of asking the *podestà* for the oath: ‘it will be the *camparius* of the community to ask the *podestà* to take the oath on observing what has been said, as well as the notary and the servants of the *podestà*, at their expense and without any disbursement by the community’.³⁷

The body representing the real counterpart of the *podestà* is the *credentia*, although it was possible to put forward complaints against the *podestà* at the end of his term of office with the auditor, who, however was appointed by the Lord (assisted by two assistants, one from Intra and one from Pallanza): it was before the *credentia* (four members appointed by Intra, four by Pallanza and eight by Valle Intrasca) that the power of the *podestà* met a precise set of formal and substantial limitations (however difficult it may seem to make precise distinctions between these two areas). Regarding the former, statute 21 (Book I) requires that the proposals of the *podestà*, before being officially presented to the *credentia*, are

³⁵ Mariani, *Verbania premesse medievali. Gli Statuti, liber primus*, pp. 25 and 243.

³⁶ John M. Najemy, ‘Stato, comune e “universitas”’, in Giorgio Chittolini, Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994), pp. 647–69, here p. 660.

³⁷ Statute 3, Book I. The right of the *campario* to punish a man from another community, is presented by Panero as a fundamental element of definition of the territory and, as a consequence, of the possibility of action by the rural community which – structured in the defence of its boundaries – acts politically.

put in writing, whilst statute 22 lays down, once the notary has read the written proposal aloud, that the *podestà* must stand up to make it in public before the *credentia*.

The substantial elements limiting the power of the *podestà* include that of not being able to spend the money of the community (according to statutes 25 and 26 of Book) except with the consent of the *credentia* and for some special cases.

If the centre of late medieval states is the fulcrum ‘of a territorial political system understood as a synthesis of practices and negotiations between powers at different levels’, this dialectic has positive effects for both sides involved. On the one hand, it is the basis for the legitimacy of authority and consolidates its territorial dominion, whilst on the other it ‘reinforces the political identity of its interlocutors, guaranteeing their survival’.³⁸ This point appears extremely significant because the more a local community can negotiate a significant degree of autonomy in the management of its territory, the more this confers a real, strong and significant value on the recognition of the higher authority that the community explicitly enacts. Lazzarini correctly writes of a ‘reinforcement’ of a pre-existing identity at local level whilst it is uncertain at state level. Therefore, more than dominion, the lord needs to be acknowledged as such, not so much for his presence in terms of force but as the local communities attribute to him and acknowledge he has a function: ‘it is in the bilateral and direct relationship with the various local forces that he [the prince] finds the strongest mainstays of his authority and the firmest supports for his power’.³⁹

It is worth considering – as has been said at the beginning – that the concepts of ‘higher’ and ‘lower’ are not, in themselves, absolute indications. The relationships between ‘higher’ and ‘lower’, or between centre and periphery, are determined on the basis of the awareness of the two players confronting one another: these will be able to act politically according to the force of their self-representations and to the prevailing possibilities.

³⁸ Lazzarini, p. 171.

³⁹ Chittolini, *Città, comunità e feudi*, p. 128.

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Chapter 2

Models of Government ‘from Below’ in Fifteenth-Century Lombardy. The ‘Capitoli di Dedizione’ to Francesco Sforza, 1447–1450

Giorgio Chittolini

The *Capitoli*

The *capitoli* or pacts of submission referred to here were of a type found widely in late medieval Italy, and throughout the rest of Europe. They were composed of a series of requests (‘capitula’) presented by a community (more rarely by individuals, families, ecclesiastical bodies) at the moment of submission to a lord (or to a more powerful community, such as a civic commune or a dominant city) to ask for or to agree to the conditions of surrender and subjection.¹

Pacts and terms were stipulated on the occasion of military conquests or political agreements. There had been many of them during the era of the communes, in the twelfth and thirteenth centuries, during the formative phase of the city-states, as communities and rural lords were submitting to the city. There had also been many of them in the fourteenth and fifteenth centuries, during the formative phase of the regional states, and on the frequent occasions when territorial arrangements were changed, because of war, military operations, dynastic crises or as a consequence of the establishment of new lords or new regimes, which necessitated or provided an opportunity for the renegotiation of the conditions of submission.² They were

¹ Giulio Rezasco, *Dizionario del linguaggio storico ed amministrativo* (Firenze, 1881, reprint Bologna, 1966); Salvatore Battaglia, *Grande dizionario della lingua italiana* (Torino, 1962), vol. 2, pp. 694f., see ‘Capitolo’, § 5.

² Antonio Menniti Ippolito, ‘Le dedizioni e lo stato regionale. Osservazioni sul caso veneto’, *Archivio veneto*, 127/162 (1987): 5–30; Antonio Menniti Ippolito, ‘Providebitur sicut melius videbitur. Milano e Venezia nel Bresciano nel primo Quattrocento’, *Studi veneziani*, 142/162 (1986): 5–30; Steven Epstein, ‘Governo centrale e comunità del demanio nelle città demaniali in Sicilia: le fonti capitolari’, in Giuseppe Meloni and Olivetta Schena (eds), *La Corona d’Aragona in Italia (sec. XIII–XVIII), XIV Congresso di storia della Corona di Aragona* (Sassari, 1996), vol. 3, pp. 383–416; Pietro Corrao, ‘Negoziazione la politica. I “capitula impetrata” delle comunità del regno siciliano nel XV

not, therefore, different in substance from other, analogous, instruments intended to set the terms of the relationship between a lord and subject entities: instruments such as privileges, enfeoffments, rural statutes, or military *condotte*, or less directly, acts of *accomandigia* [formal agreements of political protection].³

The objective of the *capitoli* was to fix, in more or less detail, the reciprocal obligations of the new lords and their new subjects. Not everything was spelt out explicitly or in detail; there were many points taken for granted, and implicit references to customs and established practices. As occasion arose from time to time, additions would later be made to agreements made at the time *capitoli* were stipulated, in agreements and negotiations documented in letters, requests, petitions, supplications and the records of embassies.

Documents analogous to *capitoli* are frequently found, as I have said, in other areas of Europe, to the extent – the considerable extent – to which the various political societies were governed according to instruments of dialogue and of representation, or more schematically, a system of pacts arrived at by negotiation, *Huldigungen*, *Herrschaftsverträge*.⁴ A very distinctive feature in northern and central Italy – an area characterized by marked communal and urban development, the so-called ‘Italy of the cities’ – is the lack of parliaments and of assemblies of estates among the institutions of dialogue and representation. (This was because there were no *Stände*, as such, of the nobility and the clergy. Parliaments did

secolo’, in Cecilia Nuvola and Andreas Würzler (eds), *Forme della comunicazione politica in Europa nei secoli XV–XVIII. Suppliche, gravamina, lettere* (Bologna, 2004), pp. 119–36, here pp. 123f.

³ On the political relationships envisaged by *condotte*, see Maria Nadia Covini, *L’esercito del Duca. Organizzazione militare e istituzioni al tempo degli Sforza (1450–1480)* (Roma, 1998). On contracts of ‘aderenza’ Giovanni Soranzo, ‘Collegati, raccomandati aderenti negli Stati italiani dei secoli XIV e XV’, *Archivio storico italiano*, XCIV (1941): 3–35; Ugo Petronio, “‘Adhaerentes’. Un problema teorico di diritto comune’, in *Scritti in memoria di Domenico Barillaro* (Milano, 1982), pp. 40–84.

⁴ Werner Näf, *Herrschaftsverträge des Spätmittelalters* (Bern, 1951); Antonio Marongiu, ‘Capitulations, liens et limites du pouvoir monarchique’, in *Album François Dumont* (Bruxelles, 1977) pp. 101–21, now in Antonio Marongiu, *Dottrine e istituzioni politiche medievali e moderne. Raccolta* (Milano, 1979), pp. 401–21; Heinz Monhaupt, ‘Vertragskonstruktion und fingierter Vertrag zur Sicherung von Normativität: Gesetz, Privileg, Verfassung’, in Jean-François Kervégan and Heinz Monhaupt (eds), *Gesellschaftliche Freiheit und vertragliche Bindung. Rechtsgeschichte und Philosophie* (Frankfurt/M., 1999), pp. 1–33; Kenneth Pennington, *The Prince and the Law, 1200–1600. Sovereignty and Rights in the Western Legal Tradition* (Berkeley, 1993); Anthony Black, ‘Der verborgene Ursprung der Theorie des Gesellschaftsvertrages. Die in der Entwicklung befindliche Sprache des Contractus und der Societas’, in Paolo Prodi (ed.), *Glaube und Eid. Treueformeln, Glaubensbekenntnisse und Sozialdisziplinierung zwischen Mittelalter und Neuzeit* (München, 1993), pp. 31–48. See also André Holenstein, *Die Huldigung der Untertanen. Rechtskultur und Herrschaftsordnung (800–1800)* (Stuttgart and New York, 1991), pp. 92–4, 284ff. and 328ff.

exist outside the 'Italy of the cities', however, in the kingdom of Naples, in some provinces of the Papal States and in the subalpine states.)⁵ Hence the prominence that the *capitoli* assumed in the constitutional history of the communities, their careful preservation in the archives, and the transcription of the most significant documents in *Libri iurium* and *Libri privilegiorum*.

The *capitoli* that will be briefly analysed in the following pages were concluded by communities, by families or by individuals, with Francesco Sforza, the *condottiere* who, after the death of Filippo Maria Visconti, duke of Milan, in 1447, succeeded within three years in conquering the ducal throne, by virtue of his rights (as son-in-law of the late duke), above all by virtue of his effective military conquest with his troops of the various provinces of the duchy, and then of the city of Milan itself in 1450.⁶ Sforza's laborious conquest of the ducal throne has left a significant documentary trail. The change of regime and the circumstances of the conquest produced in effect a whole series of capitulations that the *condottiere* – wanting firm, consensual foundations for his authority – made with the communities that submitted themselves one by one: not only the principal cities, but also small towns, villages, *terre* and valleys. The resulting pacts, over 70 of them, came to form the institutional framework within which Francesco Sforza would operate. I have already written in more detail about these *capitoli* elsewhere. In the following pages, the aim is to see what 'models of the state' can be discerned behind the requests presented by the communities.⁷

An Outline Geography of the Duchy: Cities and Urban Territories, Communities, Feudataries

In the mid-fifteenth century the duchy of Milan was approximately 25,000 square kilometres in extent; with 10 recognizable principal 'provinces', corresponding to as many city *contadi*, the territories that between the twelfth and the fourteenth centuries had been centred on the principal urban communes of the region, the

⁵ Helmut Georg Königsberger, 'Parlamenti e istituzioni rappresentative negli antichi stati italiani', in Ruggiero Romano and Corrado Vivanti (eds), *Dal feudalesimo al capitalismo* (Torino, 1978), pp. 577–613. On the absence or weakness of representative institutions in areas dominated by cities, see Wim P. Blockmans, 'A typology of representative institution in late medieval Europe', *Journal of Medieval History*, 4 (1978): 189–215.

⁶ Fabio Cusin, 'L'impero e la successione degli Sforza ai Visconti', *Archivio storico lombardo*, 63 (1936): 3–116; Francesco Cognasso, 'La Repubblica di S. Ambrogio', in *Storia di Milano*, ed. by the Fondazione Treccani degli Alfieri (Milano, 1953), vol. 6, pp. 387–442.

⁷ Giorgio Chittolini, 'I capitoli di dedizione delle comunità lombarde a Francesco Sforza', in Giorgio Chittolini, *Città, comunità e feudi negli stati dell'Italia centrosettentrionale (secoli XIV–XVI)* (Milano, 1996), pp. 39–60.

civitates superiorem non recognoscentes, real 'city-states'.⁸ The *contadi* were quite extensive in comparison with the territories of cities elsewhere in Europe, and had become the basic structure of the territorial organization throughout the Po valley,⁹ so that they could be compared to the *Territoria* of the Germanic lands.¹⁰ These provinces extended in fact almost without a break throughout the central plain of the duchy, from the lakes below the Alps to the river Po, and on to the heights of the Appenines. Each of them was centred on a city, a provincial capital, the seat of the

⁸ On what could be considered the specific characteristics of a city-state – characteristics distinct from those of other cities, even those that were rich and powerful and had subject territories, see Mogens Herman Hansen (ed.), *A Comparative Study of Thirty City-states Cultures. An Investigation Conducted by the Copenhagen Polis Center* (Copenhagen, 2000), here pp. 277–93. On the equivocal characteristics of city-states shown by the German Imperial cities, see Peter Johanek, 'Imperial and Free Towns of the Holy Roman Empire. City-States in Pre-Modern Germany?' in Mogens Herman Hansen (ed.), *A Comparative Study of Thirty City-states Cultures. An Investigation Conducted by the Copenhagen Polis Center* (Copenhagen, 2000), pp. 141–67. On the characteristics of Italian city-states Philip Jones, *The Italian City-state. From Commune to Signoria* (Oxford, 1997), esp. pp. 360–70 and 564–73; Ann Katherine Isaacs, 'Italie. Les Etats de Toscane et de Vénétie du XIVe au XVIe siècle', in Peter Blickle (ed.), *Résistance, représentation et communauté* (Paris, 1998), pp. 383–400; Thomas A. Brady Jr., 'Conclusion', in Peter Blickle (ed.), *Résistance, représentation et communauté* (Paris, 1998), pp. 419–23. For an overview of European cities, urban territories, and city-states see Marino Berengo, *L'Europa delle città. Il volto della società urbana europea tra Medioevo ed Età moderna* (Torino, 1999), pp. 111–70; Giorgio Chittolini, 'Gli stati cittadini italiani', in Rainer C. Schwinges, Christian Hesse and Peter Moraw (eds), *Europa im späten Mittelalter. Politik – Gesellschaft – Kultur* (München, 2006), pp. 153–65.

⁹ Gian Maria Varanini, 'L'organizzazione del territorio in Italia. Aspetti e problemi', in Giuliano Pinto and Silvana Collodo (eds), *La società medievale* (Bologna, 1993), pp. 133–73; Gian Maria Varanini, 'Aristocrazie e poteri nell'Italia centro-settentrionale dalla crisi comunale alle guerre d'Italia', in Renato Bordone, Guido Castelnuovo and Gian Maria Varanini (eds), *Le aristocrazie dai signori rurali al patriziato* (Roma-Bari, 2004), pp. 121–93, 127–9 and 157; Isabella Lazzarini, *L'Italia degli Stati territoriali. Secoli XIII–XV* (Roma-Bari, 2003), pp. 98–100; Giuliano Milani, *I comuni italiani. Secoli XII–XIV* (Roma-Bari, 2005), pp. 129–31 and 151–4. For a comparison of Italy and Germany see Giorgio Chittolini and Dietmar Willoweit (eds), *Hochmittelalterliche Territorialstrukturen in Deutschland und Italien* (Berlin, 1996); Giorgio Chittolini and Dietmar Willoweit (eds), *Statuten, Städte und Territorien zwischen Mittelalter in Neuzeit in Italien und Deutschland* (Berlin, 1992).

¹⁰ On the concept of *Territorium* Dietmar Willoweit, 'Territorium', in Adalbert Erler, Ekkehard Kaufmann and Dieter Wertmüller (eds), *Handwörterbuch zur deutschen Rechtsgeschichte* (Berlin, 1998), vol. 5, columns 149–51 and Monica Pelz, 'Signoria rurale in Germania: Grundherrschaft?' in *La signoria rurale in Italia nel Medioevo. Atti del 2. convegno di studi, Pisa 6–7 novembre 1998, organizzato da Cinzio Violante e Maria Luisa Ceccarelli Lemut* (Pisa, 2006), pp. 41–59, here pp. 57f. On the equation between *Territorium* and urban *contado*, by a sixteenth-century jurist, A. Knichen, see Berengo, *L'Europa delle città*, pp. 110f.

local ducal officials, but which itself possessed notable powers of jurisdiction and taxation in their territories. It should be borne in mind that, while in the Germanic lands and in Europe more generally the designation 'city' was widely used for all centres of some demographic and political significance, and could refer to places with one or two thousand inhabitants, in Italy it was strictly reserved for a quite limited number of centres: those that had been episcopal seats, that had generally been Roman *civitates*, and that had established themselves as major communes between the eleventh and thirteenth centuries, taking the boundaries of the diocese as the horizon of their expansion.¹¹ The ten *civitates* of the duchy of Milan around 1450 each had a population of not less than 8,000 to 12,000 – the population level of Tortona, Alessandria and Como; some, such as Pavia, Cremona and Piacenza, had 30,000 or more; others, such as Novara, Parma and Lodi, came in between; Milan had perhaps 80,000 inhabitants, about the same as Venice.¹²

Beside the *civitates* there were numerous other centres with a considerable number of inhabitants, and many urban characteristics (privileges concerning taxation and markets, for example, the presence of merchants and artisans, of notaries, of petty local aristocracies, or the number and quality of the secular and regular churches). All these were characteristics that, according to the parameters used on the other side of the Alps, would have placed such centres not only above the threshold of a town, but among the so-called *Mittelstädte*. In the population band between 3,000 and 8,000 alone, there were at least another dozen: Vigevano, Monza, Borgo San Donnino (now called Fidenza), Treviglio and so on.¹³ Below this band there were numerous other centres, with between 1,500 and 3,000 inhabitants, levels which elsewhere in Europe would evoke the name of city. There were defined as 'terre', 'borghi' or 'castelli', and could be distinguished from the villages by the size of their population and by not being merely communities of peasants. In each *contado* there were several of these, perhaps amounting to a hundred or so throughout the duchy.¹⁴

All these 'minor centres' were, however, administratively and politically subordinate to, if not dependent on, the cities. A few, more populous, or just

¹¹ Giorgio Chittolini, 'Il nome di "città". La denominazione dei centri urbani d'oltralpe in alcune scritture italiane del primo Cinquecento', in Hagen Keller, Werner Paravicini and Wolfgang Schieder (eds), *Italia et Germania. Liber Amicorum Arnold Esch* (Tübingen, 2001), pp. 489–501; Marco Folin, 'Sui criteri di classificazione degli insediamenti urbani nell'Italia centrosettentrionale (secoli XIV–XVIII)', *Storia urbana*, 92 (2000): 5–23.

¹² See Maria Ginatempo and Lucia Sandri, *L'Italia delle città. Il popolamento urbano tra Medioevo e Rinascimento* (secoli XIII–XVI) (Firenze, 1990), pp. 73–89.

¹³ Chittolini, *Città, comunità e feudi*, pp. 61–84 and 85–104. On the particular urban and cultural characteristics of these centres, see Elena Svalduz, *L'ambizione di essere città. Piccoli, grandi centri nell'Italia rinascimentale* (Venezia, 2004).

¹⁴ Ginatempo and Sandri, *L'Italia delle città*; Peter Musgrave, 'The Small Towns of Northern Italy in the Seventeenth and Eighteenth Century: an Overview', in Peter K. Clark (ed.), *Small Towns in Early Modern Europe* (Cambridge, 1995), pp. 250–70.

peripheral, enjoyed a certain autonomy – if one contested by the cities on which they should have been dependent – a kind of political separation from the civic district and unmediated dependence on the duke analogous to that of the Alpine areas and some places on the lakes. Other *borghi* enjoyed their own privileges but were not formally ‘separati’, and were substantially included in the system of administration and government centred on the cities and on the ducal officials resident there.

The Alpine area was more complex and fragmented. The absence of major urban centres and the vivacity of the local communities (due in part to problems concerning communal properties and their exploitation) had given rise to a political and administrative landscape characterized by ample autonomies and federal organizations.¹⁵

There was an extended network of fiefs in the duchy; augmented by numerous enfeoffments by the Visconti and the Sforza, it was becoming still more substantial.¹⁶ The feudataries’ powers constituted a danger to the cities’ aspirations to hegemony in taxation and jurisdiction. Nevertheless, they were more limited and controlled than those of the old rural lordships. Between the twelfth and thirteenth centuries the major urban communes had set themselves the task of eliminating the rural lordships, and as a rule, from the early decades of the thirteenth century, they had not recognized other jurisdictions and other powers than those exercised directly by the communes themselves through their own organs of government and offices, or those conferred or delegated by them. This had been a significant turning-point in the history not only of the landed nobility but of Italian society as a whole.¹⁷ Into the politically unified *contado* were introduced the urban statutes, the paramount legal authority in the sphere of commun law (*jus commune*).

The crisis of the communal city-state had seen not only the recovery in the *contadi* of local lords, who had more room to manoeuvre, but also the willingness of the new *signori* establishing themselves in the cities to come to terms with them,

¹⁵ See, for example, for the area corresponding to the southern part of the present-day Canton Ticino (belonging in the fifteenth century to the duchy of Milan) Paul Schäfer, *Il Sottoceneri nel Medioevo* (Lugano, 1954), and see, now, for an analysis of the fifteenth-century *capitolazioni*, Massimo Della Misericordia, “‘Per non privarci de le nostre rasone li siamo stati desobidienti’”. *Patto, giustizia e resistenza della cultura politica delle comunità alpine nello stato di Milano (XV secolo)*, in Cecilia Nuvola and Andreas Würigler (eds), *Forme della comunicazione politica in Europa nei secoli XV–XVIII. Suppliche, gravamina, lettere* (Bologna, 2004), pp. 147–215.

¹⁶ For the grants in fief made in the decades before Francesco Sforza became duke see Federica Cengarle, *Immagini di potere e prassi di governo. La politica feudale di Filippo Maria Visconti* (Roma, 2006); Federica Cengarle, *Feudi e feudatari del duca Filippo Maria Visconti* (Milano, 2007).

¹⁷ Gerhard Dilcher, ‘Signoria rurale in Italia e Germania (X–XIII secolo). Problemi e prospettive’, in Gerhard Dilcher and Cinzio Violante (eds), *Strutture e trasformazioni della signoria rurale nei secoli X–XIII* (Bologna, 1996), pp. 623–42; Yves Barel, *La ville médiévale. Système social, système urbaine* (Grenoble, 1977), pp. 304ff.

recognizing them, making concessions to them, bypassing the cities. The titles of Imperial vicars and, in 1395, of dukes of Milan, had also allowed the Visconti to position themselves more easily and legitimately as the point of reference of the *domini* of the *contado*, and to proceed to make new concessions of rights, and also of privileges of separation (*Unmittelbarkeit* in relation to the city), to local lords as well as to minor communities and territories.

But in the areas around the urban centres – where the citizens themselves held much of the land – the pre-eminence of the urban commune and of its citizens remained firm, even in areas that were in large part enfeoffed, and the major structures of the territorial framework were still the city and diocesan territories (those cities and dioceses to which the imperial grants to Gian Galeazzo Visconti of 1395–1396 had referred as the constituent parts of the duchy). In the new ‘provinces’ of the duchy the cities – which were still the keystones of its general organization – remained natural capitals, and in the course of the fifteenth century consolidated their position as principal interlocutors of the prince.¹⁸

The Parties to the Contracts: Subjects, Corporate Bodies and Communities

But what ‘subjects’ presented their requests in the years 1447 to 1450? For the most part, it was communities who negotiated the pacts; over 70 of their *capitoli* are extant. The fullest and most studied *capitoli*, often the fruit of prolonged discussions, were those of the major civic communes, Milan and the nine cities that were the capitals of the principal provinces. Numerous non-urban communities also made pacts, however. In fact the submission of the *civitates* generally would imply, and in many cases did imply, the automatic submission of the communities dependent on them, comprised in their *contadi*. Nevertheless, some of these would seek to negotiate pacts in their own right: either because they had previously been governed by a feudatary or enjoyed privileges of separation (and hence were not really part of the urban ‘district’); or because they had simply found themselves in the path of the Sforza armies, or had chosen to anticipate surrender by timely submission, so as to obtain more favourable conditions. Such communities might be small centres, mere villages. But above all there were numerous *terre* and *borghi* with a substantial degree of demographic and economic development, that had already, under the Visconti, enjoyed some privileges and a degree of autonomy,

¹⁸ Giorgio Chittolini, ‘Statuten und städtische Autonomie. Einleitung’, in Giorgio Chittolini and Dietmar Willoweit (eds), *Statuten, Städte und Territorien zwischen Mittelalter in Neuzeit in Italien und Deutschland* (Berlin, 1992), pp. 7–38; Gian Maria Varanini, ‘Governi principeschi e modello cittadino di organizzazione del territorio nell’Italia del quattrocento’, in Sergio Gensini (ed.), *Principi e città alle fine del Medioevo* (Pisa, 1996), pp. 95–127; Maria Ginatempo, ‘Le città italiane, XIV–XV secolo’, in *Poderes públicos en la Europa medieval. Principados, reinos y coronas. Actas de la XXIII Semana de Estudios Medievales de Estella, 22 al 26 de julio de 1996* (Pamplona, 1997), pp. 149–207.

sometimes effectively 'separation', either in areas on the periphery that had been poorly integrated into a civic *contado*, or in areas without cities.¹⁹ In particular, there were several communities situated near the Alps: single communes, or communes grouped together in various kinds of federation (such as of a parish, or a valley).²⁰

Besides the *capitoli* stipulated by the communities were numerous *capitoli*, pacts and *condotte* (dozens of which are extant) that Francesco Sforza agreed with individuals such as *condottieri*, castellans and officials, and with some locally prominent families, particularly those who possessed ancient signorial rights in the border provinces of the duchy, above all those of Parma and Piacenza.²¹

The Principal Contents of the Requests

The framework of the requests is therefore complex and broadly representative of the range of communities which came to capitulate; the requests themselves varied considerably, and revealed diverse constitutional models.

Some requests had elements in common. One was the aspiration to have a constitution (*Verfassung*) that, in recognizing the sovereignty of the duke in his primary role as defender and protector of his subjects, confirmed corporate rights and assigned to the prince limited powers that could not override their prerogatives and privileges, so that his main functions would be as a guarantor, as a moderator and mediator in conflicts. Another common element was the significance that the communities assigned to the pact being entered into: a pact that could not be annulled, that was firmly binding on the duke and that, if it were not respected, could be considered void.²² The model of the state that emerges was one constituted of many small territorial entities – *borghi*, villages, fiefs – directly dependent on the prince, in a relation of immediate, almost personal dependence that excluded as far as possible the interposition and mediation of other powers.

But there could be various intermediary powers, and there were marked differences in the attitudes of the communities. Many of them were contesting the

¹⁹ As, for example, in the so-called Ghiaradadda, a region situated between the *contadi* of Cremona, Bergamo, Brescia and Milan, which was also an arena of warfare in these years, and where in fact nine centres made terms: Brignano, Covo, Antiginate, Caravaggio (the community, and some exiles from it), Treviglio, Fontanella, Mozzanica, Rivolta, Vailate.

²⁰ Della Misericordia, 'Per non privarci de le nostre rasone'.

²¹ There is no systematic listing of these documents. Some references for the Parmense in Giorgio Chittolini, 'Guerre, guerricciole e riasseti territoriali in una provincia lombarda di confine. Parma e il parmense, agosto 1447–febbraio 1449', *Società e storia*, 108 (2005): 221–49.

²² A full analysis, in relation above all to the mountain communities, in Della Misericordia, 'Per non privarci de le nostre rasone', pp. 166ff. and 191.

interposition of ducal officials – commissioners, captains, referendaries, *podestà*, appointed by the duke to various fiscal and jurisdictional districts – who were seen as often disturbing the relationship between the prince and his subjects. This was a frequent consideration, made evident in the *capitoli* as on so many other occasions (corresponding to the well-known adage ‘Vive le roi et mort à ceux qui gouvernent’), and which found expression above all in the requests of mountain communities, which had less to fear from the antagonism of other competing territorial bodies.²³

Some communities, that had been subject to a feudatary under the Visconti or feared becoming so, made explicit demands not to be subject in future to any feudal obligations, and to be able to depend immediately on the duke, in a kind of immediate dependence (*unmittelbare Abhängigkeit*) that excluded all forms of alienation of his sovereignty.

But the majority of the communities who formed part of larger administrative districts were also fearful with regard to more powerful communities in the same district, or of local government bodies in charge of it. This was the case, for example, for Alpine communities, in parish or valley federations: they feared the predominance of the major centre, or the federal organs (the communities of the Lugano valley, for example, were wary of interference from the *borghi* of Lugano and of Medrisio which, according to the valley’s constitution, should not have had the pre-eminence they exercised in practice).²⁴ In the majority of cases, however, it was the mediation of the city that was contested.

The Grounds of Disputes between the Cities and Rural Communities

In effect, the cities preserved important prerogatives in relation to villages and *borghi* within the boundaries of their ancient *contadi*, concerning jurisdiction and taxation in particular. The subject communities were not in an identical condition of dependence: within the territorial, administrative and fiscal organization of the state a hierarchy of powers and dependencies emerged, clearly differentiated, among the various ‘corpi’ subject to the duke. And a strong contrast emerged between the urban communities on one side, in which were concentrated many prerogatives of government over the territories of their ancient *contadi* and which thus exercised a degree of hegemony within them, and, on the other side, the lesser communities comprised within their districts, within, that is, the provinces of the duchy, of which the cities were capitals and centres of power. These lesser communities were small villages, which yet had an opportunity during the disturbances following the death of Filippo Maria to find a way to make their voices heard; or communities with privileges, perhaps even formally ‘separati’, although situated in the city districts, and consequently subject to the threat of

²³ Ibid., pp. 160f. and 201ff.

²⁴ Schäfer, *Il Sottoceneri*, p. 315.

interventions by the cities, and of reincorporation in the districts; or formally feudal territories who feared that the authority of the feudatory would be replaced by that of the urban commune. In the intense dialogue between Francesco Sforza and the subjects of his future state what arose most frequently, the theme most discussed, was precisely the prerogatives in fundamental matters claimed by the cities over their ancient *contadi*, and that the communities wanted to cancel or reduce.

Thus, in legal matters, the cities asked that the urban statutes should be in force throughout the territory, while the rural communities challenged their pre-eminence, setting their own statutes against them, if they had any, or common law (*jus comune romanorum*), or Visconti decrees. In the administration of justice, according to the requests of the *civitates*, the superiority of urban tribunals should be recognized throughout the whole *contado*; while the minor communities claimed the right to their own magistrate, nominated by the duke, or more rarely elected by the community itself, to whom its inhabitants and those of minor surrounding centres could have recourse. In fiscal matters the urban centres aspired to keep control over the allocation and exaction of direct taxes in the entire *contado*, and to concentrate in the cities the tax farms of customs dues; while the communities asked for the duke to impose a quota on them, and the freedom to decide how the taxes should be levied (making no secret of their wish to tax the property of citizens too). They also wanted to restrain the expansion of urban ownership of property in the countryside, to defend their communal property against direct or indirect alienation. Similarly, for ecclesiastical benefices, it was claimed that local benefices should be given to local, resident priests, as against the accumulation of rural benefices and prebends in the hands of clerics from the city.²⁵

What 'Below'? What 'Above'?

For the great majority of the communities that submitted their requests to Francesco Sforza, the most evident problem was that of the relations between the city and rural communities, or rather, between cities and non-urban communities, given that among the latter were many that were of such demographic, economic and social substance that they certainly could not be considered 'rural' communities.²⁶ This was much less of a problem for the communities and federations of the Alpine valleys and foothills, where the links with the city, already few enough in the communal era, had been further reduced during the fourteenth and early fifteenth century, but it was very much to the fore in the plains, where the economic links between city and countryside were close, and where disputes were more frequent, with small valleys as well as with the *borghi* and the *terre*. This was not solely due

²⁵ For a more detailed exposition, see Chittolini, 'I capitoli di dedizione'.

²⁶ Some of them – such as Monza or Vigevano – had over 6–7,000 inhabitants; some, such as Treviglio, Caravaggio, Borgo San Donnino, Voghera, all *terre* separate, had around 5,000 and their economies were quite diversified and lively.

to the fact that some – the urban communities – were richer and more influential than others (a hierarchy that could be observed among the various fiefs as well, some of which enjoyed greater privileges than others), but also the fact that these 10 cities, the ancient *civitates*, that later, between the twelfth and the fourteenth centuries, became great communes, each at the head of a city-state, claimed powers of government in taxation, jurisdiction and administration over their ancient territories. While they recognized the superior authority of the duke, they laid claim to being important intermediaries for that authority in the government of the territory (their ancient *contado*).

Consequently, in the political and administrative organization of the territory of the duchy of Milan, in the difficult search for a balance of interests between corporate bodies and social groups, in the negotiations of the *capitoli* the true ‘above’, for the greater part of the communities involved in the negotiations, was represented by the cities (save for the lofty and distant *superioritas* of Francesco Sforza). And the ‘below’ was represented by the wide variety of rural and non-urban communities.

It should be emphasized, nonetheless, that these did not constitute the lowest level in the complex framework of the communities of the duchy. Besides the 70 or so communities whose *capitoli* have survived, there were at least 20 or 30 times that number who had no voice to be heard on this occasion²⁷ (and had little enough before, as they would have little enough later, in the play of negotiations, petitions, embassies and letters). There were hundreds and hundreds of little villages, largely on the plain and in the hills, that did not have the opportunity and above all did not have the strength to make pacts, to agree *capitoli*, and most of them seem to have already been substantially integrated into the urban system. They were the many villages in which men from the city held much of the land, while the inhabitants were their *laboratores* – sharecroppers, rentpayers, labourers – and few were engaged in non-agricultural activities; villages without communal property; villages in which the few ecclesiastical benefices there were, were held by clerics and priests from the city. These communities were notably weak: no voice was heard from them, no requests for pacts or *capitoli*. It can be imagined that they shared the same anti-urban spirit revealed in the *capitoli* of other ‘rural’ communities;²⁸ but it is difficult to imagine a political and administrative set-up in which they could have a significant part to play. Indeed, the generic concept of ‘community’, *Gemeinde*, in the general sense in which it is used for other European

²⁷ The tax registers – the only documents that for this period record the communities systematically and according to common criteria – numbered from 100 to 250 taxable communities for each of the 10 *contadi* of the state.

²⁸ The incidence of rural revolts in Italy, however, appears low in comparison with other parts of Europe. See Giovanni Cherubini (ed.), *Protesta e rivolta contadina nell’Italia medievale* (Roma, 1994); Tom Scott (ed.), *The Peasantries of Europe. From the Fourteenth to the Eighteenth Centuries* (London and New York, 1998).

areas, appears to be of little use.²⁹ Significantly, in more than a few instances, it was the men from the city who had lands in the area, or even the feudataries, who came forward to assert the rights of the small rural communities.³⁰

The Responses of Francesco Sforza and the Constitutional Settlements in the Sforza Era

The lively dialogue opened by the death of Filippo Maria Visconti was nevertheless destined to be concluded by the substantial confirmation of the old agreements, those arranged in the duchy in the early decades of the fifteenth century, that sanctioned the recognition of ample urban prerogatives. The requests of the rural communities had only partial and temporary success, and the pre-eminence of the cities remained firm, destined even to be strengthened (except for the maintenance of the prerogatives of some centres too substantial not to be given the privileges of 'separation'). This was the situation that could be found in the neighbouring Venetian Terraferma, and, in part, in the republic of Florence, with the clear recognition of the prerogatives of the subject cities over their territories. Indeed, Milan's position – the 'capital' but not the 'dominant city'³¹ – left more scope for the subject cities than Venice did in her Terraferma or, still more, Florence in respect of her subject cities.

The 'community' model that in some ways was set against the urban model was in reality generic enough. The *capitoli* expressed a collection of *gravamina* rather than a viable alternative constitutional settlement, that could be realized in the effective organization of the corporate entities and territories throughout Lombardy. If anywhere, there was scope for this in the Alpine area, near to the great system of communities that was becoming established in the Swiss confederation.

Even with this important limitation, the claims advanced in the *capitoli*, the affirmations expressed in them (in texts drafted with care and much consideration) retained great significance. They defined a general political horizon, with the evocation of some general principles and of the obligations of the prince; they contributed effectively to the development of a political language and a political culture of the communities.³² Moreover, those communities – not many, as has been said – that succeeded in making pacts with Francesco Sforza in the *capitoli*

²⁹ Peter Blickle, *From the Communal Reformation to the Revolution of the Common Man* (Leiden, Boston and Köln, 1998); Peter Blickle, *Kommunalismus. Skizzen einer gesellschaftlichen Organisationform, II, Europa* (München, 2000).

³⁰ See Domenico Sella, *Crisis and Continuity. The Economy of Spanish Lombardy in the Seventeenth Century* (Cambridge, 1979).

³¹ Marino Berengo, 'La capitale nell'europa d'antico regime', in Cesare De Seta (ed.), *Le città capitali* (Roma-Bari, 1985), pp. 3–15.

³² Della Misericordia, 'Per non privarci de le nostre rasone', pp. 214f.

drawn up then, obtained recognition of what would be fundamental points of reference in the bargaining, negotiation, forms of ‘resistance’ that would follow.

From Above, from Below: Political Dynamics

At the time the pacts were made in 1447 to 1450, rather than an unvarying dynamic from above to below, there was a game with many players, of various strengths and conditions. It was an analogous situation to that in other societies of the *ancien régime*, in which power was ‘diffused’, and in which, therefore, it is not easy to distinguish clearly ‘above’ from ‘below’: that is, to clearly distinguish the governors from the governed, the holders of power from the subjects, in a society in which the recognized function of the prince, the duke, appeared to be substantially that of taking cognizance of the relative weight of the forces involved, to arbitrate in disputes, to guarantee equilibrium (even if this did not impede the prince from acting to maintain the ducal ‘stato’, and to affirm his prerogatives). In the dialectic between prince and corporate entities, voices ‘from below’ were not lacking; but, as has been explained, there were different levels ‘below’; nor were the signs of some vitality ‘down below’ sufficient to speak of a state built up ‘from below’, in the complex synthesis of the diverse orientations of government evident in the duchy. The element differentiating the situation in Lombardy (and throughout the Po valley, in the Veneto and in Tuscany) from the European situation in general, is the important role that the city – in the Italian sense of the term – retained as an intermediary between the prince on one side and the ‘corpi minori’ on the other, taking the role that the territorial princes and territorial nobility, for instance, played in numerous other regions of Europe.³³

³³ Giorgio Politi, *Gli statuti impossibili. La rivoluzione tirolese del 1525 e il ‘programma’ di Michael Gaismair* (Torino, 1995), pp. 289 and 291; Giorgio Politi, ‘I dubbi dello sviluppo. Rilevanza e ruolo del mondo rurale in alcune opere recenti (secol XV–XVII)’, *Società e storia*, 5 (1982): 367–89; Peter Blickle (ed.), *Résistance, représentation et communauté* (Paris, 1998).

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Chapter 3

Local Conflicts and Political Authorities in the Papal State in the Second Half of the Seventeenth Century

Bertrand Forclaz

Introduction

In June 1664, a petition arrived on Prince Giovan Battista Borghese's desk in Rome, from his lordship of Norma, situated in Southern Lazio, around 100 kilometres south-east of the Eternal City. The author, notary Stefano Sbante, accused the chancellor – that is the secretary – of the commune, Bartolomeo Coluzzi, of having insulted and trying to attack him during an argument they had on the main square of the village about communal finance. According to Sbante, the governor of Norma – that is the local judge, who was appointed by Prince Borghese – had not investigated Coluzzi, as he was the latter's friend. A couple of weeks later, another petition was sent to Prince Borghese against the same Bartolomeo Coluzzi, this time anonymously: it described him as 'little inclined to the most excellent house Borghese', and again blamed the governor for being under Coluzzi's control. These petitions led to a trial against Coluzzi, and he was exiled from Prince Borghese's jurisdiction.¹

Twenty years later, in 1684, another anonymous petition was sent from Norma to Rome – it concerned Barnaba Coluzzi, Bartolomeo's nephew; this time though, the recipient was not Prince Borghese, but Pope Innocent XI. According to the authors, Coluzzi, who served as the commune's chancellor, had committed several abuses in the management of communal finance, and they asked for him to be removed. Following the petition, the papal authorities asked the local governor for more information about Coluzzi; among other documents, the governor sent judicial records showing that Coluzzi, during a meeting of the communal council held a few months before, had defied instructions given to the commune

¹ Archivio Segreto Vaticano [ASV] Archivio Borghese [AB] 6573, petition of Stefano Sbante; AB 704/120, petition of the 'particulari di Norma'; AB 6500, letter of Angelo Cassetta, 18 November 1664.

by Cardinal Cybo, one of the pope's closest officials. Despite the accusations, Coluzzi kept his position.²

These two examples, apart from illustrating the importance of petitions in the Old Regime, testify to the broadening of the political scene in the second half of the seventeenth century in the Papal State.³ Both affairs took place in a context of struggle for local power, and more specifically for control over the commune. Whereas the local actors belonged to the same families, their interlocutors in Rome were different: in 1664, the intervention of the feudal lord was called for, whereas 20 years later, the pope, acting as a temporal sovereign, was involved. These cases raise questions about the background of the petitions and their immediate results, and about the language of political conflicts: what kinds of arguments are used with different authorities? How do the outside authorities – the feudal lord and the pope – react to these petitions? More broadly, how are we to analyse this process: can we for example conclude that there was 'progress' in statebuilding? The thesis of the present chapter is that we need to widen our definition of statebuilding. State magistracies and feudal lords shared a design of administrative 'centralization', and the interaction between these rival powers and their subjects shaped the political space of the Old Regime and constituted statebuilding: by turning to these different authorities, the subjects – in this case the local notables – helped them improve their control over the territory, whereas this control itself was significantly remoulded by the subjects.

In order to address these questions, this chapter will focus on several political events that took place between 1650 and the end of the seventeenth century in the lordships of Montefortino and Norma, both held by the Borghese family; the microanalytical study of these cases will make it possible to highlight change and continuity in the pattern of relationships between local notables on the one hand and outside authorities on the other.⁴ But first of all, who were the actors involved?

² Archivio di Stato di Roma [ASR] Buon Governo [BG] II, 3106, petition of the 'popolo, e miseri della terra di Norma' and letters of the governor of Norma, September/October 1684.

³ In the last years, the relevance of petitioning for political communication between rulers and subjects has been emphasized: see lately Cecilia Nubola and Andreas Würgler (eds), *Bitschriften und Gravamina. Politik, Verwaltung und Justiz in Europa (14.–18. Jahrhundert)* (Berlin, 2005).

⁴ I present here some results from my PhD thesis, which I discussed in 2003 at the *Ecole des Hautes Etudes en Sciences Sociales* in Paris: see Bertrand Forclaz, *La famille Borghese et ses fiefs. L'autorité négociée dans l'Etat pontifical d'Ancien Régime* (Rome, 2006). For the broader historiographical context, see Bertrand Forclaz (ed.), 'Attori sociali e istituzioni in Antico Regime', *Dimensioni e problemi della ricerca storica*, 1 (2004): 7–14.

The Context

Norma was one of the 32 lordships held by the Borgheses in the Papal State at the end of the seventeenth century. This papal family had taken advantage of Pope Paul V's (Camillo Borghese) long pontificate (1605–1621) to buy an important landed patrimony from old Roman noble families, thanks to Paul V's immense financial donations and the use of political authority. By doing so, they completed their social ascension, as they obtained nobiliary titles – a classical process in the early modern period, which was particularly developed in the Papal State, due to the phenomenon of nepotism.⁵ These purchases not only had economic and social components, but also a political dimension.

In the Papal State, as in the neighbouring Kingdom of Naples, nobles held extended jurisdictional rights in their lordships in the seventeenth century: criminal and civil jurisdiction as well as appeals and the death penalty. The inhabitants could appeal to papal tribunals, and the central magistracies theoretically controlled condemnation to death and the use of torture, but this control was difficult to apply.⁶ The lords also took part in the appointment of communal aldermen in their lordships and had jurisdiction over the management of communal finance; furthermore, they held patronage rights over ecclesiastical benefices as well as significant property and banal rights.⁷ They thus retained a very strong position in their lordships. However, not every lord retained the same rights, and hierarchies within the nobility as well as nepotism were important parameters of seigneurial rights: old Roman families, such as the Colonnas and the Caetanis, possessed the

⁵ On nepotism, see esp. Wolfgang Reinhard, 'Papal Power and Family Strategy in the Sixteenth and Seventeenth Centuries', in Ronald G. Asch and Adolf M. Birke (eds), *Princes, Patronage and the Nobility. The Court at the Beginning of the Modern Age, c. 1450–1650* (Oxford, 1991), pp. 329–56; Antonio Menniti Ippolito, *Il tramonto della Curia nepotista. Papi, nipoti e burocrazia curiale tra XVI e XVII secolo* (Roma, 1999); on the patrimonies of papal families, see Wolfgang Reinhard, *Papstfinanz und Nepotismus unter Paul V. (1605–1621). Studien und Quellen zur Struktur und zu quantitativen Aspekten des päpstlichen Herrschaftssystems* (Stuttgart, 1974); Volker Reinhardt, *Kardinal Scipione Borghese (1605–1633). Vermögen, Finanzen und sozialer Aufstieg eines Papstnepoten* (Tübingen, 1984); Marco Teodori, *I parenti del papa. Nepotismo pontificio e formazione del patrimonio Chigi nella Roma barocca* (Padova, 2001).

⁶ On the jurisdictional rights of feudal lords in the seventeenth century, see Bertrand Forclaz, 'Le relazioni complesse tra signore e vassalli. La famiglia Borghese e i suoi feudi nel Seicento', in Maria Antonietta Visceglia (ed.), *La nobiltà romana in età moderna. Profili istituzionali e pratiche sociali* (Roma, 2001), pp. 165–202; Caroline Castiglione, *Patrons and Adversaries. Nobles and Villagers in Italian Politics, 1640–1760* (Oxford, 2005). For the Kingdom of Naples, see esp. Tommaso Astarita, *The Continuity of Feudal Power. The Caracciolo di Brienza in Spanish Naples* (Cambridge, 1992); Luca Covino, *I baroni del 'buon governo'. Istruzioni della nobiltà feudale nel Mezzogiorno moderno* (Napoli, 2004), pp. 3–80.

⁷ On the various seigneurial rights, see Forclaz, *La famille Borghese*, Chapter 1.

most extended rights; papal families, such as the Borgheses and the Barberinis, were granted extended jurisdictional rights in the lordships they bought; new nobles allied to papal families also received jurisdictional rights, that is the Sacchettis, clients of Urban VIII (Maffeo Barberini, pope between 1623 and 1644). The so-called 'anti-feudal' policy of the popes in the early modern period was thus limited at its very core in its range and application by nepotism.⁸

In the lordships, seigneurial rights therefore had significant implications in various areas – political, economical and social. What repercussions did this have on the local political scene? In the lordships of the Borghese family – as well as in other villages of early modern Italy – political conflicts mainly revolved around the administration of the communes.⁹ The communes, which had been created from the thirteenth century on, were responsible for the distribution of taxes and the allocation of communal pastures or other properties; they also represented the villagers with the lords and defended their interests – for example when there were conflicts about seigneurial rights. The direction of a commune was therefore crucial for the local notables – the families of big farmers, landowners, lawyers and priests – and the nomination of communal officers led to sharp conflicts between competing factions. Since the lord exerted significant control over the administration of a commune throughout the seventeenth century and was involved in the appointment of officers, it was fundamental for the rival groups within the elite to include one of the local lordly administrators: the steward, who was in charge of the management of the lordships, the leaseholder – if the lord's incomes were rented out – as well as the governor, that is the lordly judge and other officers of the lordly tribunal. Given the multiplicity of these offices, all factions usually had ramifications in the lordly bureaucracy. As we shall see, relationships with outside authorities – the papal magistracies or the bishops holding ecclesiastic jurisdiction – proved central in local factional struggles.¹⁰

⁸ On the old noble families, see David Armando, 'I poteri giurisdizionali dei baroni romani nel Settecento: un problema aperto', *Dimensioni e problemi della ricerca storica*, 8 (1993): 209–39; the case of the Sacchetti family is studied in Irene Fosi, *All'ombra dei Barberini. Fedeltà e servizio nella Roma barocca* (Roma, 1997). Claims of the 'anti-feudal' policy of the papacy have been made esp. by Paolo Prodi, *Il sovrano pontefice. Un corpo e due anime: La monarchia papale nella prima età moderna* (Bologna, 1982); as well as by Bandino Giacomo Zenobi, *Le 'ben regolate città'. Modelli politici nel governo delle periferie pontificie in età moderna* (Roma, 1994).

⁹ For the Papal State, see Castiglione as well as Giovanni Curis, *Usi civici, proprietà collettive e latifondi nell'Italia Centrale e nell'Emilia con riferimento ai Demanii comunali del Mezzogiorno* (Napoli, 1917); for early modern Italy, see Gérard Delille, *Le maire et le prieur. Pouvoir central et pouvoir local en Méditerranée occidentale (XVe–XVIIIe siècle)* (Paris and Rome, 2003); Giovanni Tocci, *Le comunità in età moderna. Problemi storiografici e prospettive di ricerca* (Roma, 1997).

¹⁰ The rich literature concerning faction conflicts has stressed this element, esp. the Italian micro-historical school: see Angelo Torre, 'Faide, fazioni e partiti, ovvero la ridefinizione della politica nei feudi imperiali delle Langhe tra Sei e Settecento', *Quaderni*

Political Conflicts in the Lordships (1650–1660) – Bandits

The analysis of a conflict that took place in the 1650s in Montefortino, another lordship held by the Borghese family in Southern Lazio, illustrates these elements: this struggle, which concerned the management of communal finance and the appointment of officers, led to the involvement of the Borgheses and their officers, but also of the bishop of Segni, to whose diocese Montefortino belonged, and of a papal tribunal.¹¹ Montefortino was the biggest village held by the Borgheses in the middle of the seventeenth century: it consisted of about 1,700 inhabitants and had three parishes. With 17 canons, four notaries, two law graduates and several landowners, it had a significant elite. The main actors in the conflict that will be analysed here, Alessandro Serangeli and Ottavio Fanfoni, belonged to old and established families. The struggle centred around the distribution of communal charges. During the winter of 1652/1653, Ottavio Fanfoni prevented the nomination of Alessandro Serangeli as alderman (*priore*), one of the officials responsible for daily management of the commune. Fanfoni, a law graduate, was the commune's prosecutor, an essentially honorific charge which exempted him from paying taxes on his extended properties. Together with his brother, Montefortino's archpriest, he possessed about 180 ha. Alessandro Serangeli, backed by other notables, had announced that if he became an alderman, he would remove Fanfoni from his office, in order to have the latter's assets taxed, thereby reducing the commune's deficit. When the incumbent aldermen proposed Serangeli as their successor, Fanfoni, as expected, opposed his appointment; in November 1652, he also vetoed Serangeli's designation to the 'Council of the Forty', a new body responsible for the crucial task of reviewing the cadaster. Serangeli and his allies petitioned Prince Marcantonio Borghese in Rome, who ordered the aldermen to nominate Serangeli as a member of the council; yet once again, Fanfoni was able to block the latter's appointment – according to Fanfoni's adversaries, the lordly governor, in charge of supervising the nominations, was under his influence. Subsequently, the Fanfonis' lands were measured by the lord's steward in Montefortino: they were suspected of usurping lordly ground – an argument which of course attracted Prince Borghese's attention and prompted his reaction. The suspicion proved wrong, and according to the Fanfoni brothers, it was Serangeli and his allies who had launched the accusation. In all these cases, Serangeli and his partners, in the opinion of the Fanfonis, were able to rely on a close collaborator of Prince Borghese in Rome, Giovan Vincenzo Jacobelli, a law graduate from Montefortino related to one of Serangeli's associates.

The confrontation between the factions ended violently: in September 1653, Alessandro Serangeli was murdered. According to the witnesses questioned by the

storici, 63 (1986): 775–810; Osvaldo Raggio, *Faide e parentele. Lo stato genovese visto dalla Fontanabuona* (Torino, 1990); see also Delille.

¹¹ For a detailed account of this case, see Forclaz, *La famille Borghese*, Chapter 7; the sources (testimonies and examinations), unless stated otherwise, are in ASV AB 2892/7.

feudal judge in the trial following the murder, his murderer was a bandit protected by Ottavio Fanfoni, whom they depicted as an almighty potentate in the village; they did not directly involve him in the assassination, but they stressed the political conflict between him and Serangeli as well as a recent family vendetta, therefore strongly suggesting his implication. Fanfoni took the minor orders, probably to escape the local tribunal. Since a bandit was involved and banditry was a matter for the competence of state tribunals, the plaintiffs appealed to a papal court, the Tribunal of the Governor of Rome, which could proceed against ecclesiastics. Ottavio then fled, and his brother, the village's archpriest and bishop of Segni's local vicar, was arrested by the Tribunal of the Governor and jailed in Rome – he claimed that Prince Borghese himself had him arrested as a result of an ongoing conflict between the feudal lord and the bishop concerning patronage involving several ecclesiastic benefices. His version did not convince the Roman judges: in 1655, Ottavio Fanfoni was condemned to death in absence and to the confiscation of his properties. In 1658, though, Fanfoni was pardoned as a result of the handover of another bandit to the Roman authorities, and Prince Borghese appointed him as governor of Palombara, another of his lordships situated in Sabina – Fanfoni held this office until his death in 1663.¹² This surprising outcome shows how fronts and alliances could shift, and how careful one has to be in interpreting political struggles.

This trial puts on display several elements that are relevant to relationships between local notables and outside authorities. First, both factions had connections within the Borghese administration, in Montefortino but also in Rome. Both included Prince Borghese's clients: Ottavio Fanfoni and several of his brothers had worked for Prince Marcantonio Borghese in Rome, and they had been appointed to ecclesiastical benefices in Montefortino by the Roman nobleman. On the opposite side, Serangeli and his allies had served the Borgheses as officers, and they were supported by one of Prince Borghese's closest officials in Rome. Yet the competitors were also related to other authorities: Ottavio's brother, Carlo Fanfoni, was the bishop of Segni's vicar in the village, and Ottavio himself was the bishop's prosecutor in Montefortino – a rather uncomfortable position in 1653, given the conflict between the bishop and the feudal lord.

Alliances were thus shifting, and the web of jurisdictions which is typical of the Old Regime allowed the actors to use different authorities in their conflicts by mobilizing the right argument: banditry in order to involve papal tribunals; the feudal lord's economic interest or a threat to his control over local politics in order to bring on Prince Borghese's intervention. The multiplicity of alliances with outside authorities was also an attempt on the side of the local notables to reinforce their power by diversifying its sources and acting as 'mediators' between

¹² See ASR Tribunale Criminale del Governatore, Atti di Cancelleria, 21/46, Sentenze 1655, 140, and Sentenze 1658, 63; ASV AB 8566, f. 656v.

competing institutions.¹³ But this case also shows how outside actors were able to manipulate local factions for their own sake, and how conflicts at different levels could overlap and even collide: local struggles, jurisdictional disputes between lords and bishops, or the policy of papal magistracies willing to intervene in seigneurial jurisdictions and to fight banditry.¹⁴ Conflicts thus were opportunities for shifts in the balance of local power, but also for attempts on the part of the authorities to reinforce their control, although it had to be permanently renegotiated with the notables.

Political Conflicts in the Lordships (1650–1660) – an Archpriest

The events in Norma narrated at the opening of this chapter include very similar elements, but in a different order.¹⁵ Norma consisted of about 800 inhabitants in the mid-seventeenth century. It comprised only one parish and the elite were less substantial than in Montefortino: a few notaries, a law graduate, some big landowners and farmers. Whereas in Montefortino, the local conflict concerned mainly the administration of the commune and the appointment of aldermen, in Norma, the political struggle primarily dealt with ecclesiastic jurisdiction and the position of the archpriest. Don Orazio Macario had been appointed by Prince Marcantonio Borghese, who held the patronage right over the parish church. In May 1664, rumours spread that Macario had sexual intercourse with young men, and the general vicar of the bishop of Velletri – to whose diocese Norma belonged – was sent to check the accusations.¹⁶ His enquiry confirmed them and Macario was suspended and fled from the village; a trial took place in the episcopal court of justice. The witnesses were local priests and notables connected to notary

¹³ This concept, formulated by the anthropologist Frederick George Bailey, has been used by Italian micro-historians in studying the interactions between ‘centre’ and ‘periphery’: see Frederick George Bailey, *Stratagems and Spoils. A Social Anthropology of Politics* (Oxford, 1969); Giovanni Levi, *Le pouvoir au village. Histoire d'un exorciste dans le Piémont du XVII^e siècle* (Italian original edn 1985, Paris, 1989), here p. 169; Raggio, *Faide e parentele*, pp. 59, 102 and 231f.; Edoardo Grendi, *Il Cervo e la repubblica. Il modello ligure di antico regime* (Torino, 1993), p. 60.

¹⁴ On the problem of banditry in the Papal State, see Irene Fosi's works, esp. *La società violenta. Il banditismo nello Stato pontificio nella seconda metà del Cinquecento* (Roma, 1985), and ‘Banditismo, nobiltà e comunità rurali nello Stato Ecclesiastico fra Cinque e Seicento’, in Francesco Manconi (ed.), *Banditismi mediterranei. Secoli XVI–XVII* (Roma, 2003), pp. 23–34; as well as Paola Staccioli, ‘Banditi e società. Lo Stato pontificio agli inizi del Seicento’, *Dimensioni e problemi della ricerca storica*, 1 (1989): 138–80; on banditism in the Borgheses' lordships, see Forclaz, *La famille Borghese*, Chapter 6.

¹⁵ For a detailed account of the events, see Forclaz, *La famille Borghese*, Chapter 7. The sources used are (unless stated otherwise) in ASV AB 704/120.

¹⁶ ASV AB 587/319, letter of Giovan Francesco Jacobelli to Prince Giovan Battista Borghese, 19 May 1664.

Bartolomeo Coluzzi, the commune's chancellor. They indicated young notaries as Macario's sexual partners – all of whom were allied to the leaseholder of the lordly incomes in Norma. Since the archpriest, Don Macario, was a client of the Borghese family, Prince Giovan Battista Borghese's collaborators organized his defence: they were even more eager to do so as the bishop of Velletri had already appointed a new archpriest, thus threatening the feudal lord's patronage right. In this context, Stefano Sbante, one of the notables implicated in the accusations against Macario, sent a petition to Prince Giovan Battista Borghese against Bartolomeo Coluzzi in June 1664, and a few weeks later, another petition asked for Coluzzi's removal from his office as the commune's chancellor. The conflict about the administration of the commune thus included another dimension, since Coluzzi was the chief of Macario's opponents. In August, the local governor arrested several of the archpriest's accusers as well as Coluzzi, in order to 'destroy' the 'league' against the archpriest.¹⁷ The struggle continued in both jurisdictions: in November, Bartolomeo Coluzzi was exiled by the seigneurial tribunal, and in December 1664, Macario was jailed and examined by the episcopal court. He denied all charges and described his accusers as his enemies – according to him, they wanted to take revenge on him for various reasons. Macario was released on bail and came back to Norma, and Prince Giovanbattista Borghese's pressure on the bishop proved efficient: in September 1665, Macario was absolved.¹⁸ For the archpriest and his allies, the victory was complete: Coluzzi had been exiled and Macario had returned to his cure. The triumph did not last for long however: Coluzzi was back as the communal chancellor by 1666, and the 'league' provoked a new trial against several of Macario's allies, even managing to get the Congregation of the Holy Office, the Roman Inquisition, to step in; again, the archpriest and his associates turned to Prince Borghese, whose collaborators contacted an advisor of the bishop in order to get the priests of the 'league' to step back. Unfortunately, I was not able to find any further evidence concerning this case, but it is obvious that the struggle was not over and that it had taken on greater intensity with the involvement of the Inquisition.

Again, we face a situation in which two factions are opposed, one with connections to the Borgheses, the other with the bishop and the Roman ecclesiastical authorities. As in Montefortino, various levels overlapped: at stake were control over local power – leadership in the commune as well as the possession of benefices – but also the rivalry between Prince Borghese and the bishop about patronage rights. In Norma as in Montefortino, the notables showed a striking ability to induce the intervention of these competing authorities by defining a type of offence which was a matter for their jurisdiction: in this case, Macario's adversaries used accusations against his morality to involve the episcopal tribunal;¹⁹

¹⁷ ASV AB 6500, letter of Angelo Cassetta, 19 August 1664.

¹⁸ ASV AB 6500, letter of Angelo Cassetta, 26 December 1664.

¹⁹ The instrumentalization of moral accusations in local conflicts, as well as the resort to church tribunals, was very common throughout the early modern period: for the Papal

but the archpriest's allies were able to shift the boundaries between ecclesiastical and lay jurisdiction by activating patron–client relationships and mobilizing Prince Borghese's concern for his authority. On the other hand, both Prince Borghese and the bishop of Velletri had their own motives in this case: for the feudal lord, it was an opportunity to get rid of a local potentate, whereas the bishop could appropriate patronage over the cure.

These affairs thus demonstrate how well local actors knew the agenda of the authorities: repression of banditry for the Roman Curia, moralization of the clergy for the bishops, control over communal politics for the feudal lord. These policies were instrumentalized by the factions: local conflicts were thus 'translated' into the language of outside authorities.

For the authorities, on the other hand, the implementation of their goals depended on the cooperation of the local notables and on factional conflicts: by setting one faction against another, Prince Borghese, the bishop and Roman cardinals could enhance their control, although it constantly needed to be renegotiated and reassessed. The balance between these rival institutions remained unstable, although it did not shift greatly in the 1650s and the 1660s. Things were to change in the last quarter of the century.

A New Partner: the *Buon Governo* (1680–1700)

A major transformation in the lordships was the involvement of a Roman institution, the *Congregazione del Buon Governo*. This congregation of cardinals, created at the end of the sixteenth century, was in charge of supervision of communal finance. Although its control theoretically extended to the communities of the lordships, the feudal lords were able to counter it and keep their jurisdictional immunity during the seventeenth century.²⁰ In the Borghese family's lordships, correspondence with the congregation did not start until the second half of the seventeenth century. In some of them, only a few letters were sent to the *Buon Governo* before 1700, whereas in others, such as Norma, contacts were intense

State, see Renata Ago, *Un feudo esemplare. Immobilismo padronale e astuzia contadina nel Lazio del '700* (Fasano, 1988), pp. 129f. and 140f.; Irene Fosi, 'Giustizia, giudici e tribunali fra centro e periferia nello Stato ecclesiastico', *Dimensioni e problemi della ricerca storica*, 2 (2001): 193–206; in other contexts, see Levi, p. 193; Jaime Contreras, *Sotos contra Riquelmes: regidores, inquisidores y criptojudíos* (Madrid, 1992); Luca Giana, 'Pratica delle istituzioni: procedure e ambiti giurisdizionali a Spigno nella prima metà del XVII secolo', *Quaderni storici*, 103 (2000): 11–48; Delille, p. 249.

²⁰ On the *Buon Governo*, see Stefano Tabacchi, 'Per la storia dell'amministrazione pontificia nel Seicento: organizzazione e personale della congregazione del Buon Governo (1605–1676)', in Armand Jamme and Olivier Poncet (eds), *Offices et papauté (XIVe–XVIIe siècle). Charges, hommes, destins* (Rome, 2005), pp. 613–34; on the jurisdiction conflict with the feudal lords, see Castiglione, pp. 92–118; Forclaz, *La famille Borghese*, Chapter 8.

from the 1680s on – as we saw earlier, the petition against Barnaba Coluzzi was sent in 1684. This chronology is significant: during the pontificate of Innocent XI (1676–1689), reforms were launched in order to improve the control over papal territories; for example, attempts to generalize taxation of land throughout the Papal State were made.²¹

This policy reached the lordships, although it did not prove very efficient until the beginning of the eighteenth century: lawsuits about the distribution of taxes or the management of communal finance piled up on the *Buon Governo*'s desk, but their results remained very limited. Such was the case in Norma in the late 1670s and early 1680s. As in the 1660s, the conflicts involved priests, communal aldermen, major farmers and landowners, and were characterized by factional divisions. These could last for years, and the recourse to papal institutions could end up prolonging them. The following case exemplifies these elements. Giovan Battista Aristotile and Carlo Trocchi, former aldermen (*priori*) of Norma, had been ordered in 1678 by the communal accountants to refund a large amount of money to the commune for their administration. They appealed first to the feudal governor, who confirmed the sentence. In September 1684, when Barnaba Coluzzi, a nephew of Aristotile and of Bartolomeo Coluzzi, was appointed chancellor of the commune, he obtained a cancellation of Aristotile's and Trocchi's debt from the feudal governor. The conflict went on and involved the Roman authorities: a few weeks later, an anonymous petition against Barnaba Coluzzi was sent to Pope Innocent XI, accusing him of financial embezzlement and asking for his revocation; the governor investigated Coluzzi for having allegedly dismissed the orders received from the prefect of the *Buon Governo* in these matters. In 1685, a Roman tribunal suspended the payment of the former aldermen's debt; the *Buon Governo*, informed of the matter, first overruled its decision, then confirmed it, and eventually remitted the case to the local tribunal.²²

This long and complicated lawsuit is typical of the early modern web of jurisdictions and shows how statebuilding, and the involvement of central magistracies in local conflicts, gave new resources to the actors – an element brought to light by micro-historical research.²³ Who were these actors? The former aldermen and the chancellor, Barnaba Coluzzi, belonged to the families who had opposed the archpriest in 1664; among their opponents, we find the sons of other notables involved in that conflict – some of whom had sided with the Coluzzis back then. Various elements suggest factional strife beneath the conflict over communal finance: the shifting alliance between the lordly governors and the

²¹ See Stefano Tabacchi, 'Land Registers and Cadastral Policy in the Papal State (17th–18th Century)', *Jahrbuch für Europäische Verwaltungsgeschichte*, 13 (2001): 121–43. The letters between communes of the Borgheses' lordships and the *Buon Governo* are in ASR BG II, 667, 2329, 2440, 2532, 2684, 3106, 3143, 3320.

²² ASR BG II, 3106, petitions sent to Pope Innocent XI against Bartolomeo Coluzzi, letters to the *Buon Governo* and trial records, September 1684–July 1685.

²³ See for example Levi; Raggio, *Faide e parentele*; Grendi.

notables, the anonymous petitions sent to Rome against the chancellor, or the fact that Barnaba Coluzzi, a few years later, accused his adversaries, then in charge of the commune's management, of financial malfeasance.²⁴

The similarities with the conflicts analysed in the first parts of this chapter are striking: in 1684, as 20 years earlier, at stake was political control over the commune. Moreover, the rhetoric used in the petitions – in 1664 as in 1684 – was similar: Barnaba Coluzzi was accused of disregarding the Congregation, whereas his uncle had been blamed for disrespecting Prince Borghese; in both cases, the local governor was denounced for his partiality. Key principles of the current political culture – justice and obedience to authority – were thus ignored. But while 20 years earlier disobedience to the feudal lord had been stressed, in this case, it was the papal bureaucracy that was being dismissed.

If the rhetoric was similar, the authorities involved were different, and the reforms launched by the papacy provided local notables with new arguments and new partners in their conflicts: the notables leaned on the policies of state institutions, while remoulding them in their own interest – they also instrumentalized the competition between the feudal lord and his officials on the one hand and the *Buon Governo* on the other hand. In the eighteenth century, this tendency was furthered by the definitive submission of lordly communities to the *Buon Governo*'s jurisdiction in 1702. From now on, conflicts between notables about the management of communal finance were to be arbitrated by the *Buon Governo*, and no longer by the seigneurial officials. The lord turned out to be less central in local conflicts, although he – and his officials – remained important allies on the local scene and also served as a link between the commune and the papal magistracies: in most cases, the *Buon Governo* turned to feudal governors for information when a conflict was brought to the Congregation.²⁵ Both the Borgheses and the Roman prelates hence used local conflicts to gather information and enhance their control over political life, although the *Buon Governo*, by contrast with the feudal lord, did not enjoy the support of local officers: the communal officers were not directly responsible to the congregation – which made the cooperation of local notables even more crucial. In the Papal State, the intervention of public magistracies in the lordships remained therefore very limited up to the end of the Old Regime.²⁶

²⁴ ASR BG II, 3106, letter of Barnaba Coluzzi to the *Buon Governo*, 8 September 1687.

²⁵ On eighteenth-century conflicts and the involvement of the *Buon Governo*, see esp. Renata Ago, 'Conflitti e politica nel feudo: le campagne romane del Settecento', *Quaderni storici*, 21/3 (1986): 847–74; Armando; Castiglione; Forclaz, *La famille Borghese*, Chapter 8.

²⁶ These limits now appear as a significant element in early modern statebuilding: see Jürgen Schlumbohm, 'Gesetze, die nicht durchgesetzt werden – ein Strukturmerkmal des frühneuzeitlichen Staates?', *Geschichte und Gesellschaft*, 23 (1997): 647–63.

Conclusion

The evolution sketched in these pages could be described as an affirmation of the state's authority, or in Weber's terms, as 'rationalization' of political debate, since violence and accusations concerning morality tended to be replaced by 'proper' conflicts over communal finance. Although this narrative has some truth to it, it is important to stress the continuity of local political life. In the 1650s, as in the 1680s, the notables manipulated the outside authorities and their concepts by bringing forward the 'right' accusation, but they continued to play according to their rules and to their concept of power: once a notable became an alderman, he did not manage the commune according to the *Buon Governo's* views, even though he might have sent petitions stressing the need for 'justice' and 'good government'. From the villagers' point of view, the cardinals of the *Buon Governo*, Prince Borghese and the bishop were alternative partners whom they could involve in their conflicts, and the notables had an accurate perception of the latter's different priorities. They were also able to use the competition between these authorities for their own sake, and drew local power from it.

Yet if we consider these cases from the point of view of outside authorities, the perspective changes. Aside from their competition, all of the institutional actors used these conflicts in a similar way: the cases were opportunities to collect information on local affairs, to improve their control, and to implement their policies. The Roman cardinals, the bishops or the Borgheses, while they were manipulated by the local notables, manipulated them as well in order to build up their authority: without its involvement in faction conflicts, the *Buon Governo* would not have been able to extend its control to the lordships. But in return, this process would not have been possible without the instrumentalization of outside institutions by the notables.

Can we consider these interdependencies to have resulted in statebuilding? Yes, if we adopt a broad definition of statebuilding. In the long run, feudal lords, bishops and communities lost their competition with the state – and our view of early modern statebuilding still owes much to that outcome. However, a closer look at political practice in the Old Regime shows its 'juridic pluralism' (according to Antonio Hespanha) and the multiplicity of actors involved.²⁷ All these authorities, and not only the state, should be included to the concept of statebuilding, as all of them actively took part in the institutional density of the Old Regime – a density

²⁷ The critic to the 'teleological' approach of early modern statebuilding has been made by Italian micro-history and the southern European school of law history: see Osvaldo Raggio, 'Visto dalla periferia. Formazioni politiche di antico regime e Stato moderno', in Maurice Aymard (ed.), *Storia d'Europa. L'età moderna. Secoli XVI–XVIII* (Torino, 1995), vol. 4, pp. 483–527; Luca Mannori (ed.), *Comunità e poteri centrali negli antichi Stati italiani. Alle origini dei controlli amministrativi* (Napoli, 1997); Antonio Manuel Hespanha, *Introduzione alla storia del diritto europeo* (original edn 1997, Bologna, 1999).

which makes its study relevant to our own experience, as nation-states fade away and we rediscover the plurality of political actors.

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Chapter 4

The Politics of Mercy: Village Petitions and a Noblewoman's Justice in the Roman Countryside in the Eighteenth Century

Caroline Castiglione

By virtue of their ubiquity and their quantity, petitions are among the most common sources for understanding the interactions between rulers and ruled in early modern Europe. The tally even in a single archive can be mind-boggling: over 7,300 volumes of registers of supplications in the Secret Vatican Archives alone, dating from the late fourteenth to the end of the nineteenth centuries.¹ In much of the countryside near Rome (as in many rural areas of Europe), local justice for ordinary crimes remained under the control of the nobility, who were also the recipients of petitions from their villagers.² Petitions thus formed a crucial element in the interaction between a variety of ruling authorities and their subjects. Along with complaining, stealing and foot-dragging, petitions were among the ordinary means of participating in what Wayne Te Brake called 'the ongoing bargaining process' that constituted the politics of early modern Europe.³

¹ Cecilia Nubola, 'Supplications between Politics and Justice: The Northern and Central Italian States in the Early Modern Age', in Lex Heerma van Voss (ed.), *Petitions in Social History* (Cambridge, 2002), pp. 35–56, here p. 41. The work of Irene Fosi has illuminated the possibilities (and limitations) of petitions as sources for the history of the papacy. Among her many insightful articles, see esp. Irene Fosi, 'Sovranità, patronage, e giustizia: suppliche e lettere alla corte romana nel primo Seicento', in Gianvittorio Signorotto and Maria Antonietta Visceglia (eds), *La corte di Roma tra Cinque e Seicento 'teatro' della politica europea* (Roma, 1998), pp. 207–41.

² A good summary of the recent literature on the Roman nobility is Maria Antonietta Visceglia, 'La Nobiltà romana: dibattito storiografico e ricerche in corso', in Maria Antonietta Visceglia (ed.), *La Nobiltà romana in età moderna: Profili istituzionali e pratiche sociali* (Roma, 2001), pp. XIII–XLI; a valuable overview of noble jurisdiction is David Armando and Adriano Ruggeri, 'La Geografia feudale del Lazio alla fine del Settecento', in Visceglia (ed.), *La Nobiltà romana*, pp. 401–45.

³ Wayne Te Brake, *Shaping History: Ordinary People in European Politics, 1500–1700* (Berkeley, 1998), p. 6. Due to space limitations, I confine the bibliography on rural justice and its relationship to power to Italy, esp. the area around Rome. A fine local study that also offers a thoughtful survey of the recent literature is by Gregory Hanlon, 'Justice in the Age of Lordship: A Feudal Court in Tuscany during the Medici Era (1619–66)', *Sixteenth*

During the eighteenth century, one noblewoman, Cornelia Costanza Barberini (1716–1797) made the first systematic attempt in her family to preserve a record of villagers who petitioned her for a reduction in the penalty imposed on them by her judicial officials. She considered it worth recording, for example, that Pasquale Pizzoli, originally from a village in the Roman countryside, had written to her from the Santo Spirito Hospital in Rome. He had fled his village because he was being prosecuted for the ‘abusive and injurious’ words he had used against another villager. The culprit wrote to Cornelia Costanza Barberini in the summer of 1770 to ask that the legal action taken against him be ended, not because he claimed to be innocent, but because he had been ‘advised [in the hospital] to return to his native air’.⁴ Pasquale’s was one of hundreds of requests for clemency that the noblewoman had preserved in a unique volume in the family archive. The noblewoman was by then in her fifties, with an ailing husband from whom she had taken over the management of some of the family properties. The Barberini already had a well-established pattern for governing and recordkeeping in their territories near Rome. What inspired Cornelia Costanza to keep more scrupulous records of her interventions in cases as minor as that of Pasquale? How can these recorded exchanges between a noblewoman and her ‘vassals’ inform us about the political interactions between nobles and villagers in the eighteenth century?⁵

Century Journal, 35/4 (2004): 1005–33; Renata Ago led the way in examining the political implications of rural conflict in the area around Rome, see esp. Renata Ago, ‘Conflitti e politica nel feudo: le campagne romane del Settecento’, *Quaderni storici*, 21/3 (1986): 847–74; Renata Ago, *Un Feudo esemplare: Immobilismo padronale e astuzia contadina nel Lazio del ‘700* (Fasano, 1988). Marina D’Amelia, *Orgoglio Baronale e Giustizia: Castel Viscardo alla Fine del Cinquecento* (Roma, 1996) has examined one family’s administration of justice, including how women played a role in its administration. Bertrand Forclaz has provided a thorough explication of the officials, practices, and implications of seventeenth-century seigneurial justice for Rome’s wealthiest landowning family, the Borghese. See Bertrand Forclaz ‘Les tribunaux du seigneur. L’administration de la justice dans les fiefs du Latium au XVIIe siècle’, *Dimensioni e problemi della ricerca storica*, 1 (2004): 67–82 (cf. also Forclaz’s contribution to this volume, Chapter 3). For a look at rural justice in southern Italy (and in the case of murder) see Tommaso Astarita, *Village Justice: Community, Family, and Popular Culture in Early Modern Italy* (Baltimore, 1999). On noble jurisdiction in southern fiefs, see the unique anthology by Luca Corvino, *I Baroni del ‘Buon Governo’: Istruzioni della nobiltà feudale nel Mezzogiorno moderno* (Napoli, 2004).

⁴ Archivio Barberini Computisteria, Biblioteca Apostolica Vaticana [ABC] 708, 14v (24 August 1770).

⁵ The volume ABC 708 (1770–1780) assembled information that previous generations had haphazardly preserved: lists of villagers the noblewoman approved for participation in the village assembly; requests from village communal officials to spend beyond their budget; brief notations about long-term leases on Barberini properties. The innovation of keeping a record of clemency requests was the work of Cornelia Costanza, at least until 1775 (by which time 70 per cent of the requests were received). This is not obvious if one consults the Vatican Library inventories of the Barberini archives, which do not attribute any of the volumes related to the administration of the *stato* to Cornelia Costanza. However,

Many of the villagers who petitioned the noblewoman in the 1770s resided in the *stato* of Monte Libretti, a territory north-east of Rome comprised of six villages – the village of Monte Libretti (the capital of the *stato*), Nerola, Ponticelli, Corese, Montorio Romano and Monte Flavio.⁶ While the noblewoman also preserved requests from villagers outside the *stato*, this chapter focuses on requests from the extensive *stato* of Monte Libretti, where the Barberini administered justice through two governors. The *stato*'s size, proximity to Rome, its status as a semi-independent territory in the Papal States and the unruliness of some of its inhabitants (at least as perceived by the Barberini) gave it a prominent place in the noble family's governing attention in the countryside.⁷

By the 1770s, Cornelia Costanza had been officially connected to the *stato* of Monte Libretti for almost 40 years, although the 1770s were the first decade in which she ruled alone. After the death of her father in 1722, she remained the only legitimate heir recognized by her uncle, Cardinal Francesco Junior (1662–1738). During a childhood punctuated by bitter custody battles between Cardinal Francesco and her mother, she was married to Giulio Cesare Colonna di Sciarra in 1728. He agreed to assume the Barberini family name after their marriage, and for the duration of that marriage, landholdings from the two families were combined.

letters to village officials were a critical eighteenth-century tool for monitoring affairs in the *stato*, and these are clearly the work of Cornelia Costanza between 1770 and 1775. A volume of letters dated 1770–1772 (ABC 998), contains the note on the first folio that they were written in the office of the secretary of Cornelia Costanza. The following volume of letters, from the years 1773–1775 (ABC 999), does not contain her name (or anyone else's) but those letters were also written in the first person singular feminine. Unfortunately, letters to village officials disappear from the family archive after 1775. However, since she dictated the letters to her officials in the villages between 1770 and 1775, it is likely that she was also the innovator of recordkeeping in volume ABC 708. ABC 708 is currently catalogued as part of the papers belonging to Cornelia Costanza's son, Carlo Barberini. The only reference to her son, however, is in the last ten folios of the volume (14 June 1780). Cornelia Costanza's control of the *stato* of Monte Libretti in the early 1770s is corroborated by a document of 1772, which records the formal possession of the *stato* by Carlo in 1772. It clearly stipulates, however, that Carlo was only the *future* owner of the *stato*, since his possession of it was not to take effect until the death of Cornelia Costanza. See AB, Indice II, 404 (3 June 1772, 24 June 1772, 25 June 1772). Carlo Barberini may have taken over the administration of the *stato* by 1778. In ABC 708 there is a shift in the style of recording the petitions in April 1778. The Italian becomes more ragged and the action taken by the Barberini was then written in Latin. An edict of 1778 pertaining to Monte Libretti was also issued in the name of Carlo Barberini, rather than his mother.

⁶ Throughout the chapter I use the spelling of the villages that was used in the early modern period, rather than the contemporary Italian spelling.

⁷ Further information on the officials of the Barberini can be found in Caroline Castiglione, *Patrons and Adversaries. Nobles and Villagers in Italian Politics, 1640–1760* (Oxford, 2005), pp. 108–13. *Patrons and Adversaries* did not specifically examine the Barberini's administration of justice, but rather focused on the noble family's dealings with the communal governments of the *stato*.

Giulio Cesare was 20. She was 12. During the 1730s, she was obviously busy with childbearing and childrearing (she bore seven children in the first nine years of marriage). She was named co-ruler of the territory of Monte Libretti in 1729, although from the late 1730s to the 1750s, Giulio Cesare seems to have been the more active partner in the governing of the *stato*. Gaps in noble recordkeeping for the 1760s suggest that either Giulio Cesare's failing health or advancing years had an impact on his ability to monitor affairs in the countryside. By 1769 the decision was made to divide the previously combined patrimonies. Those fiefs formerly belonging to the Barberini were placed under the tutelage of Cornelia Costanza, and those formerly belonging to Giulio Cesare remained under his authority.⁸ In the early 1770s, Cornelia Costanza attempted to return the family's engagement with the countryside to the near-obsessive levels it had reached during the 1740s and 1750s.⁹

During the 1770s, Cornelia Costanza read as much about wayward cows as she did about errant villagers like Pasquale Pizzoli. This was because the most common request for clemency during the eighteenth century was the reduction or the elimination of penalties imposed for grazing violations.¹⁰ Requests for clemency in these cases usually claimed that the animals escaped without the person's knowledge, and that upon this discovery the owner or responsible person moved immediately to return them to the lands where they belonged.¹¹ This most common offence could trigger violence in the village however, since livestock, whether owned outright or 'leased' in *società*, played a key role in the agrarian economy, and tempers exploded when animals were confiscated or merely threatened with confiscation by anyone. Maria Oriddia, a widow in Monte Libretti, wrote in February of 1771 to explain what happened when her oxen wandered into the property of Giovanna Pettinella. Giovanna's land was:

part olive grove, and part vineyard ... near the macchia and the public road, without any fences. The oxen had barely arrived on her property, when Giovanna became aware of it, and since she wanted to have all of them confiscated, one of the sons of the supplicant hit her.

⁸ Archivio Barberini [AB], Indice II, 1315, on the separation of the properties, which was declared necessary due to the age of Giulio Cesare, and his numerous duties.

⁹ On the custody battle, see Caroline Castiglione, 'Extravagant Pretensions: Aristocratic Family Conflicts, Emotion, and the "Public Sphere" in Early Eighteenth-Century Rome', *Journal of Social History*, 38/3 (2005): 685–703. On the Barberini obsession with governing in the preceding decades, see Castiglione, *Patrons and Adversaries*, pp. 91–118.

¹⁰ The requests for clemency I examined in volume ABC 708 for the *stato* of Monte Libretti can be roughly divided into the following categories: grazing violations, 61; offensive words or brawls, 10; theft, 15; violations by renters of ovens, *macelli*, etc., 7; milling grain outside the Barberini mills, 3; other damage to property, 8; other, 9.

¹¹ See the testimony of Vincenzo Griscioli, on 31v (probably around 3 May 1771, but precise date unknown).

Maria claimed that she was not entirely at fault because Giovanna had not protected her cultivated land in any way (such as with a hedge) as the local statute required since it was near the *macchia*, where everyone's animals were allowed to graze.¹² Cornelia Costanza had to weigh the relative culpability of Giovanna Pettinella, who had not properly protected the property, and the negligence of Maria Oriddia and her sons, who had not controlled their livestock. In this case, Maria Oriddia was absolved from any penalty.

Almost everyone who petitioned Cornelia Costanza received some relief from the penalty involved for his or her crime, and a few people even wrote again when they weren't satisfied with the noblewoman's first decision. Although she often forgave fines imposed by the governors, Cornelia Costanza still required the guilty party either to repair or repay any damages he or she might have caused. In the case of grazing violations, this meant payment for damages to trees or pasture.¹³ Even if the fine involved was halved or eliminated altogether, retribution was expected from those committing damages, like Santo Di Visi, who chopped down someone's oak tree,¹⁴ as well as from those accused of theft, like Elisabetta Parlioni, who, because she was hungry, stole cherries from Lucia Pelloni. Elisabetta was absolved from all fines, but she did have to reach a consensus about damages with Lucia.¹⁵ If physical violence was involved, both monetary penalties and apologies were in order, as was the case with Nonnosio Bellili who brawled with the Passarini brothers. Nonnosio had to reach an agreement with Federico Passarini about damages in order to be freed from prosecution in this case.¹⁶ Maria Benedetti, a widow in Montorio Romano, asked for, and received pardon for her sons, who had injured Serafino Tassi, while he was playing his guitar. Provided the annoying guitar player recovered, and agreed, the sons were to be absolved of all damages or penalties.¹⁷ Even in situations where only angry words were exchanged, there was still an emphasis on the necessity of apology. Words were weapons too, especially where Barberini officials were concerned. Bernardino Lugnini of Montorio Romano wrote because he had been found in contempt of

¹² Ibid., 25r (1 February 1771). Many of the requests demonstrate a clear familiarity with edicts issued by the Barberini. Particular details of the laws that supported the supplicants' position were cited, most frequently to support the claim that no damage had been done to the offended party's property. See ABC 708, 12v, 22r, 28r, 29v. The local economy of olive groves, vineyards, vegetables and animal pasture was fraught with tensions between cultivating crops and pasturing animals. See Hanlon p. 1013 who found similar tensions in a Tuscan village.

¹³ ABC 708, 28r and 57r are two additional examples, but it is a common pattern in her response to all the petitions.

¹⁴ Ibid., 102r (2 June 1775).

¹⁵ Ibid., 102v (2 June 1775).

¹⁶ Ibid., 75v (probably around 3 December 1773, but precise date unknown). He also had to pay a very small fine, 3 zecchini.

¹⁷ Ibid., 114v (1 March 1776).

court for 'having lost respect for a local official' while filing a petition with him. For such behaviour Bernardino was banished from his home, 'with great damage to his family, and to his own health, since he is advanced in age and has no one to attend to him'.¹⁸ Provided Bernardino apologized to the governor in question, he was to be allowed to return home.¹⁹

The petitions and Cornelia Costanza's response to them remind us that there could be considerable distance between the law and its practice in the eighteenth century. Although the penalty for some crimes (like losing respect for a Barberini official) was banishment, petitioning the noblewoman seems to have been sufficient to secure the waiving or the modification of such a penalty. Even a 'casual murderer' of unknown origins who petitioned the Barberini in 1779, found his penalty of exile lifted, since he had made peace with the family of his victim.²⁰ In responding to such petitions Cornelia Costanza placed more emphasis on reconciliation and on resolving disputes in the villages than on maintaining the draconian punishments decreed in Barberini edicts.²¹ Punishment, if it were to preserve the order it was supposed to protect, had to have limitations, although if one read only eighteenth-century edicts, one would assume the contrary. The stated penalties for crimes were often quite severe, either in monetary or personal terms. But in practice, if poverty was the cause of a crime, then penalties were to be reduced, since impoverishing a poor person, especially a widow or a pregnant woman, was undesirable. Thus petition-writers frequently stressed their poverty, as well as their marital status if they were women, especially if they were the sole caregivers of children. Not everyone petitioning the noblewoman claimed to be poor – men did so far less often than women. Bernardino Gervasi, for instance, who asked for her mercy on his illegal latrine building, was clearly well-to-do. He

¹⁸ Ibid., 63r (12 March 1773).

¹⁹ Cornelia Costanza stands in the tradition of seigneurial justice of promoting peace and local order. See Forclaz, pp. 69–70 and Hanlon, p. 1018 for the antecedents in seventeenth-century seigneurial justice; on the process of re-establishing peace in early modern justice, see Marco Bellabarba, 'Pace pubblica e pace privata: linguaggi e istituzioni processuali nell'Italia moderna', in Marco Bellabarba, Gerd Schwerhoff and Andrea Zorzi (eds), *Criminalità e giustizia in Germania e in Italia: Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna* (Bologna and Berlin, 2001), pp. 189–213.

²⁰ ABC 708, 163r (9 July 1779).

²¹ Penalties varied from as low as 10 giuli, imposed for not cleaning brush overhanging public roads (Archivio Barberini Colonna di Sciarra, Biblioteca Vaticana [ABCS] 248, fascicolo 27) to as much as 50 scudi for introducing 'foreign' goods into the *stato* (ABCS 248, fascicolo 92). Penalties might also include physical punishments, though I find no evidence for their use, based on the petitions for clemency. In an edict of 1762, the prince lowered the penalty for physical damages from 2 scudi to 75 baiocchi in the village of Ponticelli, but this seems to be a unique example (ABCS 287, fascicolo 7 [15 June 1762]). Also particularly severe were the penalties for gambling, viewed by the Barberini as a particularly dangerous activity. See the edicts in ABCS 248, fascicolo 93 (14 November 1754); ABCS 248, fascicolo 102 (2 October 1756); ABCS 291, fascicolo 36 (10 January 1748).

attributed most of his troubles to the envy of his fellow villagers.²² Nonetheless, the phrase, 'Considering the poverty' appears frequently in the record, and in those circumstances, the noblewoman often waived or halved the penalties.²³

Similarly, although banishment was used more often than imprisonment as a form of punishment (and a self-inflicted one in cases where the person did not want to face a particular accusation) it was a threat to local order. Migration for agricultural purposes was a common feature of rural life, but permanent absence was potentially damaging to families. Men were expected to be present in the village to look after their relatives, their work and, when they were eligible for office, the affairs of the communal government. The old and the ill were supposed to be cared for by their own kin and breathe their native air, not languish in the hospitals of Rome during the sweltering heat of summer. In these matters, the Barberini and the villagers apparently were in agreement.²⁴

Such attitudes towards punishment also share several points with the famous Italian treatise of the day, Cesare Beccaria's *On Crimes and Punishments* (1764), especially his assertion in Chapter 22, that theft is 'generally the crime of poverty and desperation ... and fines (to punish it) only increase the number of criminals ... and take bread from the innocent when taking it from the villains'.²⁵ Similarly, in his discussion of banishment, he noted,

What more afflicting sight could there be than that of a family which is brought into disgrace and destitution by the crimes of its head, when their legally decreed submission to him prevented them from averting his crimes, even if there had been a way of doing so.²⁶

In late seventeenth-century Tuscany, legal reforms had underscored the importance of 'rendering justice to the poor'.²⁷ Village justice had to be promptly and fairly administered (villagers insisted upon it), but the waiving of penalties was not uncommon, especially when the guilty party had already suffered the

²² ABC 708, 3r–4r (9 March 1770).

²³ Fosi, p. 213 has stressed that in many petitions to the pope, poverty was one of the frequently stressed qualities of a supplicant, along with the supplicant's need and honesty.

²⁴ Ago, *Un Feudo esemplare* argued that the peasants successfully manipulated the values of the elites in their petitions, letters, and protests to landowners like the Hospital of the Santo Spirito in Rome. This is certainly an issue in the villagers' presentation of their case to the noble lord, but villagers also had to deal with the results of their actions and the aftermath of the Barberini pardon for their offenses. Their justifications in the petitions would have to make sense for their neighbours as well as for the noble family. See Natalie Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, 1988).

²⁵ Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. by Richard Bellamy (Cambridge, 1995), p. 53.

²⁶ Ibid., p. 58.

²⁷ On Tuscan legal reform, 'rendering justice', see Nubola, p. 49.

cost of exile, imprisonment and the trial.²⁸ So Beccaria's treatise insisted upon what was evidently an evolved practice at least in rural Italy, that punishments that created more poverty would probably cause more problems than they could resolve. I point out the parallels not because I think that Cornelia Costanza had read Beccaria and employed his ideas, one of the most important of which (equality before the law) she would have found completely outrageous (although I'm sure his comments on the vulgar multitude would have struck a chord with the noblewoman). Rather the claims in Beccaria's text echo legal practices that were already quite old in the Italian judicial system. Similarly the success of eighteenth-century legal reform, one of the few successful reforms of that century, should be reconsidered in light of its relationship to longstanding practices. Reformers rightfully lamented the horrors of the early modern legal system, yet the creation of less draconian legal codes must be situated in the context of the leniency that emerged from the negotiations between petition-writers and rulers in early modern Italy.²⁹

Cornelia Costanza's preservation of the villagers' requests was also linked to her religious devotion – she used her response to petitioners in part to assert her spiritual leadership in the villages, and in part to counter negative critiques of the Barberini that evidently circulated in the *stato*. Clemency, in other words, could be good piety and good seigneurial publicity. How can both aspects be glimpsed in her ledger of mercy? Petitioners clearly relied on the religious dimensions of their requests. When possible supplicants situated requests for a pardon (a *grazia*) around Easter or Christmas, and in honour of these holiest days of the liturgical year many absolutions from her were granted. One petitioner wrote as early as January and was absolved in honour of Easter.³⁰ The power to grant such exemptions was a sign of Cornelia Costanza's status as lord of Monte Libretti, but it was also an act of charity that could bestow grace on the noble benefactor. In February of 1770, she complained to one of her officials about his tardiness in sending the proceeds of the judicial penalties collected in the *stato*. 'You are not the master of this money',

²⁸ On legal practice in Tuscany, see Hanlon, pp. 1031f.; Forclaz, p. 69 neatly summarized justice for the Borghese fiefs in the seventeenth century: '[L]a bonne justice doit être impartiale, rigoureuse et juste, et protéger les plus faibles.'

²⁹ John H. Langbein made a similar argument about the abolition of torture in the eighteenth century, attributing its eventual disappearance to sixteenth and seventeenth-century relaxation in the law of proof, rather than to the work of the eighteenth-century reformers. See John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago, 1976), esp. pp. 45–69. In Rome, the jurist Filippo Maria Renazzi (1745–1808) was writing his major works about criminal reform in the 1770s. See Beatrice Maschietto, 'Il "problema penale" nella dottrina italiana del secondo Settecento: Filippo Maria Renazzi', in Marco Bellabarba, Gerd Schwerhoff and Andrea Zorzi (eds), *Criminalità e giustizia in Germania e in Italia: Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna* (Bologna and Berlin, 2001), pp. 235–52.

³⁰ ABC 708, 8r; 21r; 21v; 48v; 75v; 93v; 98v; 166v; 137r; 138r (the petition as early as 17 January 1778).

she reminded her recalcitrant employee. The money, the noblewoman informed him, was already allocated by her for pious purposes (meaning for donation to charities, probably in Rome).³¹ Cornelia Costanza thus carefully delineated money collected from the administration of justice from other types of income from the *stato*, allocating it for charity, suggesting a close connection in the noblewoman's mind between the practice of charity and the administration of justice.

In order to reconcile adversarial parties in the village, Cornelia Costanza turned to the rehabilitative possibilities of Catholic ritual and teaching. Two boys of 'tender age', from Montorio Romano, were caught stealing pears but were spared any monetary penalty. They were to be sent instead 'three times to catechism to learn the acts of faith, hope, charity and contrition'.³² The governor was to provide the attestation from the parish priest that they had fulfilled this obligation.³³ Maria Benedetti, a widow left with five children and 'wretchedly poor', wrote in 1770 to ask for clemency because her son, a guardian of other people's livestock, had been involved in various accusations. This son was now dead, and she found it impossible to pay any of the penalties he had incurred in these suits, and so asked to be absolved from them. Cornelia Costanza decided that the mother should not be responsible for the penalties of the son, but the noblewoman also insisted that Maria should be required to go with her remaining children two times to weekday mass.³⁴ This was the same Maria Benedetti whose other two sons later wounded the guitar-player, which suggests that two masses were insufficient to reform the family, or mass attendance had raised their musical standards to intolerable heights. In addressing three other petitions Cornelia Costanza also relied on the potential efficacy of Catholic ritual, sending one man along with his entire family to mass, and then sending as many as six women who were convicted of theft to take communion while, 'asking God that Our intention be granted'.³⁵

Cornelia Costanza's actions suggest that she believed what many historians now assert about power in her times – that secular and religious hierarchies could reinforce each other. Eighteenth-century Barberini edicts proclaimed it: 'every human and divine law demanded that [Barberini] vassals faithfully maintain the rights of the noble family'. It was evidently worth repeating: the 'faithful vassals ... should have at heart the maintenance of the rights rightfully belonging to the Barberini Princes'.³⁶ According to this model, the parish priest should have been an ally, and Cornelia Costanza evidently believed she could count on some of

³¹ ABC 998, 53r (17 February 1770).

³² ABC 708, 37v (9 August 1771).

³³ Ibid.

³⁴ ABC 708, 19r. The archpriest was to send a statement that she had done so to the governor who was to forward it to the Barberini.

³⁵ The man was accused of grazing violations, ABC 708, 16r (28 September 1770). The women accused of theft are in 117r (18 May 1776) and 126v (29 March 1777).

³⁶ ABCS 248, fascicolo 98 (issued 1750, 1751, 1753, 1754, 1756); ABCS 248, fascicolo 107 (issued, 1751, 1761).

them to monitor the villages for her.³⁷ In a letter urging a local priest to keep his eye on a new noble employee, Cornelia Costanza noted: 'I want the individuals of my family, whether inside or outside of Rome, to live as Christians'.³⁸ Her 'family' in this case extended from her household servants in the city to her officials in the countryside, whose Christian conduct, the noblewoman apparently believed, was her business. Cornelia Costanza wrote to Don Francesco Palozzi to remind him that he was required to teach school as part of his contract as village priest. Her particular pedagogical advice to him was that 'he be especially vigilant regarding the proper conduct of the pupils, who I have heard, to my great regret, are little disciplined'.³⁹ In many ways the noblewoman set herself up as the mother superior of her parish priests – a role as much ecclesiastical as seigneurial. By sending villagers to mass or to catechism, she was assigning them penance in lieu of fines or monetary damages, and the role of the priests (besides administering the sacraments or teaching catechism) was to provide the noblewoman an attestation of compliance with her wishes.

Cornelia Costanza's maternalism, with its detailed instructions to her priests and its greater interest in the administration of justice was a more interventionist and more religious variant of the paternalism practiced by her husband, her uncle Cardinal Francesco Barberini, or her grandfather Maffeo. Since her grandfather Maffeo had ruled the territory, members of the Barberini family had attempted to influence the administration of justice in the *stato* by requesting copies of certain trials (although usually only ones pertaining to their seigneurial rights like hunting); issuing edicts to governors about proper procedures and penalties; investing money in the building and maintenance of jails, which contrary to stereotypes in the historiography, the Barberini carefully maintained or expanded. Like these male predecessors, she shared the aristocratic worldview that seigneurial and ecclesiastical hierarchies were interdependent – strengthening one by necessity would strengthen the other. But better than her predecessors, she seemed to have

³⁷ See John Bossy, *Christianity in the West* (New York, 1975), p. 120 on early modern Catechism, 'designed to instill obedience and mark out boundaries'. Other supporters of the thesis include Wolfgang Reinhard, 'Reformation, Counter-Reformation, and the Early Modern State – A Reassessment', *Catholic Historical Review*, LXXV/July (1989): 383–404; William V. Hudon, 'Religion and Society in Early Modern Italy – Old Questions, New Insights', *American Historical Review*, 101/June (1996): 784–804. See John W. O'Malley's objections in John W. O'Malley, *Trent and all That: Renaming Catholicism in the Early Modern Era* (Cambridge, MA, 2000), pp. 101–17.

³⁸ After appointing a new superintendent in February 1774, Cornelia Costanza instructed the archpriest Giovanni Battista Raimondi in Nerola to keep a careful watch over his activities and report any indiscretions to her. ABC 999, 166v (26 February 1774). Renata Ago has argued that archpriests should be considered noble officials, and the evidence from Monte Libretti suggests that connections between the Barberini and some local prelates were an important part of the noble family's management of the estate. See Ago, *Un feudo esemplare*, p. 134.

³⁹ ABC 999, 224v–225r.

recognized how much this was only an ideal that had to confront other forms of Catholicism circulating in the *stato*. Noble–villager disagreements about the implications of Catholicism and about the meaning of the Barberini’s religious paternalism surfaced in village assembly meetings and in Barberini letters to their officials. In Monte Flavio, villagers used these differences in a dispute with the noble family that lasted for several decades. They made explicit certain aspects of Catholic theology, fused them with the idea of the village constitution as a contract, and questioned thereby the legitimacy of the Barberini’s seigneurial regime.⁴⁰

From the mid-1740s to the early 1760s, the villagers of Monte Flavio refused to pay the Barberini some of the seigneurial dues they owed the noble family on an annual basis. Although the village constitution stipulated such payments were required of the villagers, the villagers maintained that the payment of the dues was unnecessary, since at the sixteenth-century foundation of Monte Flavio, crucial promises made to their ancestors by their then noble lords, the Orsini, had never been delivered: the village constitution had promised land that could be cultivated, but for the most part the land of Monte Flavio was too poor to be cultivated; the constitution referred to abundant pasture land, but the commune was forced to rent pasture outside the village. For these reasons, the villagers of Monte Flavio refused to pay the disputed dues, and ‘if someone did pay them, it was because they were forced to, or they were ignorant or sometimes [the dues] were extorted from some poor inhabitant’.⁴¹ Thus the disputed dues were actually a form of persecution of the poor, especially poor widows. This critique introduced a moral framework that transcended the historical and legal basis of noble power in the countryside. Villagers did not owe the Barberini the disputed dues until the noble lords made good on the promises to villagers in the constitution. Politically savvy villagers had long relied on the strategies of adversarial literacy – understanding how to manipulate the legal system and mastering documents like the constitution that defined their rights and obligations. By the eighteenth century they were also reinterpreting such documents to support their cause against the noble family.⁴²

Although the monetary value of the disputed dues was very low, each side was as adamant as the other in a dispute that meandered for many years through the papal law courts. The village critique of the noble family’s dues attacked the Barberini’s religious paternalism, an especially damning criticism in the intensely charity-oriented city of Rome.⁴³ By associating the Barberini with the ‘arbitrary

⁴⁰ For tensions elsewhere in the *stato* during the eighteenth century, see Castiglione, *Patrons and Adversaries*, pp. 131–46.

⁴¹ The testimony of the priests is in ABCS tomo 290, ‘Signatura Justitiae, pro Communitate ... Montis Flavii, Summarium, num. 4 [1751]’.

⁴² This incident and the concept of adversarial literacy are analyzed in greater detail in Castiglione, *Patrons and Adversaries*, pp. 13, 60–2 and 148–71.

⁴³ Hanns Gross has noted that eighteenth-century Rome (in contrast to much of the rest of Europe) retained a perspective which granted the poor a legitimate place in the world. By the standards of the time Rome was ahead of most European cities in dispensing charity

oppressors' of the poor, the villagers said, in effect, that there was no religion in the Barberini's religious paternalism, and not much paternalism in it either. Worse still, from the point of view of the noble family, was that three of the most articulate leaders of the rebellion in Monte Flavio were priests, who, in addition to the material poverty of Monte Flavio, stressed the village's remoteness from the Barberini's judicial officials. The priests argued that the villagers lacked proper access to noble justice. Because of these shortcomings, the priests charged that the seigneurial dues were nothing more than extortion. While there certainly were priests in the *stato* loyal to the Barberini, the long duration of this case suggests that by the mid-eighteenth century the relationship between religious and seigneurial authorities could be adversarial as well as collaborative.

Cornelia Costanza thus attempted to play a revitalized role in the administration of justice, focusing her efforts on what she perceived to be its enemies in the *stato*: wandering livestock, angry words, local feuds that threatened to lapse into long-term vendettas, families without fathers, parents without sons, poverty. In her response to the villagers she emphasized the religious dimensions of her lordship, making the practice of justice in her territory an act of charity, an integral part of her own salvation which depended in part on extending kindness towards the impoverished widow, the wayward youth and the exiled villager longing for home. She tried to reclaim Catholicism for her own seigneurial purposes, to return its priests to their appropriate sphere, individual salvation, and to lead the villagers to submit to God and to their lord. Her efforts in the 1770s were a response to threats to that vision, to an alternate Catholicism focused on social justice that inspired the politics and won the loyalty of some villagers of the *stato* of Monte Libretti.⁴⁴

and creating institutions to assist the poor. Clerics in Rome inside the papal government as well as private elite individuals devoted considerable effort to public assistance. Hanns Gross, *Rome in the Age of Enlightenment: The Post-Tridentine Syndrome and the Ancien Regime* (Cambridge, 1990), pp. 200, 202, 207 and 209.

⁴⁴ On the emphasis on justice in socially progressive Catholicism, see Penny Lernoux, *Cry of the People* (New York, 1980), p. 41.

Chapter 5

The Dynamics of Law Formation in Italian Legal Science during the Early Modern Period: the Function of Custom

Roy Garré

Introduction

If we closely examine the formation of the state from below, it is inevitably necessary also to refer to the juridical context in which this process took place.¹ From this point of view custom plays a particularly important role. This chapter focuses on custom as a normative feature within the legal system of the modern era, paying particular attention to Italy. The frame of reference comes from doctrinal sources, writings, treatises, collections of opinions and commentaries on Italian legal science² from the sixteenth to the eighteenth centuries.³

First of all, though, it is necessary to eradicate any misunderstanding in terminology that might arise from the polysemy of the word custom itself. The term ‘custom’ is understood here in its principle juridical meaning, in other words that of a source of law or, as the philosophy of law maintains, that of a

¹ On the role played by law and jurists in the formation of the modern state, see for example Aldo Mazzacane, ‘Law and Jurists in the Formation of the Modern State in Italy’, in Julius Kirshner (ed.), *The Origins of the State in Italy, 1300–1600* (Chicago, 1995), pp. 62–73; Thomas Kuehn, ‘Antropologia giuridica dello Stato’, in Giorgio Chittolini, Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994), pp. 367–80; as well as numerous contributions in Maurizio Fioravanti (ed.), *Lo Stato moderno in Europa. Istituzioni e diritto* (Roma-Bari, 2002) and Roman Schnur (ed.), *Die Rolle der Juristen bei der Entstehung des modernen Staates* (Berlin, 1986). For the Middle Ages see also Alan Harding, *Medieval Law and the Foundations of the State* (Oxford, 2002).

² In general, on the methodological usefulness of this kind of approach, see Roy Garré, *Consuetudo. Das Gewohnheitsrecht in der Rechtsquellen- und Methodenlehre des späten ius commune in Italien (16.–18. Jahrhundert)* (Frankfurt/M., 2005), pp. 18–30. To avoid burdening the text with juridical sources, I will limit myself to referring in note form to passages in Garré, *Consuetudo*, where the readers who wish to deepen their knowledge can make a comparison, usually with the transcript of the original in Latin.

³ For Italian juridical science in this period see above all Italo Birocchi, *Alla ricerca dell'ordine. Fonti e cultura giuridica nell'età moderna* (Torino, 2002), pp. 233ff.

normative fact,⁴ that is a set of regularities in social behaviour that for certain reasons are crystallized by constant use, supported by the personal conviction of the protagonists that the use in question has juridical relevance. It therefore rightfully constitutes *law* even though it is not laid down in written law, and as such can, at least potentially, be put before a court or an authority either as direct legitimatization, or as evidence, or as an interpretative element, or as anything else that has a bearing on the result of the trial. Excluded from our field of enquiry are therefore all those uses, observances, customs and regular practices that can have social, anthropological, religious or any other relevance, but not juridical validity and thus are not part of the everyday equipment of jurists, lawyers or notaries. A clear distinction between juridical custom and non-juridical custom is therefore often extremely difficult to make, above all in the period before laws were codified, which is why any precise distinction should be carefully considered from case to case.⁵

A Typical Source of Law from Below

In the early modern age custom (sources usually speak of *consuetudo*, *observantia* and eventually also of *usus*, *mos* or other similar expressions) was normally defined as a right that springs from the constant repetition of a specific use by the people ('*jus longo populi usu introductum*').⁶ In this sense it is a source of law coming from below – and here is the connection with the general theme of our collective research – in contrast, for example, with the law

⁴ Norberto Bobbio, *La consuetudine come fatto normativo* (Padova, 1942).

⁵ Concrete examples taken from juridical doctrine in the modern age in Garré, *Consuetudo*, pp. 259–62. For a broader discussion of the difference between *ius* and *factum* in the theory of custom see *ibid.*, pp. 9, 16ff., 60, 64, 66f., 215ff. and 225.

⁶ So for example Tommaso Maurizio Richeri, *Universa civilis et criminalis Juris-prudentia* (1774–1782) (Venetiis, 1841), tom. I, lib. I, tit. II, pars II, cap. I, § 351, p. 86. See also Pietro Ravennate, 'Enarrationes in titul. de consuetudine', in *De legibus, statutis, et consuetudine* (Coloniae, 1574), sect. I, n. I, p. 782: 'Si quaeritur, quid est consuetudo? Dicas, quod est ius non scriptum, moribus et usibus populi, vel a maiori parte ipsius, ratione initiatum, et continuatum, et introductum, habens vim legis'; Jacques Cujas, 'Paratitula in libros IX. Codicis Iustiniani', in *Opera omnia*, lib. VIII, tit. LII (Neapoli, 1758), tom. I, col. 571 E: 'Quid ... sit [consuetudo], si quaeras, dicam jus esse non scriptum, quod usus populi frequens, et inveteratus communi adsensione comprobavit'; Antoine Favre, *De erroribus pragmaticorum et interpretum iuris* (Lugduni, 1668), pars I, decas IV, error V, n. 11, p. 57: 'Consuetudo ius est ... quod moribus longoque usu receptum est ...'. For other definitions see Garré, *Consuetudo*, pp. 4, 13ff., 60ff., 105ff. and 159ff.

made by princes,⁷ with jurists' *interpretatio*⁸ and with the jurisprudence of the Highest Courts (*grandi Tribunali*).⁹ Within the so-called system of the sources of *ius commune*¹⁰ it played a very important role, not only in the Middle Ages,¹¹ as is generally believed, but also throughout the early modern age up to the introduction of the first codifications under the influence of natural law between the end of the eighteenth and the beginning of the nineteenth centuries. In Italy and in Continental Europe in general, influenced by the phenomenon of *ius commune*, medieval and early modern jurists very carefully and scrupulously studied the question of custom.

They were well aware of its vitality and importance, but they were at the same time aware of its 'otherness' in comparison with the doctrinal sources, legal or legislative, with which they usually operated, and of the risk they would have run if they had remained passive spectators to an uncontrolled emergence of local, popular or class customs.¹² It was necessary, therefore, to produce a body of knowledge to limit the phenomenon. Customs were totally acceptable as norms, but only on condition that they passed a series of tests related to substantive and procedural law. In this way the jurists of the time kept very efficient control over customs, eliminating those they classified as *malae consuetudines*.¹³ The choice of adjectives itself demonstrates the basic formula,

⁷ For the importance of the debate law/custom in the history of law see *ibid.*, pp. 89–97; Pio Caroni, “‘Sogar wenn Löwen sprechen könnten ...’ – Überlegungen zur Einführung: Gewohnheitsrecht und seine Vergangenheit”, in Pio Caroni (ed.), *Akten eines im Wintersemester 1998–1999 durchgeführten Seminars* (Bern, 2000), pp. 1–11, here p. 7; Francesco Calasso, *Medioevo del diritto. Le fonti* (Milano, 1954), pp. 182 and 213.

⁸ For this concept see Paolo Grossi, *L'ordine giuridico medievale* (Roma-Bari, 1995), pp. 162–75.

⁹ For the importance of the *grandi Tribunali* in the early modern period in Italy see Annamaria Monti, *I formulari del senato di Milano (secoli XVI–XVIII)* (Milano, 2001), pp. 45–69; Rodolfo Savelli, ‘Tribunali, “decisiones” e giuristi: una proposta di ritorno alle fonti’, in Giorgio Chittolini, Anthony Molho and Pierangelo Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna* (Bologna, 1994), pp. 397–421; Mario Sbriccoli and Antonella Bettoni (eds), *Grandi tribunali e rote nell'Italia di Antico Regime* (Milano, 1993); Gino Gorla, ‘I “grandi Tribunali” italiani fra i secoli XVI e XIX: un capitolo incompiuto della storia politico-giuridica d'Italia’, *Quaderni del Foro italiano*, 92 (1969): 629–52.

¹⁰ For an introduction to this concept see for example Grossi, *L'ordine giuridico medievale*, pp. 227ff.; Adriano Cavanna, *Storia del diritto moderno in Europa*, vol. 1: *Le fonti e il pensiero giuridico* (Milano, 1979), pp. 33ff.

¹¹ For the importance of the custom in the Middle Ages see for example Garré, *Consuetudo*, pp. 53–86; Grossi, *L'ordine giuridico medievale*; Luigi Prosdocimi, *Observantia. I commentatori e i pratici italiani* (Milano, 1954); Siegfried Brie, *Die Lehre vom Gewohnheitsrecht. Eine historisch-dogmatische Untersuchung* (Breslau, 1899).

¹² Garré, *Consuetudo*, pp. 18–30 and 277–81.

¹³ *Ibid.*, pp. 5, 49, 85, 135, 162, 166, 168ff., 196, 219 and 280.

in which ideological, political, ethical and religious factors undoubtedly converged, above all through the discriminating criteria of the *rationabilitas*.¹⁴ On the basis of this criterion customs were divided into two categories: good customs and bad ones. Only the first were allowed; the second were rejected because they were a priori held to be *usurpationes et corruptelae* and certainly not law. It is by no means accidental that the favourite form of custom was explanatory (*interpretatio usualis*)¹⁵ which on account of its very nature better conformed to the dominant legal system, at the same time offering a very useful means of applying the law on a day-to-day basis.¹⁶ Custom in this sense provides an element of certainty,¹⁷ which was the result of its close connection with the temporal dimension through the continuous reiteration in time (*temporis diuturnitas*)¹⁸ of determinate similar acts (*actuum frequentia*).¹⁹

Custom and Statute Law

In juridical methodology before the institution of codes, custom acted as a complementary phenomenon in comparison with written law.²⁰ Custom was simply another way of expressing popular opinion, formally shown in the case of statute law (*statutum*), implicitly self-explanatory in the case of customary law.²¹ There is no real variance between written law and non-written law; rather, one mirrors and complements the other. These two aspects are

¹⁴ For a casuistry on this concept see *ibid.*, pp. 168–74.

¹⁵ Clausdieter Schott, 'Die "Interpretatio usualis"', in Jan Schröder (ed.), *Entwicklung der Methodenlehre in Rechtswissenschaft und Philosophie vom 16. bis zum 18. Jahrhundert* (Stuttgart, 1998), pp. 65–84; Clausdieter Schott, 'Gesetzesinterpretation im Usus modernus', *Zeitschrift für Neuere Rechtsgeschichte*, 21 (1999): 45–84; Garré, *Consuetudo*, pp. 198–203.

¹⁶ As the famous jurist Cardinal Giambattista De Luca (1614–1683) wrote, in courts judges and lawyers often quoted from the Digest 'consuetudo est optima legum interpretres' (D. 1, 3, 37), he refers even to a 'quotidiana propositio, qua nil in Foro frequentius' (*Theatrum veritatis, et iustitiae* (Neapoli, 1758), lib. VII, part II, disc. 9, n. 8, p. 151; see also lib. VII, pars III, disc. 35, n. 13, p. 279; lib. XII, pars I, disc. 27, n. 17, p. 45; lib. XIV, disc. 4, n. 16, p. 147; lib. XV, pars I, disc. 35, n. 65, p. 116).

¹⁷ Garré, *Consuetudo*, pp. 94–7.

¹⁸ *Ibid.*, pp. 125–43.

¹⁹ *Ibid.*, pp. 111–24.

²⁰ See for example Antonio Piaggio, *Tractatus de consuetudine* (Perusiae, 1595), n. 88, p. 626; Filippo Decio, *Consilia sive responsa* (Francofurti ad Moenum, 1588), cons. 694, n. 7, seq. 681; Lancillotto Gallia, *In Consuetudinem Alexandrinam prohibentem maritum ultra certum modum uxori relinquere Commentarius* (Alexandriae, 1579), n. 11, p. 7.

²¹ Garré, *Consuetudo*, pp. 264–9.

in fact present in Roman sources²² where, for example, it was admitted that ‘leges non solum suffragio legislatoris, sed etiam tacito consensu omnium per desuetudinem abrogentur’ (Digest 1, 3, 32). This phrase of the classical jurist Salvius Iulianus was to be widely quoted by the authors of the *ius commune* to describe in parallel statute law and custom. For medieval and early modern jurists it was certainly important to keep customary law under control, but they neither wanted nor were able to abrogate it. Only Codification was able to achieve this, but a real revolution in the relationship between statute law and customary law was necessary, a revolution that would destroy the parallelism between the explicit and the unspoken will of the people, in favour of an a priori primacy of written law as the law of the state above all other sources.²³ The pluralism of legal sources typical of medieval and early modern times²⁴ no longer responded to the needs of the nineteenth and twentieth-century state. This meant that juridical sources emanating from below, like customs, were destined to disappear, even though the signs of a progressive marginalization of the phenomenon were already apparent in the early modern age. Custom (as the real *ius non scriptum*)²⁵ became less and less relevant as it was constrained between the increasingly widespread legislation of the princes and their growing interference in the way law was made.²⁶ For some time the requirement of the *tacitus consensus populi*²⁷ had been replaced in juridical doctrine by one which was unknown in classical juridical sources, but which, in the eighteenth century was predominant, that is the so-called princely approval (*adprobatio principis*).²⁸ In this way absolutism appropriated a juridical source which had emanated from below, elevating itself as the only guarantor of the legitimacy of custom.

²² For custom in Roman law see for example Okko Behrens, ‘Die Gewohnheit des Rechts und das Gewohnheitsrecht’, in Dietmar Willoweit (ed.), *Die Begründung des Rechts als historisches Problem* (München, 2000), pp. 19–135; Burkhard Schmiedel, *Consuetudo im klassischen und nachklassischen römischen Recht* (Graz and Köln, 1966). A brief overview is also in Roy Garré, ‘Die althergebrachten Gewohnheiten im römischen Recht’, in *Jusletter*, 13 September 2004, www.weblaw.ch/jusletter/Artikel.asp?ArticleNr=3375.

²³ See Pio Caroni, *Gesetz und Gesetzbuch. Beiträge zu einer Kodifikationsgeschichte* (Basel, Genève and München, 2003).

²⁴ With particular attention to Germany see now Peter Oestmann, *Rechtsvielfalt vor Gericht. Rechtsanwendung und Partikularrecht im Alten Reich* (Frankfurt/M., 2002).

²⁵ On the problem of written or oral sources in the ambit of custom, see in particular Garré, *Consuetudo*, pp. 107–9.

²⁶ In general on these dynamics, in which an authoritative part of legal historiography recognizes signs of so-called ‘juridical absolutism’, see Paolo Grossi, *Assolutismo giuridico e diritto privato* (Milano, 1998).

²⁷ Garré, *Consuetudo*, pp. 145–60.

²⁸ *Ibid.*, pp. 151f.

The Ambivalence of Custom

In the light of the debate on the formation of the state from below, to which this chapter is a contribution, the juridical history of custom presents a contradictory picture. Without a doubt in the medieval and early modern juridical systems, the law of custom played an important role, in no way comparable with its definitely minor role in the present legal system in Continental Europe.²⁹ And without doubt custom is a typical source of laws emanating from popular forces, which is why it incorporates legal-political dynamics that in the methodological approach of this volume can certainly be described as *coming from below*.

On the other hand, it is not possible to overlook the fact that especially in the early modern era, but also to a great extent already in late medieval times, the educated legal and political milieu put up considerable resistance to these forces. In legal history it is rare to find custom alone as a manifestation of petitions emanating from below without any legal-political interference from above. Being part of the system of knowledge like that offered by the *ius commune* inevitably brought about changes. Jurists confined and tamed it with their erudite skills. Jurists were generally close to political power, whether it was local, princely, patrician or pertaining to the guilds.³⁰ This close contact with power is to be seen in a paradigmatic way in the increasing demands on the above-mentioned needs of the *adprobatio principis*, an ideal technical-legal guarantee to *control* in fact *from above* the substance of the various customs that were apparent in society.³¹

Custom is therefore an ambivalent juridical phenomenon whose realization in practice was the result of a dialectic interaction of forces emanating both

²⁹ For the role of custom in Anglo-Saxon legal systems and in a global perspective see Mario G. Losano, *I grandi sistemi giuridici. Introduzione ai diritti europei ed extraeuropei* (Torino, 1988), pp. 161ff. On the common law as custom see Alan Cromartie, 'The idea of common law as custom', in Amanda Perreau-Saussine and James Bernard Murphy (eds), *The Nature of Customary Law. Legal, Historical and Philosophical Perspectives* (Cambridge, 2007), pp. 203–27.

³⁰ Important points on this issue in António Manuel Hespanha, *Introduzione alla storia del diritto europeo* (Bologna, 2003), in particular pp. 67ff., as well as in Mario Sbriccoli, *L'interpretazione dello statuto* (Milano, 1969). See also Hilde de Ridder-Symoens, 'Training and Professionalization', in Wolfgang Reinhard (ed.), *Power Elites and State Building* (Oxford, 1996), pp. 149–72 noting in particular the phenomenon of the professionalization of the structure of the state.

³¹ In this context the title of a dissertation of a German jurist like Augustin von Leyser (1683–1752) is emblematic: *De consensu principis unico consuetudinis fundamento* (Wittenberg, 1751). In this sense the approval of the prince actually becomes the *only* decisive basis for the creation of the customary law, to the detriment of the other classical prerequisites until then supported by the doctrine of the *ius commune*. For the consequences of this extreme position see Garré, *Consuetudo*, pp. 159ff.

from below and from above.³² It is therefore an effective vantage point from which to enquire into the complex interaction that can be found in the dynamics of the formation of the state. An historical-legal view offers an indispensable key to understanding these dynamics fully.³³

³² On the metaphor of the vertical aspect of medieval and modern doctrines of sovereignty, see Pietro Costa, 'Immagini della sovranità fra medioevo ed età moderna: la metafora della "verticalità"', *Scienza & Politica per una storia delle dottrine*, 31 (2004): 9–19.

³³ An interesting example of this in Osvaldo Raggio, 'Visto dalla periferia. Formazioni politiche di antico regime e Stato moderno', in Maurice Aymard (ed.), *Storia d'Europa. L'età moderna. Secoli XVI–XVIII* (Torino, 1995), vol. 4, pp. 483–527, here pp. 514ff. With particular attention to the concept of citizenship see also Pietro Costa, *Civitas. Storia della cittadinanza in Europa, vol. 1: Dalla civiltà comunale al Settecento* (Roma-Bari, 1999) as well.

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PART II

CENTRAL AND EASTERN
EUROPE

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Chapter 6

Threats from Above on Request from Below: Dynamics of the Territorial Administration of Berne, 1420–1450

Simon Teuscher

Around the year 1380, some local noblemen challenged the Bishop of Basle's rights of lordship over Pieterlen, a village located about 80 kilometres south of the city of Basle, at the periphery of the Bishop's secular territory. The Bishop summoned witnesses whom he expected to confirm that he was the rightful lord over the village and that the local bailiffs had been serving the bishops of Basle since time immemorial. One witness underscored this position with an anecdote that brings to mind a famous scene in Friedrich Schiller's play *Wilhelm Tell*: Allegedly, the witness once asked an officer who held court at Pieterlen: 'Who is your lord?' The officer replied: 'The Bishop of Basle.' The witness continued, asking: 'And who is the Bishop of Basle?' To this, the bailiff took the emblem of his juridical power, his pole, poked it into the soil, attached his hat to it, pointed his finger at it and said: 'There is my lord, the Bishop of Basle.'¹

Schiller's bailiff Gessler, who attached his hat to the top of a pole and obliged his subordinates to greet it, is considered the embodiment of a tyrant.² The witness of the fourteenth century evoked a very similar motive, but with less negative and altogether different connotations. The concern here was with the delegation of lordship and the relationship between a lord and his local representatives. Should the peculiar semiotic of lordship in the anecdote express the bailiff's entitlement to act within his district as if he were the lord himself? At any rate, the anecdote points to an understanding of officeholding and of the delegation of power that differed quite radically from the ideals of modern state administration with officers who are subject to directives.

In what follows, I would like to discuss aspects of the relationship between the central authorities of territorial power complexes and their local representatives, that is between agencies that even in relatively small territories operated several walking or riding hours apart from each other. The topic is tangent on a question that has long preoccupied research into medieval and early modern societies: how

¹ *Fontes Rerum Bernensium* (Bern, 1857–1956), vol. 9, p. 361 no. 799.

² Friedrich Schiller, *Werke. Nationalausgabe*, ed. by Julius Petersen (Weimar, 1980), vol. 10, pp. 149 and 204–13.

could territorial lords enforce their claims over extended areas, even though they disposed of comparatively little personnel and modest means of communication? Rather than compile more anecdotes like the one about the officer pointing to his hat, I shall present preliminary results of a more systematic inquiry into documents from an adjacent territory.

From the first half of the fifteenth century, several thousand missives have been preserved containing instructions of the city council of Berne to its bailiffs in Thun, a small town that became part of the Bernese territory at the end of the fourteenth century.³ These documents shed light on local dimensions of a city's territorial lordship or a 'city-state'. The latter is a more common, though slightly anachronistic, designation for a type of political entity that emerged all over Northern Italy as well as in some neighbouring regions throughout the later Middle Ages, for example in today's Switzerland.⁴ Like many other cities subject to similar development, Berne acquired territorial lordship over an extended hinterland, claimed control over minor cities, and used them as district-towns in its territorial administration. Ultimately, in the course of the sixteenth century, Berne became the largest city-state north of the Alps. Already by the period we are concerned with, that is the decades after 1400, Berne had assembled a territory of roughly 20 districts or bailiwicks in minor Burgundy. In the south this territory consisted of the valleys that come down from the high Alps, many of which join up in the surroundings of Thun. The city of Berne itself is located about 30 kilometres further down the river Aare in an area where the hills begin to flatten out and give way to the northern plains, where the territory's most fertile districts were located.

Berne ruled over its territory much like a contemporary noble or ecclesiastic lord would have done.⁵ For each district the city council appointed a bailiff from among the city's upper class. The bailiff for Thun was in charge of the small town by the same name and a couple of villages in its surroundings – overall, an area with about 1,000 inhabitants. He resided in a castle that overlooked the city from a prominent position, where he appointed and headed the local city council, presided over the local law-court, collected fees and taxes, and seems quite generally to

³ Anne-Marie Dubler, 'Einleitung', in *Das Recht der Stadt Thun und der Ämter Thun und Oberhofen* (Rechtsquellen des Kantons Bern 2.11.1) (Basel, 2004), pp. XLIX–CVII.

⁴ Philip Jones, *The Italian City-State. From Commune to Signoria* (Oxford, 1997); Martina Stercken, 'Reichsstadt, eidgenössischer Ort, städtische Territorialherrschaft. Zu den Anfängen der Stadtstaaten im Gebiet der heutigen Schweiz', in Mogens Herman Hansen (ed.), *A Comparative Study of Thirty City-State Cultures* (Copenhagen, 2000), pp. 321–42; Eberhard Isenmann, *Die deutsche Stadt im Spätmittelalter, 1250–1500. Stadtgestalt, Recht, Stadtrecht, Kirche, Gesellschaft, Wirtschaft* (Stuttgart, 1988), pp. 107–30.

⁵ Christian Hesse, 'Expansion und Ausbau. Das Territorium Berns und seine Verwaltung im 15. Jahrhundert', in Ellen J. Beer, Norberto Gramaccini, Charlotte Gutscher-Schmid and Rainer C. Schwinges (eds), *Berns grosse Zeit. Das 15. Jahrhundert neu entdeckt* (Bern, 1999), pp. 330–47; Karl Geiser, *Die Verfassung des alten Bern* (Bern, 1891).

have had the ultimate authority – or was it the penultimate one? As a matter of fact, we still know very little about the extent to which such local officers were confronted with interventions of their superiors.

Most historians agree that the central authorities of territories at the end of the Middle Ages tightened their control over local officers in one way or another.⁶ From the vantage point of constitutional frameworks, these changes reflect a transition from the various high medieval forms of vassalage to the no less varied, but altogether very different early modern bureaucracies. As vassals, officers of the high Middle Ages exercised the authority their lord had confided to them largely at their own discretion, at least as long as they fulfilled some basic duties. By contrast, appointed, salaried and terminable officers in modern bureaucracies must be prepared to receive detailed instructions from a sovereign.⁷ During the late Middle Ages, the leading territorial power complexes of the area – besides the ones of the Bishop of Basle and of major cities such as Berne, Zurich and Lucerne, we should mention the ones of the dukes of Savoy – increasingly resorted to salaried officers that were accountable to the central authorities. These political systems had, however, still little in common with modern bureaucracies, as has been quite unanimously stressed by historians who examined the institutional structures of the respective administrative bodies or the revenues and careers of their officers. Thus it has been demonstrated that these officers often kept a substantial amount of the taxes and fees they collected on behalf of their territorial lords. Moreover, potential officeholders were careful to take service in districts where they could combine an office with activities in trade or with the management of their privately owned seigneuries and manors.⁸ Rather than state servants, the period's officers were largely independent co-entrepreneurs of the territorial lordship, and their

⁶ *Les serviteurs de l'état au Moyen Age*, ed. by Société des Historiens Médiévistes de l'enseignement Supérieur public (Paris, 1999); Ernst Schubert, *Fürstliche Herrschaft und Territorium im späten Mittelalter* (München, 1996); Werner Paravicini and Karl Ferdinand Werner (eds), *Histoire comparée de l'administration (IVe–XVIIIe siècles)* (Zürich, 1980).

⁷ Udo Wolter, 'Amt und Offizium in mittelalterlichen Quellen vom 13.–15. Jahrhundert', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung*, 74 (1988): 246–80; Thomas Zotz, 'In Amt und Würden. Zur Eigenart 'offizieller' Positionen im früheren Mittelalter', *Tel Aviver Jahrbuch für Deutsche Geschichte*, 22 (1993): 1–23.

⁸ Guido Castelnuovo, 'Quels offices, quels officiers? L'administration en Savoie au milieu du XVe siècle', *Etudes Savoyennes*, 2 (1993): 5–41; Guido Castelnuovo, *Ufficiali e gentiluomini. La società politica sabauda nel tardo medioevo* (Milano, 1994); Philip Robinson, *Die Fürstabtei St. Gallen und ihr Territorium 1463–1529. Eine Studie zur Entwicklung territorialer Staatlichkeit* (St. Gallen, 1995); Hans-Rudolf Dütsch, *Die Zürcher Landvögte von 1402 bis 1798. Ein Versuch zur Bestimmung ihrer sozialen Herkunft und zur Würdigung ihres Amtes im Rahmen des zürcherischen Stadtstaates* (Zürich, 1994); Kurt Weissen, 'An der steuer ist ganz nuett bezalt.' *Landesherrschaft, Verwaltung und Wirtschaft in den fürstbischöflichen Ämtern in der Umgebung Basels (1435–1525)* (Basel, 1994).

success depended on their ability to create synergies in the simultaneous pursuits of their own and their lord's interests.⁹

Historical discussions about why and how central authorities increased their control over their officers in the territory have traditionally concentrated on the initiative of central authorities and on their protagonists' interests in income and influence. In contrast, a growing number of more recent studies underscore the importance of the activities of the subjects living in all parts of the territories. Their individual initiatives to get central agencies to intervene in local affairs are believed to have added up to a veritable process of statebuilding from below. Even members of the lower classes were ever less content with settling their conflicts among each other or on a local level and instead increasingly submitted them to central agencies.¹⁰ Several historians have resorted to market-economy metaphors to write about such phenomena, describing them as 'use' or even as 'consumption' of the justice of central authorities by subjects who, virtually as consumers, chose the best offer in conflict settlement.¹¹ To describe what subjects did as a choice implies that there were appreciable differences in how central and local agencies dealt with the cases brought to their attention. It seems easy enough to name such differences, since central authorities undoubtedly took the lead in the development of more formalized procedures capable of disassociating conflicts from their social backgrounds – and from the intrigues of local clientele.

Investigations that stress the importance of impulses from below have mostly left open how the resulting decisions of the central authorities were implemented on the local level and to what extent the new and more formalized procedures were actually put to use in this particular context. In order to answer these questions we need greater insight into patterns of communication in the triangle between the power-centre, its officers and the local population. This is exactly where missives from central authorities sent to their outposts in the territory originally belonged. That the exchange of such letters was key to late medieval territorial

⁹ Cf. the reflexions in Stefan Brakensiek and Heide Wunder (eds), *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, Weimar and Wien, 2005); Philippe Contamine, 'Le moyen Age a-t-il connu des "serviteurs de l'Etat"?', in *Les serviteurs de l'état au Moyen Age*, ed. by Société des Historiens Médiévistes de l'enseignement Supérieur public (Paris, 1999), pp. 9–20; Peter Moraw, *Von offener Verfassung zu gestalteter Verdichtung. Das Reich im späten Mittelalter 1250–1490* (Berlin, 1989).

¹⁰ André Holenstein, 'Gute Policey' und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der Markgrafschaft Baden(-Durlach) (Epfendorf, 2003); Peter Blickle (ed.), *Gemeinde und Staat im Alten Europa* (München, 1998); Andreas Würzler, 'Voices from Among the "Silent Masses": Humble Petitions and Social Conflicts in Early Modern Central Europe', *International Review of Social History*, 46 (2001): 11–34.

¹¹ The most explicit argument in favour of understanding this behaviour in analogy to the one of a consumer has been made by Daniel Lord Smail, *The Consumption of Justice. Emotions, Publicity, and Legal Culture in Marseille 1264–1423* (Ithaca, 2003), esp. pp. 19f.

power complexes all over Western Europe is known from scattered evidence that includes a few known originals as well as chronicles and registers of chanceries that mention such letters or contain copies of a few examples.¹² While all of this bears witness to the importance of the missives, little has so far been said about their actual contents. This is probably also due to the fact that the missives themselves usually are not to be found in the well-organized and conveniently accessible archives of central authorities, but in outposts such as Thun. In this little town's archives more than 1,000 missives have been preserved, to count just the ones from the period between 1420 and 1450. In what follows, I will analyse selected examples of these letters from three different perspectives. First, I will discuss how frequently and in what situations the centre of the Bernese power system intervened in the activities of its officers. Second, I will look into actual modes of intervening, and finally discuss these in light of contemporary patterns of dealing with conflicts.

Material from the Bernese territory has previously been used to examine how frequently and for what occasions late medieval central authorities wrote to their local officers. Arnold Esch examined the registers in which the chancellery of the council of Berne listed its expenses for messengers who carried missives throughout the city's territory and beyond. On particularly busy days, such as the ones that led up to the war with Burgundy that Esch examined, these messengers brought several hundred letters to their destinations. If necessary, officers in the territory could be reached at amazingly short intervals. As an example, Esch cites a period in spring 1476, when the council within a few days or even several times on one day sent orders to his bailiffs and thus within a few weeks used them to conscribe, equip, mobilize, demobilize and re-mobilize troops.¹³ Such sequences suggest that the city's officers in the periphery, much like modern bureaucrats, were constantly on the wait for instructions from their superiors who micromanaged their activities. But how representative are the early stages of the Burgundian wars of day-to-day administration in the late Middle Ages?

The missives from Thun I shall discuss here were mostly written in times of peace and in rather undramatic circumstances. Although their number is large, they probably represent no more than a fraction of the missives the bailiffs in Thun had originally received. That number may have been close to the 65 letters extant from the year 1460, while it is undoubtedly due to a loss of previously existing documents that not a single one is preserved from the three-year period between November 1445 and October 1448.¹⁴ It seems fair to assume that the

¹² Hans Patze, 'Neue Typen des Geschäftsschriftgutes im 14. Jahrhundert', in Hans Patze (ed.), *Der deutsche Territorialstaat im 14. Jahrhundert* (Sigmaringen, 1970), pp. 9–64.

¹³ Arnold Esch, 'Alltag der Entscheidung. Berns Weg in den Burgunderkrieg', *Berner Zeitschrift für Geschichte und Heimatkunde*, 50 (1986): 154–61.

¹⁴ *Bürgerarchiv Thun, Thuner Missiven [TM] and the relative archival inventory.* The ones among the missives that contain information on important wars have long been

council on average sent more than one letter a week to local bailiffs in Thun. Nevertheless there is little to suggest that Berne attempted to make its territory and the bailiffs subject to systematic and dense regulations. In less than a handful of the extant missives did the council of Berne issue general rules to be followed by the entire population of Thun, and these forerunners of modern mandates remained remarkably situational. One example is the order given to the bailiff toward the end of a war between Berne and Zurich to bar the inhabitants of Thun from continuing to sing 'evil little songs' about Zurich.¹⁵

An overwhelming majority of the missives dealt with the concerns of individuals from a wide variety of social backgrounds. It is obvious that the council sent many of its missives in order to support the personal interests of the councilmen themselves and of other individuals belonging to Berne's elite. Thus the bailiffs of Thun time and again received orders to recover money from local people indebted to wealthy citizens of Berne and to tell their local creditors to remain patient. The bailiffs also had to run errands such as telling an inhabitant of Thun to do his share of the reparations on a mill he co-owned with a member of the council of Berne,¹⁶ and reminding another to pay for the charters the scribe of Berne had issued for him.¹⁷ The latter missive is one of the very few in the handwriting of the concerned scribe. This may indicate that he and other members of the elite of Berne themselves wrote the letters they wanted the council to send in its name and simply asked the latter to approve and seal a prepared text.

The council by no means vouched for the elite only. The greatest share of the extant missives actually dealt with concerns of individual inhabitants of the little town of Thun, many of whom belonged to the lower classes. They had made a special trip – about five hours on foot – down along the river Aare from Thun to Berne in order to ask the council in person to intervene for them. Thus one Hensli Oppliger from the village of Uttigen next to Thun came to complain about his neighbour, who had stabbed his pig.¹⁸ Peter Stelli from Thun did not want to put up with his neighbour's new barn which cast a shadow on his garden.¹⁹ Hensli Rieden had troubles with three men from a town nearby. He had paid them to find a wealthy bride for him. Upon meeting the woman they had found in the nearby Savoyard territory, Rieden realized that she was less than half as wealthy as promised. Nevertheless the marriage brokers refused to reduce their fee and took Rieden's horse.²⁰ One Elsa Tschingeler told the council that she was so afraid of

known and edited, cf. among others Carl Friedrich Lohner, 'Missive aus der Zeit des alten Zürichkriegs vom 13. Februar 1437 bis 24. Dezember 1450', *Der Schweizerische Geschichtsforscher*, 6 (1827): 321–480.

¹⁵ TM II 219 (1441).

¹⁶ TM III 353 (1465), I 217 (1465).

¹⁷ TM III 367 (1465).

¹⁸ TM I 146 (1409).

¹⁹ TM II 160 (1441).

²⁰ TM II 233 (1441).

the threats from her brother, who worked as a servant to the bailiff of Thun, that she no longer dared to walk in the streets.²¹ It seems that the wives of Peter Ziegler and Tschan Lehmann had jointly walked to Berne, as the council summarized their concerns in one single missive.²² Peter Ziegler's wife complained that her husband had taken her cloth in order to compel her to come back to him. Tschan Lehmann's wife lamented over the bailiff of Thun himself. He had taken a silver cup and a pot as security for her husband's debts, although these items were part of her trousseau, which was exempt from her liability for her husband. Hensli Matter complained that the bailiff had given him too harsh a penalty for having dallied with the maidservant of the schoolmaster of Thun.²³ He and Tschan Lehmann's wife were far from being the only petitioners who complained about ordinances and sentences issued by the local bailiff, which indicates a considerable degree of independent activity by the latter. But many other petitioners from Thun had obviously brought their requests directly to the city council of Berne and simply bypassed the local bailiffs.

It is fair to assume that the nineteen or so other bailiwicks of the territory of Berne generated similar streams of individual requests, which altogether must nearly have inundated the city council. Statutes the council issued around the middle of the fifteenth century did in fact describe this as a problem and fixed days of the week on which petitioners should no longer be admitted to the city hall so that the council would have time to deal with questions of general interest. For the decades around 1500, Renate Blickle established a similar afflux of petitioners coming to the Bavarian ducal court from all parts of the territory. Blickle argues that peoples' actual habit of walking to court ('Laufen gen Hof') was among the most important driving forces in the expansion of the central administration. In order for the central administration to come to terms with an overwhelming number of individual requests, new offices had to be continually established.²⁴ The resulting efficiency would have made it even more attractive to bring cases to the central administration that in turn would continue to grow. Thus the argument could be further developed according to models of statebuilding from below. The development of a modern administrative apparatus would hence be the outcome of a process that, once it had gained momentum, became largely self-perpetuating.

Before drawing such far-reaching conclusions it is worthwhile to tackle the second principal question of this chapter: what courses of action, decision-making processes, and administrative measures did these individual requests entail? Like most historians of administration, Renate Blickle examined primarily the records

²¹ TM II 554 (1445).

²² TM II 180 (1441).

²³ TM III 114 (1451).

²⁴ Renate Blickle, 'Laufen gen Hof. Die Beschwerden der Untertanen und die Entstehung des Hofrats in Bayern. Ein Beitrag zu den Varianten rechtlicher Verfahren im späten Mittelalter und in der frühen Neuzeit', in Peter Blickle (ed.), *Gemeinde und Staat im Alten Europa* (München, 1998), pp. 241–66.

of the central agencies. These mainly registered incoming requests, but often yield little information on how these had exactly been followed up. In contrast, the missives from Thun allow for quite a precise, if slightly surprising answer to this question. As a general rule, the councilmen in Berne did nothing but nod their heads. They advised their bailiffs to support almost every request that people had brought to their attention in person. Thus the council told the bailiffs to see to it that Peter Stelli's neighbour reduced the size of his barn, that Hensli Rieden (who had been misled about the wealth of his bride) got his horse back, and that the penalty of Hensli Matter (who was after the schoolmaster's maidservant) was mitigated. The bailiff was also to take care that Peter Ziegler returned the cloth to his wife, and of course received an order to immediately return to Tschan Lehmann's wife the silver cup and the pot she claimed belonged to her dowry.²⁵ There is nothing to indicate that the council, prior to making these dispositions, had closely examined the petitioners' contentions. Did the silver cup and the pot truly belong to the dowry of Tschan Lehmann's wife? Was Hensli Rieden's bride really that much poorer than the marriage brokers had claimed? And had Peter Stelli's garden actually been all that sunny before his neighbour enlarged his barn? In all these questions it seems that the council simply took the petitioners at their word.

The notion that simply anybody could make claims on the council of Berne in this manner seems questionable – and is actually contradicted by various sources. Thus statements in both private letters and court protocols indicate that petitioners from the lower classes in particular needed the patronage of an influential citizen, ideally of a councilman, to get as much as admitted to a meeting of the council.²⁶ In addition, it could certainly happen that the council found a request ill-founded and refused to issue a missive, in which case the entire affair was likely to remain completely undocumented. It is, however, no less certain that there was a system behind the seeming credulousness of the council. One missive from the year 1450 makes this particularly visible.²⁷ Here, the council apologized to a bailiff for bothering him the third time with the same quarrel between two women from Thun, a wife and her husband's mistress. According to the missive, the wife had been the first to appear at a session of the council, where she complained that her husband had taken her skirt in order to have his mistress wear it. The council reacted by advising the bailiff in Thun to recover the skirt from the mistress and return it

²⁵ Cf. the documents quoted in notes 18 to 23.

²⁶ Simon Teuscher, *Bekannte – Klienten – Verwandte. Soziabilität und Politik in der Stadt Bern um 1500* (Köln, Weimar and Wien, 1998), pp. 218–34; Simon Teuscher, 'Chains of Favour. Approaching the City Council in Late Medieval Berne', in Cecilia Nubola and Andreas Würzler (eds), *Petizioni, gravamina e suppliche nella prima età moderna in Europa (secoli XV–XVIII)* (Bologna, 2004), pp. 311–28.

²⁷ TM III 25 (1450). A similar case of successive complaints by two opponents each of which temporarily gained the council's support against the other: TM II 160 (17 March 1441) and II 164 (6 April 1441).

to the wife. A few days later the mistress came to the council and complained that the bailiff had taken her skirt. The council was no less helpful this time and advised the bailiff to help the mistress get her skirt back. The bailiff certainly followed this order, too, because this was exactly what the wife complained about next – and the council told the bailiff to immediately seek the mistress out and make her surrender the skirt to the wife. Apparently, the council reacted to almost every reasonably plausible complaint by advising their bailiffs to put pressure on the opponents of those who had complained and to make arrangements that, if necessary, could be reversed.

How is this rather surprising procedure to be explained? The Bernese territory did dispose of a fairly elaborate system of local and appellate courts.²⁸ Cases that people personally presented to the council were, however, almost never referred to this formalized judicial system. Instead, the council resorted to entirely different proceedings as well as alternative methods of assessment. Apart from a few exceptions, the missives neither mentioned explicit legal rules nor categorized acts as right or wrong. Instead, the council expressed its opinion in a peculiar language referring to the incidents the petitioners complained about as ‘unpleasant’, ‘uneven’ or ‘quite inappropriate’.²⁹ Using such qualifications, the council first and foremost reiterated the subjective points-of-view of the petitioners themselves, while avoiding a verdict based on more general criteria. Correspondingly, the task of the bailiffs consisted less of enforcing law than of making threatening gestures and of pronouncing paternalistic admonishments. According to the council’s missives the bailiffs were to seize things at peoples’ homes or to ‘talk them into’ or ‘see to it’ that they satisfied the petitioners.³⁰ If the opponents of those who had complained did not want to make concessions, they, too, could come to Berne in order to make their case. Many missives explicitly refer to this alternative: a daughter should either return the valuables she had taken from her sick mother, or come and explain to the council why she thought she should have them,³¹ and a trader should either pay the woman from Valais her asking price, or come to Berne and explain why he thought she asked too much.³² The council did, however, also make it clear that it preferred conflicts to be settled by a single intervention of the

²⁸ Geiser.

²⁹ To give a few examples: ‘das nimpt uns und ouch nu ze mal unbillichen’ [I 460 (1433)], ‘Wond uns nu semlich nit zitlich nympt’ [TM II 646 (1445)], ‘das uns gar nit billich bedungket’ [II 16 (1439)], ‘das uns doch leid ist’ [II 37 (1439)], ‘anderligen den billichen und glimplichen’ [III 25 (1450)].

³⁰ The council used expressions such as: ‘das ir mit dem verschaffent’ [I 574 (27 November 1436)]; ‘solt inen fürheben, das unser will und meinung sy’ [TM II 233 (1441)], ‘und mit ir ernstlichen ... redest, das si im tüye das, so denn ein biderb wip irem man tun sol’ [TM II 290 (1442)], ‘inen fürheben, das unser will und meinung sy’ [TM II 233 (1441)].

³¹ TM II 391 (1443).

³² TM II 206 (1441).

bailiff, while a confrontation of the opponents in the form of an actual judicial procedure should only be resorted to as a last resort.³³

The council clearly worked towards extrajudicial solutions, but avoided losing control of the cases by siding with one of the parties. The effectiveness of this strategy largely rested on the materiality of the missives and the way these – as material objects – shaped processes of communication. Usually the letters were conveyed from Berne to Thun not by the city's professional messengers, but by the concerned petitioners themselves. Thus the city limited its expenses, while granting the petitioners the benefit of serving as messengers, a role that during the Middle Ages implied much more than that of a present-day letter carrier.³⁴ As bearers of a letter from the council, the petitioners were certain to be admitted to the bailiff's castle. The texts of several missives addressed to the bailiffs refer to the petitioner as 'the one who shows you this letter' and explicitly assign to them the task of further explaining their case.³⁵ Some missives did not even as much as give away the name of the opponents of the petitioners with whom the bailiff had to intervene, but instead contained expressions such as 'the one who shows you this letter is inappropriately treated by someone from your district whose name he will certainly tell you'.³⁶ These letters were not meant to operate as independent means of communication, but primarily as catalysts for an oral conversation.

Another advantage of the particular format of the missives was that it obliged the petitioners to stick to official channels. The council had its orders to the bailiffs written on small rectangular pieces of paper that were folded into a letter, addressed on the exterior to the bailiff, and closed with the council's seal. When the recipient opened the letter this seal was broken, so that today usually nothing remains but stains of wax as evidence of its previous existence. The council would have provided the petitioners with far greater latitude had it given them actual charters, rather than this kind of missive. A charter, in medieval terminology a 'littera patens' with an almost public character, could be used to make a case with almost everybody. In contrast, a missive as a 'littera clausa' could only be legitimately presented to its actual addressee.³⁷ By issuing such missives the council made sure that the petitioners could not take matters into their own hands and that its local bailiffs kept control over the cases. Moreover, the bailiffs could use the once opened missives as tangible proof of the council's will that they were presented to those they were told to intervene with. The texts of some missives allude to their possible use as such tokens, for instance, when the council advises the bailiff to

³³ This is explicitly stated for example in TM II 290 (1442).

³⁴ Horst Wenzel, *Gespräche – Boten – Briefe: Körpergedächtnis und Schriftgedächtnis im Mittelalter* (Berlin, 1997).

³⁵ For example TM I 526 (1435), 680 (1438), II 233 (1441), 290 (1442), 555 and 580 (1445).

³⁶ TM II 391 (1443).

³⁷ Reinhard M.G. Nickisch, *Brief* (Stuttgart, 1991), pp. 11–19; Patze, pp. 22–7.

make an inhabitant of Thun return a horse ‘upon being presented this letter’.³⁸ Such examples make it very clear that the interventions of the central authority did not necessarily weaken the local officers but were likely to bolster them by reminding those in their surroundings of the greater power they represented.

While bailiffs could be very unruly, for example when it came to passing on taxes to the central authorities, they seem by and large to have done as the council told them when it came to interventions on behalf of individual subjects. Only a small number of the extant missives remind the bailiffs to execute tasks they had previously been given,³⁹ and only occasionally do they indicate that a bailiff made objections to the orders the council had sent in a missive brought by a petitioner.⁴⁰ If the council’s initial impulse proved to be insufficient to settle a conflict, it probably had to deal with the case a second time. But apart from this, this particular manner of dealing with individuals’ concerns entailed little activity in the centre of the Bernese territory and can hardly be made responsible for the expansion of the central administrative body. The management of conflicts was indeed not disassociated from the local context but relegated back into it.

To what extent did this kind of intervention by the centre represent an actual alternative to local modes of conflict management? One way of approaching this question is to relate the council’s interventions to contemporary strategies in extrajudicial disputes. Historians have long primarily associated the latter with blood-revenge and physical violence – which largely corresponds to a perpetuation of stereotypes first propagated by agents of the centres of early modern states. In contrast, recent studies have focused on means of exerting pressure on opponents that were both more subtle and more ordinary. I would like to elaborate on two widespread strategies.

Being exposed to the first of these strategies was what made many individuals walk to Berne and call on the council to intervene. The conflicts that were brought to the latter’s attention had often escalated to a very particular point at which those who complained had just been deprived of a precious object by their opponents. Such incidents of taking for example a horse, a silver bowl, or a good skirt, or also of harvesting the crops from an opponent’s field, were usually referred to neither as theft, nor as garnishment. People took valuables from their opponents in order to make them give in. It would be worth further examining the extent to which

³⁸ TM II 646 (3 October 1445).

³⁹ Thus bailiffs were advised twice for example to tell Heini Müller to repair his mill [TM III 353 (6 May 1465) and I 217 (16 August 1465)], to make Ziegler return the cloth to his wife [TM II 180 (17 June 1441) and II 188 (5 August 1441)].

⁴⁰ For example: the council forbade Hensli Amstalden to build a barn outside the city wall of Thun [TM II 160 (17 March 1441)], but cancelled the prohibition [II 164 a (5 April 1441)] after the bailiff of Thun had protested. The council asked the bailiff to allow a woman he had banned from Thun to return for a half-year period, so she could work off her debts [TM II 302 (22 June 1442)], but after the bailiff had protested asked him to let her at least return for two weeks [TM II 304 (26 June 1442)].

objects were chosen for seizure according to their meaning as symbols of social status and of relationships. This dimension certainly played a prominent role in the surprisingly frequent cases of husbands seizing their wives' skirts.

The council's interventions in local conflicts often followed a similar rationale. Without examining the legitimacy of a petitioner's claim, the council advised its bailiffs to seize household goods and animals from their opponents. The council, too, used this method in order to advocate settlements. The individuals whose objects the bailiffs seized could either acquiesce, or complain to the council themselves – in which case they were on the best path towards submitting to negotiations under the latter's lead. The council's methods do not correspond to the assumption that central authorities in emerging modern states stood out by their formalized and legalistic manner of proceeding. On the contrary, the council of Berne tended to deliberately avoid formalized procedures. And even in the probably not very numerous cases where an actual court trial was the goal, informal bullying could be the most efficient means to the end. Given that the Bernese administration disposed of a modest law enforcement apparatus, seizures of objects and threats could be a comparatively promising method to convince an unruly subject to participate in a trial.

Another widespread strategy was that conflicting parties mutually attempted to outplay each other by seeking the protection of ever more influential personalities. A great number of documents in the archive in Thun still bear witness to this. There we find not only the council's missives to its bailiffs, but also a remarkable number of letters with very similar contents that these bailiffs had received from individual high-ranking citizens of Berne. Much like the council, but in a somewhat less authoritarian language, these citizens asked the bailiffs in Thun to intervene in favour of locals who had come to their homes and asked them to support their cases. Thus Ulrich von Erlach, a prominent citizen of Berne, asked the bailiff to protect a worker in the vineyards of Thun from harassment by another inhabitant of the town.⁴¹ And Barbara von Erlach and Niklaus von Scharnachthal, both members of the nobility of Berne, asked the bailiff to appoint one Hans Danner for another term to the minor office of gauge collector in Thun.⁴² These petitioners were often poor kin, clients or partisans of the letter writers. In addressing themselves to the bailiffs, the letter writers described their action as part of an ongoing exchange of courtesies among high-ranking men to mutually grant each other favours for protégées. The authorities' interventions that I have described were interlocked with these exchanges of protection and patronage in two ways. First, it was probably often due to the protection of individual councilmen and other high-ranking citizens when the council of Berne sided with a person from the territory. Seen in this context, the council helped less in order to demonstrate its mercy than as part of efforts to negotiate relationships to influential personalities who vouched for the petitioners. Second, the interventions of the council itself are best

⁴¹ TM II 167 (1441).

⁴² TM III 444 and 445 (1468).

understood as a form of protection, a protection that was granted not by a powerful person, but by the even more powerful council.

Ultimately, the council could of course change its operating mode and go from being an informal agent to becoming the head of a territorial court system. As far as possible, however, the council tried to solve conflicts not by taking the position of a third party or of a superordinate agency, but by choosing almost at random one of the parties, in favour of which it intervened, much like a private protector in an extrajudicial context. Accordingly blurred were the dividing-lines between the interventions of state authorities and the strategies of agents operating outside the territorial power complex – so blurred, that it seems unlikely that parties in a conflict would have had a consumer's choice between a range of providers offering qualitatively distinct forms of conflict settlement. The council asserted its authority not by ousting and replacing local and informal mechanisms of conflict settlement, but by adjusting to them or even by taking them as the model for its own manner of proceeding.

To conclude, I would like to relate my results to three questions that are currently at the core of debates among historians of the late Middle Ages, about the role of secular officers, statebuilding from below, and approaches to the period's political culture. First, concerning the nature of officers, the examples cited from Berne correspond neither to the schema of largely independent vassals nor to that of modern bureaucrats who receive detailed instructions from their superiors. It is more adequate to understand these officers as actual proxy persons for the lordship that appointed them. In principle, and within their district, they executed the totality of the rights of their lord as if they were their own. This is also what we find expressed in the anecdote quoted in the beginning about the officer using his own hat to represent his lord. A similar understanding emerges from the missives from Thun. These suggest that the central agency of a territorial state such as the Bernese one in the fifteenth century hardly yet made any systematic attempts at regulating the activities of its officers. The same documents, however, indicate that these officers had no protected area in which they could decide entirely at their own discretion. Whenever the city council of Berne liked, it could reclaim the lordly rights it had consigned to its officers in the territory, overthrow each of their decisions outright, and give them orders even in the smallest of questions. Officers acted as lordship until the moment when their superiors with a stronger claim to 'being the lord' stepped in themselves.

A surprising number of interventions by central authorities in the activities of their officers out in the territory occurred because members of the local population had asked for them. What kept the central authorities busy was a constant flow of people walking from Thun to Berne and asking the city council to intervene in local affairs and the activities of local officers. How can this operating mode of the political system be related to a second debate, the one about statebuilding from below? There is of course no question that territorial states emerged in the course of the early modern period, but it is hard to see why such individual requests should have been a particularly prominent factor in the emergence of procedures

that were formalized, legalistic, disassociated from local mechanisms of conflict management, or otherwise anticipated characteristics of modern government. On the contrary, such impulses from below not only affected the quantity, but also the quality of the interventions of central authorities that tended to perpetuate the logic of non-governmental modes of conflict management.

Sources such as the missives from Thun open up perspectives not only on the ancestry of the modern state, but also on more diverse aspects of the period's political culture. This is the third field of inquiry I would like to address. The missives provide an opportunity to discuss developments of political organization less from the perspective of their contemporary focus, namely modern state organization, than from their medieval premises. The examples from Thun remind us that the modes of operation of medieval political institutions, even the ones that structurally resemble modern institutions, tend to defy our expectations. The interventions of the council of Berne followed a rationale that was not primarily 'administrative' in a modern sense, but strongly oriented towards the dynamics of family-, patron-client-, market- and credit-relationships that made fundamental contributions to the organization of society. These phenomena deserve to be further examined in their own right. They should, however, also be taken into account beyond the frame of social history dealing with 'anything but the state' and used as a perspective on the context that conditioned institutions foreshadowing modern government. We would probably learn to see the latter in a new light, if we became more attentive to how it was also shaped by the ways in which people mobilized influential personalities, seized skirts or, to put it in the words of a missive concerning the quarrel between the widow Hirni and Andreas the Wild: 'How they chase and drive each other from one hassle into the next, in order to exhaust each other.'⁴³

⁴³ TM II 561 (1445).

Chapter 7

Modes of Reading, Community Practice and the Constitution of Textual Authority in the Thurgau and Graubünden, 1520–1660

Randolph C. Head

Introduction

The era from 1300 to 1900 CE, so significant for European processes of statebuilding and institutional intensification, coincided with accelerating changes in the way written documents functioned within European political cultures.¹ For statebuilding in republican contexts, foundational documents and the practices they endorsed came to play a particularly important role. For the moment, let us take for granted the historical preconditions that enabled this particular pattern of development. As Charles MacIlwain noted half a century ago, the theory and practice of constitutional government in the early modern period rested largely on Roman concepts of law and polity.² The special authority that Latin Christianity attributed to certain texts, and the rapidly increasing availability of many texts to a wide spectrum of readers after 1400 were equally important preconditions.³ Statebuilding of any kind in late medieval and early modern Europe, we now recognize, took place in an environment in which not only those with power,

¹ Special thanks to Hildegard Elisabeth Keller, Ansara Martino and Martina Stercken for comments and assistance and to the Staatsarchiv Zürich, the Kantonsbibliothek Thurgau, the Library of Congress (European History Reading Room) and the Rivera Library and the Academic Senate at the University of California, Riverside for support.

² Charles Howard McIlwain, *Constitutionalism Ancient and Modern* (rev. edn, Ithaca, 1947), see Chapter 3, ‘The Constitutionalism of Rome and Its Influence’, esp. pp. 60–3. Other relevant efforts to come to terms with the concept of state in David Runciman, ‘The Concept of a State: the Sovereignty of a Fiction’, in Quentin Skinner and Bo Stråth (eds), *States & Citizens: History, Theory, Prospects* (Cambridge, 2003), pp. 28–38; and Giorgio Chittolini, ‘The “Private”, the “Public”, the “State”’, *Journal of Modern History*, 67 (1995): 34–61.

³ Michael T. Clanchy, *From Memory to Written Record: England, 1066–1307* (2nd expanded edn, Oxford, 1993) has been very influential. For Swiss archives, Randolph Head, ‘Knowing like a State: the Transformation of Political Knowledge in Swiss Archive Inventories, 1470–1770’, *Journal of Modern History*, 75 (2003): 745–82.

but also broad parts of the population, had internalized the conviction that texts possessed authority – even if understandings of such authority varied widely.

This chapter focuses on the implications of these developments within the Swiss Confederation, showing how certain texts – specifically the Kappeler *Landfrieden* of 1531 and three foundational Graubünden charters from the mid-1520s – came to function ‘constitutionally’ through their changing deployment in political and ideological debates that extended far beyond the documents’ original communicative context. Three distinct phases can be discerned in how these documents were deployed in the century after they were promulgated: first a period of direct application in specific legal cases before courts and in arbitration; then a period when reference to these documents *in general* authorized growing penumbras of institutional practice, accepted both by rulers and local communities; and finally a ‘return to the text’ in the seventeenth century, setting the stage for a new economy of knowledge that transformed statebuilding processes – in part by enabling such later possibilities as ‘adversarial literacy’ and perhaps even the ‘emancipation of writing’.⁴ From their promulgation, as I will show, the documents considered here represented a discursive resource that different parties could deploy either to legitimate or to challenge new forms of political practice – that is, they had what James Scott describes as the capacity for multiple ‘transcripts’.⁵ How they were deployed, however, underwent significant shifts.

The significant role that constitutional documents could play in early modern Europe has long been recognized, as has the connection between early constitutionalism and broader participation in political life. I use the term ‘constitution’ in its broad English sense, here, as:

that assemblage of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system, according to which the community hath agreed to be governed.⁶

The idea that such ‘constitutions’ might be contained in a heterogeneous assemblage of texts was quintessentially early modern. City-states in particular often drew on diverse *Einungen*, *Stadtbriefe* or *Handfeste*, on charters from princes and emperors that guaranteed their privileges of self-government, and on

⁴ The expression ‘adversarial literacy’ comes from Caroline Castiglione, *Patrons and Adversaries: Nobles and Villagers in Italian Politics, 1640–1760* (Oxford, 2005). ‘Emancipation of writing’ is Ian McNeely’s term: *The Emancipation of Writing: German Civil Society in the Making, 1790s–1820s* (Berkeley, 2003).

⁵ James Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, 1990). Scott’s idea of multiple transcripts helps illuminate the importance of constitutional texts, which are precisely those whose authority allowed them both to explain existing institutions and permit alternative transcripts.

⁶ Henry Bolingbroke, cited in McIlwain, *Constitutionalism*, p. 3.

settlements among political groups that founded specific arrangements of guilds, councils and officials.⁷ Most such documents took the form of public agreements, becoming part of a larger tissue of (often hard-won) consensus. Typically, the Swiss *Landfrieden* of 1531 was a peace treaty in the form of a sealed declaration among allies, the same form taken by the *Bundsbrief* and *Ilanzer Artikel* in Graubünden.

By their nature, most early modern constitutional documents recorded conflict as well as consensus, since profound power struggles or lasting factional disputes usually preceded their drafting. They often referred to quite specific persons and issues, even though much broader significance eventually accreted to some of them. Reflecting on this leads us to two propositions. First, the actual words in early modern constitutional texts were not always their most important feature, especially earlier in the period; documents could also function as markers for certain broad principles, or stand symbolically for the restoration of unity after political tumults.⁸ Second, many of these texts experienced repeated reorientations of function once promulgated, so that words written under one set of circumstances came to be used quite differently later on.⁹ Studying how constitutional texts worked at various times therefore requires moving beyond positive law theories.

The tumultuous decade after the Reformation began spreading in Switzerland – a period also characterized by diplomatic realignments after the Swiss recession from the Italian wars, and by political pressure from below during the Peasants' War of 1525 – was especially productive of agreements with lasting consequences. The first document I will discuss here is the second *Eidgenössischer Landfrieden*, signed 20 November 1531 in the Swiss town of Zug, which ended the first round of religious wars that divided the Confederation.¹⁰ The crucial section of the treaty, for this chapter, discussed governance and religious practice in the *Gemeine Herrschaften*, those regions jointly subject to the Swiss. The treaty's evolution – from legal contract, to justification for new practices, to textual resource – is particularly visible in the *Gemeine Herrschaft* of Thurgau, where constant wrangling

⁷ Almut Höfert, 'States, Cities and Citizens in the Later Middle Ages', in Quentin Skinner and Bo Stråth (eds), *States & Citizens: History, Theory, Prospects* (Cambridge, 2003), pp. 63–75, here p. 73 reminds us that 'It is becoming clear ... that we have to give up the idea of a rational, legally based constitution in the medieval city. Not everything that was called law can be treated as a legal rule in the modern sense'.

⁸ This is illustrated forcefully in Graubünden from 1600 to 1620. One of the most common demands in popular bills of articles (*Artikelbriefe*) was that earlier constitutional texts be observed. See below and Randolph Head, *Early Modern Democracy in the Grisons* (Cambridge, 1995), pp. 160f.

⁹ Such reorientations appear not only for political constitutional texts, but also in the changing readings experienced by some canonical religious texts. Indeed, the capacity for 'resemiotization' is inherent in archived documents. Thomas Hildbrand, *Herrschaft, Schrift und Gedächtnis. Das Kloster Allerheiligen und sein Umgang mit Wissen in Wirtschaft, Recht und Archiv (11.–16. Jahrhundert)* (Zürich, 1996).

¹⁰ Published in Ernst Walder (ed.), *Religionsvergleiche des 16. Jahrhunderts* (Bern, 1945), pp. 6–14. I will cite from my own translation.

over religion ensured that reference to the *Landfrieden* would remain common. The confederation of the Three Leagues in Graubünden followed a political trajectory similar to its Swiss neighbours, and like Switzerland, the Leagues possessed shared subject territories that encouraged the emergence of firmer institutions among the scattered mountain communities before the Reformation. Likewise, civil war over religion and diplomacy certainly seemed possible in the 1520s in Graubünden. However, the Leagues instead consolidated their integration up to 1525 in a *Bundsbrief*, while addressing issues of religious division and agrarian change in two additional documents, the *Ilanzer Artikelbriefe* of 1524 and 1526.¹¹ Like the Swiss *Landfrieden*, the *Bundsbrief* and *Ilanzer Artikel* came to be read in multiple ways that shifted as the Leagues' institutions developed and intensified.

Reading the *Eidgenössischer Landfrieden* in the Thurgau

The terms of the 1531 *Landfrieden* came into play immediately after the brief Swiss civil war of that year ended. While much of the treaty regulated affairs among the belligerent cantons themselves, a crucial portion set the terms by which the cantons, in their capacity as lords, would reorganize the political and ecclesiastical arrangements among their shared subjects.¹² The Thurgau and the nearby Rheintal lordships posed the hardest challenges, since a substantial majority of the population there had adopted the new form of worship coming out of Zurich, whereas a majority of the seven cantons that ruled the Thurgau remained Catholic.¹³ The Catholic cantons' victory at Kappel did end efforts to institutionalize the Reformed church in the Thurgau, but the text of the *Landfrieden* preserved the Reformed subjects' privilege to continue practicing their religion, side-by-side with the Catholic minority. The combination of protected Reformed worship and officially encouraged return to Catholicism resulted in the highest density of shared churches (*Simultankirchen*) anywhere in Europe after the Reformation.¹⁴ These churches and the religiously divided communities they served raised innumerable

¹¹ See Head, *Early Modern Democracy*, Chapters 3–4.

¹² A concise introduction to Swiss political evolution in Hans Conrad Peyer, *Verfassungsgeschichte der alten Schweiz* (Zürich, 1978). For details and literature on the Thurgau in particular, see Randolph Head, 'Fragmented Dominion, Fragmented Churches: The Institutionalization of the *Landfrieden* in the Thurgau, 1531–1630', *Archive for Reformation History*, 96 (2005): 117–44.

¹³ See Ursula Kägi, *Die Aufnahme der Reformation in den ostschweizerischen Untertanengebieten. Der Weg Zürichs zu einem obrigkeitlichen Kirchenregiment bis zum Frühjahr 1529* (Zürich, 1972); Konrad Straub, *Rechtsgeschichte der Evangelischen Kirchgemeinden der Landschaft Thurgau unter den eidgenössischen Landfrieden (1529–1792)* (Frauenfeld, 1902).

¹⁴ In 1627, the Zurich authorities counted 29 places of worship in the Thurgau that were used for both Reformed and Catholic services. *Staatsarchiv des Kantons Zürich*

practical issues once the *Landfrieden* was established in 1531, especially between the Thurgau's many clerical lords and their now largely Reformed subjects. Local disputes quickly reached the Swiss *Landvogt* in the main town of Frauenfeld, who usually referred them to the entire Swiss Diet.

There, all parties turned to the *Landfrieden*, since it was the only document accepted by all parties that actually treated confessional relations. Consequently, the phrases 'according to the *Landfrieden*' and 'against the *Landfrieden*' appeared almost immediately. In 1532, for example, a group of Swiss arbitrators declared that rectory endowments in the Rheintal should be divided in proportion to the number of adult males, '*nach lut des landfriedens*'.¹⁵ Such interpretations – the 1532 record of the arbitration calls itself a '*lüterung*' – were necessary because the actual text of the *Landfrieden* articulated various key principles, including the preservation of existing privileges, the ability of Reformed congregations to continue public worship, and the right of Catholics to re-establish Catholic worship, but gave little guidance about the details. Instead, various compromises over the next few years – often initially ad hoc and crafted through negotiations that included both local communities and local lords – produced workable solutions to the challenges of biconfessionalism. As local compromises accumulated and began to spread to other communities across the Thurgau, we see an emerging 'penumbra'¹⁶ of the *Landfrieden* – that is, well-established practices that limited all parties even though they did not rest on any specific language in the *Landfrieden*. The relatively late term *Landfriedensrecht* eventually described this entire system.¹⁷

Because it required interpretation, the application of the *Landfrieden* as legal guideline was contentious from the outset, as Heinrich Bullinger noted in 1533:

And we see now with the *Landfrieden* what kind of judgments we would obtain, 'according to the word and content of our alliances' [*nach laut und sag der*

[StAZH] A 263.1, 1627. See Paul Brüschiwiler, *Die landfriedlichen Simultanverhältnisse im Thurgau* (Frauenfeld, 1932).

¹⁵ Johannes Strickler (ed.), *Actensammlung zur Schweizerischen Reformationsgeschichte in den Jahren 1521–1532* (Zürich, 1881), IV: 618, #1762. A clause in the *Landfrieden* provided for proportional division of church property.

¹⁶ The term 'penumbra' comes from constitutional theory in the United States, where it refers to rights not explicitly articulated in the Constitution, but derivable from it. The phrase appears to have originated with Herbert L. A. Hart; see Stephen Feldman, 'The Rule of Law or the Rule of Politics? Harmonizing the Internal and External Views of Supreme Court Decision Making', *Law and Social Inquiry*, 30 (2005): 89–135, here p. 96.

¹⁷ *Landfriedensrecht* was part of the ongoing emergence of so-called *Eidgenössisches Recht*. For an overview, cf. Peyer, *Verfassungsgeschichte*; with particular reference to the Thurgau, Bruno Meyer, 'Die Durchsetzung eidgenössischen Rechts im Thurgau. Studien zum Verfassungsrecht der Eidgenossenschaft des 15. Jahrhunderts', in *Festgabe Hans Nabholz zum siebzigsten Geburtstag. Vorwort von Bruno Meyer* (Aarau, 1944), pp. 139–69.

Pündten]: what they want, they think they have the power and right to, according to the peace [*noch laut des fridens*], since they interpret it however they want.¹⁸

Despite Bullinger's fears that the Catholics would use their majority in the Swiss assemblies to destroy the Zurich church, however, hardheaded negotiations relying on the terms of the 1531 agreement actually led to compromise and stability in the Swiss subject territories.

Later uses of the 1532 Rheintal arbitration mentioned above provide useful clues to the second phase in the constitutionalization of the *Landfrieden*. From 1532 into the 1620s, this and later arbitrations' provisions continued in effect, although reference to the actual documents became rare.¹⁹ Both law and institutional practice in the Swiss Confederation remained largely oral in the sixteenth century, and specific deals like the one from 1532 operated primarily through their absorption into custom (often celebrated by appeals to '*Brief und Siegel*', but rarely documented by direct quotation). When the Protestants in Frauenfeld were accused of religious misbehaviour in 1606, for example, they began their letter of defence by insisting 'We well know what the *Landfrieden* allows', even though the issues at stake were not addressed by the *Landfrieden* at all.²⁰

When new disputes broke out in the 1620s, however, the pattern changed. In a complex four-way struggle among the Rheintal Protestants, the Abbot of St. Gallen, Zurich and the five Catholic cantons, all sides began citing directly from both the *Landfrieden* itself and its earliest interpretations, like the 1532 '*Lüterung*'. Their goal in recovering the latter text, notably, was to apply it as a precedent that was important far beyond its disposition of a few chantries. The Zurich authorities hoped to use such early agreements to overturn what they admitted were 'many recesses and contracts ... in which ... much was given away by the Evangelicals'.²¹ In consequence, Zurich officials in the 1620s feverishly searched for testimony and documents that could support the conclusions that they wanted to draw from the *Landfrieden*, especially when those conclusions contradicted more recent

¹⁸ StAZH E II 96, p. 105: 'Man sicht auch jetzund an dem Landsfriden, was rechts wir nach lauth und sag der Pündten haben wurden, was Sie wollen vermaynen Sie fug und recht haben noch laut des fridens, dann Sie den friden außlegen wie Sie wollen, also mit den Pündten.' The citation here comes from a misdated mid-seventeenth-century copy, demonstrating that Bullinger's doubts remained in circulation in the later period.

¹⁹ StAZH A 263 contains many documents that resulted from Zurich's efforts after 1610 to gather old documents and testimony from retired pastors.

²⁰ StAZH A 263.1, 1606, 'Euangelische zu Frowenfeld': 'Erstens wüssen wir woll, was der Landtsfrid zugibt.'

²¹ StAZH A263.1, 'Bedencken und unpartygischer bericht': 'Dergleichen und noch vill mehr Abschydt und verträg, der Pfründen AbChurung betreffend, werden vill vorhanden sein, darinne Allwegen wie obgemelt, von den Euangelischen vill vergeben worden, Also das man nit Allein niemahlen kein vorthail haben: sonnder auch nit zum halben Theill gelangen mögen'.

practices. Representatives of the Catholic cantons, in turn, argued that evidence from later in the sixteenth century could not overturn the rights they claimed to find in the *Landfrieden's* text.²²

In the 1640s, legalistic readings that focused on the *Landfrieden's* exact words reached a new level of intensity. An extraordinary brief entitled 'Concerning the interpretation of the *Landfrieden*', now in the *Antistitlalarchiv* in Zurich, demonstrates how the precise meaning of everyday words could be probed. At stake was the differing treatment of conversion by Protestants and Catholics in the Thurgau, since the Catholic cantons now maintained that the actual words of the text prohibited conversion to Protestantism.²³ In 1644, a Zurich church official explained the problem to the city council:

Indeed, [the *Landfrieden*] states that ... those who have accepted the new religion (as it is called), and who still want to stay with it, well *may* do so; in contrast, on their side they have the word '*should*' ... There is a great difference between the two words *may* and *should*, since one makes something free for us, the other binds us.²⁴

The author of this brief therefore provided a detailed analysis of the words 'might' and 'should', arguing that when understood properly, the words in the *Landfrieden* did allow conversion for all subjects, not just Catholics. Even though the point of this specific analysis was to avoid one obvious interpretation of the text, the very attention it focused on specific words increased, rather than undermined the authority attributed to the *Landfrieden*.

This raises another crucial question: who *knew* the *Landfrieden* in the Thurgau, or across the Swiss Confederation, and how well did they know it? In fact, the text was rarely published before the eighteenth century, at least not in convenient form, nor do we find it quoted regularly.²⁵ It therefore seems likely that access to

²² For example StAZH A 264.1, 9 November 1630

²³ The *Landfrieden* reads: 'Es ist ouch ... abgerett, ob ... etlich kilchhörinen, gemeinden oder herlikeiten ... die den nügen glauben angenommen und noch dabi bliben wellten, das si es wohl thun mögen ... ob etwer in gemelten herschaften were, so den alten glauben noch nit verloungnet ... das die selben ouch ... bi irem alten glauben bliben söllent'. Walder, *Religionsvergleiche*, pp. 8f. (his clauses II.b and II.d). On the issue of conversion, Frauke Volkland, *Konfession und Selbstverständnis. Reformierte Rituale in der gemischtkonfessionellen Kleinstadt Bischofszell im 17. Jahrhundert* (Göttingen, 2005).

²⁴ StAZH E II 97, pp. 983ff., here p. 983: 'was den underthanen in gemeinen herrschafften zu beyden theilen der Religionsänderung halber erlaubt seye, steht zwahren von den unsrigen, die den neüwen glauben, wie er genant wird, angenommen, und noch darbey bleiben wolten, daß sie es wol thun mögen, dargegen aber haben sie auff Ihrer seiten des wort. Sollen ... [quoting the 1531 words]. Zwischen beyden worten mögen und sollen, ist ein merklicher underscheid, daß eine stelt uns ein sach frey, das ander verbindt uns.'

²⁵ One pamphlet containing the text (although with critical deletions) appeared in 1532: *Merckliche und warhafftige geschichten von den Schweytzern; Nemlich wie im Jare*

the actual text was restricted primarily to a few chanceries and a few powerful families, and thus unknown to many who justified their positions as being ‘*nach lut des Landfriedens*’. This changed around the first Villmergerkrieg of 1656. We can see the change in knowledge of and attitudes about the *Landfrieden*’s text in a series of pamphlet dialogues that circulated at the time. These were set in the Thurgau but written from differing viewpoints; linguistic research suggests that they had at least three different authors, one each from Schwyz, Zurich and the Thurgau itself.²⁶ Significantly, all four contained direct quotations from 1531 *Landfrieden*; in addition, they also reveal contemporary views on the document’s accessibility. In the earliest of the four pamphlets, written by a Schwyzer just before the war started in early 1656, one speaker, the Catholic peasant Jockle, told his Protestant friend, Bärthle the innkeeper:

Jockle: ... if it were not forbidden, or if I could tell you confidentially as my dear neighbor: You don’t know what points and matters the lords in Zurich specifically and knowingly swore to in 1531 ...
Bärthle: Dear neighbor Jockle, I have only heard of this war and peace a few times, and would like to hear a bit about how it went.²⁷

Jockle then provided several quotations directly from the 1531 *Landfrieden*. The dialogue thus assumed that most people knew little about the 1531 war and peace, and that such knowledge was in fact prohibited.

An author from Zurich quickly published a second dialogue that employed the same two characters, but quoted different passages from the Swiss alliances in support of Zurich’s position. In this version, the *Landfrieden* was evidently not secret, since Bärthle observed, ‘You have doubtless also seen the *Landfrieden* that

nach Christi unsers Herrn Geburt; Funffzehen hundert eyns und dreyßig; die fünff Orth der löblichen allten Eydgnoßschafft ... (n.p., 1532). The text was also copied into several manuscript chronicles, including Bullinger’s and Salat’s. I have not located other sixteenth-century pamphlet editions.

²⁶ Hans Trümpi, *Schweizerdeutsche Sprache und Literatur im 17. und 18. Jahrhundert* (Basel, 1955), pp. 181–5. These pamphlets are further discussed in Randolph Head, ‘Thinking with the Thurgau: Political Pamphlets from the Vilmergerkrieg in the Construction of Biconfessional Politics in Switzerland and Europe’, in Christopher Ocker et al. (eds), *Politics and Reformations: Communities, Politics, Nations, and Empires* (Leiden, 2007), pp. 239–58.

²⁷ *Turgäwische Kunckelstuben, Oder Gantz Vertrüwlich und Nochberlich Gespräch Zwischen Jockle und Barthel ...* (n.p., 1655), Aiii: ‘Jockle: ... aber wanns nit verboten wär / oder ich dirs / als mim lieben Nochbern / dörfte vertrüly sägen. Du weist nicht was die Herrn von Zürich sonderlich und voruß im 1531. Jahr (do Sy ein ReligionsKrieg mit den Catholischen ghan / und wider Friden gmacht) für Puncten und Sachen gschworn han. Würth: Lieber Nochber Jockle / hab zwor etymol vom selben Krieg und Friden hören sägen / möchter aber bloß ein kly vernäh wies hergangen’.

was made after the War of Kappel'.²⁸ By the fourth dialogue in the series (written by a critical Catholic Thurgauer), knowledge of the *Landfrieden* was taken for granted. When Bärthle thought about consulting his pastor, Jockle joked that 'he just needs to spend half a *Batzen*, and buy the printed *Landfrieden*'.²⁹ Naturally, the knowledge displayed by characters in a fictional dialogue does not tell us how much real Swiss commoners knew. Still, the use of direct quotation in these pamphlets suggests that textualism itself was by now a tactic that was effective for influencing broader audiences. Likewise, the pamphlets provide a rare clue about the wider dissemination of constitutional texts. Finally, the *Landfrieden*'s deployment by the third author from the Thurgau – a Catholic who was highly critical of both parties in the 1656 war – also reminds us that an authoritative *text* can serve diverse readers and writers in different ways than an authoritative *document*. Like the intense scrutiny of the exact words in documents that was emerging in the Zurich chancery around this time, popular contestation about the *Landfrieden*'s meaning reinforced both the overall importance of the document and the rhetorical weight of the actual text it contained.

Constitutional Documents in Graubünden

Despite some significant differences, the use of crucial texts from the 1520s in Graubünden followed the same basic trajectory as the *Landfrieden* in the Swiss Confederation. After an early wave of applications in specific legal disputes, the actual texts faded into obscurity, even as the *idea* of these texts gained growing salience in political debate. Eventually, closer textual readings of the documents returned in the context of specific crises in the seventeenth century, accompanied by increased dissemination of the documents' texts. The following discussion sketches a few high points that illustrate these developments.³⁰

The most important Bündner constitutional documents were the *Bundsbrief* of 1525 and the two *Ilanzer Artikelbriefe*, the first from 1524 and the second from 1526.³¹ These documents delineated the authority of the communes and

²⁸ *Turgüowische Kunkelstuben / oder Gantz verträwly unnd nochberly Gspräch zwischen: Jockle unnd Barthel ...* (n.p., 1655), Aii: 'Du wirst on zweyfel den Landsfriden ouch gsehn han / welcher uff den Capperlerkrieg gmacht worden: im vierten Artickhel'.

²⁹ *Ibid.*, A3v: 'Jockle: Der Her Agostin [the pastor] hätt einmhal gseyt / er wölle einen halben Thaler geben / daß er wüßte / welches der rechte Globen wäri / er dör[f] jetz nun einen halben Batzen spenderen / unnd den truckten Landsfriden kooffen / da würdt er sechen'. The *Landfrieden* text, at least in its amended 1656 form, did become more widely available after the war of 1656.

³⁰ The standard introduction is *Handbuch der Bündner Geschichte*, vol. 2, *Frühe Neuzeit* (Chur, 2000).

³¹ All three are published in Constanz Jecklin, *Urkunden zur Verfassungsgeschichte Graubündens* (Chur, 1883).

Leagues, regulated the place of the churches in the **Three Leagues**, and responded to popular pressure for changes in the organization of agriculture and property. A specific conjuncture of social organization and political circumstances shaped this 'constitutional moment' in Graubünden. The First Ilanz Articles of 1524 were a product of the local Reformation movement, and substantially adjusted the place that the church should take in Bündner society. Immediately on the heels of the First Ilanz Articles came the *Bundsbrief* of 1524. Unlike the Articles, the *Bundsbrief* was neither legally nor socially innovative, since it mostly reproduced the contents of earlier alliances, though extending them to all three Leagues.³²

Unlike the First Ilanz Articles and *Bundsbrief*, the Second Ilanz Articles were forced upon the Bündner political class from below. The political situation outside Graubünden in 1526 was dire: a war was underway in the Valtellina, but help from Switzerland was unavailable. Under these circumstances, social peace in the Republic required a conciliatory document. The Second Ilanz Articles succeeded in balancing the forces of religious division and economic upheaval, mostly at the Bishop of Chur's expense.³³ Graubünden's solution to the problem of religious division was local choice, which at first produced much less friction than did the Swiss solution of biconfessionalism in subject territories.³⁴ The Articles addressed peasant economic grievances by regulating the tithe and land tenure, and by giving local courts the authority to adjudicate all changes in tenurial burdens. In both Ilanz Articles and in the *Bundsbrief*, the turmoil of the 1520s thus brought about surprisingly clear formulations of the Republic's new political, social and religious ground rules.

A wave of legal disputes followed the settlements reached in these documents, as had occurred in the Thurgau after the *Landfrieden*. Most suits had to do with

³² Oskar Vasella, 'Bauernkrieg und Reformation in Graubünden, 1525–1526', *Zeitschrift für schweizerische Geschichte*, 20 (1940): 1–65; Oskar Vasella, 'Zur Entstehungsgeschichte des 1. Ilanzer Artikelbriefes vom 4. April 1524 und des Eigenössischen Glaubenskonkordates von 1525', *Zeitschrift für Schweizerische Kirchengeschichte*, 34 (1940): 182–92; Oskar Vasella, 'Die Entstehung der bündnerischen Bauernartikel vom 25. Juni 1526', *Zeitschrift für schweizerische Geschichte*, 21 (1941): 58–78. All now republished in *Geistliche und Bauern: Ausgewählte Aufsätze* (Chur, 1996).

³³ The Bishop and his agents were excluded from all common assemblies and were denied the right to appoint any magistrate or officer in the communes. Jecklin, *Urkunden*, pp. 89f.

³⁴ See Randolph Head, "'nit alß zwo Gmeinden, oder Partheyen, sonder ein Gmeind": Kommunalismus zwischen den Konfessionen in Graubünden, 1530–1620', in Beat Kümin (ed.), *Landgemeinde und Kirche im Zeitalter der Konfession* (Zürich, 2004), pp. 21–57 and Immacolata Saulle Hippenmeyer, *Nachbarschaft, Pfarrei und Gemeinde in Graubünden 1400–1600* (Chur, 1997). Later, religious conflict in the Valtellina did cause comparable divisions: Randolph Head, 'At the Frontiers of Theory: Confession Formation, Anti-Confessionalization and Religious Change in the Valtellina, 1520–1620', in Georg Jäger and Ulrich Pfister (eds), *Konfessionalisierung und Konfessionskonflikt in Graubünden, 16.–18. Jahrhundert* (Zürich, 2006), pp. 163–79.

specific tithes, parish endowments and other resources now released from church control, and were adjudicated locally. The general principles that informed the *Bundsbrief* and Ilanz Articles often shaped the outcome of particular disputes as much as the exact words did.³⁵ As the Bishop's officers complained in 1528, 'the common people withhold our rents and interest through actions of the secular authorities, in the opinion that the Leagues' articles say that they owe nothing'.³⁶ Episcopal suits to regain control of assets thus confronted communes and peasants who 'knew' what the '*Pünthen artickel*' said – even when that knowledge diverged from the document's actual words.

As in Switzerland, the Graubünden *Briefe* remained relevant long after the first burst of short-term legal battles, in part because they generated their own broad penumbra of political practices as the Bündner state took shape. The most visible example is the so-called '*Bündner Referendum*', a procedure used for reaching joint decisions among the Three Leagues and their 52 constituent communes.³⁷ The *Bundsbrief* contained an important article that established majority rule among the Leagues: 'after written announcement seeking attendance, everything that two of the Leagues agree upon should be followed and observed by the third League and its delegates'.³⁸ By enabling decisions in an otherwise very fragmented system, majority rule by the Leagues was a critical part of Graubünden's survival as a political entity. Actual decision-making, however, soon evolved well beyond the general statement in the *Bundsbrief*. As assemblies became more frequent in the sixteenth century, a majority of communes rather than of Leagues became the decisive factor, as part of an increasingly formalized procedure for validating new legislation or policies. Here, too, the Bündner built on the general principles that they believed could be found in their key documents, rather than seeing such documents as precise guides to political practice.³⁹

³⁵ After all, most Bündner peasants did not read and scarcely any copies of the *Bundsbrief* and Articles are found in communal archives from this period. Initial publication took place only in 1619.

³⁶ 'das gmain volckh ... unns unnser rendt und gült uff weltlichs gwalts hanndlung zum tail versperren, der maynung, der Pünthen artickel vermögen, das man ... nichts schuldig sy zu geben'. Oskar Vasella, 'Urkunden und Akten zur Reformationsgeschichte des Bistums Chur', *Zeitschrift für Schweizerische Kirchengeschichte*, 34 and 35 (1940–41), No. 2.

³⁷ Laid out as an ideal-typical chart in Randolph Head, 'Die Bündner Staatsbildung im 16. Jahrhundert, zwischen Gemeinde und Oligarchie', in *Handbuch der Bündner Geschichte*, vol. 2, p. 106.

³⁸ Jecklin, *Urkunden*, p. 86: 'Es ist ouch lutter abgerett, wass wir obedachtenn puntznossen all mit ein andress zehandlen ald uszerichten habendt ald gewinnet, darumb söllend die tag satzung ... angesetzt werden, unnd nach geschryfftilicher verkundung die gehorsam suochen, unnd alles dess sich zwenn pundt verainigenn, sol der drite punth unnd sine boten by iren aydenn ouch volgen unnd geläben.'

³⁹ Rudolf Ganzoni, *Beiträge zur Kenntnis des bündnerischen Referendums* (Zürich, 1890) like later authors who rely on him, exaggerates the scope of the Referendum.

Late in the sixteenth century, the three documents in question took on an additional iconic function, serving as a focal point of unity among the Three Leagues. Threatened by external pressure and domestic factionalism, more and more voices began calling for strict adherence to the founding *Briefe*. Such calls are of particular relevance to ‘statebuilding from below’, since they appeared most forcefully in popular manifestos drafted during that quintessentially Bündner tumult, the *Fähnli*lupf. These were gatherings of soldier-citizens from all 52 communes, carrying their banners, who met in order to protect the Bündner state from some perceived threat – often including corruption or overmighty leaders.⁴⁰ Once assembled, the military companies suggested articles to reform every kind of public business, ‘in the name of and in place of the common III Leagues according to ancient custom’, as one pamphlet put it in 1618.⁴¹

In their reform bills, such assemblies often explicitly reconfirmed the older constitutional documents. All ten separate bills of *Fähnli* articles passed between 1600 and 1620 mentioned the *Bundsbrief*, for example, while the Ilanz Articles appeared in three.⁴² Such demands built on earlier efforts to make the *Bundsbrief* better known through public recitation and re-swearing before the communes.⁴³ Finally, in 1619 someone published a short pamphlet containing the most important constitutional documents of the Three Leagues. Entitled *Landtsatzungen Gemeiner dreyer Pündten*, the small volume included the *Bundsbrief*, *Ilanzer Artikel* and several later statutes.⁴⁴ Graubünden soon fell into political chaos because of the revolt of the Valtellina and the subsequent foreign occupations, so that there was little opportunity for the kind of textual parsing that we saw emerging at this time

⁴⁰ Major anti-elite outbreaks of this kind took place in 1565, 1572, 1585, 1603 and 1607, before a string of increasingly partisan assemblies from 1617 to 1620 that brought the Republic’s government to a halt. Analysed in detail in Head, *Early Modern Democracy*, pp. 147–55. See also Michael Valèr, *Die Bestrafung von Staatsvergehen in der Republik der drei Bünde* (Chur, 1904).

⁴¹ *Grundtlicher Bericht über den Zuostand gemeiner dreyer Pündten in Rætien: Und was sich syder den im Veltlin begangnen Mordthaten in bemelten dreyen Pündten weiter zuogetragen* (n.p., 1621): ‘Volgends sind [die Gemeinden mit ihren Vendlinen] gemeinlich zu Tuis zusammen kommen / allda haben sie im Namen und an stat gemeiner dreyen Pündten nach altem brauch unnd herkommen ein Straffgericht von beyden Religionen besetzt.’

⁴² Head, *Early Modern Democracy*, p. 160.

⁴³ The Bündner Diet noted in 1573 that ‘diewyll dan leyder vill alther lüth sygen die sprechen dörfen sy wüssen nüt umb den pundsbrief’, and appointed a commission to read the *Bundsbrief* before each commune. Staatsarchiv Graubünden AB IV 1/3, p. 172 (17 July 1573).

⁴⁴ *Landtsatzungen Gemeiner dreyer Pündten in alter hoher Raetia gelegen: Zu underschidenlichen mahlen abgesetzt und dises M.DC.XIX. jahrs fürohin steiff und stet zuohalten angenommen und gelobet* (n.p., 1619). The compilers’ actual knowledge of the texts’ origins was shaky. The *Bundsbrief* was attributed to 1471, for example, even though the pamphlet actually reproduced the text of 1544.

in Zurich. After the restoration of the Three Leagues after 1639, however, Bündner legal minds turned back to these texts during a series of intense struggles about primacy in the individual Leagues. When they did, close readings that argued from precise texts and original intent emerged here, as well.⁴⁵

We thus see parallel developments from the 1520s to the 1650s in both the Swiss Confederation and in Graubünden. In both cases, political conflict and social tensions spurred the drafting of innovative political-legal documents in the decade after the Reformation. In the Swiss case, the second *Landfrieden* actually ended a civil war; in Graubünden, the political class forestalled open revolt by drafting the new agreements. In both cases, the resulting documents provided the grist for extensive litigation and arbitration in the 1530s. Over the following half-century or so, although much less reference to the specific texts took place, complex institutions and widely-accepted practices developed that (allegedly) rested on principles established by the constitutional documents. 'The *Landfrieden*' or 'the *Bünde*' functioned primarily as legitimating ideas shared by political actors – a constitutional role, even if contemporaries did not apply the textualist premises of modern constitutionalism. Finally, starting in the 1600s, renewed interest emerged in the exact words these documents contained. Seeking to maintain its influence in the Thurgau, Zurich zealously combed its own archives, conducted questionnaires, and parsed the exact text from 1531 in search of rhetorical and legal advantage. In the Three Leagues, increasing ungovernability produced louder and more frequent calls to heed the founding documents. Graubünden saw a published version in 1619, while frequent quotations in propaganda eventually made the *Landfrieden*'s text better known in Switzerland, as well.

Constitutions, Textualism and Statebuilding – from Below?

In conclusion, I would like to suggest some connections between the patterns outlined here – which do not claim to present a full picture of constitutional intensification in Switzerland – and the larger issue of statebuilding in the early modern period. Two issues stand out: how the 'constitutionality' of certain texts enabled broader participation in political contestation, and how changes in the way texts were read correlated with changes in the process of statebuilding.

The category 'statebuilding from below', which provided one spark in developing the more revealing term 'empowering interactions', makes two key intellectual claims. The first, contained in 'statebuilding', is that modern states were built, rather than being inevitable consequences of human nature or impersonal processes. The term thus echoes a broad movement in current historiography that seeks to reinsert the agency of human actors into the historical process, though

⁴⁵ On political conflict in later seventeenth-century Graubünden, see Silvio Färber, 'Politische Kräfte und Ereignisse im 17. und 18. Jahrhundert', *Handbuch der Bündner Geschichte*, vol. 2, pp. 113–40, esp. p. 136.

without reproducing the straightforward intentionalism found in earlier historians. Statebuilding implies statebuilders. The second claim comes in the phrase 'from below'. Taken narrowly, this phrase constitutes a critique of approaches that see the modern state as a product of elites' agenda for social control in the wake of Reformation religious divisions. Confession-formation and state-formation, such scholars have argued, were parallel projects of a newly literate and self-conscious ruling group. More broadly, an approach 'from below' also evokes the extensive research into communal autonomy and into resistance that have so enriched our understanding of the early modern period.

However, 'statebuilding from below' also contains an inherent tension. As long as we equate statebuilding with the construction of a Weberian state apparatus, it is hard to locate the agency implicit in statebuilding anywhere but among power-elites.⁴⁶ Resistance or autonomy may have shaped state trajectories, but they could scarcely 'build' states. If, however, we look at institution-formation more broadly as a process resulting from widely distributed political engagement – a process that transformed both opportunities and constraints for the exercise of political agency – we can move beyond the confining dualism of 'above vs. below' towards the more productive analysis of empowering interactions.⁴⁷ This approach requires looking at changes in the conduits through which political power was negotiated and institutionalized at any given moment. Studying the 'constitutionalization' of documents and texts is one way to carry out such an approach, since it allows us to discern the discursive resources that various actors could employ without hiding the multiple transcripts such resources allowed.⁴⁸

New authority for documents and new uses of texts were in fact *pervasive* phenomena in early modern Europe – certainly not simply the result of action 'from above', but not really 'from below' either. The interpretive trends that we identified for the Swiss *Landfrieden* and Bündner *Briefe* highlight an actor-driven, but not intention-directed process of change. The growth of legal penumbras, for example – that is, practices that evolved beyond specific textual authorizations while still remaining dependent on legitimating documents – shows how the authority attributed to crucial documents could bind power-holders as well as those subject to power. After 1600, recognizable forms of 'textualism' emerged

⁴⁶ This point was emphasized by Wolfgang Reinhard during the sessions in Ascona.

⁴⁷ It also gets us past the misleading problematic of hegemony, as James Scott argues in the first chapters of *Domination*. In looking for shared conduits of power that structure all parties' ways of negotiating the institutionalized reality they live in – conduits that were always contested and that allowed multiple readings of accepted sources of authority – we get closer to how politics actually operated.

⁴⁸ Abundant work on medieval Europe and on the eighteenth century demonstrates the potential of investigating how documents and texts were used. For the Middle Ages, in addition to the classic work by Brian Stock and Michael T. Clanchy, see for example Steven Justice, *Writing and Rebellion: England in 1381* (Berkeley, 1994). On the eighteenth century, see McNeely, *Emancipation of Writing*.

out of the intensified readings of texts by lawyers.⁴⁹ The return to the text that this approach required, however, opened new avenues for other readers, as well, once they had appropriated the tools of close reading. It also transformed the authority of the underlying documents, and thus the unity and coherence (especially the *imagined* coherence)⁵⁰ of the state itself. Expanded access to constitutional texts ultimately widened the sphere of participants who could use them in the pursuit of their own agendas, as suggested by Caroline Castiglione's term 'adversarial literacy', and clearly point towards the emergence of a broader public sphere.⁵¹ On a more speculative note, I wonder if the growing importance of ways of reading political texts that appropriated the intellectual machinery of text-based religious orthodoxy, including diverse hermeneutic strategies, was itself a product of the collapsing clerical monopoly over authoritative reading that characterized the Reformation era. While the clerics' authority had always been subject to challenge, the rise of multiple confessions greatly increased the number of actors trained in and willing to deploy clerical methods of reading.

⁴⁹ My observations from Switzerland clearly correlate with the emergence of positive public law in this period as well, a much broader process that involved the rise of specialized training. Cf. Wolfgang Weber, *Prudentia Gubernatoria: Studien zur Herrschaftslehre in der deutschen politischen Wissenschaft des 17. Jahrhunderts* (Tübingen, 1992). See also Martin van Gelderen and Quentin Skinner (eds), *Republicanism: A Shared European Heritage* (Cambridge, 2002), esp. the articles by Robert von Friedeburg and Hans Erich Bödeker.

⁵⁰ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (rev. and extended edn, New York, 1991).

⁵¹ The variations that this emergence experienced have been explored in depth since Jürgen Habermas coined the term to contrast the divergent public spheres in England and Germany.

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Chapter 8

‘God is high up, the Tsar is far away’. The Nature of Polity and Political Culture in Seventeenth-Century Russia.

A Comparative View

Endre Sashalmi

Delineation of the Period

The period under consideration is delineated by two crises. In 1598 the ruling dynasty died out in Muscovy. This became the most important cause of social and political upheaval known as the ‘Time of Troubles’ (1598–1613) even by contemporaries. The extinction of the dynasty combined with the worsening of the climate and ensuing famines led to social uprisings, the appearance of false tsars and finally foreign intervention by the Poles and Swedes. The weakness of *Moskovskoe gosudarstvo* (the ‘Muscovite state’ [that is realm])¹ is clearly indicated by the success of the First False Dmitrii who was able to rule Moscow for a year (1605–06), and it is even more revealing that Polish troops were in possession of the Kremlin between 1610–12. Political consolidation could only begin after the Poles had been ousted from Moscow and a new tsar was ‘elected’ (1613) by the ‘assembly of the whole country’ (that is a gathering consisting of the church council, the boyars and people of various social origins, (townsmen, military servitors and even peasants) sent to Moscow). To have a generally recognized

¹ This article is part of a research project supported by the Hungarian fund OTKA (reference number: T043432). Although the term *Moskovskoe gosudarstvo* had been known before, it came into widespread use precisely during the early seventeenth century and it was to remain the most important expression referring to Russia in official documents (see the Law Code of 1649) throughout the century (with the exception of titles where *Rossiya* became the established term). *Gosudarstvo*, however, did not mean *state* at that time but ‘had a number of different meanings’, of which the most important was ‘realm’; it could also refer to parts of the realm and was often used in the plural. Simon M. Dixon, *The Modernisation of Russia 1676–1825* (Cambridge, 1999), p. 190. For the changes in the meaning of *gosudarstvo* see my article “‘Proprietary Dynasticism’ and the Development of the Concept of State in 17th-Century Russia’, in Márta Font (ed.), *Specimina nova III* (Pécs, 2005), pp. 165–202 and also Oleg Kharkhordin, ‘What is the State? The Russian Concept of *Gosudarstvo* in the European Context’, *History and Theory*, 40 (2001): 206–40.

true (that is real) *tsar* (*istinnij/pravednyj tsar*) or, in other words, a *born tsar* (*prirozhdennyj tsar*) was the key to political stability after the false tsars and the three-year interregnum (1610–13).

What other event could provide a better example of a ‘statebuilding from below’ than ending an interregnum by an assembly which in its social composition was the most ‘representative’ of all such gatherings in seventeenth-century Muscovy? We should not, however, interpret either the ‘election’ of the new *tsar* by the assembly or the presence of lower social groups (even of peasants, which was exceptional) at this gathering as a sign of ‘statebuilding from below’. The assembly, as I will argue, was not in any sense an assembly of estates. Familiarity with the basic notions of Muscovite ideology and the study of the Confirmation Charter written in 1613 to justify the accession of the first Romanov ruler (the charter was to be the official interpretation of events and necessarily reflected the crucial points of ideology) hardly allow such an interpretation. According to this document Mikhail Romanov (1613–45), a distant relative of the last *born tsar*, had been pre-selected as *tsar* by God while in his mother’s womb! Therefore the people of the assembly in 1613 were merely inspired by the Holy Ghost when they unanimously cried the name of Mikhail (whom the charter identified as a ‘special relative of the *tsarist* family’) thereby revealing God’s will. The young *tsar* who was not present at the event and was reluctant to accept the burden of rule was to be convinced as follows:

Merciful Ruler, Mikhail Fedorovich! Do not oppose the providence of the Most High God, but do obey His will ... for previous tsars had also ruled as tsars pre-selected by God ... God has favoured humanity with the most precious honour, that is with royal honour. Whomsoever God wants to endow with this grant, He endows the person with this honour already in the mother’s womb and prepares the person for it from infancy. Indeed, you were pre-selected through the same way ... Mikhail Fedorovich, and not through the unanimous thinking of the people, or in accordance with human discretion. For it was by the just judgment of God that you have been entrusted with this royal election ... because the voice of God is the voice of the people [in the other version: the voice of the people is the voice of God].²

Since the people gathered in the Assumption Cathedral were just the vehicle ‘for expressing and confirming God’s will’, ‘election’ and the assembly were merely the means by which divine pre-selection was communicated to this world.³ As the people did not confer any power on Mikhail they could not limit the new *tsar*’s

² Sergei Alekseevich Belokurov (ed.), *Utverzhennaya gramota ob izbranii na gosudarstvo Mikhaila Fedorovicha Romanova* (Moskva, 1906), p. 56.

³ Valerie Ann Kivelson, *Autocracy in the Provinces. The Muscovite Gentry and Political Culture in the Seventeenth Century* (Stanford, 1996), p. 13.

power. In 1613 ‘autocratic monarchy’ was restored.⁴ The assembly wanted not a new ordering of the political system of Muscovy but an end to the interregnum – in short, people wanted a new tsar. Therefore, the delegates of townspeople, military servitors and peasants came to the Moscow assembly ‘not with binding conditions’ but with ‘petitions to submit’ to the new tsar ‘once he *was* elected’.⁵ This issue introduces one of our topics: the role of petitions and assemblies in Muscovy.

The closing date of the period is 1700, the year of defeat of the Russian army at Narva by Charles XII (1697–1718), King of Sweden. By that time there were no assemblies in Muscovy and the traditional way of petitioning had also changed. The defeat, at the same time, set in motion a train of subsequent ‘reforms’ (as the measures of Peter the Great [1682–1725] are generally known) which in many ways were to transform Russia. Though the ‘reforms’ up to the late 1710s were, in fact, mostly unsystematic ad hoc measures aimed at increasing the country’s military potential, it was in the aftermath of the battle of Narva that the coercive Russian *Polizeistaat* (called *regulyarnoe gosudarstvo* that is a ‘regulated state’ by Peter himself in 1718) was actually born.

The Problem of ‘State’ and ‘Statebuilding from Below’ in Muscovite Russia

If state formation ‘from below’ is ‘the perspective of estates, communes, guilds and subjects’,⁶ then one can simply conclude that there was no statebuilding from below in Muscovite Russia, since there were neither social or political estates nor corporations in Muscovy. Likewise, the legal notion of *universitas/communitas* itself was alien to Muscovite Russia. Of course, there were *subjects*, but government documents before about 1700 used the word *poddannyj* (*subject*) only very rarely – it was an exception rather than the rule. It would be pointless, for instance, to look for the term (which was a word borrowed from Polish) in the most important state document of the whole seventeenth century, the Law Code of 1649. Yet, we should not suppose a priori that there was no initiative coming from below, from the ‘subjects’ or more properly from *Orthodox Christians*, as the people governed by the tsar were normally referred to.

Adding to the doubts, not only the ‘from below’ perspective but even the term ‘statebuilding’ can be problematic for the very simple reason that Muscovite Russia was not familiar with the concept of the *state*⁷ – *gosudarstvo* was not understood in the sense that the terms *Etat* and *State* were in seventeenth-century France and

⁴ Geoffrey Hosking, *Russia and the Russians. A History* (London, 2001), pp. 141 and 148.

⁵ Geoffrey Hosking, *Russia. People and Empire 1552–1917* (London, 1998), p. 63.

⁶ André Holenstein, *Empowering Interactions: Looking at Statebuilding from Below* (cf. the introduction to this volume, pp. 1–31).

⁷ Dixon, pp. 189f. For a detailed discussion see the literature in fn. 1.

England.⁸ The concept of state and hence statebuilding also implies (among other things) the notion of the *public*. This statement is crucial to the understanding of the problem of Muscovite 'statehood', even though the line between private and public was often blurred in the West in the early modern period. Whatever ambiguities existed in this respect in the Early Modern West, the main duty of the kings (after Bodin) was clear: to preserve or (under the growing influence of the concept of *gute Policey*) promote the *common good/ public good* of the *body politic*, which in turn was increasingly designated by the word *state* (in England and France) as the seventeenth century progressed. In Muscovy there was no conceptual distinction 'between the tsar's public and private interests nor between his subjects' private and public obligations' before the late seventeenth century.⁹ Therefore, in the Bodinian sense at least, Muscovy was not a state, for in Bodin's view if there is no *publique* (*public*) sphere then 'there is no *république*', that is commonwealth.

The notion of the *public* was no point of reference in Muscovy until 1682 when the Russian equivalent of the expression *common good* is encountered in an official document for the first time – obviously as a part of Russia's Westernization. From c.1700 the term *subject* definitely replaced *Orthodox Christian* in government documents, and references to the *public good/ common good* and also to *gosudarstvo* (which came to mean roughly *state* under Peter) became the indispensable elements of government rhetoric used as justifications of the tsar's government. The first official expression of this ideology was laconically formulated in Peter's manifesto of 16 April 1702:

It is well-known in all the lands of which the Almighty has placed under our rule that since our accession to this throne all our efforts and intentions have been aimed at ruling this State (*sim gosudarstvom upravlyat'*) in such a manner

⁸ Though *Moskovskoe gosudarstvo* was an object of loyalty distinguishable from the ruler even before Peter the Great, in the minds of the Russians it was first of all the 'realm' of genuine Orthodoxy and even of genuine Christianity (cf. the problem of *subject* – *Orthodox Christian*, and also the discussion of Muscovite ideology in this chapter). While in Muscovy the simple question 'What is *gosudarstvo*?' was not raised at all, in France or in England it posed no problem to give a short abstract definition of the *state* in the early seventeenth century. In his work entitled *The Prince or Maxims of State* (1618) Sir Walter Raleigh, who was not an original political thinker, could define the *state* as 'the frame or set order of a commonwealth, or of the governors that rule the same'. Raleigh's definition is quoted from Kenneth H.F. Dyson, *The State Tradition in Western Europe. The Study of an Idea and Institution* (Oxford, 1980), p. 36. For the idea of the *state* in France and England see briefly also Dyson, pp. 27f. and 36f.

⁹ Joseph Hugh Shennan, *Liberty and Order in Early Modern Europe. The Subject and the State 1650–1800* (London and New York, 1986), p. 66.

that as a result of our concern for the common good (*vseobshchee blago*) all our subjects (*poddannye*) should attain an ever greater degree of well-being.¹⁰

Paradoxically, in one respect Muscovy seemed a more 'modern' state than its contemporaries in Western Christendom. 'One of the essential characteristics of the early modern state was the absence of a uniform state power.'¹¹ Seventeenth-century Muscovy was rather different: there was no *societas civilis cum imperio* there, that is corporations to stand *between* the tsar and his people. Apart from relations with nomadic peoples and the peoples of Siberia (where special arrangements were in force)¹² and the treatment of Western border areas,¹³ the tsar *in principle*, though not in reality, ruled his territories in 'equal depth'. Looking at Muscovy from a perspective which goes back to the thirteenth century (when corporations 'fundamental to the birth of the modern institutional state'¹⁴ were mushrooming) a comparison with the West is striking.¹⁵ For the most significant difference between the Muscovite power structure and the Western experience is that Muscovy, 'so to say, skipped the preparatory phase and the preconditions of state formation' characteristic of the West.¹⁶ As a historian whose research so far has been mostly focussed on understanding of the sixteenth to eighteenth-century Russian perception of power and Russian statebuilding, I share H.-J. Torke's view that most categories of 'Western European social and legal history' (and also arguably the categories used for the history of Western Christendom as a whole) 'are almost completely inadequate' for the description of Muscovite Russia.¹⁷

It would be hard to say, for instance, what nobility (*dvoryanstvo*) was in Russia before 1785 when the so-called 'Charter to the Nobility' was issued. Indeed, it was this charter which made one layer of Russian society *come close* to what one can call an *estate*, by listing the legal capacities of this group. The Russian term for nobility shows the importance of *court* (*dvor*), or the ruler, as well as of *service*, for it is derived from *dvoryanin* (*court servitor*) which eventually came to mean *nobleman*. Until 1762, when *dvoryanstvo* was exempted from compulsory service, 'all members of the society were expected to serve the tsar

¹⁰ Quoted from Lindsey Hughes, *Russia in the Age of Peter the Great* (New Haven, 1998), p. 386.

¹¹ Holenstein.

¹² For this see esp. Michael Khodarkovsky, *Russia's Steppe Frontier. The Making of a Colonial Empire, 1500–1800* (Bloomington, 2002).

¹³ The quasi contractual settlement (1654) with the Ukraine (the name *Ukraine* means *frontier*) was exceptional.

¹⁴ David Nicholas, *The Transformation of Europe 1300–1600* (London, 1999), p. 57.

¹⁵ Hans-Joachim Torke, 'Staat und Gesellschaft in Russland im 17. Jahrhundert als Problem der europäischen Geschichte', in Klaus Zernack (ed.), *Handbuch der Geschichte Russlands 1613–1856* (Stuttgart, 1986), pp. 200–12, here p. 203.

¹⁶ Torke, 'Staat und Gesellschaft', p. 203.

¹⁷ *Ibid.*, p. 201.

in some capacity'.¹⁸ And from the time of Peter the Great they were expected to serve (at least on the level of official government rhetoric) *gosudarstvo*, the *state*. Therefore, distinctions between social groups in Muscovite (and Imperial) Russia were mainly 'determined by the nature of the service' they performed:¹⁹ the more important the given service was and the closer the person or group stood to the tsar, the higher the standing of the person and the given social group was. ('*To be close to the tsar – to be close to honours*', held the proverb.) No wonder that seventeenth-century Muscovite society was called 'state-conditioned' by Torke.²⁰

The principle of service was reinforced by Peter the Great and though service was increasingly seen by nobles as 'more of a privilege and honour than a burden' in the eighteenth century, the charter of 1762 which made it optional for *dvoryanstvo* still definitely encouraged nobles to serve.²¹ If this was the case with the higher strata of society, then one cannot expect the lower social groups to do better. Therefore, it is not surprising that there were no social estates in Muscovy: the emergence of 'the concept of a social estate as a legally defined social group' and the term designating it (*soslovie*) can be dated to the 'second quarter of the nineteenth century'.²² Russia was beginning to move towards a corporate society at a time when this society was increasingly being eroded and eventually came under attack in the states of Western Christendom. This is understandable, however, since the principles of *service* and *corporatism* are not good bedfellows: corporatism implies autonomy for social groups in a given sphere of action.

To be sure, embryonic corporate ties and regional identities were emerging not only in the peripheries but also in the core regions of Russia in the seventeenth century, mostly among the military servitors.²³ Some historians go even further, saying that 'Muscovy's regional diversity and toleration of local autonomies were more characteristic than the centralization' especially in areas inhabited by a non-Russian population and in frontier regions.²⁴ Whatever the importance of these 'local autonomies' was (among which probably the towns of Belarus came closest to the corporations known to the West), they were politically irrelevant: they did not affect in any way the autocratic nature of government and notions of power. For unlike in the West, these identities in the 'Muscovite realm' did

¹⁸ Janet M. Hartley, *A Social History of the Russian Empire 1650–1825* (London and New York, 1999), p. 6.

¹⁹ *Ibid.*, p. 4.

²⁰ Torke, 'Staat und Gesellschaft', p. 203.

²¹ Hartley, p. 56.

²² *Ibid.*, p. 28.

²³ Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600–1800* (New Haven and London, 1983), p. 186; Kivelson, pp. 4–6.

²⁴ Nancy Shields Kollmann, 'Concepts of Society and Social Identity in Early Modern Russia', in Samuel H. Baron and Nancy Shields Kollmann (eds), *Religion and Culture in Early Modern Russia and Ukraine* (DeKalb, 1997), pp. 34–51, here p. 35.

not lead either to strong local or regional institutions entrenched in law or to a loyalty which would have overshadowed 'national' loyalty. The bunch of titles of Muscovite rulers did not, in fact, reflect the legal and institutional diversity (with the corresponding diversity of checks on royal power) common to *Western dynastic states*. We find no statements similar to that of the Spanish lawyer, Pereira who wrote in 1647: 'The kingdoms [of Spain] must be ruled and governed as if the king who holds them all together were king only of each one of them.'²⁵ Even if the word 'autonomy' is proper in the case of Muscovy, which is questionable in my view, the following statements will highlight the contrasts with Western Christendom. In Muscovy 'local autonomy made sense only within the context' of the larger community: 'The image of *Russian Orthodox community* served a unifying function in Muscovy and in significant measure determined the outlines of Muscovite political culture.'²⁶ The larger community, which was not a secular one, was given priority over particular interests. Petrine reforms of the army and administration ruined the existing embryonic corporate ties and helped to make Russia more of a 'unitary state'.²⁷

The lack of estates and corporations in Muscovy had a profound impact on the nature of society and the type of statebuilding. In the West 'statebuilding and estatebuilding were reciprocal actions'.²⁸ D. Gerhard called the type of political organization which antedated the *polity of estates* (*Ständestaat*) the *corporate order state*.²⁹ Indeed, the *polity of estates* of the Late Middle Ages was based on corporations and estates. Corporations were to remain an integral part of the social and political structure even under the *absolute monarchy*, which developed its institutions 'alongside the old corporate order'.³⁰ Regionalism, strongly interwoven with the corporate order, was the other special feature of the Old Regime in Western Christendom. These features, however, were not characteristic of Muscovy.³¹

From the perspective of statebuilding, the categories used for medieval and early modern Western states, that is the *polity of estates* and *absolute monarchy* (the latter grew out of the former and can be dated from the mid-seventeenth century) are *irrelevant* with regard to Muscovite Russia. Seventeenth-century Western dynastic states, by and large, belonged to one of these two types or oscillated

²⁵ Quoted from John Miller, 'Introduction', in John Miller (ed.), *Absolutism in Seventeenth-Century Europe* (London, 1990), pp. 1–20, here p. 1.

²⁶ Kivelson, p. 9 (my italics).

²⁷ Aleksandr Kamenskij, 'Petrine Reforms and their Impact', in Lindsey Hughes (ed.), *Peter the Great and the West* (New York, 2001), pp. 29–35, here p. 34.

²⁸ Nicholas Henshall, *The Myth of Absolutism* (London and New York, 1992), p. 11.

²⁹ Dietrich Gerhard, 'Regionalism and Corporate Order as a Basic Theme of European History', in Ragnhild Hatton and M.S. Anderson (eds), *Studies in Diplomatic History: Essays in Memory of David Bayne Horn* (New York, 1970), pp. 155–82, here p. 168.

³⁰ Dietrich Gerhard, *Old Europe. A Study of Continuity 1000–1800* (New York and London), pp. 125f. and 132.

³¹ Gerhard, 'Regionalism and Corporate Order', pp. 159f. and 174–8.

between them. Because of the lack of corporations and the great variety of in-built privileges, the *political structure* of Muscovy was an *autocracy* hardly comparable to Western absolute monarchies,³² among which Denmark should be mentioned as coming closest (following the Royal Law of 1665) to what could be called a 'pure case of absolutism'. In Muscovy, autocracy came into being not in the way that absolute monarchy was established: Muscovite rulers did not have to struggle and demolish legal-institutional checks³³ characteristic of the polity of estates, for there were no checks of this kind.

By *Muscovite autocracy*³⁴ I mean a political system in which the God-appointed ruler's authority is not restricted either by corporate bodies or laws (positive laws, fundamental laws, natural law etc.) contracts, agreements or oaths of any kind. The only limitation recognized by the ruler is the law of God, but only in the sense interpreted by the ruler himself. The specific nature of Muscovite polity, and the difference in the political structure does not mean, however, that seventeenth-century Muscovite Russia should not be viewed on a European continuum from the perspective of statebuilding. But this is another perspective: namely that of the 'fiscal-military state'. This category is broader than absolute monarchy (England, which evolved into a constitutional monarchy, also had become a fiscal-military state by the early 1700s), since it concerns not the political structure, but the so-called 'state infrastructure' (increase in the size of the government apparatus and the level of taxation etc.) and, of course, the growth of the armed forces.³⁵

³² Torke, 'Staat und Gesellschaft', pp. 202–5; Robert O. Crummey, 'Seventeenth-Century Russia: Theories and Models', in Hans Joachim Torke (ed.), *Von Moskau nach St. Petersburg. Das russische Reich im 17. Jahrhundert* (Wiesbaden, 2000), pp. 113–31, here pp. 114–24. Torke's term 'autocratic absolutism', however, is not a fortunate choice to characterize the specific nature of the late seventeenth-century Muscovite system of government, while Crummey is not always consistent in labelling Muscovy an autocracy (cf. Crummey, pp. 118 and 124).

³³ Torke, 'Staat und Gesellschaft', p. 205; Crummey, p. 118.

³⁴ The definition is mainly based on Gustave Alef, *The Origins of Muscovite Autocracy. The Age of Ivan III* (Berlin, 1986), p. 10 and Hosking, *Russia and the Russians*, p. 148.

³⁵ This is the perspective which (despite of the titles) dominates two insightful comparisons placing Russia in a European context. Paul Dukes, *Absolutism in Russia 1613–1801* (2nd edn, London, 1990), pp. 206–13 and Philip Longworth, 'The Emergence of Absolutism in Russia', in John Miller (ed.), *Absolutism in Seventeenth-Century Europe* (Basingstoke, 1990), pp. 175–93. Recently James Cracraft applied the concept of the 'fiscal-military state' for the type of state created by Peter the Great's reforms after 1700. James Cracraft, *The Petrine Revolution in Russian Culture* (Cambridge, MA and London, 2004), pp. 150–9. At the same time, I think it is unjustified to treat sixteenth-century Muscovy as a 'fiscal-military state', and it is even less plausible to consider Muscovite Russia as one of the first polities to develop this complex phenomenon. For this see Chester Dunning and Norman S. Smith, 'Moving beyond Absolutism: Was Early Modern Russia a "Fiscal-Military" State?', *Russian History/Histoire Russe*, 33/1 (2006): 19–44, here pp. 39

Last, but not least, the issue of political culture requires that some remarks be made on the perception of the tsar's power from a European perspective. To underline the importance of political ideas for the understanding of statebuilding, R. Crummey's contention is worth quoting. He claims that the ways 'governments define and justify their power ... can have very important implications for the practice of government'.³⁶ Therefore, to understand the ideological context of Muscovite petitions and the assembly, it is necessary to outline the ideological framework of the tsar's power.

Muscovite Ideology: Divine Right of the Tsars

Political thought proper (not to mention *political theory*) was completely unknown in Muscovy. Even the isolated use of the word *politics* (*politika*), again a word borrowed from Polish, is first encountered only in the 1660s. Thought on ruling power existed, of course, but *within the framework of Orthodox theology*. This means that the *origin, purpose and limits* of power were 'always discussed in a religious context'.³⁷ The Muscovite ideology of power was consequently not 'legal-rationalistic' (as in the West), but 'religious and prophetic'.³⁸ The vocabulary of the sources was understandably 'predominantly biblical in origin', dominated by passages from the Old Testament³⁹ as well as St. Paul's crucial words on the origins and obedience to authorities (Romans 13). If we were to describe Muscovite ideology in one sentence it would read as follows: 'The Tsar's heart is in God's hand'. This passage, coming from the Old Testament (Book of Proverbs), was the core of Muscovite ideology and was so common that it was thought to be a proverb in the seventeenth century.⁴⁰ Therefore, in comparison with the West, what is 'striking about both the form and the language' of Muscovite ideology 'is the degree to which philosophical abstractions remained foreign' to it.⁴¹

Muscovite ideology therefore cannot be called absolutist,⁴² for the *theory of absolute monarchy* was none other than the exposition of royal power with the help

and 43. I completely agree with the authors, however, that this concept is a useful one in understanding Russian statebuilding from European perspective (pp. 32 and 43f.).

³⁶ Crummey, p. 118.

³⁷ Daniel Rowland is quoted by Kivelson, p. 213.

³⁸ Daniel Rowland, 'The Problem of Advice in Muscovites Tales about the Time of Troubles', *Russian History/Histoire Russe*, 2 (1979): 259–83, here p. 279.

³⁹ Dixon, p. 190.

⁴⁰ Endre Sashalmi, '16th–17th-Century Muscovite Ideology of Power in a European Perspective. Proverbs as Means of Understanding Muscovite Ideology', in Gyula Szvák (ed.), *Mesto Rossii v Evrope /The Place of Russia in Europe* (Budapest, 1999), pp. 166–72.

⁴¹ Dixon, p. 190.

⁴² Sashalmi, '16th–17th-Century Muscovite Ideology', 169f.; Crummey, p. 119.

of legal-philosophical concepts. The notion of the king's *absolute power* (*potestas absoluta*) concerns the problem of the extent of the ruler's prerogatives in the body politic: his *being independent* of any institution and standing *above positive laws* (*rex legibus [ab]solutus*) in order to preserve/promote the *common good* but at the same time his standing *below* (*rex sub lege*) and being *constrained* by *fundamental law(s)*, *natural law* and *divine law*. Absolute power, which entails first of all the right to make positive laws, and to impose taxes at the king's pleasure, thus means *not legally unlimited, but institutionally unlimited* power. Or to be more precise, the 'ruler is not limited by institutions outside the kingship itself'.⁴³ Therefore, rule of law and absolute monarchy are not mutually exclusive notions, rather they must be considered as complementary.⁴⁴

The ideology of Muscovite rulers,⁴⁵ which I call *the divine right of the tsars*, *lacked the notion of the rule of law*. It recognized no legal limits, except God's law, but to raise the problem of ideology only in terms of *legal limitation* betrays a Western way of thinking. A comparative approach should not skip over the problem of *conceptual difference*, for Muscovy knew *no lawyers, or legal science* at all, and the architects of ideology were predominantly monks. The community governed by the tsar 'was depicted by elite writers as a *household* and as a *Godly Christian community, not as a cohesive political unity* of a common people'.⁴⁶ Thus Muscovite perception of rulership was neither 'law-', nor 'polity-based': the tsar was conceived as a God-appointed and divinely inspired 'stern but merciful father' of Orthodox Christians and not a holder of a public office.⁴⁷ The tsar's power was not devoid of any norms, however: he had to take care of his Orthodox folk, maintain order, hearken to his people's problems, and above all, he had to defend and keep Orthodoxy.⁴⁸ These norms, at the same time, *were not of a legal but of an ethico-religious nature* and, in my view, it is not proper to call them *limitations* but rather *expectations*. These expectations were 'norms of proper behaviour' that tsars had to follow, or 'ideals to be reached', but they were never formalized legally.⁴⁹ In contrast to the West, they were expressed not in coronation

⁴³ Richard Bonney, 'Absolutism: What's in a Name?', *French History*, 1 (1987): 93–117, here p. 94.

⁴⁴ Fritz Hartung and Roland Mousnier, 'Quelques problèmes concernant la monarchie absolue', in *Relazioni del Congresso di Scienze Storiche IV. Storia Moderna* (Florence, 1955), pp. 4–15.

⁴⁵ For this most recently see Michael S. Flier, 'Political Ideas and Rituals', in Maureen Perrie (ed.), *The Cambridge History of Russia. Vol. I: From Early Rus' to 1689* (Cambridge, 2006), pp. 387–408.

⁴⁶ Kollmann, pp. 38f. (my italics).

⁴⁷ Kivelson, p. 16.

⁴⁸ Daniel Rowland, 'Did Muscovite Literary Ideology Place Limits on the Power of the Tsar 1540s–1660s?', *Russian Review*, 49 (1990): 125–55, here p. 148.

⁴⁹ Pavel V. Lukin, *Narodnye predstavleniya o gosudarstvennoj vlasti* (Moskva, 2000), p. 253.

oaths, and much less in coronation charters or even contracts such as the *pacta conventa* (these phenomena were unknown), but above all in *religious imagery and ritual*, and also in *admonitions by clergymen* in the manner of the mirrors of princes.

Muscovite divine right, however, was ‘more than the “divine right of kings”’,⁵⁰ despite its simplicity. The ruler’s authority in Muscovy ‘could be justified without the help of elaborate literary constructs, simply by referring to God, antiquity and local tradition’.⁵¹ This is reflected in Ivan IV’s statement: ‘We are unlimited rulers (*gosudari*) in our realm/ “state” (*na svoem gosudarstve*) by *divine will*, and posses through our *ancestors* that which was given to us *by God*.’⁵² This simplicity was also characteristic of seventeenth-century Romanov ideology. In *Muscovite divine right* (unlike in Petrine divine right) the *duties* of the tsar were predominantly *religious not secular*, and these duties were to be performed by him as God’s living image on earth, constantly inspired by Him. The idea that the tsar was God’s elect and placed on the throne directly by Him, entailed the notion that through the person of the tsar God Himself, and not so much his representative, governed the realm: therefore the tsar’s will was the will of God. Muscovite ideology was inherently ‘God-dependent’, based on the assumption of ‘God’s constant and direct intervention in the world’.⁵³ In brief, ‘without God it makes no sense’.⁵⁴

Divine right of the tsars (but the not divine right of kings) lacked the notions of *state* and *public* and even the clear concept of *office*, which is firmly proven by the lack of a coronation oath in Muscovy. As a consequence of the extremely personal perception of power (that is the ‘identification of power with the person of the ruler’⁵⁵), there was no concept of the impersonal crown, or the ‘tsar’s two bodies’⁵⁶ – only the tangible, ‘natural body’ of the tsar mattered, which led to the appearance of pretenders in cases of crisis, among which the extinction of the dynasty was the gravest.

⁵⁰ Orlando Figes and Boris I. Kolonitskii, *Interpreting the Russian Revolution. The Language of Symbols of 1917* (New Haven and London, 1999), p. 5. For a detailed comparison see Sashalmi, ‘Proprietary Dynasticism’. Divine right of kings is not to be confused with absolutism: the first concerns the *origin*, the latter concerns the *extent* of the ruler’s power. Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven and London, 1996), pp. 96f.

⁵¹ Ihor Ševčenko, ‘Byzantium and the Eastern Slavs after 1453’, *Harvard Ukrainian Studies*, 2 (1978): 5–25, here p. 10.

⁵² Quoted by Lev N. Pushkarev, ‘Bogoizbrannost’ monarkha v mentalitete russkikh pridvornykh deiatelej rubezha novogo vremeni’, in *Tsar i Tsarstvo v russkom obshchestvennom soznanii* (Moskva, 1999), pp. 59–69, here p. 68.

⁵³ Rowland, ‘The Problem of Advice’, pp. 264f.

⁵⁴ *Ibid.*, p. 279.

⁵⁵ Dixon, p. 194.

⁵⁶ Michael Cherniavsky, *Tsars and People. Studies in Russian Myths* (New Haven and London, 1961), p. 44.

No matter how strange it sounds, this ideology left some room for the 'from below' perspective, but in a very special way. From the early seventeenth century the activity of different social groups 'surfaced in *collective petitions, assemblies and finally in uprisings*': though autocracy was not questioned by any of these forms of social activity, they 'influenced legislation' as the Law Code of 1649 proves.⁵⁷

Petitions

Contrary to well-established belief, Muscovite Russia was not a centralized bureaucratic state in this period: autocracy should not be confused with the capacity to govern. The seventeenth-century proverb '*God is high up the Tsar is far away*' reflects this state of affairs. A clear proof of the non-centralized nature of the polity is the number of clerks employed in state administration: in the 1640s there were some 837 salaried officials in the chanceries and 774 in local administration, which means that Russia was governed by a body of administrative personnel numbering merely 1,611 men.⁵⁸ Though this figure increased almost threefold by the 1690s,⁵⁹ Russia was to remain notoriously 'undergoverned' (as many historians noted) if the ratio between the number of government officials and the size of the population (and territory) is calculated. Therefore, besides the notion of the tsar as a 'merciful father', distance and the lack of officials 'mitigated' autocracy. How was it possible to govern this huge empire at all with such a small number of administrative personnel? (In France, which was much smaller but had a population roughly double that of Muscovy towards the end of the seventeenth century, there were about 65,000 salaried officials.) How did the central government have access to information amidst the lack of corporations? What were the means of 'political' communication and integration, and how were these means interpreted by the Russian rulers and the community governed? What kind of impact did local demands have on legislation? These questions can be answered briefly by considering the issue of petitions and assemblies.

I contend that *petitions* in Muscovy played a role similar to that of *grievances* in Western Christendom. The function and the conceptual framework of supplications is summarized here on the basis of P. Blicke as follows. The so-called *gravamina* were significant, 'from the point of view of *formal communications*, because the early modern state did not have at its disposal the bureaucratic apparatus to inform the heads of state of conditions that needed to be redressed'.⁶⁰ More important

⁵⁷ Torke, 'Staat und Gesellschaft', p. 204.

⁵⁸ Natalija F. Demidova, *Sluzhilaya byurokratiya v Rossii v XVII veke* (Moskva, 1987), p. 37.

⁵⁹ Ibid.

⁶⁰ Peter Blicke, 'Conclusion', in Peter Blicke (ed.), *Resistance, Representation and Community* (Oxford, 1997), pp. 325–38, here p. 334 (my italics here and hereafter in the

in scope are statements on the role of supplications in the political culture of the Old Regime: 'The *right to voice a grievance and receive an answer* belonged to the juridical culture of Old Europe and gave the subjects a political power', and it was a right 'which was never contested in theory and was enforced in practice'.⁶¹ Political representation, *resistance*, etc. 'were all related to the grievance ... which *as a rule was first formulated by the commune*'.⁶² Finally, the principle of voicing a grievance 'strongly *influenced the legislative process*, and thus the law', through representative institutions.⁶³ I will make a comparison between grievances and petitions bearing these statements in mind.

It is impossible to understand not only Muscovite administration, but also the *whole political culture* of Muscovy, without petitions.⁶⁴ But similarities end here, because there was a conceptual difference between grievances and petitions. Again, we must begin with terminology: the Russian term for petition, *chelobitnaya gramota*, literally means *forehead-knocking charter*. Forehead-knocking (*chelobit'e*) was an important ceremony in Muscovite Russia, expected of everyone as a conventional style of greeting the ruler in his presence. Therefore, *chelobitnaya gramota* can be best translated as a *written humble request* (I simply call it 'petition'). Petition became a literary genre by the middle of the sixteenth century with standard formulae, and found its way into the practice of administration when the *Petition Chancery* was established, possibly in 1550.⁶⁵ 'Interactions with the state were almost always framed as supplications for mercy.'⁶⁶ This was true not only in the field of administration (in the correspondence of local officials with the central government) but also in cases when *individuals* and, to be sure, more rarely *collectives* turned to the tsar. There were three types of petitions in the seventeenth century: those written to the centre by local officials, those written by individuals, and finally collective petitions coming most often from the military servitors of different regions. The last of these is the type which is most relevant to the topic, but individual petitions could also touch upon issues relevant to statebuilding. Collective petitions were not only a crucial channel of 'political' communication⁶⁷ but were also comparable to *gravamina*.

Petitions were addressed to the tsar himself and ended with the petitioner's 'direct and subservient request' to have the tsar's 'mercy'.⁶⁸ This direct, personal relationship between the tsar and individuals or collectives is reflected not only

quotations from Blickle).

⁶¹ Ibid., p. 335.

⁶² Ibid.

⁶³ Ibid., p. 336.

⁶⁴ Kivelson, p. 217.

⁶⁵ For seventeenth-century petitions see esp. Svjatoslav Semenovitch Volkov, *Leksika russkikh chelobitnykh XVII veka* (Leningrad, 1974).

⁶⁶ Kivelson, p. 11.

⁶⁷ Ibid., p. 217.

⁶⁸ Kollmann, p. 35.

in the fact that no organ of administration was identified to make the necessary measures, but also in the custom of submitting petitions personally *to the tsar himself*. Indeed, ‘physical access to the ruler’⁶⁹ was of great importance and it was in accordance with the political culture of Muscovy in which there was no room for the concept of the ‘tsar’s politic body’ besides his ‘natural body’. Petitions had three standard parts.

In the first part, the petitioner(s) addressed the tsar, identified himself/themselves and added the formula *b’et chelom/b’yut chelom* meaning literally ‘knock(s) forehead’ but, in fact, meaning ‘petition(s)’. Petitions were written in ‘a language of *submissiveness* and *personal connection* to the tsar’ for petitioners identified themselves in a ‘childlike’ and ‘subordinate’ manner ‘by referring to themselves with diminutives, a form of name customarily used for children, dependents and loved ones’.⁷⁰ Then came the narrative part, the *request* itself, in which previous service (if relevant) was often mentioned to win the tsar’s favour. The third part was a concluding formula: ‘Ruler, Tsar! “Have mercy on me/us”, “reward me/us”!’ In some cases ‘do as God /the Holy Ghost instructs you’, or ‘as God puts it on your heart’ was added.⁷¹ These phrases are clearly proof of the inherently religious nature of Muscovite ideology and had their origin in its main premise: ‘the Tsar’s heart is in God’s hand’. (The tsar’s decision, as it has been said, reflected God’s will.)

Petitions thus reveal the main features of Muscovite ideology in a very condensed manner: the principle of service, the patrimonial (non-institutional) character of the ‘political’ community where ‘the personal was political’,⁷² the divine inspiration of the tsar, and the belief in the tsar’s benevolence. In my view, the dichotomy of the ‘petitioner’s insignificance’ and the idea of the ‘all-powerful tsar’ was, however, accompanied *not* by ‘the subjects’ right to call attention to their woes’.⁷³ For the right to petition was not the *ius murmurandi*. In petitions, individuals and collectives could only *humbly request*, express their expectations and their belief in the tsar’s benevolence, but not exercise the right to receive redress, because the underlying principles of petitions were completely different from those of the *gravamina*.

The *non-mediated, non-institutional* relationship between the tsar and his people fostered by petitioning was crucial to the belief in the ‘good tsar’. Official ideology emphasized ‘the innate benevolence of the tsar’ towards everyone and the tsar was portrayed as ‘an impartial fount of justice’.⁷⁴ In my view, the idea

⁶⁹ Ibid.

⁷⁰ Ibid., pp. 35f. – For example, if one’s name was *Ivan* (John) the person referred to himself as *Ivashko* (Johnny). Common people added to their names that they were the tsar’s *orphans* (my italics).

⁷¹ Volkov, p. 100.

⁷² Kivelson, p. 18.

⁷³ Ibid., p. 217.

⁷⁴ Dixon, p. 194.

of the 'good tsar', the ruler as the embodiment of justice, was strengthened by the accidental similarity in Russian of the words *to govern* (*pravit'*) and *justice* (*pravda*). The expression *pravit' v pravdu* (*to govern justly/with justice*) is encountered in seventeenth-century sources of every kind. In petitions sent by officials, the ruler is often addressed by the formula 'merciful and *just* (*pravednyi*) tsar' and formulaic references to the tsar as *just tsar* are generally common in petitions.⁷⁵ In the early seventeenth century the idea of the 'good tsar' protecting powerless common people by dispensing justice was, so to speak, institutionalized. Complaints in petitions against 'strong people' (as contemporaries put it) became so numerous that this phrase became an 'established legal term' and even a distinct Petition Chancery, the *Chancery in Which People Petition Against Strong People* was set up!⁷⁶

Submitting petitions personally to the tsar was prohibited by the Law Code of 1649 on pain of being beaten with the bastinadoes (or imprisoned): thereafter the petitioner first had to submit the petition to the relevant chancery. Direct appeal to the tsar was left open only in cases when the petition was unanswered.⁷⁷ The old custom, however, was so deeply rooted that despite later bans in the course of the seventeenth and eighteenth centuries,⁷⁸ it was still alive in 1905 when the notorious 'Bloody Sunday' took place.

Assemblies and the Moscow Rising of 1648

The 'assembly (*sobor*) of the whole land [that is country]' to use the contemporary term, should be analysed first of all *in the context of non-institutionalized politics* and the *framework of Muscovite ideology*. Though it is not my intention to suggest even to the slightest degree that 'Muscovite assemblies'⁷⁹ resembled early or mature Western assemblies of estates, whenever comparisons are made the use of the plural is justified. If in the case of England, it is more plausible to speak of *parliaments* than *the parliament* before the late seventeenth century (that is about separate gatherings with an existence of their own),⁸⁰ then it is much more relevant to do so in the present case. Originating in the mid-sixteenth century, the 'Muscovite assemblies' became important for the government after the turmoil of the Time of Troubles, but what changed in the seventeenth century was not their 'competence', but only their 'composition'.⁸¹ The word *sobor* originally was the

⁷⁵ Volkov, pp. 130f.

⁷⁶ Kivelson, p. 220.

⁷⁷ *Ulozhenie* (Law Code) 1649 ch. 10. § 20.

⁷⁸ Kivelson, p. 243; Kollmann, p. 35.

⁷⁹ This name was suggested by Hans Joachim Torke, 'Tak nazyvaemye zemskie sobory v Rossii', *Voprosy Istorii*, 22 (1991): 3–10.

⁸⁰ László Kontler, *Az állam rejtelméi [The Mysteries of State]* (Budapest, 1997), p. 53.

⁸¹ Vasilij O. Klyuchevskij, *Kurs russkoj istorii* (Moskva, 1988), vol. III., p. 187.

name of the *church council* in Muscovy, and indeed, the church hierarchy was part of the assemblies. It can thus be plausibly assumed that councils provided the inspiration not only for the name but also for the practice of calling assemblies of wider social composition, including not only members of the church hierarchy and *boyars*, but also military servitors selected by local government officials and, from time to time, townspeople. The decade after 1613, the 1630s and 1640s, witnessed the most active phases in the history of the assemblies, which came to an end in 1653. The most subtle statement of opinion on the character of the assemblies was probably made by N.S. Kollmann, who commented on their ideological framework as well: 'In form and symbolism they were consistent with Muscovite ideology, an ideology that mandated personal consultation between the tsar and his people. They should probably best be regarded as a consultative process rather than as formal institutions, particularly of a proto-parliamentary type.'⁸² Indeed, the assemblies 'never intended to represent the non-existent estates'⁸³ in Muscovy and had no power over taxation and legislation. The most important reasons for summoning the assemblies were as follows: the need of information on the state of the provinces, especially in the decade after 1613, the declaration of government policy, and the intention to calm social unrest.

Assemblies and petitions were sometimes interrelated as *grievances and assemblies of estates* were in the West. References to collective petitions of the early seventeenth century can be found in 'chronicles and decrees', but the first surviving collective petition of provincial military servitors dates from 1637, followed by many others during the course of the century.⁸⁴ It is significant that in the collective petitions concrete measures were proposed for how to solve the problems raised. The Muscovite government was responsive to the petitions by calling assemblies on each occasion until the mid-century.⁸⁵ In 1648 the tsar, breaking the traditional custom, refused to accept petitions personally from the people of Moscow on his return from a pilgrimage. The result was the great Moscow uprising. To calm the uprising, the government called two assemblies 'publicly announcing its action as a response to the petitions'.⁸⁶ This time the initiative rested on a very wide social base, ranging from the Moscow military servitors and provincial military servitors to 'merchants and trading people of greater and lesser ranks' and finally to 'all the simple people'.⁸⁷ The second assembly (1648–49) led to the Law Code of 1649, in which 'at least 8.5 percent of the 967 articles' reflected the initiative 'from below':

⁸² Kollmann, p. 39.

⁸³ For the most recent discussion see Donald Ostrowsky, 'The Assembly of the Land (Zemskii Sobor) as a Representative Institution', in Jarmo Kotilane and Marshall Poe (eds), *Modernizing Muscovy: Reform and Change in Seventeenth-Century Russia* (London, 2004), pp. 117–41, here p. 141.

⁸⁴ Kivelson, pp. 217f. and 219.

⁸⁵ *Ibid.*, p. 219.

⁸⁶ *Ibid.*, p. 224.

⁸⁷ *Ibid.*, p. 223.

the Code 'conceded many of the demands that had been raised in the preceding decades'.⁸⁸ Therefore, in practice, the assemblies were not immune to popular initiative. But those who were present came to the assemblies to 'perform a duty and not to exercise a right'.⁸⁹ Therefore, service and not right (that is corporatism) is the key notion linking petitions and the assemblies, since no concept of representation and political consent (including the principle of 'redress before supply') existed. The assemblies lacked any theoretical underpinning, and Russia did not know the main principle of medieval and early modern parliamentarism in the West: *quod omnes tangit, ab omnibus approbetur* ('what touches all must be approved by all'). If the 'Muscovite assemblies' could occasionally influence government policy and legislation, they did so *not on the basis of the right to express grievances* and not as a constituent part of the legislative process, but simply by *articulating humble requests* which the tsar might or might not have taken into account.

The Law Code at the same time ushered in the principle of the 'well-ordered police state' which was to triumph in Russia after 1700.⁹⁰ Thus the birth of interest in law in Muscovy was closely connected to the idea of law as a means regulating society. This perception of law had long-lasting consequences in a country without a legal tradition: law was reduced to being an administrative convenience.

⁸⁸ Hans Joachim Torke, 'From Muscovy towards St. Petersburg, 1598–1689', in Gregory L. Freeze (ed.), *Russia. A History* (Oxford, 1997), pp. 55–86, here p. 70.

⁸⁹ Thornton Anderson, *Russian Political Thought* (Ithaca and New York, 1967), p. 103.

⁹⁰ Raeff, pp. 182 and 187.

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Chapter 9

Communication between Authorities and Subjects in Bohemia, Hungary and the Holy German Empire, 1650–1800: A Comparison of Three Case Studies

Stefan Brakensiek

Every kind of authority has to rely on the cooperation of at least some of its subjects. This universal law applies as well to monarchies, principalities and noble estates of the early modern period. To rule meant to organize interchanges between the holders of prerogatives, rights and liberties and those affected by them on a regular basis. Moreover, in the Western tradition, princes and lords sought to define themselves as acting not like tyrants, but rather like Christian authorities endowed by God with the office of maintaining the public peace, administering justice and promoting the common good. To this end, specific arrangements were instituted that included policies dedicated to these purposes, administrative bodies (or other kinds of organization) that could implement the policies and channels of communication to articulate consensus or conflict. The actual type of rule that resulted in specific cases thus rested on prevailing ruling concepts, as well as on bureaucratic developments and no less on customary habits of communication.¹

I deliberately avoid the term state-formation in this context, since recent research has failed to reveal any kind of demiurge that could have directed any such process in a coherent way. Instead, we can observe a tacit process of trial and error that involved not only the governors, but also their public servants and many of their subjects at every step. This process affected the whole arrangement of a given ruler's policies, public offices and channels of communication. In a European context, more or less contingent constellations determined which specific authorities made themselves available for empowering interactions of the kind that simultaneously intensified lordship and fostered obedience.

This chapter will examine three diversely structured territories in order to demonstrate how actual institutional arrangements shaped the scope for action available to the various estates involved, and to reveal what strategies were

¹ Recent research has been preliminarily interested in the institutionalized forms of communication, for example denunciation, testimony, oath, supplication and record-keeping, as essential parts of trials and administrative proceedings.

deployed in order to profit from this scope of action, and to enlarge it. The three areas in question are the aristocratic domain of Jindřichův Hradec (or Neuhaus, as it was called in German) in southern Bohemia, the *Comitatus* of Szatmár in eastern Hungary and the landgraviate of Hesse-Kassel, a medium-sized principality in the Holy Roman Empire. The research presented here draws on work done by a group of colleagues from Germany, the Czech Republic and Hungary.² To answer the question of how intensifying communication could foster the acceptance of lordship, we concentrated in particular on the local dimension of dominion. That is, we wanted to know how close different authorities seemed to be from the subjects' point of view, and to what extent access to authority was easily available and affordable for heads of households, corporations or cities. In this context, the spatial dimension of the territorial units involved is obviously of great importance.

All three of these territories, we should note, belong to parts of Europe that have a rather bad reputation where political openness is concerned. Neither Hungary, Bohemia nor Hesse-Kassel is well known for the opportunities for participation it offered to town-dwellers or rural people – a justly deserved reputation, as none of the diets or parliaments in any of these territories included representatives of the peasants. Nevertheless, our research reveals that even here, subjects participated in the political process either through conflict with their lordships or in the form of consensual proceedings.

Bohemia

The domain of Jindřichův Hradec or Neuhaus consisted of a huge assemblage of manors in the south of Bohemia that had belonged to the Slavata family since 1604, and was acquired by the Tschernin family in 1691. The Slavata and Tschernin families belonged to the aristocratic lineages that prevailed in Bohemia after the defeat of the Protestant estates in 1620. Families like these took up the commission of the Habsburg dynasty to push the kingdom of Bohemia back into the arms of Counter-Reformation Roman Catholicism. The ruling aristocrats themselves stayed at the imperial court at Vienna most of the time, so that, although domains like Neuhaus provided the source of their immense wealth and symbolized their high position in society, they were used only rarely as places of residence and never as the centre of a country lifestyle.³

² I am deeply grateful to the members of the Volkswagen project, namely Peter Dominkovits (Sopron), Judit Pál (Cluj Napoca) and András Vári (Budapest), Vaclav Bůžek, Josef Hrdlička and Vaclav Pražák (České Budějovice), Beate Fujiwara (Bielefeld), Karin Gottschalk and Heide Wunder (Kassel). For further details see www.lokaleherrschaft.de. In the present chapter I have to restrict the references given to the recent literature.

³ Josef Hrdlička, 'Herrschaftliche Amtsträger als Klienten und Patrone im frühneuzeitlichen Böhmen? Kommunikation im Dominium der Herren von Neuhaus,

During the seventeenth century, the Habsburg rulers (as kings of Bohemia) confined themselves to laying down only general requirements for the governance by means of which aristocrats wielded their power over the subjects. Among these prescriptions were a statute of 1627, called the *Verneuerte Landesordnung*, and the so-called *berni rula*, a register of peasant holdings and their tax burdens. As the crown had scarcely any servants of its own in Bohemia, moreover, the Habsburg rulers put the courts of their royal towns in charge of all criminal cases and of appeals in civil cases. Nevertheless, the lords' agents determined the day-to-day management of local affairs, especially since the crown had virtually no royal demesne at its disposal. Between 1620 and 1740, a kind of bureaucracy emerged which was frequent in the Holy Roman Empire, yet it was developed not by the prince but by aristocratic landlords. At Neuhaus, the lord's office was the most important local centre of power, which together with that of the other domains of the family, was subordinated to the central office of the Tschernin family in Prague.⁴

The rural communities had their own community courts chaired by the village headman (German: *Scholz* or *Richter*, Czech: *rychtář*) and manned by half a dozen village officers, variously termed elders (German: *Älteste*) or justices (German: *Schöffen*, Czech: *přísežní*) taken from the ranks of the peasantry and approved by the landlord.⁵ These village officials possessed the competence to regulate matters within the village, and were responsible for enforcing ordinances of the crown or of the aristocratic estate owner. Their domainal counterpart in all economic matters

Slawata und Tschernin (1550–1730)', in Stefan Brakensiek and Heide Wunder (eds), *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, Weimar and Wien, 2005), pp. 145–63; Stefan Brakensiek, 'Rekrutierung lokaler Herrschaftsvermittler unter wechselnden Vorzeichen: Die böhmische Herrschaft Neuhaus, das ungarische Komitat Szatmár und die Landgrafschaft Hessen-Kassel im Vergleich', in Stefan Brakensiek and Heide Wunder (eds), *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, Weimar and Wien, 2005), pp. 97–122; Thomas Winkelbauer, 'Grundherrschaft, Sozialdisziplinierung und Konfessionalisierung in Böhmen, Mähren und Österreich unter der Enns im 16. und 17. Jahrhundert', in Joachim Bahlcke and Arno Strohmeier (eds), *Konfessionalisierung in Ostmitteleuropa. Wirkungen des religiösen Wandels im 16. und 17. Jahrhundert in Staat, Gesellschaft und Kultur* (Stuttgart, 1999), pp. 307–38; Václav Bůžek and Petr Mat'a, 'Wandlungen des Adels in Böhmen und Mähren im Zeitalter des Absolutismus (1620–1740)', in Ronald G. Asch (ed.), *Der europäische Adel im Ancien Régime. Von der Krise der ständischen Monarchien bis zur Revolution (1600–1789)* (Köln, Weimar and Wien, 2001), pp. 287–321; Thomas Winkelbauer, *Ständefreiheit und Fürstenmacht. Länder und Untertanen des Hauses Habsburg im konfessionellen Zeitalter* (Wien, 2003), vol. 1, pp. 91–3, 101, 113f., 185, 188–94 and 207–9.

⁴ Hrdlička; Václav Pražák, 'Mezi normou a skutečností. Vrchnostenští úředníci na Jindřichově Hradci na počtku 18. století', in Martin Čapský (ed.), *Celostátní studentská vědecká konference Historie 2002* (Opava, 2003), pp. 77–82.

⁵ Sheilagh Ogilvie, 'Communities and the "Second Serfdom" in Early Modern Bohemia', *Past & Present*, 187 (2005): 69–119, esp. p. 78.

was the steward of the nearest manor. All other matters belonged to the landlord's office at the castle, which usually was at some distance from most of the villages. Bohemia, therefore, lacked the close integration into domainal communication that the densely-knit net of administrative districts (*Ämter*) of the territories of the Holy Roman Empire provided.

The rural population of Bohemia had scarcely any chance to contact the king or his bureaucracy. Inspections by royal commissions usually took place only after local unrest. The massive number of petitions that enserfed peasants, dispatched in the years 1679 and 1680, amply demonstrate a quite widespread need to communicate. Because the imperial court had moved to Prague owing to an outbreak of plague at Vienna, the king was more easily accessible than usual. Still more important was the perception that the king, by issuing the so-called *Robotpatent*, which regulated the amount of the peasants' services, had made it plainly recognizable that he cared for his Bohemian subjects.⁶

Usually the population was left in the custody of their aristocratic lordships. It was the local lords who directed the maintenance of public order through their domainal instructions.⁷ Owing to insufficient research, it is not known whether these instructions, which were addressed to the stewards, village judges and town magistrates, were published in the same high numbers, and whether they contained the same great detail, as the policy ordinances of the German territories, the imperial cities, or the regional organization of the Empire, the *Reichskreise*.

At the castle of Neuhaus in the century between 1620 and 1720, communication between government and subjects was channelled through the aristocratic domainal administration. The aristocrats who resided at Vienna or Prague left this task to their captains, scribes and auditors at the castle, and confined themselves to occasional conventional oversight of their servants. It is therefore little wonder that the subjects predominantly appealed to the captain to mediate conflicts between villages or to complain about the steward when he collected not only the regular services and taxes due to the lordship, but sought to make a private profit in addition. At first glance, findings like these fit very well into the contemporary picture of 'Bohemian slavery' or into the historian's notion of a 'second serfdom'. But one has to be careful. Recent research by Pavel Himl and Dana Štefanová has produced evidence that the rural population possessed a broad range of possibilities for action with regard to daily economic activities or the transmission of dwellings and land. Although rural inhabitants were obliged to announce each property transaction to their lordship, and had to pay the corresponding dues, they also used the scribes of the domainal office as public notaries in their own interest.

⁶ Jaroslav Cechura, *Selské rebelie roku 1680. Sociální konflikty v barokních Čechách a jejich každodenní souvislosti* (Praha, 2001).

⁷ Thomas Winkelbauer, 'Instruktionen für Herrschaftsbeamte und grundherrliche Ordnungen in den österreichischen und böhmischen Ländern', in Josef Pauser, Martin Scheutz and Thomas Winkelbauer (eds), *Quellenkunde der Habsburgermonarchie (16.–18. Jahrhundert). Ein exemplarisches Handbuch* (Wien and München, 2004), pp. 409–26.

Manorial stewards collected services and taxes in a very harsh manner, but they did not intervene in the inner life of the villages as often as is usually supposed. The structure of the rural communities in Bohemia resembled that of villages in other territories of the Empire to an astounding degree. These findings suggest that the conventionally assumed differences between the manorial regions of the West and the eastern region of strict estate management and landlordism (of which Bohemia is a proverbial case) were more likely differences in degree, especially economically, but not in principle. They did not permeate the whole social fabric of the society.⁸

Indeed, this recent research makes it obvious that the aristocratic lordships and officials of Bohemia had no more interest in gaining complete control over the daily business of their villages through their own servants than did their colleagues in the imperial territories. Instead, one can discern a form of governance that combined a small number of professionalized officials with many more local notables through hierarchically ordered cooperation. This was a kind of rule that was quite inexpensive, and that the rulers viewed as efficient enough.

Starting in the second third of the eighteenth century, a fundamental change became visible in Bohemia that affected general policy, the administrative machinery and the style of communication. This change provides a true case of statebuilding from above. An increased effort by the crown regarding the everyday business of administration in the Bohemian and Austrian territories led to a change from the traditional dualism of lordship and populace to a triangular relationship. At the end of the seventeenth century and the beginning of the eighteenth century, this change was still confined to the normative level. Startled by some severe upheavals, the court in Vienna strove to limit the burden of feudal dues and services on the rural population through a series of ordinances, the *Robotpatente* of 1680, 1717 and 1738, so that the subjects would be able to pay rising central taxes. However, it

⁸ Eduard Maur, 'Genese und spezifische Züge der spätf feudalen böhmischen Gutsherrschaft', in Eduard Maur, *Gutsherrschaft und 'zweite Leibeigenschaft' in Böhmen. Studien zur Wirtschafts-, Sozial- und Bevölkerungsgeschichte (16.–18. Jahrhundert)* (Wien and München, 2001), pp. 59–83; Pavel Himl, *Die 'armen Leüte' und die Macht. Die Untertanen der südböhmischen Herrschaft Český Krumlov im Spannungsfeld zwischen Gemeinde, Obrigkeit und Kirche (1680–1781)* (Stuttgart, 2003); Dana Štefanová, 'Dorfgemeinde in der Gutsherrschaft. Ein Beitrag zu Handlungsräumen der Gemeinde am Beispiel Nordböhmens (1558–1750)', in Markus Cerman and Robert Luft (eds), *Untertanen, Herrschaft und Staat in Böhmen und im 'Alten Reich'. Sozialgeschichtliche Studien zur Frühen Neuzeit* (München, 2005), pp. 235–55; Heide Wunder, 'Das Selbstverständliche denken. Ein Vorschlag zur vergleichenden Analyse ländlicher Gesellschaften in der Frühen Neuzeit, ausgehend vom "Modell ostelbische Gutsherrschaft"', in Jan Peters (ed.), *Gutsherrschaft als soziales Modell. Vergleichende Betrachtungen zur Funktionsweise frühneuzeitlicher Agrargesellschaften* (München, 1995), pp. 23–49; William W. Hagen, 'Village Life in East-Elbian Germany and Poland, 1400–1800: Subjection, Self-defence, Survival', in Tom Scott (ed.), *The Peasantries of Europe from the Fourteenth to the Eighteenth Centuries* (London and New York, 1998), pp. 144–89.

took defeat by Prussia in the two Silesian Wars of 1740–42 and 1744–45 before the normative intention came to be supported by administrative reinforcement. By introducing the regional district office (*Kreisamt*) in 1749, Maria Theresa created a new crown bureaucracy, which acted as an authority of appeal above the still existing manorial districts, where the noble and church authorities still exercised their dominion. This led to a strengthening of central power.⁹

Concerning the issue of domainal communication, the establishment of regional courts and administrative offices meant a considerable change. Now, quite different constellations became possible at the regional and local levels. This does not imply that the material conditions of the rural population improved, however. In fact, the opposite was true, because of the rapidly rising tax burden. The owners of the great domains and their officials reacted effectively to the new situation, especially in order to damp down the consequences of the *Robotpatente* for their own financial fortunes. By acceding to a partial adoption of the targets of reform, they stayed on speaking terms with central government and its administrative representatives within the region, where they tried to influence the performance of the regional district offices through constant bargaining.

Nevertheless, new opportunities did open up for individual subjects or villages to pursue their interests more effectively than before by taking legal action or by invoking the bureaucracy through charges, petitions, reports, complaints and denunciations. Even before, the captain and the stewards had often employed diverging strategies, so that the subjects had some room to manoeuvre. After the middle of the eighteenth century, the overall situation became much more flexible for the rural population. This was due to availability of alternative channels of communication via the royal bureaucracy.¹⁰ Furthermore, because of the concurrent expansion in the set of legitimate discourses, during which a language of economic utility supplemented the older languages of estates or religion, it became much easier for various interlocutors to play a strategy game with different options. The question whether the new constellation ultimately increased the chance that any of the authorities involved would gain acceptance cannot yet be answered, however, because the relevant research has just begun.

⁹ Winkelbauer, *Ständefreiheit und Fürstenmacht*, pp. 120–23; Karl Vocelka, *Österreichische Geschichte 1699–1815. Glanz und Untergang der höfischen Welt. Repräsentation, Reform und Reaktion im habsburgischen Vielvölkerstaat* (Wien, 2001), pp. 358–60.

¹⁰ The establishment of regional district offices in 1749 was preceded by setting up a commission concerning the complaints and privileges of the subject in 1738, see Eduard Maur, 'Staat und (lokale) Gutsherrschaft in Böhmen 1650–1750', in Markus Cerman and Robert Luft (eds), *Untertanen, Herrschaft und Staat in Böhmen und im 'Alten Reich'.* *Sozialgeschichtliche Studien zur Frühen Neuzeit* (München, 2005), pp. 31–50, here p. 45.

Hungary

Our second case study involved the *Comitatus* (county) of Szatmár, situated in the easternmost part of Hungary on the border with Transylvania. During the seventeenth century, this region was one of the main battlefields of the Habsburg monarchy and the Ottoman Empire, and it also became one of the centres of the rebellion of the Kuruc.¹¹ When the peace treaty of Szatmár in 1711 put a stop to decades of disaster, the country lay in ruins. Roads, bridges and canals were completely devastated. Most of the towns and villages, many of which had been founded during the Middle Ages, no longer existed, and the countryside was nearly depopulated. The county of Szatmár had to be rebuilt virtually from nothing through explicit efforts to enlist various ethnic and denominational groups of new settlers.¹² The result was a society characterized by the unusual feature of segmentally organized estates: Hungarians of the Calvinist or Catholic creeds lived alongside Catholic Swabians who spoke German, Wallachians of the Greek-orthodox church who spoke Romanian, Ruthenians of the Uniate church, and smaller groups of Greeks, Gipsies, Jews and Armenians. This profoundly affected communication between the authorities and their different subjects, because each of the populations acted as a corporate and privileged group, rather than individually or as village communities, which might have formed larger unified associations of protest.¹³

Comitatus was the contemporary term for the self-governing bodies of gentry that were absolutely central to the administration, jurisdiction and politics of the Hungarian kingdom. The assemblies of these counties elected representatives of the diet of the kingdom, which met at Pressburg (current-day Bratislava). Because of the long distances between each county and government departments at Vienna or Pressburg, because of the denominationally, ethnically and socially segmented character of Hungarian society, and because of the large numbers of the gentry

¹¹ The Kuruc uprisings were independence movements of the Hungarian estates against the Habsburg rule.

¹² István N. Kiss, *Die deutsche Auswanderung nach Ungarn aus neuer Sicht* (Köln, 1979), esp. pp. 15–20; Karl-Peter Krauss, *Deutsche Auswanderer in Ungarn. Ansiedlung in der Herrschaft Bóly im 18. Jahrhundert* (Stuttgart, 2003).

¹³ Anton Radvánszky, *Grundzüge der Verfassungs- und Staatsgeschichte Ungarns* (München, 1990), pp. 59–63; István Fazekas, 'Dorfgemeinde und Glaubenswechsel in Ungarn im späten 16. und 17. Jahrhundert', in Joachim Bahlcke and Arno Strohmeyer (eds), *Konfessionalisierung in Ostmitteleuropa. Wirkungen des religiösen Wandels im 16. und 17. Jahrhundert in Staat, Gesellschaft und Kultur* (Stuttgart, 1999), pp. 339–50; Márta Fata, *Ungarn, das Reich der Stephanskronen, im Zeitalter der Reformation und Konfessionalisierung. Multiethnizität, Land und Konfession 1500 bis 1700* (Münster, 2000).

in Hungary, the *comitatus* became the essential unit in the indirect rule of the Habsburg monarchs.¹⁴

The county of Szatmár possessed a first-rate aristocratic house of great political importance, the counts of Károlyi,¹⁵ who ruled their domains in the same unrestricted fashion as the owners of Neuhaus, even though the *Comitatus* covered an area which was several times greater than that of Neuhaus. Although the manors of the counts of Károlyi were real *latifundia*, and continued to grow during the eighteenth century, they made up only a part of the county. During the eighteenth century, the Catholic counts of Károlyi occupied the office of Lord-Lieutenant (*Obergespan*) of the *Comitatus*, that is they were the regional representatives of the crown. They dominated the political business of the county because of their financial and political weight. Against their will, no one could make a move without feeling the consequences. Nevertheless, the Károlyi had to reach some kind of accommodation with the less powerful members of the county gentry, since the latter could mobilize the political backing of the *Comitatus*.

During the seventeenth and eighteenth centuries, the *Comitatus* and its institutions were nearly all-powerful at the regional level. Its responsibilities included the administration of welfare in general, the collection of taxes, conscription, important branches of the legal administration, and even parts of the legislative office. The *Comitatus* could remonstrate against supposedly illegal ordinances of the central royal administration, so that their enforcement, even if it was not prevented, could be delayed. The regional officeholders were elected by the assembly of the *Comitatus*, which regularly designated individuals from the ranks of the so-called *bene possessionati*, that is the wealthier gentry of the county, which included Calvinists as well as Catholics.¹⁶ The *Comitatus* possessed

¹⁴ András Kubinyi, 'Landesherr, Reichstag bzw. Landtag und Komitatsversammlungen in Ungarn und Siebenbürgen 1542–1681', in Joachim Bahlcke, Hans-Jürgen Bömelburg and Norbert Kersken (eds), *Ständefreiheit und Staatsgestaltung in Ostmitteleuropa. Übernationale Gemeinsamkeiten in der politischen Kultur vom 16.–18. Jahrhundert* (Leipzig, 1996), pp. 81–94; István György Tóth, 'Der wechselnde Spielraum des ungarischen Adels im 17./18. Jahrhundert', in Joachim Bahlcke, Hans-Jürgen Bömelburg and Norbert Kersken (eds), *Ständefreiheit und Staatsgestaltung in Ostmitteleuropa. Übernationale Gemeinsamkeiten in der politischen Kultur vom 16.–18. Jahrhundert* (Leipzig, 1996), pp. 149–59; Péter Dominkovits, 'Das ungarische Komitat im 17. Jahrhundert: Verfechter der Ständerechte oder Ausführungsorgan zentraler Anweisungen?', in Thomas Winkelbauer and Petr Mat' a (eds), *Die Habsburgermonarchie 1620 bis 1740: Leistungen und Grenzen des Absolutismus-Paradigmas* (Stuttgart, 2006), pp. 401–41.

¹⁵ Ágnes Kovács, *Károlyi Sándor* (Budapest, 1988).

¹⁶ Peter Schimert, 'The Hungarian Nobility in the Seventeenth and Eighteenth Centuries', in Hamish M. Scott (ed.), *The European Nobilities in the Seventeenth and Eighteenth Centuries, Vol. 2: Northern, Central and Eastern Europe* (London and New York, 1995), pp. 144–82; Joachim Bahlcke, 'Calvinism and Estate Liberation Movements in Bohemia and Hungary (1570–1620)', in Karin Maag (ed.), *The Reformation in Eastern and Central Europe in Comparative Perspective* (Aldershot, 1997), pp. 72–91.

the competence to make its own by-laws, which were very important to the social and economic life of the region's inhabitants. Many by-laws passed by the various counties became national law by resolution of the Hungarian Diet. Only after the middle of the eighteenth century did the *Comitatus* lose their legislative position, and give way to the orders and statutes of the central government in Vienna.

The court of justice of the *Comitatus* heard cases of first instance for gentlemen, and of second instance for town-dwellers and rural communities. Even serfs could go to this court to appeal against a sentence of the manorial court in civil cases, at least after the middle of the eighteenth century. The courts of the *Comitatus* thus extended their competence during the eighteenth century, to the detriment of the manorial courts. It became more and more usual that a deputy of the *Comitatus* with the right to vote was present when a manorial court was in session. It is significant that even Joseph II could not think of anything better than to replace the manorial courts with the court of the *Comitatus*, or at least to let the manorial courts be supervised by the latter, when he implemented his policy of peasant protection (*Bauernschutzpolitik*).¹⁷

Local rights and usages in Szatmár therefore remained *terra incognita* for the higher administrative and judicial bureaucracies. This had severe consequences for the final judgements in the hearing of cases. If we look at the papers of the county administration, moreover, we frequently find topics that no longer appeared on court agendas in the nineteenth century, because such matters were unmistakeably fixed and registered. But in the late eighteenth century, the boundaries of local administrative districts or private property, the establishment of legitimate birth and thus the social dignity of individuals, and various declarations of intent could not simply be looked up in the records. Instead, such information still had to be gathered from the testimony of witnesses; this in turn opened up a wide field for empowering interactions in the county. The outcome of a hearing was often determined by which participant best established his local knowledge.¹⁸

Starting from quite poor conditions economically and culturally, eastern Hungary later caught up through a rapid drive to match the standards of Western Europe. This affected administrative and judicial authorities equally. The process of development started with the 'private' administration of the noble manors,¹⁹ but from there it extended to the public sphere as the great noble families of the magnate

¹⁷ Lajos Hajdú, *Das Strafgesetzbuch Josephs II. in Ungarn. Beiträge zur Wertung der strafrechtlichen Reformen des Josefinismus* (Budapest, 1973); Herbert Küpper, *Autonomie im Einheitsstaat. Geschichte und Gegenwart der Selbstverwaltung in Ungarn* (Berlin, 2002), pp. 41–6.

¹⁸ András Vári, 'Ergebene Diener ihrer Herren. Wandel der Machtausübung im Komitatsleben und in der privaten Güterverwaltung im Ungarn des 18. Jahrhunderts', in Stefan Brakensiek and Heide Wunder (eds), *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, Weimar and Wien, 2005), pp. 203–31.

¹⁹ András Vári, 'Der Großgrundbesitz als Konfliktgemeinschaft', in Jan Peters (ed.), *Gutsherrschaftsgesellschaften im europäischen Vergleich* (Berlin, 1997), pp. 253–73.

class introduced their own professionalized servants into the administration of the *Comitatus* in order to direct business in their districts. Such moves provoked a reaction from the lesser gentry, so that some knowledge of the law soon became a requirement for the assumption of office.

The expansion of work to be done, the multiplication of correspondence and the growing demands of the central royal government required the institutions of the *Comitatus* to work continuously and on a professional basis. Moreover, the reform programme of Joseph II had a considerable impact, although it failed at first glance because of noble resistance.²⁰ Nevertheless, the expectations concerning the performance of servants of the noble houses and that of the officeholders of the *Comitatus* did change. The nobility of Hungary adopted elements of what it perceived to be the civilized behaviour of their European contemporaries. The nobleman came to see himself as the vanguard in a process of cultivation of the Hungarian nation. If this became the inner perspective of an elite, what was its significance concerning the empowering interactions between rulers and subjects?

At the beginning of the eighteenth century, the majority of the enserfed rural population was subordinated to noble domains where, for the moment, local stewards, who depended on their lords, still had a free hand without being bound to written guidelines. Because of the extension and emptiness of the countryside, however, the first settlers could quite easily evade many of the demands put on them, and the frequency of interaction remained relatively low. The segmented units of rural society raised the agreed tributes and paid them to the nobility, but apart from that, they sustained church and village life on their own. This pattern changed rapidly in the course of the eighteenth century, however, as the period of peace after 1711 witnessed a sharp growth in population accompanied by a corresponding increase in the zones of contact or conflict. The interests of the nobility lay in tighter control over jurisdiction and over the bookkeeping of their administrators. This could be achieved by creating new pathways of communication that bypassed local officials, so that more information went directly from the subjects to their lordships. The measures taken were obvious and well known: petition, visitation, inspection and appeal. In less than half a century, the whole apparatus became available to administrators and to subjects. What is more, the relation between the lord of the manor and the communities was mediated by the *Comitatus*. Because of the denominationally mixed composition of their administrative bodies, subjects could expect to encounter relatively impartial judges. The king, however, remained completely unapproachable for enserfed peasants.

²⁰ Lajos Hajdú, 'II. József igazgatási reformtörekvései és ezek végrehajtása Tolna vármegyében', in Lajos Hajdú, *A közbizottság szolgálatában* (Budapest, 1983), pp. 115–306; Horst Haselsteiner, *Joseph II. und die Komitate Ungarns* (Wien, 1983).

Hesse-Kassel

Finally, we can make some observations about the landgraviate of Hesse-Kassel, where the local dimension of jurisdiction and administration was altogether different compared to the Habsburg monarchy. As in most of the German principalities in the West, the local district administration of the *Amt* in Hesse guaranteed a small scale of dominion and people. This kind of local administration employing officials (*Amtleute*) and auditors (*Rentmeister*) had already emerged with its basic features during the sixteenth century. These authorities were responsible for the remarkable strength of princely government on the spot. The *Amt* exercised princely rights at the local level. Most villages in Hesse were subordinated to them in the first instance, while the manorial courts of the nobility supervised only a few communities.²¹ Jurisdiction and administration was in the hands of legally trained officials, who were appointed by the prince and controlled by central government bodies. The *Amtmann*, likewise, had a legally trained scribe at his side to support him, who was responsible for keeping the records. The *Amtmann* presided over the town courts of his district and was the judge of first instance for all villagers, including those in non-contentious jurisdictions.

The financial department of the *Amt* was called the *Renterei*, and was responsible for the collection of duties and taxes, the organization of feudal services of the subjects, and the supervision of the princely domain, which was rented out. The director of this department was a *Rentmeister* who, like the *Amtmann*, was generally of middle-class origin, at least since the middle of the seventeenth century. A *Rentmeister* had usually either received training as a scribe and auditor in the departments of central government, or had been an army officer who handled the financial business of a regiment. He was supported by a scribe, the *Rentschreiber*, who kept the records of the *Renterei*.²²

If one takes into account that only between 7,000 and 18,000 people lived in each of the local districts of Hesse, than it becomes clear that with four officials – that is *Amtmann*, *Schreiber*, *Rentmeister* and *Rentschreiber* – in every district we find a really substantial and professional staff of administrators in this principality when compared to the territories of the Habsburg monarchy, or even of Brandenburg-Prussia. The small scale of administrative districts in Hesse made it possible for

²¹ Gregory W. Pedlow, *The Survival of the Hessian Nobility 1770–1870* (Princeton, 1988).

²² For the history of jurisdiction and administration in Hesse see Kurt Dülfer, 'Fürst und Verwaltung. Grundzüge der hessischen Verwaltungsgeschichte im 16.–19. Jahrhundert', *Hessisches Jahrbuch für Landesgeschichte*, 3 (1953): 150–223. Recently: Stefan Brakensiek, *Fürstendiener – Staatsbeamte – Bürger. Amtsführung und Lebenswelt der Ortsbeamten in niederhessischen Kleinstädten (1750–1830)* (Göttingen, 1999), pp. 49–84; Stefan Brakensiek, 'Local Office-holders in the Landgraviate of Hesse-Kassel. The Significance of Social Networks for their Careers and Daily Life', *Mélanges de l'école française de Rome*, 116/2 (2004): 577–91.

the subjects to contact the local officials of their prince at any time. The same holds true in a reverse direction. The individual subject could be integrated much more deeply into domainal communication, which enhanced the ability of the petty princes and their bureaucratic machine to penetrate the country to a high degree, exceeding the possibilities of the greater European monarchies.²³

A great variety of means enabled and shaped communication between the staff of the domainal bureaucracies, the local notables of the towns and villages, the privileged corporations and individual subjects. Many of the features which have been analysed by Renate Blickle in the case of Bavaria and André Holenstein for the principality of Baden-Durlach can be equally discovered in Hesse-Kassel: visitation by commission, routine and regular reports by community and domainal officeholders, written petitions, 'running to court' (*Laufen gen Hof*), accusations and censure by the subjects.²⁴ All these means contributed to a lively process of communication between government and population. The estates of the Hessian diet also contributed to the lawmaking procedure with important kinds of information in the form of complaints and ideas from the estate owners and town magistrates. Therefore, many statutes promulgated by the landgrave had been influenced substantially by the persons affected.²⁵

In the seventeenth and eighteenth centuries most of the princes of the Holy Roman Empire eagerly adopted the whole range of communication forms discussed here, because of their position within the Empire, because of the competition of different denominations, and surely also because of the small size of their territories. This style of government became such a formative influence

²³ Bernd Marquardt, *Das Römisch-Deutsche Reich als segmentäres Verfassungssystem (1348–1806/48). Versuch zu einer neuen Verfassungstheorie auf der Grundlage der lokalen Herrschaften* (Zürich, 1999); Peter H. Wilson, *Absolutism in Central Europe* (London and New York, 2000); Stefan Brakensiek, 'Neuere Forschungen zur Geschichte der Verwaltung und ihres Personals in den deutschen Staaten 1648–1848', *Jahrbuch für Europäische Verwaltungsgeschichte*, 17 (2005): 297–326.

²⁴ Renate Blickle, 'Laufen gen Hof. Die Beschwerden der Untertanen und die Entstehung des Hofrats in Bayern. Ein Beitrag zu den Varianten rechtlicher Verfahren im späten Mittelalter und in der frühen Neuzeit', in Peter Blickle (ed.), *Gemeinde und Staat im Alten Europa* (München, 1998), pp. 241–66; André Holenstein, 'Gute Policy' und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der Markgrafschaft Baden(-Durlach) (2 vols, Epfendorf, 2003).

²⁵ Beat Kümin and Andreas Würigler, 'Petitions, Gravamina and the Early Modern State: Local Influence on Central Legislation in England and Germany (Hesse)', *Parliaments, Estates and Representation*, 17 (1997): 39–60; Andreas Würigler, 'Desideria und Landesordnungen. Kommunal- und landständischer Einfluß auf die fürstliche Gesetzgebung in Hessen-Kassel 1650–1800', in Peter Blickle (ed.), *Gemeinde und Staat im Alten Europa* (München, 1998), pp. 149–207.

upon the political culture of the Old Empire that I think the term 'acceptance-oriented dominion' would be appropriate.²⁶

It is well known that conditions in the various regions and territories of the Holy Roman Empire varied in detail, and cannot be lumped together. So it has to be taken into account that the military state of Hesse was predominately interested in recruiting soldiers.²⁷ Policy measures consequently took great care to distinguish between the male heir of the household, who was spared from becoming a soldier, and his brothers, who as mercenaries had to risk their necks on the battlefields of Europe and North America in order to benefit the purse of their prince. Thomas Fox and Peter Taylor have demonstrated how the new register of acreage (*Hufenordnung*) brought conflict into the families.²⁸ Extensive recruitment and the governmental command to observe primogeniture ensured that the traditional quarrels about inheritance within families now produced definite winners and losers with regard to social status. The growing rural lower classes were viewed as a clear object for domainal discipline, and not as possible partners in a bargaining process. Consequently, the landgrave's offer to participate was first and foremost addressed to the better-off and married heads of households.

Conclusion

Thus, there is some evidence that rural subjects in subordinate positions took part in governing even in the aristocratic nation of Hungary, the badly reputed Bohemia, and the not less disreputable Hesse-Kassel. Everywhere in Europe, dominion rested on some kind of selective cooperation between government and individual people or certain segments of the subjects, and always on regular cooperation with the various unpaid chairmen of the communities. The type of relations that stemmed from this situation can surely not be described adequately by terms such as 'serfdom' or 'subordination', since they permitted considerable opportunities for participation. But even those subjects in these domains who were involved in permanent exchanges of communication or cooperation could scarcely claim to hold fixed and documented rights to participate: they had to rely on pragmatic

²⁶ Stefan Brakensiek, 'Lokale Amtsträger in deutschen Territorien der Frühen Neuzeit. Institutionelle Grundlagen, akzeptanzorientierte Herrschaftspraxis und obrigkeitliche Identität', in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess* (Köln, Weimar and Wien, 2005), pp. 49–67.

²⁷ Charles W. Ingrao, *The Hessian Mercenary State. Ideas, Institutions, and Reform under Frederick II., 1760–1785* (Cambridge, 1987).

²⁸ George Thomas Fox, *Studies in the Rural History of Upper Hesse, 1650–1830* (Vanderbilt, 1976); George Thomas Fox, 'Land Tenure, Feudalism and the State in Eighteenth-Century Hesse', in Richard Herr (ed.), *Themes in Rural History of the Western World* (Ames, 1993), pp. 99–139; Peter K. Taylor, *Indentured to Liberty. Peasant Life and the Hessian Military State, 1688–1815* (Ithaca, 1994).

habits of participation, which were a by-product of the everyday business of the practice of dominion.

Inquiry into questions about how certain princely or monarchical governments addressed themselves to their subjects, to what extent domainal authorities used such forms of cooperation, and how far the sphere of individual persons or different groups who were regularly integrated into domainal communication in this way extended, allows the historian to make judgements about the quality of dominion in each single territory, region or whole realms, to identify typical styles of dominion, and to compare diverse countries on that basis. Looking at the three regions presented here, marked peculiarities as well as trans-European convergences become visible. The development that came to light concerning eastern Hungary, which in the eighteenth century longed to join the Western mainstream and caught up astonishingly rapidly with it, is impressive. Equally impressive is the specific form of princely dominion found in the territories of the Holy Roman Empire, which in a very extensive way relied on the cooperation of its subjects and therefore gained a comparatively high level of acceptance.

All three case studies suggest that in the seventeenth and eighteenth centuries, the princely and aristocratic dominion of medium size was neatly adaptable to a changing world. Neither the emergence of the great European powers and the 'military revolution', nor commercialization with its growing demands for monetary income, weakened them in a lasting way. Rather, their administrative activities were part and parcel of the general process of institutional change, which increased domainal profits, perfected the means for obtaining information from regional and local spheres, and improved the chances of getting obedience to princely commands. It thus has to be stressed that the commonplace of the emergence of modern bureaucracies does not tell the whole truth. The differentiation of bureaucratic and juridical proceedings, the growing significance of written norms and the documentation of procedures in writing, and the emergence of competing authorities created an institutional framework that enhanced empowering interactions. The proceedings of the authorities provided channels of communication that widened the scope of action for subjects as well, and, to some extent, opened the gates for their participation.

Translated by Axel Flügel

Chapter 10

Corporate Property, Collective Resources and Statebuilding in Older Swiss History

Daniel Schläppi

In a first step I would like to discuss the constitution and political system in Berne before 1798. Empirical observations will follow in a second step, and will then be put into a theoretical context with statehood (*Staatlichkeit*). Finally, I will reflect on the heuristic potential of the category of common property (*Gemeinbesitz*).¹

Political Conditions in Berne

During the early modern age Berne was the largest independent *Stadtstaat* (city-state) north of the Alps. In its self-conception, the Bernese political system was *republican* even though a handful of important notable families monopolized power. This meant that a very small fraction of Berne's bourgeoisie ruled the country. The majority of the city's citizens participated in government only potentially. Most townsmen were more or less excluded from political power. Despite the fact that the legal system considered them as *regimentsfähig* (capable of associating with the regime) they had no political influence during the *ancien régime*. A small clique of aristocrats occupied the important charges in the central administration and dominated the authorities. This so-called *Patriziat* (patriciate) was a veritable power elite, a peer group of very influential and mostly rich magistrates. This select

¹ This article is based on several years of research on the history of the *Gesellschaften* of Berne. It is the result of preliminary work done within the framework of a large research project, and it is the first publication with this interpretive approach. Analysis of other institutions confirms observations made on the Bernese corporations. For this reason, this article does not include many bibliographical references. Citations of empirical material, as well as relevant literature, can be found in books and papers previously published by the author Daniel Schläppi, *Die Zunftgesellschaft zu Schmieden zwischen Tradition und Moderne. Sozial-, struktur- und kulturgeschichtliche Aspekte von der Helvetik bis ins ausgehende 20. Jahrhundert* (Bern, 2001); Daniel Schläppi, 'Der Lauf der Geschichte der Zunftgesellschaft zu Metzgern seit der Gründung', in *Der volle Zunftbecher. Menschen, Bräuche und Geschichten aus der Zunftgesellschaft zu Metzgern*, ed. by Zunftgesellschaft zu Metzgern Bern (Bern, 2006), pp. 15–199 and 302–4; Daniel Schläppi, 'Berns burgerliche Gesellschaften', in André Holenstein et al. (eds), *Berns Mächtige Zeit. Das 16. und 17. Jahrhundert neu entdeckt* (Bern, 2006), pp. 483–9.

social elite formed the core of the Bernese state. In conventional research, the terms ‘authorities’, ‘government’ or *Staat* (state), used in the context of old Berne, stand for the *Schultheiss* (mayor) and the *Klein-* and *Grossrat*. Accordingly, the institutional arrangement in Berne appears to be a classical top-down scenario.

More modern approaches in research present a more complex picture of the function of political power. Mainly out in the huge Bernese territory, communities succeeded in maintaining extensive autonomy over the centuries, starting in the late Middle Ages and continuing up to the present time. The *Landesherrschaft* (governance) in the state of Berne was not so strong as mainstream theories of absolutism might suggest. On the contrary, many kinds of competence were delegated to self-governed institutions like communal corporations because of a rather smooth hierarchy within the political system. Federal structures could also be found in the considerable towns out in the territory (*Landstädte*) and even in the capital city of Berne, where a complicated structure of society and power existed on a lower level. Instead of communities we find the so-called *Gesellschaften* (corporations) in the role of home-ruled institutions. They consisted of 13 corporate associations of individuals with the town’s citizens split up among them. The *Gesellschaften* originated from guilds and fraternities and were, by constitutional law, largely autonomous corporations. With respect to many political issues they could make independent decisions like the partly autonomous communities in the Bernese hinterland. In assemblies the male members of the societies elected office-bearers who took care of current affairs, in particular of financial administration. Furthermore, they approved budgets and annual accounts.

Membership of a *Gesellschaft* was hereditary and it was the condition for the possession of the town’s civil rights. Only members could benefit from the corporation’s social welfare. The origin of this dates back to the late Middle Ages when communities increasingly provided for their impoverished members. The communities’ responsibility to support the poor had been institutionalized since the sixteenth century, when it was formally transferred from the confederation to the communities. The corporations were socially very heterogeneous, their range reaching from government-member aristocrats to needy, dependent workmen.

Statebuilding and Common Goods

State institutions and the enforcement of regulating and controlling acts generate costs, even if a state is based on honorary office as it was in the case of old Berne. During the seventeenth and eighteenth centuries the *Gesellschaften* took charge of several state functions (such as market regulation, fire brigade, maintenance of infrastructure, residence registration office, welfare institutions, guardianship and armed forces) at their own expense in the city of Berne itself.² Small executive

² François de Capitani, *Die Berner Zunft zum Mittellöwen von der Reformation zur Revolution* (Bern, 1985).

boards were in charge of the day-to-day business. Even if their members didn't receive a regular salary, the officials in charge of finances, social welfare, market police, trade, immovable goods and wardship profited from reimbursements that were paid by the proceeds of important funds such as the so-called *Stubengut*.

This means that important structures of state administration were based on collective resources, which led to an increasing need for finances. In order to meet these requirements, the corporations had to make use of their economic resources. With this aim in view, new committees such as *Finanzanwendungskommissionen* (boards for financial administration) and areas of competence were created starting in the late seventeenth century. At the same time the *Waisenkommissionen* (directing boards that consisted of all persons in charge) as well as the *Grosse Bott* (congregation of all male members entitled to vote) defined new official channels and procedures of decision-making.³ A continuously increasing intensity of administrative activities and expanding institutionalization were the consequence. The intensification of their bureaucracy was financed by the *Gesellschaften* using their own resources.⁴

Concerning their administrative responsibilities, the corporations succeeded in maintaining far-reaching competence vis-à-vis the authorities, thanks to their institutional stability, based on financial independence.⁵ The corporations defined the conditions and controlled the rules of the game. As long as they provided the resources they needed for their policy and social activities, they were accepted by the authorities as an equal negotiating party. Despite the constitutionally defined legislative and executive power of the mayor and the council, laws and rules were often enacted only on request and with the consent of the *Gesellschaften*.⁶

Collective goods generated symbolic as well as objective integration forces. With the impact of common property, a rather abstract civil community was put into concrete terms. The *Gesellschaften* invested a considerable amount of money in social activities and played an important role as a guarantee for local

³ Schläppi, 'Zunftgesellschaft zu Metzger', pp. 82–91.

⁴ Due to financial and operative involvement in state activity, the *Gesellschaften* played a continuous role in administration. By the end of the Ancien Regime they were so well established that their bureaucracy continued to function even during occupation by French troops in 1798. This was quite remarkable considering the collapse of the authoritarian structures and the old state. Nor did the liberal revolutions of the nineteenth century put an end to the *Gesellschaften*, so that they still exist in the twenty-first century. Making use of the profit from their resources, they are still responsible for their members (Schläppi, Zunftgesellschaft zu Schmieden, pp. 46–57 and 414–21; Schläppi, 'Zunftgesellschaft zu Metzger', pp. 116f. and 190f.).

⁵ In this respect there was dialectic dynamics in the request of the authorities to the communities to put their finances on a secure basis. Absolutist rulers demanded financial autarky from subordinate institutions, and this generated self-dynamic processes of modernization, essentially suited to the subgroups' individual interests.

⁶ Schläppi, 'Zunftgesellschaft zu Metzger', pp. 48–54 and 163–5.

society. Festivities with highly symbolic value, regular meetings, the construction of representative buildings and welfare expenditures did generate high costs, but also made the corporations' position within the state clearly visible and comprehensible. The citizens could get financial benefits thanks to their right to make use of common goods. From the point of view of the beneficiaries, the rights to benefit were the result of investments made in the form of rent, donations or honorary activities. These investments created bonds between individuals and the collective, since the loss of membership also meant loss of claim to benefits. Individuals were integrated into the community of the state by economic bonds.⁷ The common goods were the cement which held the community together.

Theoretical Framework

For methodological reasons, it is worthwhile to use a metatheoretical approach to examine the facts described. In order to come to definite conclusions, some considerations about the definition of terms belonging to the semantic field of *Staatsbildung* (statebuilding) will be useful.

Scientific debates on statehood are dominated by the idea of an implicit dichotomy. When we speak of the *state* as it was understood in the early modern age, we spontaneously think of things such as government, authorities, constitution, rule, organization, administration, rationality, formal law and modernization. The counterparts to these would be: corporations, alliances of individuals or clients who, for their part, provoke associations of ideas, local societies, interests of individuals, backwardness, informal structures, aiding and abetting, despotism, ignorance, anti-modernism, tradition and force of habit.

Older historical approaches deal with informal relationships and groups, involving only those aspects of social life which are hardly ever connected to state institutions. They are based on the assumption that statebuilding must have taken place as a result of antagonistic debates with such associations. Current research

⁷ The central position of common goods becomes evident by the fact that the resources of the *Gesellschaften* were carefully preserved to be used in situations of dire necessity only. In addition, important symbolic and objective qualities were attributed to the common pool resources. Financial reserves were seen as the fruit of investments made by ancestors for the benefit of the following generations. Thanks to this initial outlay, there were legal privileges such as civil rights or the right to political office. This inheritance was not to be put at risk. In this sense one can interpret the statement made on 26 February 1784 by Carl Friedrich Steiger (1755–1832) at the *Gesellschaft patriotischer Freunde* in Berne. According to Steiger, financial reserves were 'stets als ein Heiligthum angesehen' ('always seen as a sanctuary') (Carl Friedrich Steiger, 'Rede über die Errichtung der ausländischen Finanzen des Hohen Standes gehalten vor dem hochlöblichen Äussern Stand den 26. Februar 1784', *Berner Zeitschrift für Geschichte und Heimatkunde*, 14 (1952): 26–39, here p. 29).

characterizes interactive and communicative interrelations between the *state* and the protagonists on the spot.⁸

Even the more dynamic models do associate *state* with authorities, administration and execution. Alternatively, I postulate the *state character* of the mechanisms of institutionalization playing a role in the exploitation of common property. Its institutional structure is an immediate product of the financial, legal and cultural conditions in the community.

Most certainly, the argument will be advanced that this reasoning can only be applied to an extremely flexible conception of the state. There are indeed speculations in Foucault's later works on the possibility of the state only being 'some oddly assorted realities, a mystified abstraction whose meaning was much more restricted than one would imagine'.⁹ I would like to argue in a different direction and based on a view that is supported by the political scientist Elinor Ostrom.¹⁰

Based on investigations of local structures, which can exist only thanks to collective management of common property, Ostrom redefined the term *institution*. I consider this new definition useful in the context of early modern age. It describes institutions as *a number of rules for work and proceedings*, defining who is to take decisions on certain levels and which acts are permitted or prohibited. *Arbeitsregeln* (work regulations) are comparable to formal laws, as they exist in administration regulations or in court decisions.¹¹

The Bernese *Gesellschaften* created just exactly these kinds of work rules in order to regulate social life as well as bring about effective management and expenditure of common goods. *Gemeinbesitz* (common pool resource) consists of assets, legal titles and privileges, and the possibility of making use of them. Furthermore, in dealing with common property, a basic moral position and a spiritualized understanding of the significance and functioning of the corporation are expressed. The aforementioned rules are not abstract products of a mechanical calculation. They much rather represent the result of a well-justified and permanently repeated estimation of uncertain costs and benefits, and they must offer long-term proof to be worthwhile. It is only once they have been applied lastingly and successfully that they are reinforced as inter-subjective certainties, as exemplary standards of behaviour and, thus, will promote self-affirmation. This kind of knowledge by experience is continually confirmed by groups through repeated and norm-stabilizing encounters before it is subjectively internalized by

⁸ André Holenstein, 'Gute Policy' und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der Markgrafschaft Baden(-Durlach) (Epfendorf, 2003).

⁹ Michel Foucault, *Geschichte der Gouvernementalität I. Sicherheit, Territorium, Bevölkerung, Vorlesung am Collège de France 1977–1978* (Frankfurt/M., 2004), p. 163.

¹⁰ Elinor Ostrom, *Die Verfassung der Allmende, jenseits von Staat und Markt, übers. von Ekkehard Schöller* (Tübingen, 1999).

¹¹ *Ibid.*, p. 66.

the individuals involved. Common property formed the starting and the vanishing point of efforts towards self-regulation.

The internal degree of organization, institutionalization, documentation and legitimacy (for example by elections) are the criteria for assessment of the state character of organizations.¹² The *Gesellschaften* mentioned here did comply with these criteria. It is rather difficult to integrate these observations into conventional models where statehood is understood as being an incompatible contrast to relationships between individuals or within groups of individuals. They obviously assume that indigenous rights stand in opposition to positive rights. Concerning the question at issue, it can be assumed that the networks of relationship were gathering momentum and eventually became the foundation for the organization of early modern age governance – the state developed *from below*. The decisive impulses for this development were given by common goods.

The Heuristic Potential of the Category *Gemeinbesitz* for Early Modern History

The corporation property cited in this chapter represents obvious forms of common goods. However, there are others such as documented privileges or civil rights and liberties. Well-functioning state institutions made a number of material and immaterial goods available which represent collective resources: buildings, infrastructural installations, guarantees of justice, civil rights, welfare, stability of prices for staple food and consumer goods,¹³ fair distribution of profits from common property and of political posts, fair distribution of the possibility of making economic profits, well-functioning markets,¹⁴ a market economy which guarantees a fair distribution of goods, preventive measures against floods, military defence (without, however, a full military arsenal needed in an expansionist policy), protection and processing of environmental resources. The authorities were expected to manage common goods in an economical way. This meant that the tax burden of households and individuals had to have a comprehensible relation to the performance of the state.

These types of collective resources lead one to assume that there is a great heuristic potential. In view of the circumstances of the Swiss confederation in the early modern age, it becomes obvious that it was common property which

¹² Ibid., pp. 259f.

¹³ Anton Brandenberger, *Ausbruch aus der 'Malthusianischen Falle'. Versorgungslage und Wirtschaftsentwicklung im Staate Bern 1755–1797* (Bern, 2004), pp. 336–8.

¹⁴ Christof Jeggle, 'Nahrung und Markt in Ökonomien städtischer Gewerbe in der Frühen Neuzeit. Methodische Überlegungen am Beispiel des Leinengewerbes in Münster/Westfalen', in Robert Brandt and Thomas Buchner (eds), *Nahrung, Markt oder Gemeinnutz. Werner Sombart und das vorindustrielle Handwerk* (Bielefeld, 2004), pp. 95–130, here p. 111.

was responsible for the centuries of institutional constancy of this construction, amorphous with regard to constitutional law. The policy of the *Tagsatzung*, which was the congress of the confederate cantons, stood principally for the fair use and lasting management of hard-won common goods, such as commonly owned and governed territories (*Gemeine Herrschaften*),¹⁵ the privileged economic position in business of mercenary service, pensions and diplomacy, the privileges of foreign trade, a conception of neutrality based on utilitarian thinking, or simply the lasting stability of a loose confederacy.¹⁶

Even in times of confessional tensions or threats from the outside, a dialogue within the confederation was guaranteed to go on, at least concerning the annual accounts, by the common pursuit of profit. Thereby, an institutional constancy was established even without a legal or ideological basis.¹⁷ Regular formal and informal meetings created the basis for a collective identity.¹⁸ On the one hand, this made inevitable compromises and renunciations of individual participants possible and, on the other hand, it established a common tradition of mutual mediation between cantons in case of constitutional conflicts or political unrest. This tried and tested conflict management had a consolidating effect and provided political structures with greater stability.¹⁹

¹⁵ André Holenstein, 'Gemeine Herrschaften', in *Historisches Lexikon der Schweiz* (Basel, 2006), vol. 5, pp. 200f.

¹⁶ Andreas Würgler, *Die Tagsatzung der Eidgenossen. Politik, Kommunikation und Symbolik einer repräsentativen Institution im europäischen Kontext (1470–1798)*, MS der Habilitation am Historischen Institut der Universität Bern (Bern, 2004). Foreign trade (37 per cent) and the *Gemeine Herrschaften* (35 per cent) were two of the most important areas dealt with by the *Tagsatzung* (pp. 237–9 and 244). The community spirit within the confederation and rituals for the reception of foreign ambassadors, a number of formal symbols (p. 509), experienced actions in crisis management (p. 674), a continuous correspondence and exchange of information (pp. 431f.) as well as the institutional consolidation of networks of notables of the confederal towns (p. 671), can also be considered as common goods. The *Tagsatzung* functioned precisely under the conditions necessary to earn lasting revenue from collective resources, according to Ostrom, pp. 272f.

¹⁷ According to Würgler, p. 685, even in times of war between the confessional parties, the *Tagsatzung* used to assemble after battles in order to return to the *courant normal*. In the period investigated by Würgler (1470–1797), the annual account containing representatives from all cantons (*Jahrrechnung*) was drawn up every year.

¹⁸ Würgler, pp. 343–52 mentions a culture of negotiation (*Kultur des Aushandelns*) or political mediation (*politische Mediation*) respectively (pp. 352 and 674).

¹⁹ According to Daniel Schläppi ("In allem Übrigen werden sich die Gesandten zu verhalten wissen". Akteure der eidgenössischen Aussenpolitik des 17. Jahrhunderts. Strukturen, Ziele, Strategien am Beispiel der Familie Zurlouben von Zug', *Der Geschichtsfreund*, 151 (1998): 5–90, here p. 78) their consistency might have caused the great powers to use diplomatic and financial rather than military means to hold their interests in the strategically important alpine area.

An economical and balanced handling of common resources was one of the most important requirements for authorization in the political economy of communities with a republican constitution. In the early modern age common benefit was, according to Winfried Schulze, a 'comprehensive term for the authorization of political acts'. At the same time, it had 'a regulating effect towards good conduct of individual citizens'.²⁰ One of the fundamental principles was the idea of being in a *reciprocal relationship*.²¹ Constant struggle for office and influence was a remarkable feature of political conditions in the old Swiss confederation. It was only through political office that one could gain access to certain benefits (diplomacy, pensions, mercenary service). However, the resources were generally seen as common goods. Compensation had to be paid to the community for any private benefit gained from public resources. These ideas were expressed in the fact that elections in rural communities had to be financed through donations or paid in kind, and every peasant entitled to vote automatically had the right to participate in the benefits from foreign pensions. In Berne, each holder of a public office had to pay a certain amount to the corporation for his election. The size of the sum depended on the importance and profitability of the office.²²

Conflicts and revolts were sparked off when the handling of common goods practiced by the authorities was at odds with the understanding of the *moral economy* of the general public. Self-interest by itself was not frowned on as long as individual moneymaking was kept within the principle of mutuality. Rebellion most often had its roots in a lasting and virulent disregard of the traditional understanding of common property. *Reciprocity*, politically understood, meant that one would refuse to cooperate with individuals or groups who were not acting in a reciprocal manner.

To really understand the impact corporate property and collective resources had on early modern society, it is worthwhile to focus not only on power, political legitimation and social conflicts. If we take into account human behaviour in a

²⁰ Winfried Schulze, 'Vom Gemeinnutz zum Eigennutz. Über den Normenwandel in der ständischen Gesellschaft in der frühen Neuzeit', *Historische Zeitschrift*, 243 (1986): 591–626, here pp. 597f.

²¹ Concerning *reciprocity* see Ostrom, pp. XIXf. *Reciprocity* means that positive actions provoke positive reactions, negative actions, however, provoke sanctions. According to Ostrom *reciprocity* is thought to be a basic category in the social life of any society. During the past years not only political scientists and anthropologists insisted on the axiomatic significance of *reciprocity*. According to the lucid considerations of the psychologist, primatologist and ethologist Frans de Waal *reciprocity* is fundamental for untroubled coexistence of all intelligent and empathic beings living together in large groups forced to share in limited resources (Frans de Waal, *Der Affe in uns. Warum wir sind, wie wir sind* (München and Wien, 2005), pp. 266f., 270–2, 294 and 315). See also the ground-breaking contribution by evolutionary biologist Robert Trivers (Robert Trivers, 'The Evolution of Reciprocal Altruism', *Quarterly Review of Biology*, 46 (1971): 35–57).

²² Which has been showed by Schläppi, 'Zunftgesellschaft zu Metzgern', p. 86 using the example of the so-called *Promotionsgelder* (promotion fees).

more general manner, we might notice that *reciprocity* is a basic principle of social relationships of all kinds. Some further examples: the republic of enlightenment and scholarship, the so-called *Gelehrtenrepublik*, as well as foreign trade relations, could only develop with the necessary well-functioning networks. Only those individuals contributing to the common pool resources could also benefit from them. Concerning the communication nets, this meant that people had to make their knowledge available and provide information for third parties. Such resource systems between people could only function with the workforce of all individuals involved put at the community's disposal, thereby increasing the value of common goods and making it attractive for further participants. In early modern age relationships, the status of the anonymous beneficiary or subscriber (benefit for payment) was not known yet, as it is today with the Internet. Networks functioned by the principle *do ut des*. Whoever wished to make use of personal relationships had to cultivate them. Repeated offences against the principle of *reciprocity* were not actually punished but marginalization of the culpable was their long-term consequence.

In foreign trade personal relationship networks were of vital importance for the transfer of information and for international banking. Since large sums would not be transferred in cash, the payment of an important trade sample was often dealt with via a third party. Whether a third person involved (a friend who was a merchant, broker, banker) was credit-worthy or not, could only be ascertained with the help of a network of trading partners who could regularly provide information on the liquidity of the potential business partner. Credit was an important means of production amongst the merchants and it was suitably cared for by the group. Incorrect information could cause loss: transactions could be delayed, profits not cashed in due to the lack of a solvent exchange agent, or the credit-worthiness of customers could be harmed.

These observations are suitable to finally comment on a fundamental criticism voiced under the label *Allmendtragödie* or *Allmenddilemma*. The objection was raised by political scientists and historians as well that the collective benefit from resources was bound to fail considering that any common pool resources would eventually be exhausted as a result of greed for profit.²³ All the aforementioned examples show that individual advantages can only be achieved through cooperation with other participants and that they depend on private investment in collective resources.²⁴ The superficial antagonism between self-interest and benefit

²³ See Ostrom, pp. 10–12 and 15, where she brilliantly replies to the sharpest critics of her concept.

²⁴ The struggle against the tradition of blood-feud in the early confederation did not bring the post-conflict parties a profit which could be concretely estimated. In order to establish a monopoly of power against the interests of clans and traditional systems of rule, collective agitation of entire regions was necessary. Achievements of this importance could never be made by individuals. Typically enough, the activities of the *Tagsatzung* increased just before the Burgundian wars, when it was essential for the confederation to be able to rely

to the public (*Gemeinnutz*) is refuted as soon as common resources are managed in a useful way. In this respect, the image 'of helpless individuals trapped in an unavoidable process of destruction of their own resources caused by dominant self-interest' is not always in accordance with the actual arrangements.²⁵

Following the suggestions for the definition of common goods above, collective resources were a central category for political, social and economic acts in the early modern age. Common pool resources had a catalytic effect on statebuilding. At the same time some structures supported by collective actions triggered a number of modernization processes (commercialization, scientification). These processes involved profound structural changes which for their part had an impact on the nature of the state.

on allies. According to Würzler, p. 682, the confederate towns were forced by the European constellation of power to come to close agreements, 'um den Unwägbarkeiten dynastischer Entwicklungen geeint gegenüber zu treten' ('in order to face any incalculability of dynastic developments as a united community').

²⁵ Ostrom, p. 10. Using historical and current examples, Ostrom shows under what conditions collective resources can be managed in an effective and lasting way. For older Swiss history see Daniel Schläppi, 'Das Staatswesen als kollektives Gut. Gemeinbesitz als Grundlage der politischen Kultur in der frühneuzeitlichen Eidgenossenschaft', in Johannes Marx and Andreas Frings (eds), *Neue politische Ökonomie in der Geschichte* (Köln, 2007), pp. 169–202.

Chapter 11

Local Demand for Order and Government Intervention: Social Group Conflicts as Statebuilding Factors in Villages of the Rhine Palatinate, c.1760–1810

Niels Grüne

Introduction

The early modern state has enjoyed a remarkable research boom for several years, owing, above all, to a dual conceptual and methodical reorientation.¹ First, the progressive attrition of the ‘absolutism’ model has highlighted the regional and local periphery of governance as against the central sphere. What is more, long-prevailing standards of legal and constitutional history have increasingly been supplemented and challenged by praxeological approaches inspired by action theory.² In this connection, especially for the medium-sized German territories in the seventeenth and eighteenth centuries, interpretations have been supported that emphasize the role of local officeholders as semi-autonomous brokers between

¹ In addition to the participants at the conference I would like to thank my colleague Frank Konersmann and the members of Andreas Suter’s discussion group on early modern history at the University of Bielefeld for their valuable comments on earlier versions of this article.

² Cf. the recent research surveys in Markus Meumann and Ralf Prüve, ‘Die Faszination des Staates und die historische Praxis. Zur Beschreibung von Herrschaftsbeziehungen jenseits teleologischer und dualistischer Begriffsbildungen’, in Markus Meumann and Ralf Prüve (eds), *Herrschaft in der Frühen Neuzeit. Umriss eines dynamisch-kommunikativen Prozesses* (Münster, 2004), pp. 11–49; Dagmar Freist, ‘Einleitung: Staatsbildung, lokale Herrschaftsprozesse und kultureller Wandel in der Frühen Neuzeit’, in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess. Strukturwandel und Legitimation von Herrschaft in der Frühen Neuzeit* (Köln, Weimar and Wien, 2005), pp. 1–47; Stefan Brakensiek, ‘Herrschaftsvermittlung im alten Europa. Praktiken lokaler Justiz, Politik und Verwaltung im internationalen Vergleich’, in Stefan Brakensiek and Heide Wunder (eds), *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa* (Köln, Weimar and Wien, 2005), pp. 1–21.

'state' and 'society',³ the effects of institutional densification ensuing from the multiplied communicative contacts of state representatives and subjects,⁴ and the relevance of corporative organizations to popular bargaining power vis-à-vis princely authorities.⁵

Scholars in this field, however, have generally paid little attention to the question of how far the scope and legitimation of state capacities were shaped by the internal fabric of and, more precisely, by structural cleavages within the localities. Observations from social and criminal history, for instance, which illuminate the interdependencies of rural class relations, communal or group-specific demands for order and opportunities for government intervention,⁶ have often only marginally been included. Instead, allowing for the day-to-day business of administration and jurisdiction, recent studies have tended to attribute the growing acceptance of official power among the populace to the welcome settlement of petty quarrels rather than to the involvement in collective struggles. According to André Holenstein, for one, it was primarily the 'individualization ... of interests in the communities' and the resultant 'need for conflict solution, order and regulation' that placed the authorities in the 'position of mediators'.⁷

To be sure, this perspective goes a long way towards understanding the capillary nature of state formation at the grassroots level.⁸ Yet, the relative neglect

³ Cf. particularly for the landgraviate and principality electorate of Hesse-Kassel, Stefan Brakensiek, 'Lokale Amtsträger in deutschen Territorien der Frühen Neuzeit. Institutionelle Grundlagen, akzeptanzorientierte Herrschaftspraxis und obrigkeitliche Identität', in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess. Strukturwandel und Legitimation von Herrschaft in der Frühen Neuzeit* (Köln, Weimar and Wien, 2005), pp. 49–67.

⁴ Cf. for the margraviate of Baden(-Durlach) André Holenstein, 'Klagen, anzeigen und supplizieren. Kommunikative Praktiken und Konfliktlösungsverfahren in der Markgrafschaft Baden im 18. Jahrhundert', in Magnus Eriksson and Barbara Krug-Richter (eds), *Streitkulturen. Gewalt, Konflikt und Kommunikation in der ländlichen Gesellschaft (16.–19. Jahrhundert)* (Köln, Weimar and Wien, 2003), pp. 335–69.

⁵ Cf., based on the example of the duchy of Württemberg, the considerations in Sheilagh Ogilvie, 'The State in Germany: a Non-Prussian View', in John Brewer and Eckhart Hellmuth (eds), *Rethinking Leviathan: the Eighteenth-Century State in Britain and Germany* (Oxford and New York, 1999), pp. 167–202.

⁶ Cf. for example Robert von Friedeburg, *Ländliche Gesellschaft und Obrigkeit. Gemeindeprotest und politische Mobilisierung im 18. und 19. Jahrhundert* (Göttingen, 1997); Michael Frank, *Dörfliche Gesellschaft und Kriminalität. Das Fallbeispiel Lippe 1650–1800* (Paderborn, München, Wien and Zürich, 1995).

⁷ Holenstein, 'Klagen, anzeigen und supplizieren', pp. 364 and 368. Quite similarly, Brakensiek, 'Lokale Amtsträger', pp. 62f., stresses the 'arbitral function of the territorial office-holders' and the administration of 'impartial justice' as prerequisites for successful local government.

⁸ Cf. as a magisterial exemplar of this research branch André Holenstein, 'Gute Policy' und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der

of major social disputes might encourage too harmonious a view of this process seeing that, particularly in the course of the eighteenth century, disagreement over fundamental principles of communal and economic policy deepened considerably among government officials⁹ as well as within the citizenries.¹⁰ Consequently, the traditionally rigid top-down chain of bureaucratic interaction descending from the centre over the district authorities and chief inhabitants to the lower strata loosened to some extent, because in times of accelerated change high-ranking officials and various village groups alike would seek more direct channels of information and articulation in handling a situation of uncertainty. By the same token, also new room for government influence, often based on declared partisanship in controversial local affairs, could open up. The following investigation will, therefore, combine the communication approach to early modern statebuilding with the conflict dimension of political mobilization in socially and confessionally differentiated villages. The main analytical objective is to explore the ways in which group-specific requirements on external institutions emerged in the midst of communal dissension and how regulative power was attached or denied to state agents in this context.

Empirically, the study focuses on northern south-west Germany and draws on case material from rural communities of the Palatinate Electorate on the right bank of the Rhine in the vicinity of Mannheim ('Oberamt Heidelberg') in the second half of the eighteenth century.¹¹ As measured by other territories in the wider region, the regular interface between the authorities and the rural inhabitants may appear underdeveloped in this principality. Neither could the village citizens build on a communally based parliament as in the duchy of Württemberg,¹² nor did they have access to a forum of periodical exchange with government representatives analogous to the 'Frevelgerichte' in the margravate of Baden.¹³ A closer look at administrative practice, however, reveals a vivid dialogue between the populace

Markgrafschaft Baden(-Durlach) (Epfendorf, 2003).

⁹ Cf. for example for the disruptive frictions between 'fiscalists' and 'reformers' in the state bureaucracy Clemens Zimmermann, 'Grenzen des Veränderbaren im Absolutismus. Staat und Dorfgemeinde in der Markgrafschaft Baden', *Aufklärung*, 9 (1996): 25–45, esp. p. 27.

¹⁰ Cf. the outline in Niels Grüne and Frank Konersmann, 'Gruppenbildung – Konfliktlagen – Interessenformierung: Marktdynamik und Vergesellschaftungsprozesse im ländlichen Strukturwandel deutscher Regionen (1730–1914)', *Archiv für Sozialgeschichte*, 46 (2006): 565–91.

¹¹ The work is part of a larger research project of comparative micro studies on the sociopolitical development of rural society in the districts of Ladenburg and Schwetzingen (grand-duchy of Baden) between 1750 and 1850. In this chapter, the evidence is restricted to those 17 village communities in the investigation area which belonged to the Palatinate Electorate until its dissolution in 1802.

¹² Cf. Ogilvie, pp. 173ff.; Walter Grube, 'Dorfgemeinde und Amtsversammlung in Altwürttemberg', *Zeitschrift für württembergische Landesgeschichte*, 11 (1954): 194–219.

¹³ Cf. Holenstein, 'Gute Policy', pp. 403–825.

and the state bureaucracy, which predominantly rested upon local petitions and investigations by princely commissioners and noticeably expanded during the eighteenth century. In the following pages struggles over the management of common land, sometimes associated with rearguard fights over the repartition of dues, will be examined as examples of an endemic type of conflict that boosted communication in a particularly telling manner.

Of course, alongside these rather novel lines of internal division, older fields of confrontation such as forestry and feudal services, which ordinarily united the majority of villagers against the outside, did not lie entirely fallow. In fact, they were to grow in importance again in the first decades of the nineteenth century when local society recovered stability, thanks to intensive farming and, not least, exactly to those agrarian reforms that had upset the previous generation.¹⁴ Yet, in the period under consideration they were evidently dwarfed by home-made strife. And the range between refusal and cooperation of government responses to many people's audible desire for official interference may indicate what could be won and lost for the 'state' in listening to this popular cue.

The Conflictual Setting: Reform Policy and Village Society

In the 1760s, the government of the Palatinate Electorate, like many principalities, adopted a programme for raising agricultural productivity that included the conversion of common pasture into arable land.¹⁵ The scheme was encouraged by promising experiences with limited experiments of this kind, which some villages had conducted of their own accord.¹⁶ In addition, it was attractive to the state for fiscal reasons since the commons would be subject to tax and tithe after cultivation. To coordinate agrarian policy, among other things, the 'General-Landes-Polizei-Ministerial-Oberdirektionskonferenz' – henceforth in short 'Polizeikonferenz' (police conference) – was established in 1765 and vested with

¹⁴ Cf. Niels Grüne, 'Vom innerdörflichen Sozialkonflikt zum "modernen" anti-obrigkeitlichen Gemeindeprotest. Ergebnisse und Perspektiven einer Mikrostudie zum Wandel der lokalgesellschaftlichen Grundlagen kommunalpolitischen Handelns am unteren Neckar (ca. 1770–1830)', *Zeitschrift für die Geschichte des Oberrheins*, 151 (2003): 341–83, here pp. 342ff., 354f., 370–4 and 381ff.

¹⁵ Cf. Stefan Mörz, *Aufgeklärter Absolutismus in der Kurpfalz während der Mannheimer Regierungszeit des Kurfürsten Karl Theodor (1742–1777)* (Stuttgart, 1991), pp. 282ff.; Meinrad Schaab, *Geschichte der Kurpfalz*, vol. 2: *Neuzeit* (Stuttgart, Berlin and Köln, 1992), pp. 227f.

¹⁶ Cf. Friedrich Kasimir Medicus, 'Von den wahren Mitteln der Fruchtbarkeit', *Bemerkungen der kurpfälzischen physikalisch-ökonomischen Gesellschaft vom Jahre 1772* (Mannheim, 1773), pp. 112–284, here pp. 224–84; on the basis of communal reports, Medicus studied the management of the commons and the spread of stall-feeding precisely in that moment, when the territorial legislation claimed a general regulatory competence for this area.

comprehensive authority to cast the reform ideas into effective ordinances.¹⁷ As a pilot project, four communities in the district of Heidelberg were directed in 1770 that 'in future the common pastures, if ever possible by their location, should be distributed piecemeal among the singles, cultivated and planted with fodder and other crops, while the cattle should be kept at home in a stall'.¹⁸ Since this measure and the tested method – the egalitarian allotment among all citizens in the form of lifelong right of usufruct¹⁹ – proved expedient, the model was eventually declared a territory-wide norm in 1771. Not only the beginnings, but also the outcomes of this process seem to point to a success story of reform policy from above. Around 1800 the conversion was largely completed in nearly all communities and what remained to be done in the nineteenth century for the legislator in the grand-duchy of Baden, which acquired most of the Palatinate Electorate on the right bank of the Rhine, was basically to confirm the multitude of slightly varying local arrangements in a general law.²⁰

¹⁷ On the 'Polizeikonferenz', which consisted of conference ministers, secret state councillors and occasionally summoned experts from various agencies, cf. Mörz, *Aufgeklärter Absolutismus*, pp. 238ff.; Stefan Mörz, 'Verwaltungsstruktur der Kurpfalz zum Zeitpunkt des bayerischen Erbfalls', *Mitteilungen des Historischen Vereins der Pfalz*, 84 (1986): 403–65, here p. 450.

¹⁸ 'Verordnung die bessere Benutzung deren Viehe- und Hut-Wayden betreffend, from 8 November 1770', Generallandesarchiv Karlsruhe [GLA Ka] Bestand 77 Nr. 6685; cited after a memorandum by the president of the commerce commission Maubuisson from 13 July 1771, *ibid.*, fol. 68r: '[daß] fürs künftige die gemeine Weyden, soviel nach deren Laag möglich, unter die Singulos stückweiß ... vertheilet, umgerissen, und mit Futter oder anderen Crescentzien besaamet ... hingegen das Viehe zu Hauß im Stall be- und erhalten werden solle'. The four communities were Feudenheim, Neckarhausen, Seckenheim and Weinheim.

¹⁹ The ordinance of the 'Polizeikonferenz' from 8 November 1770 had originally provided that the distribution among the village citizens should be carried out 'in proportion to the cattle they are allowed to keep' ('à proportion ihres halten dörfenden Viehes'); but, as a rule, the allotment was egalitarian in the communities of the investigation area. Moreover, the new common arable land was tilled individually, but remained in collective property so that, by contrast with full privatization, a subsequent engrossment by wealthier peasants was prevented. This model also held sway in some other German territories, notably in the south-west; cf. Reiner Prass, *Reformprogramm und bäuerliche Interessen. Die Auflösung der traditionellen Gemeindeökonomie im südlichen Niedersachsen, 1750–1883* (Göttingen, 1997), pp. 103ff., 128–33 and 137–40; Paul Warde, 'Common Rights and Common Lands in South-west Germany, 1500–1800', in Martina de Moor, Paul Warde and Leigh Shaw-Taylor (eds), *The Management of Common Land in North-west Europe, c. 1500–1850* (Turnhout, 2002), pp. 195–224, here p. 215.

²⁰ The Baden communal constitution of 1831 only acknowledged the diverse local status quo and established uniform rules for future modifications; cf. Bernhard Ellering, *Die Allmenden im Großherzogtum Baden. Eine historische, statistische und wirtschaftliche Studie* (Tübingen and Leipzig, 1902), pp. 46ff. For a comparative structural analysis cf. Niels Grüne, 'Individualisation – Privatisation – Mobilisation: the Impact of Common

A closer look, however, reveals that the development owed its dynamics not so much to efforts at implementation by the state administration, which, in fact, displayed a growing negligence from the mid-1770s on.²¹ Rather, the transformation was boosted by the specific configuration of interests and conflicts in the localities. Here, primarily the lower-class villagers pushed for the division of the commons and urged the bureaucracy to let the lyric of ordinances be followed by the prose of real reforms. This group of citizens, who were globally termed 'Tagelöhner' (day labourers), 'Unbespannte' (non-horsed) or 'Handfröner' (performers of feudal hand services) in the sources, actually consisted of a broader social range from 'Kuhwirten' (cow crofters) with a few acres of arable to entirely landless households. At any rate, they wrestled to secure their precarious livelihood through intensive cash-cropping, notably tobacco-growing, and sought to supplement their small arable areas with plots from the pasture. By the pattern characteristic of south-west Germany,²² this intent was usually opposed by the full peasants – 'Bauern' (peasants), 'Bespannte' (horsed) or 'Fuhrfröner' (performers of feudal horse team services) in contemporary language – who, with regard to their bigger livestock, did not believe that they could dispense with the common pasture and the traditional privileges they enjoyed in such a system.²³ This antagonism was also realized by the director of the physical-economic society of the Palatinate, Friedrich Kasimir Medicus, when he visited Feudenheim, one of the pilot communities in the district of Heidelberg, in May 1771: 'It is not to describe', he wrote,

how much the poor have been helped up by this impartial allotment of the pasture. Most resident rich of the place have drawn forth all to thwart it; but it is part of the glorious government of our serenest sovereign that finally all these

Property Reforms on Land Markets and Agricultural Growth in Germany – a Comparative View of Westphalia and Baden (1750–1900)', in Bas van Bavel, Gérard Béaur and Phillipp Schofield (eds), *Property Rights, the Market in Land and Economic Growth in Europe (13th–19th Centuries)* (Turnhout, 2009).

²¹ Cf. Wolfgang von Hippel, 'Die Kurpfalz zur Zeit Karl Theodors (1742–1799) – wirtschaftliche Lage und wirtschaftspolitische Bemühungen', *Zeitschrift für die Geschichte des Oberrheins*, 148 (2000): 177–243, according to whom the 'initiatives from the beginning of the 1770s obviously were not continued'; *ibid.*, p. 234. In any case, the vivid issuing of ordinances between 1765 and 1773 was followed by a standstill in this area; cf. Dorothee Mußnug, 'Kurpfalz', in Lothar Schilling and Gerhard Schuck (eds), *Repertorium der Policeyordnungen der frühen Neuzeit*, vol. 3: *Wittelsbachische Territorien* (Frankfurt/M., 1999), pp. 1–594, esp. pp. 436–594.

²² Cf. Clemens Zimmermann, 'Entwicklungshemmnisse im bäuerlichen Milieu. Die Individualisierung der Allmenden und Gemeinheiten um 1780', in Toni Pierenkemper (ed.), *Landwirtschaft und industrielle Entwicklung. Zur ökonomischen Bedeutung von Bauernbefreiung, Agrarreform und Agrarrevolution* (Stuttgart, 1989), pp. 99–112, here pp. 105–9.

²³ For more details on property structure and divergent use interests with respect to the village of Seckenheim cf. Grüne, 'Sozialkonflikt', pp. 360–6 resp. pp. 374ff.

prejudices have been overcome and that the Palatinate Electorate has established an example, which will certainly be emulated by its neighbours.²⁴

Yet, Medicus's reform euphoria was premature since he underestimated the blockade power of the full peasant 'village despotism'.²⁵ The peasants may not have been able to resist the acute pressure of the central authorities and the lower classes. But backed by the plutocratic village council and in collaboration with the chief district official in nearby Heidelberg, the more prosperous sections of rural society often succeeded in exploiting the loopholes of the ordinances and the lack of government control. As a result, in many places the individualization of the commons was restricted to the cow pasture, whereas large stretches of ox and horse pasture and land allegedly unsuited for the plough were spared.

These tactics of delaying and diluting reform, in particular the maintenance of exactly those substantial portions of pasture which quite naturally benefited the peasants as the prevailing owners of oxen and horses, provided the background for sharp and not seldom protracted conflicts from the 1770s to the early nineteenth century. Be it in Edingen (1754), Wallstadt (1762/63), Sandhofen (1762–76, 1791–94), Heddesheim (1773–1811), Käfertal (1782/83) or Neckarau (1784/86),²⁶ to name but the major instances: almost everywhere it took the initiative of the local lower classes, who could not sufficiently make themselves heard in the communal bodies and thus turned to state agencies, especially to the central authorities in Mannheim, to revive the stagnating modernization of the economy of the commons. In the course of the disputes, the district administration, the 'Polizeikonferenz' and the government or the prince himself were addressed, at times flooded, with petitions by the two rival factions. Frequently, an investigating commission of government or court councillors was set up to examine the case on the spot and, if possible, to settle it. As a rule, in these struggles the district officers sided with the wealthier peasants, those principal inhabitants on whose local power the provincial administration relied. Conversely, the centre favoured

²⁴ Cf. Friedrich Kasimir Medicus, 'Stadt- und Landwirthschaftliche Beobachtungen, bey einer kleinen Reise gesammelt', *Bemerkungen der kurpfälzischen physikalisch-ökonomischen Gesellschaft vom Jahr 1771* (Kaiserslautern, 1772), pp. 174–337, here pp. 301f.: 'Es ist nicht zu beschreiben wie sehr den Armen durch dieß unpartheische Austheilen der Weiden ist aufgeholfen worden ... die meisten eingesessenen Reichen des Orts haben alles hervorgesucht, um es zu hintertreiben; aber es gehört zur glorreichen Regierung unsers Durchlauchtigsten Landes Vaters, daß endlich über alle diese Vorurtheile gesiegt worden und Kurpfalz ein Beispiel aufgestellt hat, dem seine Nachbarn gewiß folgen werden.'

²⁵ *Ibid.*, p. 303: 'Dorf-Despotismus'.

²⁶ Cf. the material in GLA Ka 229/22,595 (Edingen); 229/109,963 (Wallstadt); 229/91,287, 91,289–91,291, 91,293, 91,440, 91,441, 91,522 (Sandhofen); 229/40,293, 40,323, 40,327, 40,329 (Heddesheim); 229/50,648 (Käfertal); 229/70,814, 70,817 (Neckarau).

solutions that, being geared to the original reform impulse, were more in line with the claims of the lower classes.

A Case in Point: the Example of Feudenheim

With a view to the connection between local demand for order, external intervention and statebuilding, essential elements of this general pattern are highlighted by the example of Feudenheim. Although the village belonged to the four Heidelberg pilot communities, extensive districts of pasture had been preserved in 1771. Until 1812 hardly a year passed by without the question of individualizing these land reserves being put on the communal agenda and, due to contrary opinions, involving state officials.²⁷ Step by step, the non-horsed village groups wrenched from the full peasants those uncultivated areas on which the latter virtually exclusively sent their oxen and horses to graze. In the 1790s two particular pasture grounds of some 75 acres, the 'Eggelwasser' and the 'Neckarplatte', were the object of contention. By then, the officials had already become acquainted with local dissension over this question as a chronic problem. In December 1790 the Supreme Court councillor von Wrede, who was charged with a local investigation, knowingly remarked that the citizenry, 'as customarily happens in such cases, is not unanimous because of different interests'.²⁸ Under the impression of opposing petitions by the non-horsed and horsed and not quite resolved themselves, the authorities temporarily made do with varying interim solutions for some years.

The affair only came to a close when the non-horsed once again and now dramatically appealed to the government in March and April 1801. Referring to the 'political economic principle of stall-feeding' and threatening that the perpetuation of present conditions would 'entail the ruin of the citizens', they required the irreversible division of the pasture districts concerned. 'Every citizen without regard to differences in wealth [shall] be eligible for his share of usufruct by all

²⁷ The whole complex is documented in GLA Ka 229/28,175, 28,206, 28,298, 28,326–28,333; 240/698–700.

²⁸ Undated report by the Supreme Court councillor and district official 'Adjunkt' von Wrede [December 1790], GLA Ka 229/28,206 I: 'so wie es bei dergleichen Vorfällen gemeinlich zu geschehen pflaget, wegen der Verschiedenheit des Interesse nicht einstimmig ist'. Von Wrede had visited Feudenheim several times between 23 November and 8 December 1790 in order to inquire into the dispute and to arrange a settlement.

principles.²⁹ In June, this demand was met by the 'Generallandeskommission',³⁰ which ordered the definite and egalitarian allotment.³¹ After repeated protests from the horsed and their references to village customs and to a number of older, pro-peasant government decrees had failed,³² they strove to have the decision repealed by suing their local adversaries at the Supreme Court ('Hofgericht'). During the trial in July, which was still accompanied by petitions from the rival groups, not only the government was given the opportunity to explain its position,³³ but also the two parties, who in the person of four authorized deputies and a lawyer, respectively, were interrogated by the investigating Supreme Court councillor von Weiler in Mannheim and Feudenheim.³⁴ On 18 July, the peasants' action was dismissed as unsubstantiated;³⁵ the recourse to the Court of Appeal ('Oberappellationsgericht') that the horsed raised thereupon was rejected three weeks later.³⁶ All juridical obstacles being removed, the allotment of the pasture could now take place; this occurred, after some further delay, in April 1802.³⁷

From Division to Penetration: Class Struggle and Statebuilding

In four respects, these disputes and the patterns of behaviour and argumentation established and reproduced in their course systematically related to the problem

²⁹ Petitions by the non-horsed ('Unbespannte') from 25 March and 23 April 1801, GLA Ka 28,206 I: 'Staats wirthschaftlichen Grundsatz [der] Stall-Fütterung'; '[den] Untergang ... der Bürger nach sich ziehen [würde] ... einem jeden Bürgern ohne Unterschied des Reichthums der seiniger Nutzungen Theil nach allen Grundsätzen allerdings gebühren [soll]'. The first supplication was signed by the common deputy ('Gemeiner Vorsteher') Joseph Reibelt and authorized by 166 non-horsed ('unbespannte') citizens.

³⁰ The 'kur-' or 'rheinpfälzische(s) Generallandeskommission/-kommissariat' in Mannheim had been created in 1799 by the new Prince Elector Max Josef for the direction of the Palatinate government; cf. Caroline Gigl, *Die Zentralbehörden Kurfürst Karl Theodors in München 1778–1799* (München, 1999), pp. 29ff.

³¹ Decree by the 'Generallandeskommission' from 5 June 1801, GLA Ka 245/700.

³² Cf. petitions by the horsed ('Bespannte') and by the bailiff and jurors ('Schultheiß und Gericht') respectively from 18, 20 and 22 June 1801.

³³ Cf. statement by the 'Generallandeskommissariat' from 7 July 1801, GLA Ka 229/28,206 I and 245/700.

³⁴ Cf. GLA Ka 245/699 ('Protocollum Commissionale') and 700 ('Adjuncta Protocolli Commissionalis'). The investigation was carried out on 9, 14 and 15 July 1801 in Mannheim and on 16 July 1801 in Feudenheim.

³⁵ Judgement by the Supreme Court ('Hofgericht') from 18 July 1801, GLA Ka 245/698.

³⁶ Decision by the Court of Appeal from 8 August 1801, *ibid.*

³⁷ Cf. report by the district official Wrede to the 'Generallandeskommissariat' from 8 April 1802, GLA Ka 229/28,206 I.

of statebuilding in the late Old Regime. In the first place, the petitions³⁸ of the rival parties, which in the hot phases of the conflict came in almost on a weekly basis, and the investigation commissions generated an upsurge in communicative density and informational penetration of local society by state agents. Especially the central authorities would not likely have learned about the deficiencies of the reforms if they had not been alarmed by villagers. Relevant in this respect was not only the frequency of written and verbal communication as such, but particularly the immediate contact between the rural lower classes and high government officials – an administrative shortcut that does not seem to have existed to this extent until the middle of the eighteenth century.

Second, the government's enhanced capacity for control not only applied to the village's chief inhabitants, but also to its own provincial functionaries. As demonstrated by the Heidelberg district official's leniency, if not aid, with regard to peasant opposition to agrarian reform, the obstacles to policy enforcement partly resided in the state administration itself. In 1784, for instance, the government councillor von Weiler noted disparagingly with a view to the case of Feudenheim that 'the Oberamt Heydelberg denies the principle of abolishing the common pasture and of distributing it among the communal members, which is supported by approved farming experts and has been adopted even in this country'.³⁹ Hence, petitions and investigating commissions provided the centre with a means of staff discipline of the lower levels of bureaucracy.

Third, the new conditions of political communication considerably extended room for manoeuvre for the middle and lower village strata. For them, the image of the legendary 'good' prince now materialized, to a certain degree, in the shape of benevolent government councillors who not always promptly, but in the long run rather reliably promoted their objectives. Of course, the harmony of government reform initiatives and sub-peasant subsistence interests in the management of the commons cannot automatically be transferred to other policy fields. One should not, however, underestimate the social capital of trust accruing to the state through this form of bureaucratic participation.

Finally, the conflicts over the commons actualized a structural problem of the early modern state: the dualism between state legislation and territorial statutory law, on the one hand, and local by-laws and vested rights, on the other. When the

³⁸ Cf. more generally on the communicative function of supplications Holenstein, 'Gute Policey', pp. 282–305; André Holenstein, 'Kommunikatives Handeln im Umgang mit Policeyordnungen. Die Markgrafschaft Baden im 18. Jahrhundert', in Ronald G. Asch and Dagmar Freist (eds), *Staatsbildung als kultureller Prozess. Strukturwandel und Legitimation von Herrschaft in der Frühen Neuzeit* (Köln, Weimar and Wien, 2005), pp. 191–208, esp. pp. 197–200.

³⁹ Report to the government from 24 May 1784, GLA Ka 229/28,206 I: 'Das Oberamt Heydelberg bestreitet ... den von bewährten Ackerbau-Verständigen unterstützten und selbst in diesseitigen Landen ... angenommenen Satz für Abschaffung der gemeinen Weiden, und Verteilung derselben unter die Gemeindsglieder'.

peasants of Feudenheim resorted to the Supreme Court to defend their traditional privileges in July 1801, they also understood this move as a political statement in this respect. Since 'it is not allowed to voice one's thoughts and opinion about high government decrees', they declared, '[we] have to leave the substantiated answer to the Supreme Court'.⁴⁰ This challenge was harshly rejected by the government, which insisted that 'by virtue of our highest police authority we had full power to decide on the use of this common pasture and to restore those who had been excluded only for police considerations to their natural right of common use'.⁴¹ Thus, the affair evidently touched on sensitive constitutional matters.⁴² To be sure, it may be doubted whether the lower classes fully grasped this dimension. But it is obvious how important the experience of the benefits of princely supremacy could be to the social anchoring of the state's police authority. All the more so if the latter served to reduce the estate ranks within the village citizenry according to the often-cited principles of 'equity' ('Billigkeit') and 'justice' ('Gerechtigkeit'). By the same token, the lower-class struggle against peasant privileges assisted the central authorities in creating subjects equal before the law.

To sum up, the failure of communal self-regulation and the call for state authorities was not only crucial to the success of agrarian reform and, as will be seen in the next paragraph, to the settlement of ensuing dues conflicts. The new structures of communication and information also had consequences for the state's claim to police intervention.⁴³ Having long been established in theory and ordinances, it was now exercised and perceived in a way material to the practice of rule and its legitimation, as state interference came to be more closely related to broad popular interests and gained a degree of social authority it had often lacked before.

⁴⁰ GLA Ka 229/699: Da es 'nicht erlaubt sei, gegen die hohe Landesherrschaftliche Rescripte seine Gedanken, und Meinung zu äußern' müssen '[wir] die grundhafte Beantwortung ... einem ... Hofgerichte lediglich submissese überlassen'.

⁴¹ GLA Ka 229/700: 'Kraft unserer obersten Polizei Gewalt ... hatten wir volle Macht, über die Benutzungs Art dieser gemeinen Weide zu erkennen, und dabei die aus bloßer Polizei Rücksicht bisher ausgeschlossene ... wieder in das ihnen zukommende natürliche gemeinschaftliche Benutzungs Recht einzusezen'.

⁴² The claim for state competence in the management of the commons was a much disputed constitutional question in other territories too; for Lower Saxony, for instance, cf. Prass, pp. 46f.

⁴³ This broader political horizon has also been recognized by Warde, pp. 205–8 and 217ff.

Occasional Peasant Backlash: the Repartition of Dues

In some places, such as Neckarau (1787–92)⁴⁴ and Seckenheim (1774/75),⁴⁵ the social confrontation of the commons conflicts was paralleled by ensuing disputes over the levying of dues that were loosely associated with the use of collective resources. This sort of struggle was typical of south-west Germany, too,⁴⁶ and in Seckenheim, for instance, the peasants' attempt, immediately after the disliked division of the pasture, to repartition evenly among the citizenry the 'Beeth- und Treiberschützen-Korn' and 'Beeth- and Atz-Geld', which had so far been collected according to tax capital, is easily interpreted as an act of revenge against the village poor.⁴⁷ Again, the day-labourers and cow crofters successfully defied the joint pressure of their local superiors and the district official by appealing to the government and to the 'Polizeikonferenz'. After several petitions, first by the lower class, then by both parties, the Treasury councillor von Babo was commissioned to investigate the matter and, from August 1774 to May 1775, tried to negotiate a solution by mutual consent. None of the proposals he submitted, however, was endorsed by both 'Fuhrbürger' and 'Handbürger'⁴⁸ so that the case eventually had to be settled through a decree of the 'Polizeikonferenz' on 18 July 1775. The new repartition method was a compromise between the old system and the equal burden sharing propagated by the peasants. But, what is more, an internal village issue had now turned into an object of state direction due to unbridgeable differences within local society.

Conclusion

In an attempt to generalize the empirical findings, three major conclusions can be drawn. First, as to the use of collective resources, a goal conflict emerged within the bureaucracy between reform concerns and traditional elite policy. In many respects, these different outlooks were institutionally embedded in the dualism of in part newly established and largely reform-minded central executive bodies, on the one hand, and the regular provincial administration that maintained close relations to the village chief inhabitants on the other. To break the resultant deadlock, a vigorous impulse from local society was required, which, as a rule, only occurred when internal mediation had been wrecked by full-peasant intransigence. In the face of social polarization and the failure of communal self-regulation, then, the convergence of government reform programmes and lower class subsistence needs

⁴⁴ This long-drawn case is documented in GLA Ka 229/70,830–70,832, 70,932–70,934.

⁴⁵ Cf. the records of the commission investigation in GLA Ka 229/96,460.

⁴⁶ Cf. Zimmermann, 'Entwicklungshemmnisse', pp. 108f.

⁴⁷ Cf. in more detail Grüne, 'Sozialkonflikt', pp. 376–81.

⁴⁸ Analogous to the terms 'Fuhrfröner' and 'Handfröner' cited above.

created a powerful alliance that, by eroding property-related estate privileges, paved the way for a legally egalitarian communal citizenry. By the same token, the special agencies of reform absolutism in the Palatinate Electorate (for example 'Polizeikonferenz') broadened the articulation capacity of the poorer citizens to a great extent, since they provided alternative channels of communication and appeal alongside the usually pro-peasant middle ranks of the civil service in the countryside. Hence, lower class participation and state intervention appear as two sides of the same coin.

Second, in this context the petitions, which set in motion most cases under consideration, and the commissarial investigations in their further course, played a key role. The general significance of supplications and grievances, in particular, has emphatically been recognized in the literature on early modern political interaction in recent years.⁴⁹ These means of communication proved all the more crucial to the bulk of the population in a territory like the Palatinate Electorate, where there were no periodic occasions for bringing home matters of claim or complaint to non-villagers. The majority of rural society often depended on applying directly to the central authorities and, thereby, on bypassing their local superiors and the provincial officials as the sole way of effectively putting their objectives on the communal agenda. For government councillors, meanwhile, the lower-class recourse to the pen (or to a lawyer), though bothersome at times, generated valuable sources of information and problem orientation, notably in socially sensitive spheres in which the ordinary reports and statements by 'Schultheißen' and 'Amtsmännern' deserved a good deal of suspicion because of these functionaries' notorious collusion with the village oligarchy.

Third, from a conceptual perspective, the currently leading interpretations outlined in the introduction should be supplemented by a view that includes in the explanatory framework the evolution of rural class society as early as the eighteenth century, even in regions of partible inheritance. The 'individualization' approach, on the one hand, tends to underrate the extent to which the development of distinct social groups and the ensuing collective conflicts influenced the relationship between villages and territorial authorities. The 'corporative model of state formation' (S. Ogilvie), on the other, is appropriate insofar as it accentuates the need of a relatively weak administration to forge alliances with various intermediary forces. Institutional growth and empowerment, then, become comprehensible as a corollary of socio-bureaucratic interaction. Terminologically, however, this notion overemphasizes the 'corporative' basis of political participation. In the examples analysed above, the organizational backing of the commune as a public body only marginally contributed to the micro-dynamics and success of popular initiatives and, by implication, to the extension of government control. Far more important

⁴⁹ Cf. in addition to footnote 38 Andreas Würzler, 'Bitten und Begehren. Suppliken und Gravamina in der deutschsprachigen Frühneuzeitforschung', in Cecilia Nubola and Andreas Würzler (eds), *Bitschriften und Gravamina. Politik, Verwaltung und Justiz in Europa (14.–18. Jahrhundert)* (Berlin, 2005), pp. 17–52, esp. pp. 46–52.

was the communicative and rhetorical capacity of social pressure-groups within the villages to address even the central government directly and to involve remote state agents in the solution of vital local problems. To be sure, the 'commune' still served as a pivotal point of reference in all these struggles. Yet, precisely in that period the language of 'communalism' was also becoming to be heavily exploited as a mode of couching particularist claims by the sub-peasant strata.⁵⁰

It is true that no type and level of aggregation – individual, group or corporation – should be privileged a priori in accounting for the societal dimension of statebuilding processes. Given the present focus of German research, however, studies on the foundations of the state in the countryside would certainly profit from rehabilitating the perhaps too readily discarded concept of rural class society. This suggestion is not designed, of course, to revive any obsolete teleological theories. On the contrary, it can be shown that in the investigation area internal dissension gradually waned during the first decades of the nineteenth century, while frictions between village communities and state authorities multiplied, culminating in the revolution of 1848/49. That the officials found it increasingly difficult to penetrate the local sphere was partly due to the alienating effects of the more rigorous and formalistic style of administration adopted by the bureaucracy of the grand-duchy of Baden from the late 1820s on.⁵¹ But at the same time, the demand for intervention from outside declined, too, in a rural society, which was gradually relieved of its severest structural tensions thanks to agrarian reforms and intensive farming.⁵² This discontinuity or unsustainability of behavioural patterns indicates that, somewhat counter to intuition, the dubiously modernistic notion of class conflict might well be instrumental in pinpointing the specific prerequisites and trajectories of state consolidation in the late early modern period.

⁵⁰ Cf. In general Werner Trossbach and Clemens Zimmermann, *Die Geschichte des Dorfes von den Anfängen im Frankenreich bis zur bundesdeutschen Gegenwart* (Stuttgart, 2006), pp. 167f. For a case study on lower class 'communalism' in common property conflicts cf. Niels Grüne, 'Dörfliche Uneinigkeit und kommunalistische Rhetorik um 1800. Soziopolitische Streitigkeiten in der rheinpfälzischen Gemeinde Käfertal', in Hansjörg Probst (ed.), *Mannheim vor der Stadtgründung, Teil II, Bd. 2: Die Mannheimer Vororte und Stadtteile* (Regensburg, 2008), pp. 138–55.

⁵¹ Cf. Joachim Eibach, *Der Staat vor Ort. Amtsmänner und Bürger im 19. Jahrhundert am Beispiel Badens* (Frankfurt/M. and New York, 1994), pp. 81–111; Brakensiek, 'Herrschaftsvermittlung', pp. 66f.; Grüne, 'Sozialkonflikt', pp. 350ff.

⁵² Cf. the cross-regional comparison in Niels Grüne, 'Commerce and Community in the Countryside: the Social Ambiguity of Market-orientated Farming in Pre-industrial Northern South-west Germany (c. 1770–1860)', *Rural History*, 18 (2007): 71–93.

Chapter 12

Joseph-Samuel Farinet and the ‘Modern’ State: Banditry, Patronage and Resistance in Nineteenth-Century Valais

Sandro Guzzi-Heeb

Farinet and his Friends

At the beginning of 1880, quite a peculiar event occurred in the surroundings of Saillon, in the Lower Valais (Switzerland). One morning, soon after dawn, a patrol of the gendarmerie furtively approached a farm not far from the inhabited village. All of sudden, two men left the house. One of them was armed and ran away.

He was Joseph-Samuel Farinet, the notorious falsifier, who had been sought by the Italian and Valais police for many years. The same Farinet whose image had been immortalized in Charles-Ferdinand Ramuz’ novel *Farinet ou de la fausse monnaie* (1931) and, afterwards, by a successful movie (1938). A character whose idealized image is moreover kept alive by an international association named the ‘Farinet friends’; these friends have stylized the life and the vicissitudes of the famous falsifier, making him a symbol of the quest for and defence of freedom.¹

We may now deal again with the above episode. According to the investigation, at that time, the peculiar event occurred: instead of pursuing the wanted falsifier, the policemen penetrated the house of his alleged accomplice – Jean-Joseph Bessard – to search it. Bessard resisted, there was a brawl, following which Bessard was roughly beaten up.²

Most likely, the gendarmes did not appreciate that Bessard shouted insults at them and that he had insulted the corporal, Julien Caillet-Bois. At any rate, during the fight, Farinet calmly remained next to the house, ‘beyond the stream’. In fact, Bessard, after having been beaten, more or less limping, reached Farinet and went away with him – without being chased by the gendarmes. One of them simply fired a gun, ‘to frighten Bessard’.

¹ See the synthesis of the impressive historical and artistic production on Farinet in Alain Bagnoud, *Saint Farinet* (Vevey, 2005).

² For all the elements of the various investigations of Farinet and his accomplices, the indispensable source is André Donnet (ed.), *Farinet devant la justice valaisanne (1869–1880): dossiers de procédure pénale* (2 vols, Lausanne, 1980).

It is a quite odd episode: why did the gendarmes decide not to pursue Farinet, who had been sought for many years by the police forces of several countries? Why were they so ruthless to Bessard, while Farinet observed the scene from beyond the stream? The witnesses seem to confirm the interpretation sketched by Ramuz in his novel: the authorities did not want to arrest Farinet.

Farinet had actually circulated almost undisturbed between Martigny, the Entremont and the Valley of Aosta, mainly wandering about the Bagnes Valley, in Martigny-Bourg and in the nearby boroughs of Fully, Saillon, Saxon – where he had numerous collaborators. During his stays in Valais, Farinet was evidently supported by the local inhabitants, together with various accomplices inside the state, and maybe also among the judicial authorities, whose investigations appear quite tepid. As time went by, the attitude of the local persons in charge became, in fact, suspicious even to the cantonal government. On the 15 June 1878, the State counsellor, E.H. Bioley, chief of the Justice and Police Department, wrote quite a strong letter to Fidèle Joris, the investigating judge of the district, urging him to take more resolute action against Farinet and his accomplices. According to Bioley, there were ‘too many citizens favouring or at least doing nothing to thwart such a criminal industry’.³

The behaviour of the state representatives appears ambiguous. After Farinet’s death, which occurred when the falsifier was closely pursued by the gendarmes, some municipal counsellors of Saillon accused the mayor and the notary public of the village of having acted against the inhabitants’ feelings, since they had cooperated with the gendarmes. Among these were Joseph and Alexandre Roduit, very likely linked through familiar ties to some other Roduit who had been among the closest Farinet collaborators in Saillon. The ‘rumour’ that Farinet had been killed by the gendarmes spread immediately afterwards: the authorities, considering this a threat to the public order, instantly repressed the story. In the Bagnes Valley Maurice-Damien Pellouchoud, a counsellor, was accused of having collaborated with the falsifiers’ company: Pellouchoud was then discharged, although admitting he had knowledge of the illicit activities to which the Cortey family was related, without, certainly, filing any complaint.

Rivalries among the different patronages certainly played a role: Pellouchoud, who ‘looked after the business’ of Ignace Cortey and his wife Catherine, accomplices of Farinet, was the secretary of Narcisse Troillet, conservative leader and future deputy in the Parliament of Valais. He ascribed the complaint against his charge to the unfriendliness towards Camille Besse, judge of the Entremont tribunal and political rival of Troillet.

They were certainly rather insignificant personalities in the state system. However, even more relevant representatives of the institutions had ambiguous attitudes. Maurice-Fabien Carron, member of the District Tribunal from 1873 to 1877 (hence, of the competent judicial authority) and future deputy in the Parliament, is a good example: Carron admitted that he had knowledge of the

³ Donnet, *Farinet*, vol. 2, p. 398.

activities of the falsifiers in his valley and that he had tried to dissuade several persons from taking part in such activities. He even sent his brother to the villages in the valleys in order to gather some information: but even Carron did not file any complaint against the falsifiers.⁴

It is important to consider the political context of this matter. It should not be forgotten that those years were a period of crisis in the Valais: in 1871 the conservative government led by Alexis Allet had been swept away by the bankruptcy of the state-owned 'Banque Cantonale'. It was therefore a situation of clear weakness of the legal authorities who, owing to the connivances and the irregularities having accompanied the bank's bankruptcy, had lost much of their reliability. Farinet, with his false coins, then appeared to fill an economic and symbolic gap in a situation of serious political and economic hardship.

According to the definition given by Eric Hobsbawm, this would be a phenomenon of social banditry: an outlaw covered by the population, who express somehow – in an idealized way – its feelings. In the Alpine cantons, these phenomena have evident parallels: for instance, the case of Luigi Pagani, called the 'Mattirolò' in the Mendrisiotto (Ticino), who was also curiously tolerated by the state bodies.⁵

It would be possible to deal with this fact as a symptom of state degeneration – similar to brigandage, mafia phenomena, or patronage in Southern Italy. But this would lead us back to a rigid and ideal model of 'modern' state, the variants of which represent imperfect forms.

I believe it more useful to consider our question as a symptom of the specific logic of state functioning. The studies carried out in recent years, especially those focusing on the early modern era, have aimed to challenge a too rigid vision of the 'state', for instance enhancing the numerous contributions of the various resistances coming from below, or stressing the diversified relationships between institutions and society, and the different use made by individuals, groups or specific social networks of such institutions.⁶ This approach is not only useful for the years preceding 1789, but can be also useful in focusing on the various

⁴ Donnet, *Farinet*, vol. 2, esp. p. 224.

⁵ Paul Hugger, *Sozialrebelln und Rechtsbrecher in der Schweiz: eine historisch-volkskundliche Studie* (Zürich, 1976).

⁶ See the Introduction to this volume by André Holenstein. For Switzerland, see for instance Andreas Suter, *Der schweizerische Bauernkrieg von 1653: Politische Sozialgeschichte – Sozialgeschichte eines politischen Ereignisses* (Tübingen, 1997); Andreas Würigler, *Unruhen und Öffentlichkeit. Städtische und ländliche Protestbewegungen im 18. Jahrhundert* (Tübingen, 1995); André Holenstein, 'Der Bauernkrieg von 1653. Ursachen, Verlauf und Folgen einer gescheiterten Revolution', in Jonas Römer (ed.), *Bauern, Untertanen und Rebellen. Zur Geschichte eidgenössischer Landbevölkerungen im Ancien Régime* (Zürich, 2004), pp. 28–85. This influence of the social movements is still to be studied for the nineteenth century.

functioning models of contemporary European institutions, in relation to specific cultural and social logics.

Also in the nineteenth century, we can observe a construction (and reconstruction) process of the state ‘from below’: not only through participatory mechanisms of more or less democratic regimes, but also through the imposition of specific cultural and social logics, and of specific uses of the institutions, conditioning the real practices of the authorities.

From this perspective it is possible to speak of a specific state model – which I shall name the ‘alpine microstate’ – provided that this is not opposed to a rigid definition of the modern state, impersonal and rational, but is rather considered as one of a variety of local institutional models.

Farinet: a Semiotic Interpretation

Farinet was successful in the Valais, since – like Hobsbawm’s social bandits – he embodied shared values, even if ambiguous values and, therefore, embodied – by way of projection – the political ideals and attitudes of the population. Above all, he is an imposing figure himself for the strong personal qualities that he celebrated and underlined. Without a fixed domicile, constantly chased by the gendarmes, Farinet hung out in the mountains and valleys with a Spencer rifle on his shoulders and a revolver wedged in his belt – arms that, as far as it is known – he mainly used to impress and threaten.⁷

In addition, he was a good-looking man, tall and blond, of sturdy build. Women obviously liked him, and this was a decisive *atout*: women often brought him food and beverages, hid him and probably made him their lover. Farinet boasted with delicacy to his half-brother, still in the Aosta Valley that: ‘as to girls, I am more appreciated in Switzerland than in Bosses’. His repentant accomplices affirmed, not without a tip of envy, that the falsifier was ‘a women chaser’. At any rate, the only certain relationship in Valais was the one he had with the wife of one of his accomplices, Marie-Julienne Cretton, who left her family in the summer of 1878 to follow Farinet to the Aosta Valley.

It is understable why both women and men liked the falsifier: Farinet played the violin, loved dancing and entertainment, and went to parties, taprooms and pints. He did not hesitate to buy drinks for friends and acquaintances – a fact which was not despised in Valais, where wine is often an indispensable factor in male sociability. After all, he had a charismatic nature, but he was also a munificent hero who, like the mythical Robin Hood, implemented a form of social redistribution.

⁷ ‘je dors dessus un bon matelas et pour le crucifix à côté de mon lit j’ai mon revolver à douze coups et des stylets bien aiguisés pour mes défendre des gendarmes’. Letter of J.-S. Farinet to his brother Placide Ronc, 2 February 1870, in Donnet, *Farinet*, vol. 1, pp. 116–20, here p. 119.

In a report to the authorities, the police corporal Julien Caillet-Bois denounced the sympathies that the population reserved for the falsifier and its deep hostility towards representatives of the law:

I'm honoured to report to you the following in order to give you an idea of the population of the different municipalities in the district of Martigny, a population protecting the famous coin falsifier Farinet, and list the municipalities where the gendarmes have been fooled by those supporting him, to provide him assistance, such as a place to stay, and food and beverage. There are some people who help him escape from the police by shouting: 'Run away, the gendarmes are there'; everybody seems to support him, since they say: Ho! He does nothing wrong; he brings money to the country; there is not yet that much money. You, the gendarmes, you did not chase Allet and Co. that much at the time; now, a good man who brings money to our country you run after him, a man who pays well, is charitable, does good to everyone. When he gives money to poor people and when he asks for something, he always pays double; he does no harm to anybody. 'This is the idea of the countryside population'.⁸

All the stereotype components of social banditry are summarized in this brief piece: hostility towards the gendarmes, opposition to the state currency monopoly, particularly sharp after the disaster of the Banque Cantonale, accusations made against the economic politics of the state, the ideas of social justice and 'charity' credited to Farinet. In the background we find a theme well known in the societies of the *ancien régime*: solidarity with smugglers and swindlers, infringing the unfair state laws.⁹

From this perspective, the falsifier of the Aosta Valley appears to embody almost perfectly the identity of characters of the 'Vieu Pays', of the traditional, agro-pastoral Valais, fond of its autonomies and profoundly distrustful towards the state. In fact, the legitimacy of the institutions – considered as a key element in the creation of the 'modern' state – remains unstable and challenged by other forms of social loyalty. As has been underlined several times, resistance and the touristic exploitation of the Farinet's myth are strictly linked to this ideological appropriation.¹⁰

Another aspect also contributes to making Farinet a personification of the 'Vieu Pays': for years the young man from the Aosta Valley opted out of institutions, exploiting a series of personal and local solidarity and family ties, which seemed to constitute an alternative pattern to the institutional state.

First one needs to take into consideration the significant role of family solidarity. In the 1873 enquiry into the falsifier's activity in Fully, the group of Farinet's

⁸ Sion, 28 February 1880. Rapport au conseiller d'état A. Walther, remplaçant du chef du département de justice et police, in Donnet, *Farinet*, vol. 2, pp. 506–12, here pp. 506f.

⁹ Jean Nicolas, *La rébellion française* (Paris, 2002), pp. 91–117.

¹⁰ Bagnoud, esp. pp. 36–47.

closest accomplices seemed to be structured around two clearly defined family groups: the Vérolet-Léger families and the Bender-Roduit groups. In the other investigations, the family ties remained more hidden, yet they kept on establishing essential contacts between persons and places involved in Farinet's activity.

Native families of the Bagnes Valley, a side valley of Entremont where Farinet started his activity in Valais, constitute the main thread linking the various vicissitudes of the outlaw. The above-mentioned Jean-Joseph Bessard and his wife, who hid the falsifier in Saillon, were natives of this valley. Another key protagonist was Louis Luisier, a merchant selling stone stoves and a native of the same valley, who turns out to be an important element of connection: many of Farinet's accomplices were relatives or acquaintances of Luisier or persons somehow connected to him.

Luisier, together with François Frachebourg, a tanner in Martigny-Bourg, was among the first persons to exploit the falsifier's capacities, counting on some complicity in Bagnes. Also after his conviction, his traces emerge in different investigations; according to the witnesses' declarations, the Fully group of accomplices had contact with Luisier. Maurice-Eugène Maret and his wife, Marie-Julienne Cretton, at the core of the third investigation of the falsifier in Valais, had family ties with Luisier and Jean-Pierre Cretton, his brother-in-law and accomplice. The same Jean-Joseph Bessard mentioned at the beginning of this chapter was a third cousin of Luisier's brother-in-law, Justinien Bessard.¹¹ It has to be noted that the family relationships connecting the various protagonists were often quite remote and there is probably a reason for this. The close relatives are the first to be suspected of complicity. On the other hand, the need for secrecy, the unlawful activity, and the frequent movements of the falsifier and of his equipment require reliable collaboration, undetectable by outside observers. The importance of these personal and informal solidarities appear quite evident. Such relationships, of course, are not exclusive to Farinet. They represent rather a form of social organization which, in certain aspects, offers an alternative to the power of the state institutions.

Many documents tell us how even during the second half of the nineteenth century, many persons transferred usufructs and rights of *juissance* similar to the full title of ownership, without entering into formal deeds. Many transactions then took place outside the institutions and written legislative provisions. I believe it necessary to consider these informal transactions as the tissue of complex social alliances: the various parties avoided formalizing a transfer of ownership or a right of usufruct, as this allowed maintaining a link, a mutual obligation that might be useful as basis of a social alliance, to maintain a solidarity relationship, that could provide support, protection or a favour, in case of need.

¹¹ For the family ties and the history of the families in this valley, see *Familles de Bagnes du X^{III}e au X^{XX}e siècle. Généalogie, histoire, étymologie, armoiries* (5 vols, Le Châble, 2006–08).

A similar phenomenon emerges when studying the credit networks. Countless numbers of persons mutually borrowed money, renewed loans for years, even for insignificant amounts and even if they were concurrently creditors of other persons or held significant capital.¹² In this case, too, the social logic of the relationship should be considered. The fact of avoiding reimbursement of the sum maintained a link; it left open a relationship that could be solicited in case of need.

Therefore, we face complex personal networks proposing once again a particular kind of loyalty, placed outside institutions and formalized relationships. These personal solidarities remained for the whole of the nineteenth century fundamental mechanisms of social security and safety, support in case of crisis, in lieu of a state perceived as distant and hostile.

Distrust of the State

During Farinet's time, state authority was still the object of a vigorous political and social conflict. In the local tradition, any attempt to reinforce and centralize the state met with obstinate and often violent resistance. The last open conflict was concurrent with the adhesion of Valais to the Catholic and conservative league of the Sonderbund and with participation in the civil war of 1847 against the liberal cantons. This episode, however, represented nothing but the development of a more ancient history.¹³ In 1839, a temporary liberal majority, mainly established in the low parts of the central and western Valais, had imposed a new liberal constitution on the canton – not without encountering armed resistance in the districts of the High Valais. In 1844, however, after an armed conflict, the conservative party regained power; this conflict had entailed several deaths and opened deep political wounds. In the same year, a violent fight also took place in the Bagnes Valley, where the liberals at first prevailed but were then forced to capitulate on the arrival of the winning troops of the High Valais. These troops helped the conservatives to return to power and the subsequent reprisals against the liberals certainly did not help to calm feelings.¹⁴

At least until the middle of the nineteenth century, the use of violence remained an open option: any attempt to centralize the state, to reform it or to reinforce its competence met with lively resistance, traditionally anchored in the High Valais,

¹² Many examples in the local court protocols, for instance Archives de la Commune de Bagnes [ACB] J97–105.

¹³ Particularly useful for the history of Valais in the nineteenth century are Alain Clavien, 'La modernisation du Valais', in Philippe Cudry et al. (eds), *Histoire du Valais* (Sion, 2002), vol. 3, pp. 581–635; Groupe valaisan de sciences humaines (ed.), *Histoire de la démocratie en Valais (1798–1914)* (Sion, 1979); Michel Salamin, *Le Valais de 1798 à 1940* (Sierre, 1978).

¹⁴ Jean-Yves Gabbud, *Enquête au temps de la bataille de Corboraye* (Martigny, 1997).

but also in the valleys of the western Valais. And resentment between liberal-radicals and conservatives remained burningly topical for a long time: in the Bagnes Valley, just before Farinet's era, a conservative was murdered by a radical in a brawl: several persons were involved in the subsequent process – in particular the Bessard brothers – who reappear in the investigations against Farinet. It is possible to go further back, recalling a number of more or less relevant conflicts rooted in opposition to the centralization of power until the tormented Napoleonic era. It could therefore be affirmed that the reasons for resistance against centralization in the nineteenth century were not new, but revived themes and motivations going back to the armed fight against the Helvetic Republic (1798–1803).¹⁵

At the end of the eighteenth century the dominant issues were the maintenance of the Catholic religion and the defence of federalism and of municipal and local autonomies. From this perspective, all relevant expressions of the state aroused strong opposition: from taxes to tributes, to military service, to functionaries, as well as to government intervention in different fields of social life, such as education.

It is obviously necessary to be cautious: in Valais, this propensity towards autonomy and segmentation was expressed in differentiated and complex forms, mainly owing to the strong opposition between High and Low Valais, between ancient lords and subjects.¹⁶ In some francophone regions, the concern for real emancipation from the formerly dominant eastern districts of Valais and a certain economic development fostered the success of an influential liberal and radical current. However, the legitimacy of the central government and the state's monopoly on violence remained disputed. Until the second half of the century, politics continued to be conducted partly by rifle shots and open rebellion remained a realistic option.¹⁷

After the liberal victory in the Sonderbund war (1847), however, the situation changed: Valais was integrated more fully into the federal Swiss state of 1848, imposing some fundamental frame conditions. At first glance, this helped to stabilize the cantonal state, limit the expression of open resistance and reinforce the position of the authorities. However, the new situation did not extinguish underground resistance. In other words, the attitude of the majority of the population, the distrust of institutions and creeping resistance continued to affect the establishment and the actions of the local state.

¹⁵ André Donnet, *La Révolution valaisanne de 1798* (Lausanne, 1984); Alexandra Moulin and Thomas Antonietti (eds), *1798. Revolution im Wallis – Révolution en Valais* (Sion, 1998); Sandro Guzzi, *Logiche della rivolta rurale: insurrezioni contro la Repubblica Elvetica nel Ticino meridionale (1798–1803)* (Bologna, 1994).

¹⁶ Until 1798 the regions of the western Valais were territories subject to the German-speaking eastern Valais, the so-called 'Republik der 7 Zehnden'.

¹⁷ Clavien, esp. pp. 583–6. In Ticino, in 1890, the government was again overthrown by an armed coup d'état, cf. Raffaello Ceschi, 'Politica a fucilate', in Raffaello Ceschi, *Ottocento ticinese* (Locarno, 1986), pp. 31–46.

In order to explain this phenomenon one can resort to political categories. The formally democratic constitution allowed the population to have a direct influence on institutions. In addition, the traditionally strong role of the Catholic church gave the conservatives a solid ally, hampering real innovation for decades, for instance in relation to education or the civil code. But I consider it necessary to move forward, in order to stress two fundamental sociopolitical aspects: on the one hand, the obstinate, partially violent resistance to the expansion of state authority entailed the persistence of a financially and politically weak state, with limited margins for action. On the other hand, institutional weakness, together with the force of the informal networks, compelled the institutions' representatives to make great use of patronage, of personal and familiar channels for the exercise of power. These structural characteristics not only influenced Farinet's adventure, but also the evolution of the state during the second half of the nineteenth century.

From its beginning, by contrast with other Swiss cantons, the canton of Valais was founded on a precarious financial basis, since direct taxation was politically impossible because of the threat of armed rebellion in the valleys. During the second half of the century, the contradictions inherent in this system became more and more open. The reform programmes issued by both the liberal and the conservative governments were inapplicable on such a financial basis. The radical regime set up following the defeat in the Sonderbund war tried to resolve this problem, establishing a direct tax (1850): the hostile reaction of the municipalities and widespread passive resistance, however, practically obliged the authorities to step back. According to witnesses, after the introduction of the new tax, the situation was close to open revolt and many communities, mainly in the High Valais, threatened to take up arms against the government. Many communities refused to apply the rolls and to collect the levies. In this way, instead of 100,000 francs of provided revenues, only 30,000 francs were collected.¹⁸ Due to local resistance, the direct tax proved to be insufficient. In 1863, under the pressure of growing debt, a new tax law increased the public revenues; however, in 1865 the situation had already rapidly deteriorated. During that year, the government proposed an increase in the tax rate of one per mil, but this measure was refused. Subsequently, the government was forced to have large recourse to public debt, acrobatic manoeuvres and even financial irregularities.¹⁹

The public deficit was a constant feature of the second half of the nineteenth century, and it also conditioned the ambitious programmes of the conservative regime of Alexis Allet (from 1857 to 1871) and his infrastructural projects of modernization: the embankment of the river Rhône, railroads and road construction and reform of the troops.

¹⁸ Clavien, p. 585.

¹⁹ Michel Rey, 'Le régime Allet', in *Groupe valaisan de sciences humaines* (ed.), *Histoire de la démocratie en Valais (1798–1914)* (Sion, 1979), pp. 193–214, esp. pp. 200f.

The disaster of the Banque Cantonale in 1871 can also be seen as the result of an awkward attempt to fill the gap between the regime's modernizing ambitions and the real financial capacities of Valais, an imbalance that Allet tried to rectify through financial improvisations, temporarily funded by the public credit institution. However, even this system could not eliminate the structural gap between revenues and expenditures: the irregularities became public, the Banque Cantonale went bankrupt, and the conservative regime was swept away by the scandal.

The issue of the tax charge is therefore of fundamental significance, since financial weakness heavily conditioned all cantonal politics. In this perspective, anti-tax resistance was quite efficient, since the Valais tax charge stagnated at a very low level until the end of the century: in 1894 the public expenditures per inhabitant were among the lowest in the Swiss cantons.²⁰ From this perspective, the state's capacity for real influence on social life was greatly limited.

The strength of anti-state resistance could also be witnessed in other fields, for instance education. The school system in Valais was significantly underdeveloped compared to the other Swiss cantons. For decades, the education problem was a political issue between liberals and the church, Catholic resistance and the distrustful communities; the weakness of the cantonal state had hampered the creation of an efficient educational system. Accordingly, the new education law of 1873 was largely unapplied. In 1875, the federal exams of recruits revealed the seriousness of the problem, since the results obtained by the young people from Valais were the worst in the whole Confederation. It came as a shock to the canton, but the economic constraints described above hindered the adaptation of the educational system until the end of the century.²¹

This historical weakness of the cantonal state reinforced the importance of informal solidarities in the organization of a political and social consent, giving rise to quite a special model of state functioning.

An Alpine Microstate

The falsifier Farinet exploited family networks and local solidarities to escape the law, and one could assume that this was in opposition to an institutional logic and a formal, rationalized state, that is a state acting on the basis of objective provisions.

²⁰ In 1894, the standard public expenses amounted to approximately 13.15 francs per inhabitant in the Valais, versus 14.55 in Lucerne, 19.15 in Uri, 38.34 in Ticino, 42.60 in Zurich and 48.90 in Berne: *Historische Statistik der Schweiz*, ed. by Heiner Ritzmann-Blickenstorfer, unter der Leitung von Hansjörg Siegenthaler (Zürich, 1996), pp. 971 and 94f. (author's elaboration).

²¹ Elisabeth Roux, 'Le régime de Torrenté', in Groupe valaisan de sciences humaines (ed.), *Histoire de la démocratie en Valais (1798–1914)* (Sion, 1979), pp. 215–28, here p. 224.

In reality, however, the state did not behave in a substantially different way. From the beginning, the local legitimacy of the cantonal state was essentially based on personal collusion and cooperation inside familiar networks and patronage system relationships. The creation of the 'modern state' after 1798 did not remove such informal logics in the name of Weber's rationality; rather it strengthened them.²²

François Reynauld has studied reproduction conditions among the local elite in the Bagnes Valley, scene of Farinet's first actions, showing the central role of familiar relationships in organizing the continuation and the collaboration of the groups holding power.²³ These relationships remained intact in the political culture of the nineteenth and part of the twentieth century: the local elite not only kept on nourishing a strictly endogamous marriage politics, but also a specific cult of kin and family solidarity.²⁴

These characteristics are partially explained by the specificities of the alpine regions: in a mountain agro-pastoral society, for centuries political control was an essential element of allocation of economic resources: and this control was ensured by extremely strong familiar or patronage solidarities. The wood trade represents quite a typical example: in Valais, as in Ticino, exploitation of the forests in the nineteenth century was promoted to a great extent by persons strictly linked to political power. The same holds for the mercenary service abroad, also controlled by the families holding power.²⁵

The distribution of local resources among a limited elite was encouraged by geographic and personal proximity in a small state, widely excluding external competition. In this sense, I speak of an 'alpine microstate', as a milieu where acquaintance, personal collusion and social proximity ensured power. The use of

²² Sandro Guzzi-Heeb, 'Über die steigende Bedeutung von Verwandten in bäuerlichen Gesellschaften. Clans, Sippen, Verwandtschaftsnetze im Unterwallis (1650–1850)', in Jonas Römer (ed.), *Bauern, Untertanen und Rebellen. Zur Geschichte eidgenössischer Landbevölkerungen im Ancien Régime* (Zürich, 2004), pp. 187–205; see Luigi Lorenzetti, 'Les élites "tessinoises" du XVIIe au XIXe siècle: alliances et réseaux familiaux', in Anne-Lise Head, Luigi Lorenzetti and Béatrice Veyrassat (eds), *Familles, parenté, réseaux en Occident (XVIIe–XXe siècles). Mélanges offerts à Alfred Perrenoud* (Genève, 1999), pp. 207–26.

²³ François Reynauld, *Formation et évolution d'une élite dans une vallée alpestre. Le cas de Bagnes en Valais (Suisse). Mémoire présenté à la faculté des études supérieures d'anthropologie* (Université de Montréal, 1976, Manuscript in the Swiss National Library).

²⁴ Roux, pp. 215f.

²⁵ On these aspects, see Sandro Guzzi-Heeb, 'Unternehmensführung und knappe Ressourcen. Die Papierfabrik von Vouvry, der grosse Stockalper und die Eigenart der Walliser Wirtschaftsentwicklung (17.–19. Jahrhundert)', in Werner Bellwald and Sandro Guzzi-Heeb (eds), *Ein industriefeindliches Volk? Fabriken und Arbeiter in den Walliser Bergen* (Baden, 2006), pp. 127–59; Raffaello Ceschi, 'Strade, boschi e migrazioni', in Raffaello Ceschi (ed.), *Storia del cantone Ticino. L'Ottocento* (Bellinzona, 1998) pp. 183–214.

personal and patronage solidarities, however, also has to be regarded in relation to the anti-state tradition we have dealt with above. The distrustfulness towards institutions compelled the elite to search for legitimacy mainly through personal connections, patronage protection and distribution of favours. The fiscal weakness of the state reinforced this tendency, preventing the consolidation of strong institutions. The relevance of informal networks for credit circulation, social security and protection in case of crisis encouraged the exercise of patronage by politicians and their families.

During the second half of the century, this personalized character of the state remained very intense and tended to assume pronounced peculiarities. After the failure of the radical experiment of 1848–57, the conservative regime exploited the networks of the patronage system in order to establish an almost exclusive supremacy and use the institutions at its own discretion.

From the beginning, a succession of scandals – fraud, payment of bribes, manipulation of electoral circles – were denounced by the press. The conservative regime, for instance, multiplied in the municipal bureaus: in 1858, the ‘*Gazette du Valais*’ quoted examples of places where the municipality employed more than 50 employees – a method primarily used to provide political friends with work and income.²⁶

The efforts made in favour of economic and structural modernization did not weaken these peculiarities; on the contrary, they strengthened them. The political parties, in order to get hold of local power and political loyalty generously distributed favours and opportunities for profit. The Banque Cantonale, too, as mentioned above, was mostly used as the party’s source of cash, in order to assign jobs and credits to the conservative allies of Alexis Allet.²⁷ And the conservative leader exercised personal power that took on characteristics similar to those of dictatorship. Alain Clavien’s view of this era of cantonal politics is revelatory: the Allet regime was an example of ‘predatory mentality, confusing the State’s interests with its own interests and considering the government as a reserve of profits meant for friends’.²⁸ The weak alpine microstate needed personal and patronage solidarities to survive and adapt to the new economic conditions.

Synthesis: a Primitive Society?

There is therefore a significant link between social banditry, the logics supporting it and the construction of the state apparatus in its actual functioning. The obstinate

²⁶ *Gazette du Valais*, 25 February 1858, quoted in Rey, pp. 195f.

²⁷ Rey, pp. 203–13. This is not a isolated case in the alpine cantons: in Ticino very similar facts occurred at the end of the nineteenth century having their acme in the bank crisis of 1914, with the bankruptcy of various institutions; see Angelo Rossi, *E noi, che figli siamo ... : cento anni di sviluppo economico nel Ticino* (Canobbio, 1988), pp. 9–35.

²⁸ Clavien, p. 593.

resistance to institutional reinforcement, hindered the consolidation of strong institutions able to intervene significantly in local society. On the other hand, institutional weakness and the strength of the alternative networks made it easier for the ruling class to make extensive use of personal structures to legitimate and strengthen their power. This dilemma is evident in the highly ambiguous attitude of the local state representatives towards Farinet and his accomplices.

Both in Ticino and in Valais, the population's support for banditry and resistance to the state did not prevent the formalization of political mechanisms – mainly under the pressure of the Confederation – but it deeply affected the actual practice of the state bodies, hampering real centralization of the state, the reinforcement of its financial basis, and its efficient action at the social level – for instance in the field of education.

It is still necessary to be cautious. Certainly the Valais and the Ticino are not the only examples where state action has been used by personal and patronage networks. The state is always made up of people and is always subject to different uses: the present time gives us countless examples thereof.

What interests us here is to understand the specific logics of a historic configuration. What happened in Valais is not comparable to the instrumentalization of the state by criminal networks, such as the classic Sicilian mafia or the forms of 'mafia' proliferating today in various Eastern countries. Although they may have some similarities, they remain distinct phenomena.

In the case of Valais at the end of the nineteenth century, I would speak instead of double institutional and political loyalty. The state was not refused as a whole, but it was accepted only under certain conditions: its formal rules represent an organizational model along with others, and it is constantly in competition with the logics of personal and informal solidarities.

Moreover, these are not forms of political archaism. Eric Hobsbawm and the scholars following in his footsteps have considered forms of social banditry comparable to Farinet's adventure as phenomena of a transition period: traditional resistances against the transition to a market economy, to a society with stronger and more efficient state power. At first glance, Farinet seems to confirm this view, embodying strong symbols of the traditional Valais. However, this interpretation is only partially correct: the logics alternative to the state do not inexorably disappear following political and economic development. They rather interlace with the evolution of the institutions, deeply influencing state transformations. It is possible to affirm that they adapt to the state's political forms, but they continue to act underground to limit, influence and manipulate, when feasible, institutions and their representatives.

Conversely, it would be wrong to consider the social networks supporting Farinet's banditry only as the expression of a traditional or 'primitive' society,²⁹ struggling to defend pre-state agricultural logics. If we consider the closest collaborators of Farinet, we see that they often were, in their way, entrepreneurs:

²⁹ Eric J. Hobsbawm, *Primitive Rebels* (Manchester, 1963).

they were not poor farmers, related to the traditional sectors of the agro-pastoral economy; they were often looking for opportunities in innovative sectors and acted through contact networks between small entrepreneurs, tradesmen or tourist operators.

The above-mentioned François Frachebourg was a leather tanner operating in Martigny-Bourg, active in local trade; Louis Luisier was a small tradesman in stone stoves – a sector that fairly developed in the Bagnes Valley during the eighteenth and nineteenth centuries. His liberal family had been closely linked to the development of such activity in the nineteenth century. Luisier himself left his native village to settle in Martigny, likely looking for better trade channels. In this small town it seems that he tried to start businesses in new fields, buying a tannery and becoming the partner of the above-mentioned Frachebourg. But his closest contacts remained mostly in the area of stone stoves, where his accomplice and brother-in-law, Jean-Pierre Cretton, operated.

Maurice-Eugène Maret, another among the foremost of Farinet's accomplices, was not a conservative mountain farmer, fond of the land; he actually tried different jobs. The sources refer to him as a 'mineur' (miner), but Maret was above all one of the pioneers of local tourism. In the 1860s he was the first person to open a business in Fionney, in the upper part of the Bagnes Valley: a place mainly meant for the first alpinists and explorers visiting the most imposing peak of the region.³⁰ It should not be forgotten that Fionnay was the first dynamic centre of local tourism which, at the end of the century, counted various hotels and restaurants built by the wealthiest and most influential local investors.

Also the Bessard brothers, liberals too, and Luisier's relatives involved in the Farinet investigation, were not simple mountain farmers; they were among the first well-known alpine guides in the region since they made some prestigious ascents.³¹ In conclusion, the Farinet 'friends' were active in the most dynamic fields of the regional economy. Of course this dynamic is moderate in this mountain region, far from the economic and political centres: in their way, however, Luisier, Maret and people like them tried to exploit the opportunities of their time in new sectors.

From this perspective, nineteenth-century banditry was not opposed, but rather linked to certain capitalistic developments and to the 'modernization' of Valais: trade, banks, mail, railways, tourism and money circulation created new contact networks, new opportunities and also new temptations. Farinet and his accomplices largely took advantage of this infrastructure and these opportunities.

³⁰ Marthe Carron et al., *Eveil du tourisme dans le Val de Bagnes* (Bagnes, 1983), p. 26.

³¹ Justinien Bessard (1841–1929), a weaver, was a reputed alpine guide like his brothers Séraphin and Joseph-Etienne. With his brother-in-law Justin Fellay he was one of the promoters of alpinism in the Bagnes Valley. He realized more than a dozen important first ascents, and the current southern peak of Berney was called Pointe Justin Bessard by Eugène Colomb; cf. *Familles de Bagnes*, vol. 1, p. 71; Marthe Carron et al., p. 127; Donnet, *Farinet*, vol. 1, pp. 87–90.

In another context and in another time they might have been successful small-scale entrepreneurs.

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PART III

NORTHERN AND WESTERN
EUROPE – AND BEYOND

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Chapter 13

Political *Topos* or Community Principle? *Res Publica* as a Source of Legitimacy in the French Peasants' Revolts of the Late Middle Ages

Vincent Challet

'Written law authorizes legitimate princes, when they need to, to collect taxes from their subjects, especially in time of war, to defend the realm and the common good.'¹ This is how Christine de Pizan, in her book entitled *Livre des faits et bonnes moeurs du roi Charles V le Sage*, justifies the terrible fiscal pressure imposed by Charles V at a time when public opinion was willing to accept taxes only in exceptional circumstances, according to the old adage 'the King must live of his own'. Charles V himself, in the edict issued to organize the regency of the kingdom in 1374, defined the king's office as to govern and administer the state (*chose publique*)² wisely, and this definition might equally have been approved by his secretary, Pierre Salmon, who stressed in his writings that the king's duties should be focused on the *good of the realm*.³ A century later, this major preoccupation of Charles V's government was still in the mind of Louis XI who, in the *Rosier des guerres* composed for his son and successor, advised him carefully to defend the *chose publique*.

This emphasis on the *res publica*⁴ in political texts, especially those belonging to the 'advice to princes' genre, appears nowadays to be nothing more than a

¹ Christine de Pizan, *Le livre des faits et bonnes mœurs du sage roi Charles V*, ed. by Eric Hicks and Thérèse Moreau (Paris, 1997), p. 84. I would like to express all my gratitude to John Watts, professor at Corpus Christi College, Oxford, not only for his careful and critical reading but also for his brilliant and useful remarks.

² 'L'office des roys est de gouverner et administrer sagement toute la chose publique', quoted by Bernard Guenée, *L'Occident aux XIVe et XVe siècles: les Etats* (Paris, 1971), p. 181.

³ Albert Rigaudière, 'Le bon prince dans l'œuvre de Pierre Salmon', in Albert Rigaudière, *Penser et construire l'Etat dans la France du Moyen Age (XIIIe–XVe siècle)* (Paris, 2003), pp. 497–516.

⁴ According to the suggestions of John Watts, I let the Latin expression *res publica* stand untranslated. As he pointed out, using *common wealth* introduces confusion and

commonplace; however, if the *res publica* was not a complete novelty in the late Middle Ages, it seems nonetheless to have been a principle emerging at that time, as its omnipresence in the political vocabulary of royal commands goes back only to the beginning of the fourteenth century. Indeed, if we look back to the previous century, the idea of *res publica* seems scarcely to have been evoked when talking about the king's duties: Saint Louis, when writing the *Enseignements* intended for his son Philippe, only recommended that he should 'be so fair that, whatever may happen, [he] will never move out of the way of justice'⁵ and, even at the end of the thirteenth century, Jacques de Cessoles, quoting Augustine in his *Livre du jeu d'échecs*, was wondering 'what would kingdoms be without justice, if not robberies on a grand scale'.⁶ This changed from the beginning of the fourteenth century: while justice remained a value of first importance in the definition of good government, it began to be replaced by a more all-encompassing principle which was used to legitimate royal domination.

This value was precisely *res publica*, and it arose from the rediscovery of Roman law in Justinian's *Corpus Juris Civilis* and, even more, from the revival of interest in Cicero's *De Republica*. Based on Ulpian's comments about the *status rei romanae*, the medieval conception of *res publica* quickly became very close to the one of the state, even though it has also been used on a city scale by communes or consulates considered as *universitates*; in its widest acception, it means that *res publica* included everything which was not strictly private, from public life to commercial activities. The enhanced importance of *res publica* in contemporary political theory led the French royal chancery to make increasing use of the related notion of *utilitas publica* or *common utility*, which was partly borrowed from the canon law and from Gratian who defined the fair law as the one issued for the common utility of the citizens. Thus, in the political literature of the time, the 'good prince' was simultaneously depository and guarantor of *res publica* while, from another perspective, he had to legitimate his own decisions and orders by citing their common utility to all the inhabitants of the kingdom.

anachronism as it was the seventeenth-century English translation of *res publica* and the expression *common weal* simply means the common good. In fact, the very first translations of *res publica* in vernacular languages remained very literal: 'publike thyng' or 'chose publique'. On the expression of *common weal* in an English context which seems to be very similar to the French situation, see John Watts, 'Les communes: le sens changeant d'un mot au XVe siècle', in Vincent Challet, Jean-Philippe Genet, Hipólito Rafael Oliva Ferrer and Julio Valdeón (eds), *La société politique à la fin du XVe siècle dans les royaumes ibériques et en Europe* (Paris and Valladolid, 2007), pp. 197–216. Considering the English kingdom, John Watts writes: 'Dire que le gouvernement royal existe pour assurer le profit commun, le bien-être commun, ou, dans le vernaculaire du XVe siècle, le *common weal* du royaume, devient un axiome' (p. 203).

⁵ *Les Propos de Saint-Louis*, présentés par David O'Connell; préfacés par Jacques Le Goff (Paris, 1974), p. 187.

⁶ Jacques de Cessoles, *Le Livre du jeu d'échecs* (Paris, 1995), p. 48.

While these ideas had slowly ripened and developed throughout the thirteenth century, the later medieval centuries were nonetheless decisive in that they represent the period in which *res publica* and *utilitas publica* were no longer just theoretical values but practical principles that royal government was expected to respect and defend. Moreover, if the notion of *res publica* became a major value in the propaganda developed by French monarchy for the consumption of urban elites and, more generally, of ‘political society’⁷ as a whole, the fact that *res publica* was used and misused in a host of circumstances made it possible, in times of crisis, for those who wished to establish the social contract between the monarchy and its subjects on new bases to employ the term as a means of challenging royal policy.

Res Publica and Utilitas Publica in Public Discourse

The entry of Roman law vocabulary into the political literature associated with the French monarchy has already been discussed⁸ and it is not my intention to come back to this question. Nevertheless, while it has been clearly established that references to *res publica* and/or *utilitas publica* came into constant use in French royal *ordonnances* or laws from the middle of the fourteenth century, the possibility of changes in the meaning of these terms – and, above all, their capacity to legitimize and incorporate people’s complaints – has not received sufficient consideration. In a volume devoted to the resistance of communes to modern statebuilding, Hugues Neveux, writing about *Pax* and *Justitia*, pointed out that ‘these values have, at the same time, an ambiguous and changing content, because they recover what each person desires in concrete terms, and an almost magical attraction, as they represent a universally admitted ideal’.⁹ Such a remark could

⁷ The concept of ‘political society’ was first defined by Raymond Cazelles, *La société politique et la crise de la royauté sous Philippe de Valois* (Paris, 1958). For Cazelles, political society was limited to the king, his councillors, noblemen and a handful of wise and literate men, powerful enough to have, at least, an indirect influence on royal power. The role of this social group has been recently studied by Bernard Guenée, *L’Opinion publique à la fin du Moyen Age d’après la ‘Chronique de Charles VI’ du Religieux de Saint-Denis* (Paris, 2002). But, since 1958, the concept of ‘political society’ has been completely renewed; see for example Jean-Philippe Genet, *La genèse de l’Etat moderne. Culture et société politique en Angleterre* (Paris, 2003), pp. 102–6. By ‘political society’, I mean not only those who enjoyed direct participation in power such as the urban elites but also those who were, in normal circumstances, excluded from the political stage but who were able to make their voices heard to royal power, especially during rebellions. In my view, the *commons* were very much part of this ‘political society’.

⁸ Jacques Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Age: étude de la littérature politique du temps (1380–1440)* (Paris, 1981) and Jacques Krynen, *L’empire du roi: idées et croyances politiques en France (XIIIe–XVe siècle)* (Paris, 1993).

⁹ Hugues Neveux, ‘Commentaire dans une perspective française’, in Peter Blickle (ed.), *Résistance, représentation et communauté* (Paris, 1998), pp. 59–69.

apply word for word to the concepts of *res publica* and *utilitas publica* and, in fact, I would like to go back over the ambivalence and flexibility of these notions, which make them both understandable and usable by political or social groups whose interests are clearly divergent, if not mutually antagonistic. In fact, if the deep impact of such concepts on the government of European kingdoms does not need to be proved anymore, the study of the process by which the modern state was established should not be limited to measuring the intelligibility of the fundamental principles which supported royal government, nor to the exploration of the ideology of royal councillors and its theoretical origins.

If the development of such a royal phraseology intended to legitimate royal domination can only be explained in accordance with its reception, we should recognize that this reception was not entirely shaped and totally controlled by the monarchy through skilful propaganda. On the contrary, the rapid diffusion of certain themes developed by the French monarchy raises the possibility that they already existed within 'political society', and notably inside each community, town or village. In other words, we might wonder if 'the peasants' or burgess' values upon the community were not taken up by the state in order to legitimate its position',¹⁰ or even that the values of the communes could have been the soil in which royal propaganda took root. This hypothesis could explain why these communes could subscribe so easily to the royal political view: communes would recognize in it their own values – the concepts that made each one exist as a community – and this process would further their identification with the kingdom as a community itself, through the idea of *communitas regni*. Indeed, we have no evidence that demands for the reform of the kingdom or for ethical rule of the state¹¹ were major concerns only for a literate elite able to use concepts derived from Roman culture or the written law. On the contrary, it seems that, in the late Middle Ages, the wish to build up a monarchy, whose goal would be to act for the *common weal*, was one of the main motivations for peasant resistance to the growth of the modern state. This situation can probably be explained by the existence of a strong feeling of *utilitas publica* inside each local community, a feeling which developed prior to the deployment of the concept by the state.

I will now focus on the province of Languedoc, formed by the perpetual union of the three royal *sénéchaussées* of Toulouse, Carcassonne and Beaucaire. This region was characterized by the presence of strong peasant communes, most of them provided with an institutional form through a consulate, a syndicate or elected proxies, which means that many of these communes were considered as *universitates* and enjoyed privileges linked to the status of a *universitas*. By looking at the different routes through which these communes engaged in dialogue with

¹⁰ Peter Blickle, 'Introduction', in Peter Blickle (ed.), *Résistance, représentation et communauté* (Paris, 1998), p. 4.

¹¹ Raymond Cazelles, 'Une exigence de l'opinion depuis Saint-Louis: la réformation du royaume', *Annuaire Bulletin de la Société Historique de France*, 1962/3 (Paris, 1964), pp. 91–9.

the monarchy – lawsuits and appeals to the royal courts, petitions and requests addressed to the king, rebellions, links with the Estates of Languedoc – it will be possible to show how this idea of *res publica*, far from being a rigid political *topos*, was refined and enriched through contact with these peasants' communes and under their influence. Thus, the idea of *res publica* not only proceeded from the top but seems to have been the result of a conjunction between high political ideas developed by royal councillors and the more diffused perception of a common interest that communes themselves possessed.

If we look at the semantic field, the Latin expression of *res publica* may have been adopted by the Languedoc communes from the preambles of royal charters that used and misused this principle, especially to justify taxes. We can quote a few examples contained in royal acts dating from the end of the fourteenth century, a difficult period for the province, as the countryside was systematically plundered by unofficial troops of armed men, most of them coming from Brittany or Gascony¹² and pretending more or less to be on the French or English side. In April 1380, the communes of Languedoc sent ambassadors to Paris to obtain both the dismissal of the king's lieutenant in the province, Louis, Duke of Anjou, brother of Charles V, and a significant reduction in taxation. On 25 April, the king decided to uphold most of the complaints presented to him, including the dismissal of his brother: in the charter he delivered on this occasion, he justified this act by citing 'the good estate and useful government of the land and of the king's subjects'.¹³ In 1386, John, Duke of Berry, the new royal lieutenant in Languedoc, decided to institute a *juge réformateur* in order to investigate some serious crimes (*enormia crimina*) which had been committed in the *sénéchaussée* of Beaucaire by what the text calls 'sons of iniquity'.¹⁴ The Duke did this because he considered that, 'for the *res publica*, such crimes should not remain unpunished'.¹⁵ Finally, in 1392, Charles VI ordered the royal treasurers in Languedoc to use a large part of their tax revenues to repair the walls of Toulouse, Nîmes and others towns of the province. His argument was to say that the poor state of these walls could provoke a great loss for the king and the *res publica*.¹⁶

¹² On this aspect of the Hundred Years War, see Nicholas Wright, *Knights and Peasants: the Hundred Years War in the French Countryside* (Woodbridge, 1998).

¹³ *bonum statum ac utile regimen terre ac subditorum nostrorum*; Alphonse Blanc, 'Le rappel du duc d'Anjou et l'ordonnance du 25 avril 1380', *Bulletin philologique et historique du Comité des Travaux Historiques et Scientifiques* (1899): 191–212..

¹⁴ Archives Départementales de l'Hérault [ADH], A 6, fol. 179: *iniquitatis filii*. This expression is one of the most common ones used by the royal authorities to characterize rebels during the fourteenth and fifteenth centuries. Let us remember that *iniquitas* indicates a misdeed that leads to Hell.

¹⁵ *Ibid.*, *intersit rei publicae ne maleficia remaneant impunita*.

¹⁶ ADH A 6, fol. 23–24 v°: 'grand grief prejudice et dommage de nous et de la chose publique'.

So the monarchy was able to use the concept of *res publica* in very different fields, and it appears to have been an all-encompassing principle: strictly linked to *Justicia* guaranteed by the king and to *Pax* through the conduct of the war, it implied, maybe even more than *Pax and Justicia*, the good and the prosperity of all the subjects. Nevertheless, it was mainly to justify fiscal impositions that the monarchy deployed this principle: if the taxes were always legitimated by the idea of *res publica*, tax reductions, relief and even suspensions could be explained on exactly the same grounds. In 1389, several rich men and former consuls of the town of Limoux petitioned John, Duke of Berry, for the cancellation of a lawsuit launched against them for fiscal misappropriation. They argued that such a lawsuit could provoke the exile of the richest men and the merchants of the town and, in consequence, the ruin of the city which would be a great loss for the king and a great source of damage to public utility. The Duke, in turn, granted them his grace in consideration of the profit and utility of the king and for the utility of the town.¹⁷ From these few examples, we can already see that the use of *res publica* and *utilitas publica* seems to be slightly different, depending on the user's position: kings and princes like to remind their subjects of *res publica*; the subjects themselves call royal attention to *utilitas publica*.

Institutional Resistance using *Res Publica*

Perhaps the massive diffusion of such Latin expressions in Languedoc – we are not talking here about the concepts themselves as they must have existed long before – was the consequence of royal acts and letters and of the habit adopted in return by the communes of drafting their petitions in language very close to that used by the royal chancery. My choice of ‘massive diffusion’ is quite deliberate as I would like to suggest that the apprehension of these terms was not limited to urban and literate elites alone. As I have already pointed out, Languedoc was characterized by the existence of consulates or syndicates in villages as well as in towns; if such institutions were not at all ‘democratic’, we should not assume that political debate within them was systematically restricted to a handful of rich and wise men. For instance, the case of Saint-Guilhem-le-Désert – a village located just near the powerful abbey of Gellone – shows that, between 1381 and 1388, 34 men were deeply involved in the decision-making processes of the syndicate as proxies, captains, councillors, notaries or tax collectors, let alone as sergeants or *bandiers* in charge of the rural police. A complete list of the householders of this

¹⁷ Archives Départementales de l'Aude [ADA], 4 E 206 (Limoux), CC 2: ‘les bons hommes de la dicte ville, marchans et autres, leussent a desemparer et delessier, dont icelle ville pourroit venir en grant desertacion, qui seroit moult grand dommage du roy et de la utilite publique dudit lieu’. The duke's letter of grace was conceded in respect of the ‘prouffit et utilite du roy et pour la conservacion et utilite de la dicte ville’.

village, drawn up in 1402, reveals 136 persons, including 14 women.¹⁸ We can estimate, therefore, that during this decade, at least one out of four householders of this village was involved in communal government. And these village elites – if we can use this expression considering their modest social positions – were not isolated from the other inhabitants; their discussions, their decisions, the messages and orders they received from other communities or royal agents were widely shared by the entire population. Moreover, the recourse to general assemblies in time of crisis allowed each member of a given community to participate, at least in a temporary way, in public decisions.

In 1382, the proxies of Bagnols-sur-Cèze,¹⁹ a small town situated in the northern part of the *sénéchaussée* of Beaucaire, were forced to convoke a general assembly in the parish church in order to ratify their decision to forbid the *Tuchins* – mostly peasant troops who rebelled against the authority of the Duke of Berry – to enter the town. While, in normal circumstances, most of the decisions were taken by about 20 or 30 people, on this occasion, about 500 men, many poor people (*pauperes et minuti*) amongst them, joined the assembly and forced the town's leaders to surrender.²⁰ If such an assembly seems quite unusual, peasants and humble craftsmen had other ways to familiarize themselves with the legitimations employed by the monarchy. Royal charters were publicly announced by heralds in places deliberately chosen to assure maximum diffusion – especially market squares – and this process was obviously the first source of information and rumour for most peasants and citizens.²¹ It was in the marketplace of Bagnols-sur-Cèze that the peasants from surrounding villages heard the abolition of poll-taxes ordered by Charles V in September 1380 as well as the removal of the salt taxes by Charles VI a month later.²²

¹⁸ Jean-Loup Abbé and Vincent Challet, 'Du territoire à la viguerie: espaces contruits et espaces vécus à Saint-Guilhem-le-Désert à la fin du Moyen-Âge', *Annales du Midi*, 119/260 (2007): 509–32.

¹⁹ Bagnols-sur-Cèze had neither consulate, nor syndicate, but was nevertheless a *universitas* with four proxies elected for one year. On the institutions of this town, see Pierre Béraud, *Histoire de la ville de Bagnols-sur-Cèze* (Nîmes, 1941).

²⁰ For this event and the *Tuchins*' revolt, see Vincent Challet, *Mundare et auferre malas erbas: la révolte des Tuchins en Languedoc*, PhD thesis, University of Paris-I Panthéon-Sorbonne, 2002, unpublished, pp. 352f.

²¹ For the role of market squares as vehicles for rumour and information, see Vincent Challet, 'Au coeur de la révolte: les conflits paysans et leur résonance en milieu urbain en Languedoc à la fin du Moyen Âge', in François Clément, John Tolan and Jérôme Wilgaux (eds), *Espaces d'échanges en Méditerranée* (Rennes, 2006), pp. 149–62.

²² The charter of Charles V is published by Léopold Delisle, *Mandements et actes divers de Charles V (1364–1380)* (Paris, 1874), p. 948. See also Harry A. Miskimin, 'The Last Act of Charles V. The Background of the Revolts of 1382', *Speculum*, 38/3 (1968): 433–42. Charles VI cancelled the *gabelle* in November 1380; see Françoise Autrand, *Charles VI* (Paris, 1986), pp. 80–2.

Moreover, from the 1350s, many communes sued noblemen in the royal courts in order to oblige them to contribute to the local taxes paid by the non-noble inhabitants. To support their actions, they made systematic use of the argument of *utilitas publica* and, in many cases, they were successful. In 1370, Charles V authorized the consuls of Alès to collect taxes from the town's lords in order to repair the damage caused by the flooding of the River Gardon the year before.²³ In 1386, the *Parlement* of Paris declared that noblemen from Beaucaire had to pay local as well as royal taxes and to contribute to the useful and necessary expenses incurred for the defence and protection of the town.²⁴ Even before this, in 1380, the proxies of Lunel had pleaded a similar case in the *Parlement* of Paris: they argued that, if noblemen did not contribute to royal taxes, they would be even freer than the king himself, as the king risked his goods and his person night and day to defend the kingdom. They also asked the following question: if Adam is our father and Eve our mother, why are we not all equal in nobility?²⁵

Thus, in the 1380s, communes in Languedoc did not hesitate to use the argument of *utilitas publica* in royal courts against noblemen or even their own lords. Of course, one may suggest that references to *utilitas publica* are merely the result of judicial proceedings but the content of these proceedings also reveals the internal and very material concerns of these communities. 'Public utility' is here forged much more by daily events than by political theories: this can be seen in the example of damage caused by a flood. While rivers came to be considered part of the royal domain from the fourteenth century, communes had regarded them as a public resource for quite some time, and, as a consequence, had considered protection against flooding and repair of the subsequent damage as collective responsibilities. The notion of *res publica* derives from the perception of common utility and shared interests and this type of conception was validated by royal courts, especially in cases concerning safety and defence: *res publica* thus reveals itself as a practical value, deriving its content from the communes, rather than an abstractly legal or political one.

²³ ADH A 6, fol. 26.

²⁴ Archives Nationales [AN], X 1 A 34, n° 40, fol. 122 v° à 124 v°. Beaucaire had two separate syndicates as two of the proxies were elected by noblemen and eight were elected by the non-noble or *plebei*. See Alexandre Eyssette, *Histoire administrative de Beaucaire depuis le XIIIe siècle jusqu'à la révolution de 1789* (Beaucaire, 1884).

²⁵ ADH A 240, fol. 115: *Si pater est Adam et cunctis sit mater Eva, cur non sumus nobilitate pares?* It is of course very striking how close this question is to the preaching of John Ball during the English Peasants' Revolt in 1381. According to Froissart, John Ball would have said: 'We be all come from one father and one mother, Adam and Eve: whereby can they say or shew that they be greater lords than we be?' and Thomas Walsingham tells us that John Ball began his sermon at Blackheath by: 'Whan Adam dalf, and Eve span, wo was thanne a gentilman?' Both these texts are quoted by Richard Barrie Dobson, *The Peasants' Revolt of 1381* (London, 1970), pp. 371 and 374.

The working of the Estates of Languedoc also greatly helped to popularize the expressions of *res publica* and *utilitas publica*. From the reign of John II, these assemblies of representatives, most of them members of urban elites, were regularly convoked by the king's lieutenant either at a provincial scale or at the level of the *sénéchaussée*. The discussions held in such assemblies between royal agents and towns' delegates made them very familiar with the new vocabulary used by the monarchy. In November 1382, the Duke of Berry gathered together the Estates of the *sénéchaussée* of Beaucaire at Nîmes to discuss general problems and the *res publica*.²⁶ If the goal of these assemblies was essentially to vote the subsidies asked by the king's lieutenant, the towns' representatives could also express their claims, which helps us to understand the perception of the *res publica* by the king's subjects. In November 1369, the Estates of Languedoc convoked at Toulouse by Duke Louis of Anjou granted him 430,000 francs in exchange for the recognition of some privileges, most of them concerning the control of public expenses and the military defence of the province. The king's lieutenant consented to stricter surveillance of his captains and soldiers and, in addition, he authorized the inhabitants to take up arms and resist any royal troops found plundering their villages or stealing their crops and livestock. By this act, he gave official legitimacy to acts of self-defence committed by peasants against 'French' soldiers, whose behaviour in the countryside was very similar to that of the so-called English troops.²⁷

In the same way, in April 1380, representatives of Languedoc pulled off a similar bargain with Charles V in Paris: in exchange for the vote of some taxes – especially a salt-tax – Charles V granted the dismissal of his lieutenant, whom the communes regarded as a magnificent prince using public resources for his own interests. The king also promised to send Bertrand du Guesclin at the head of armed troops and gave the right to the communes to appoint auditors with the power to supervise all the royal expenses, civil as well as military ones.²⁸ If control of the entire fiscal process was clearly an obsession of the urban elites, it also remained a major preoccupation of the rural communes; besides, the licence given to the villagers to resist any pillagers plundering the countryside, even if they belonged to royal companies, arose from peasants' demands. This coalescence of concerns was the consequence of a common political culture, slowly elaborated from the beginning of the Hundred Years War, gathering together consuls,

²⁶ ADH A 240, fol. 141.

²⁷ A copy of this agreement concluded between the Duke of Anjou and the representatives of the province is kept in the Archives Municipales de Montpellier, fonds Louvet, D 13, n° 46. A more complete analysis of this agreement appears in Vincent Challet, 'Pro deffensione rei publice et deffensione patrie: les paysans ont-ils une conscience politique?', in Vincent Challet, Jean-Philippe Genet, Hipólito Rafael Oliva Ferrer and Julio Valdeón (eds), *La société politique à la fin du XVe siècle dans les royaumes ibériques et en Europe* (Paris and Valladolid, 2007), pp. 165–78.

²⁸ Blanc.

lawyers, merchants, craftsmen and *popolo minuto* as well as lords and peasants, with all these social groups sharing the same conception of *res publica*. But, this conception was not at all identical to the one promoted by the royal chancery, and above all because, for people from Languedoc, the *res publica* was not understood on the scale of the kingdom but on the scale of the province, perceived as *patria occitania*.²⁹ Based essentially on the security and defence of a *patria* limited to the *sénéchaussées* of Toulouse, Carcassonne and Beaucaire, the principle of *res publica* was conceived according to the common interest of the local population and was an argument used to convince the crown that the profits from taxes must be used for local and military purposes.

Res Publica in Rebel's Discourse

This convergence of opinions between the different social groups in the province can clearly be seen during the revolt of the Tuchins. This rebellion occurred in 1381 when Charles VI decided to appoint his uncle, John, Duke of Berry, as his lieutenant in Languedoc, and took the form of an armed opposition to the Duke's troops and a refusal of his fiscal demands. The consuls of Toulouse were the very first to react and took the initiative by convoking the delegates of their *sénéchaussée* in their city to discuss the measures that should be taken to assure security. Such an assembly was obviously illegal, as only the king's lieutenant or one of his subordinates could address a convocation and it was clearly an act of insubordination. But to convince the other delegates to join their rebellion and probably with the advice of lawyers, the consuls of Toulouse made reference to the *res publica*: in a letter dating from February 1382, they invited the consuls of Castelnaudary to come to Toulouse to talk about the king's honour and the utility of *res publica*.³⁰ In March, they mobilized the urban militias of Toulouse in order to lay siege to Buzet's royal castle, occupied by troops at the service of the Duke of Berry. On this occasion, they asked the consuls of Montréal and Castelnaudary to support their action and described this military operation as for *utilitas patrie et rei publice*.³¹

²⁹ Philippe Contamine, 'La royauté française à l'origine de la *patria occitania*?', in Rainer Babel and Jean-Marie Moeglin (eds), *Identité régionale et conscience nationale en France et en Allemagne du Moyen-Age à l'époque moderne* (Sigmaringen, 1997), pp. 207–17. For the notion of *patria*, see Gustave Dupont-Derrier, 'Le sens des mots "patria" et "patric" en France au Moyen-Age et jusqu'au début du XVIIe siècle', *Revue Historique*, 188 (1940): 89–104 and Bernard Guenée, 'Etat et nation en France au Moyen-Age', *Revue Historique*, 237 (1967): 17–30.

³⁰ ADA 4 E 076 (Castelnaudary), CC 56: 10 February 1382, fol. 107 v^o: *omnia que erint necessaria ad honorem domini nostri Francie Regis et utilitate rey publice*.

³¹ Ibid., 21 March 1382, fol. 157. On the 7 May, they also send a letter to the same consuls asking them to come to Toulouse to talk *pro utilitate patrie et totius rei publice*

But, references to these principles were not limited to the highest and most literate urban elites of the province, as were the consuls of Toulouse and their lawyers. In their account registers, the consuls of Castelnaudary wrote that the sergeants and crossbow men sent to the siege of Corbarieu's castle to help the troops of Toulouse took part in this operation for the *res publica* and the defence of the country³² against the soldiers of Corbarieu who were plundering the king's territory every day, stealing livestock and taking the inhabitants prisoner. Through these events, it becomes possible to make clear what *res publica* meant for these urban governments: while the king's authority and honour are never contested, the documents never allude to the kingdom (*regnum*) but focus instead on the *patria occitania* or, still more locally, on the *patria* of the *sénéchaussée*. After all, the military operations carried out by the communes were for the most part acts of self-defence against pillagers, even if some of those claimed to fight for the king. The *res publica* is very close to the fundamental notion of public order³³ that the king had failed to preserve and the consuls decided to maintain in the province at any price, even to the point of war with the king's lieutenant. But the appeal made by the consuls of Toulouse to a defensive league based on the notions of *utilitas* and *res publica* was only successful because these values were already widespread and shared by urban and rural populations. Of course, this does not imply that the local conception of *res publica* was also shared by the crown: on the contrary, the king always wanted to be the one who defined exactly what *res publica* was and who kept the exclusive right to approve actions taken in its name.

The revolt of the Tuchins was not limited to the region of Toulouse but spread all over Languedoc: armed peasants from different villages gathered together and fought against the troops hired by the Duke of Berry at Uchaud near Nîmes and at Valmalle. In 1383, some of their captains were authorized to negotiate with the Duke's council in order to put an end to the rebellion: in simpler language than that of the urban elites and without any reference to the *res publica*, they nevertheless expressed the same idea. They argued that their only wish was to live freely and to be secure in their homeland and they claimed that they only took up arms with royal authorization, which was a reference to the concessions of the right to self-defence discussed above. Rural communes got involved in the movement, which they did not consider as a rebellion, because they were convinced that the king, unable for a moment to maintain public order, had entrusted them with this mission. They did not realize at all that, by doing this, they usurped an essential prerogative of the crown which was to maintain internal peace; thus, they offended the royal *majestas* and became guilty not only of rebellion but also of treason and of *lèse-majesté*.³⁴

senescallie Tholose (ibid., 7 May 1382, fol. 132).

³² Ibid., 26 March 382, fol. 140 v°: *pro comodo rey publice et deffensione patrie*.

³³ Richard W. Kaeuper, *War, justice and public order: England and France in the later Middle Ages* (Oxford, 1988).

³⁴ The crime of *lèse-majesté* was expressly named among many others in the letters of grace delivered after the rebellion by Charles VI. For the crown, the communes of

As we can see, there was a huge difference between the conception of *res publica* elaborated by the crown and the one perceived by the peasants of Languedoc: if, for most political writers, *res publica* belonged to the exclusive competence of the king, for rural communes it had a quite concrete meaning which concerned every member – the defence of the country.

‘Common Profit’: a Shared Value of Peasants’ Communes

Let us turn finally to the question of the exact words used by the Tuchins themselves and the peasants who supported them (excluding the urban elites). As we do not have any documents written by the rebels, the only way is to look at the registers kept by rural or urban communities in a language which was not Latin or French, but the local vernacular. In this type of document, the exact translation of *res publica* which is *causo publico* is very unusual. The only example I could find dates from 1467 and is a formula by which the members of the general assembly of Beaucaire welcomed the newly-elected consuls: ‘May God let you enjoy it in peace and in good health, for the king’s honour and for the utility and profit of the *causo publico*’.³⁵ But, in documents dating from the end of the fourteenth century, such an expression does not exist and seems to be replaced by the idea of ‘profit’. On 21 October 1381, the consuls of Albi informed their councillors that the Pauc de Lantar, one of the captains living in the environs of the town and fighting in the name of the Count of Foix, Gaston Fébus, had asked for oil, salt, candles and torches. Whereas this captain regularly plundered the town’s territory, he did not hesitate to remind the consuls that he was only fighting for the profit and the honour of the king and the country.³⁶ In April 1383, the consuls of Vendres, a village located not far from Béziers, mentioned in their account registers that one of them was expected to go to Nîmes to meet the Duke’s councillors in order to discuss the profit of the country.³⁷

Even the royal chancery, when it wanted to be understood by the mass of the population, did not hesitate to use the same vocabulary. In July 1383, after the end of the revolt of the Tuchins, Charles VI wrote to all the communes of Languedoc,

Languedoc were guilty of *inobediencias, rebelliones, crimina legis Julie majetatis in capite et in membris* [AN JJ 124, n° 236 and 263].

³⁵ *Dieou vou lou laisse joui en paz e en santa, a l’hounou dou rey e a l’utilita e ou profi de la caouso publico. This formula is included in the report of the consuls’ election in 1467, published by Eysette, p. 120. Maybe earlier examples could be found but such an expression of *causo publico* indicates a French influence and seems typical of the end of the fifteenth century when the vernacular language was contaminated by French.*

³⁶ *Per lo profieg e per la honor del Rey e del pays* [Archives Communales d’Albi [ACA], BB 16, fol. 114].

³⁷ *Sertanas causas aprofechatblas e pertoquans al present pays* [Archives Communales de Vendres, CC 5, fol. 46].

summoning their representatives to a royal council, at Lyon, at which the conditions for the king's forgiveness were to be established. The letter is written in French and specifies that the delegates must be at Lyon to talk about certain problems concerning the good and profit of the king, and of the country of Languedoc and of the entire kingdom.³⁸ But we also have a vernacular version of this letter: indeed, on receiving it, the consuls of Albi reported it to their councillors and wrote down that they were convoked by the king to talk about the profit and honour of the kingdom.³⁹ Finally, there is a Latin version of the text delivered by the seneschal of Toulouse, Hugues de Froideville. In this letter issued to suspend the sessions of the royal court, he justified the delay by citing the fact that the communes had to send their representatives to Lyon to discuss the honour of the king and of the *res publica* of Languedoc.⁴⁰ He thus inserted in his Latin charter the words *res publica*, which seem to have been very popular in the royal chancery but, at this stage, quite unfamiliar to most communes of Languedoc. This comparison between three versions of a same text – in French, in Latin and in the vernacular – is eloquent: Occitan does not know the expression *res publica* or any equivalent but uses the expression of *profieg et honor*. This phrase may refer to the principle of 'common profit' which was used by canonists and was already present in Beaumanoir's compilation. According to Peter Blickle's works, the notion of the 'common profit (*Gemeiner Nutzen*)', a global value closely linked to peace, would be a specific production of local communes and arose from their political internal experience.⁴¹

Nevertheless, the situation of Languedoc seems to be slightly different: what happened is that peasants and city folks used a romano-canonical expression ('common profit') slightly changed into 'profit and honour', to put authoritative and almost magical words on their strong feelings of belonging to a single community. Because the 'common profit' was a principle born inside the community and one that assured its cohesion, it was in its name that peasants, craftsmen and urban elites reacted as a community when confronted by events that endangered the existence of their group. This idea of 'common profit' could explain, then, why most of the consulates of Languedoc joined the revolt of the Tuchins.

³⁸ *Pour certaines besoingnes qui touchent tres grandement le bien et proufit de nous et de nostre pays de la Languedoc ... et de tout nostre royaume* [Archives Communales de Lunel, AA 4, n° 1734].

³⁹ *Certanas causas tocan lo profieg e la honor de son realme* [ACA BB 17, fol. 18 v°].

⁴⁰ *Ad honorem et commodum domini nostri Regis et Rey publice dicte nostre senescallie et totius patrie presentis* [ADA 4 E 076, FF 3].

⁴¹ As I do not read German, I have used Joseph Morsel, 'Lecture de Peter Blickle, Kommunalismus. Skizzen einer gesellschaftlichen Organisationsform', *La formation des communautés d'habitants au Moyen Age*, colloquium of Xanten, June 2003, available on LAMOP's website <http://lamop.univ-paris1.fr/W3/Xanten/Xanten.htm#peter>.

Conclusion

In conclusion, I would like to suggest that we need to think about the themes of this volume – statebuilding from below and empowering interactions – in relation to the global political society. The state must be conceived as being in a condition of permanent interaction, not only between the monarchy and social elites but also between the crown and the *popolo minuto* or rural communes. As far as the concept of *res publica* is concerned, we should wonder if the concrete and real meaning of this expression is not at the junction of two different and mutually antagonistic movements: on one hand, an impetus from the top which makes of the *res publica* an essential prerogative of the king; on the other hand, the pre-existence inside the communes of the notion of ‘common profit’ which is not exactly similar to what the lawyers call *utilitas publica*. If the exact content of the *res publica* always remains a changing reality – we might think of the war of the *Bien Public* led by several princes against Louis XI – the peasants’ ability to participate in the definition and redefinition of this concept was, for the communes, a way to have an influence on the high politics of the kingdom. Indeed, the fact that the consent of the population was necessary, not only to taxation but, more fundamentally, to statebuilding made the active participation of the subjects in the principles and purposes of that state inescapable. In accordance with this point of view, rebellion – if, by rebellion, we mean a collective action – must be considered not as an obstacle to the state but as a way for the masses to find their place in the state. The confrontation of royal *res publica* versus popular ‘common profit’ was not only theoretical or rhetorical and could lead, as shown by the revolt of the Tuchins, to armed conflicts. By giving a major place to public order and by conceiving national defence in purely provincial terms, the rebellions raised by peasants in the name of ‘common profit’ may have done more than the war itself to force the French monarchy to change into a modern state provided with, among other institutions, a permanent and professional army.

Chapter 14

Statebuilding in Portugal during the Middle Ages: A Royal Endeavour in Partnership with the Local Powers?

Adelaide Millán da Costa

Summary of Statebuilding during the Portuguese Middle Ages as Viewed from Above

Statebuilding in Portugal during the Middle Ages, when viewed from above, appears to be characterized by its precocity when compared to the Western world at that time.¹

During the mid-twelfth century, the kingdom of Portugal achieves political independence – an autonomy obtained within the scope of the struggle against Islam in the Iberian Peninsula and legitimized by the acquisition of territory from the Muslims either by force or by diplomacy ahead of other Christian kingdoms, and by the synchronicity of interests between the ecclesiastical and political powers.²

In his essay on the country's search for its identity,³ José Mattoso emphasizes royal power as the compositing factor that brought together all the previous antinomies, whether geographical, ethnical, social or economic. Actually, from the beginning of the thirteenth century a royal strategy was in place to construct

¹ This chapter is based on a paper presented at the congress *Statebuilding from below: Europe 1300–1900*, Ascona (Monte Verità), Switzerland, 8–11 September 2005, in the panel *Construire l'Etat au Portugal: processus et agents (1300–1500)*, which also included contributions by Filipa Roldão, 'Une voie pour la construction du pouvoir central: le notariat public au Portugal autour de 1300', and António Castro Henriques, 'Approchant l'haut du bas. Les pressions redistributives sur les finances de l'Etat. Portugal 14ième–15ième siècle'.

² Cf. José Mattoso, 'A Monarquia Feudal (1096–1480)', in José Mattoso (ed.), *História de Portugal* (Lisboa, 1993), vol. 2, pp. 23–163; Maria Helena da Cruz Coelho and Armando Luís de Carvalho Homem, 'Portugal em definição de fronteiras (1096–1325). Do Condado Portucalense à Crise do Século XIV', in Joel Serrão and António Henrique de Oliveira Marques (eds), *Nova História de Portugal* (Lisboa, 1996), vol. 3, pp. 11–88.

³ José Mattoso, *Identificação de um País. Ensaio sobre as origens de Portugal (1096–1325)*, 1 – *Oposição*, 2 – *Composição* (Lisboa, 1985).

and control the territory and centralize power based on the creation of juridical, administrative and judicial structures.⁴

The circumstance relied upon by historiography to argue Portuguese precocity in statebuilding is well known, as is the actor of these anticipatory measures: King Afonso II.⁵ The contemporary ideological discourse is particularly significant as it was highly influenced by jurists that heralded the legislative and judicial superiority of the monarch. Some paradigmatic measures practically restated such an ideology: in 1211 the first general laws made their appearance; general enquiries were carried out from 1220 onwards, that is to say, systematic surveys to determine property and royal rights and, obviously, to investigate undue appropriations on the part of lay and ecclesiastical lords; and to complement this, resolution confirmations were established, whereby an obligation was instated to produce documents that demonstrated the royal concession of lordly rights. Central bureaucracy was also subject to rationalization measures, for in 1217 the first registers of documents drafted by the royal chancellery made their appearance. During this same decade, steps were taken to implement notaries at a local level.⁶ The king's testament, written in Portuguese, culminates and, simultaneously, crystallizes the Crown's ideological affirmation as an autonomous structure to the spiritual power, with the political government of men as its field of play.⁷

Although some of these measures remain temporarily exceptional in nature, they advance a programmatic agenda that the Crown will follow, with occasional setbacks, throughout the medieval period and which can be condensed along the following lines: (i) a limitation imposed on the jurisdictional rights of lay and ecclesiastical lords, consolidating the alienation of territory and men into the Crown's domain; (ii) the institution of a central administrative scheme of growing complexity, autonomizing several functional areas of government, justice and fiscality; (iii) the implementation of a local royal administrative network constituted by agents of the Crown; (iv) a clearing-up of the application of the diverse sources of law, with a tendency towards a predominance of royal legislation.

⁴ Cf. Amélia Aguiar Andrade, 'Portugal na Idade Média: um território em construção' and 'Fronteira e rede urbana: um aspecto da estratégia régia de consolidação do espaço do Portugal medievo', in Amélia Aguiar Andrade, *A Construção Medieval do Território* (Lisboa, 2001), pp. 13–50.

⁵ Cf. this king's recent biography by Hermínia Vasconcelos Vilar, *D. Afonso II* (Lisboa, 2005), as well as the other royal biographies published in this collection.

⁶ Cf. Mattoso, 'A Monarquia Feudal (1096–1480)', pp. 111–13; da Cruz Coelho and de Carvalho Homem, 'Portugal em definição de fronteiras (1096–1325)', pp. 99–103; António Henrique de Oliveira Marques, *Portugal na crise dos séculos XIV e XV*, in Joel Serrão and António Henrique de Oliveira Marques (eds), *Nova História de Portugal* (Lisboa, 1987), vol. 4, p. 182.

⁷ Cf. Mattoso, 'A Monarquia Feudal (1096–1480)', p. 113.

Delving exhaustively into this programme and evaluating its efficiency would deflect from this chapter's proposed subject. This synopsis is to provide a context to the acumen of the issue of statebuilding in Portugal as viewed from below.

Statebuilding in Portugal during the Middle Ages as Viewed from Below

Definition of the Operative Concept 'Below'

The absence of an acknowledged theoretical construct regarding statebuilding from below makes it necessary to explain the approach adopted.

The concepts of 'high' and 'low', while implying an obvious hierarchy, also suggest a bond. Accordingly, these notions are assumed to be sub-structures of the same system, foreclosing a priori the action of any possible marginal forces.

According to this line of thought, 'high' corresponds to the Crown and 'low' to the councils, the smallest civil circumscriptions recognized by the medieval political system.

The councils enjoyed a degree of autonomy together with certain prerogatives, among others that of exercising first instance justice and issuing laws, in a restricted or broad assembly, according to the gravity of the subject at stake. The scope of its legislative action was restricted to the normalization of social tensions inside the council itself.⁸

Those were, therefore, organic structures corresponding, in principle, to the power emanating from 'the people'. Nevertheless, as will soon be seen, if the political societies are taken into consideration that comprised this 'low', it becomes clear that they were led by an elite that had a monopoly of the businesses relevant to the common good.

To perform a chronological analysis of the evolution of the councils as a political structure is to follow one of the statebuilding lines of progression as viewed from above.

It is quite clear that the organic quality of local communities preceded their recognition by the central power and, in many cases, shaped the nature of that same recognition. In any case, the councils were subjected to growing and manifold intervention by the Crown in their organization.

Above all, this intervention manifested itself in the granting of *forais* (urban charters), especially during the twelfth and thirteenth centuries. These were written documents establishing the rights and duties of neighbours in relation to

⁸ Cf. article 8 in part XXVII of *Dos Vereadores das Cidades, e Villas e cousas, que a seu Officio pertenceem*, inserted in *Ordenações do Senhor Rey Dom Afonso V*, facsimile of the 1792 edition with an introductory note by Mário Júlio de Almeida Costa and textological notes by Eduardo Borges Nunes (5 vols, Lisboa, 1984), vol. 1, pp. 174f.

the king,⁹ its guidelines being adapted to the requirements of territorial defence and the economic development of the region by considering the pre-existing mode of social organization.¹⁰

Regardless of the typological diversity of these contracts, the norms that governed the community's lifestyle were now in writing and the direct bond of authority between the king and each and every individual living in such communities became an established possibility.

During the thirteenth and fourteenth centuries, the royal programme of intervention within the scope of municipal administration was intensified. Royal legislation fixed the municipal assembly's functioning rules, the competencies of the magistracies,¹¹ and regulated the access of individuals to municipal power.¹² Apart from such legislative actions, the Crown appointed external agents to oversee the councils on its behalf.

At the risk of oversimplification it can be said that the existing historiography about these organized territorial communities¹³ allows a couple of images to be captured regarding the stance they adopted vis-à-vis the construction of the state.

⁹ Cf. Maria Helena da Cruz Coelho and Joaquim Romero de Magalhães, *O Poder Concelhio. Das Origens as Cortes Constituintes. Notas de Historia Social* (Coimbra, 1986), pp. 1–7.

¹⁰ Cf. the systematization of factors explaining council and urban geography in Portugal during the twelfth and thirteenth centuries. Mattoso, *Identificação de um País*, pp. 34 and 307ff.; José Mattoso, 'A Monarquia Feudal (1096–1480)', pp. 205ff.; Maria Helena da Cruz Coelho and Armando Luis de Carvalho Homem, 'Portugal em definição de fronteiras (1096–1325)', pp. 554ff.

¹¹ Legislation collected during the fifteenth century in *Ordenações Afonsinas*, of which Book I includes the municipal and the Crown's official regulations. Cf. *Ordenações do Senhor Rey Dom Afonso V*.

¹² The *Ordenação dos Pelouros*, decreed by D. João I in 1391 published in Artur de Magalhães (ed.), 'Vereações', *anos de 1390–1395. Documentos e Memórias para a História do Porto* (Porto, 1937), pp. 235f.

¹³ The following are some titles recently published in Portugal concerning the relationship between the central and local powers: Humberto Baquero Moreno, 'A evolução do município em Portugal nos séculos XIV e XV', in *Actas das Jornadas sobre o município na Península Ibérica (sécs. XII a XIX)* (Santo Tirso, 1988), pp. 75–110; Humberto Baquero Moreno, *O poder central e o poder local: modos de convergência e de conflito nos séculos XIV e XV*, offprint from *Revista de História*, 6 (Porto, 1988); Humberto Baquero Moreno, 'As oligarquias urbanas e as primeiras burguesias em Portugal', in *Revista da Faculdade de Letras do Porto* (Porto, 1994), 2nd series, vol. 11, pp. 111–36; Maria Helena da Cruz Coelho, *Entre Poderes – análise de alguns casos na centúria de Quatrocentos*, offprint from *Revista da Faculdade de Letras*, 2nd series, vol. 6 (Porto, 1989); Maria Helena da Cruz Coelho, 'Relações de Domínio no Portugal Concelhio de Meados de Quatrocentos', *Revista Portuguesa de História*, 25 (1990): 235–89; Maria Helena da Cruz Coelho, 'O Poder na Idade Média: um relacionamento de poderes', in Luís Nuno Espinha da Silveira (ed.), *Poder Central, Poder Regional, Poder Local. Uma perspectiva histórica* (Lisboa, 1997), pp. 35–46; Armando Luís de Carvalho Homem, 'L'intervention de l'Etat portugais

The first of these images attributes a strictly passive role to them, that is the councils are pictured as buttresses for the implementation of the royal programme to centralize power, and also as territorial enclaves which allow the Crown to put a limit to the influence exerted by lay and ecclesiastical lords.

The second image confers upon the councils a more reactive stance concerning the construction of the state from above. According to this view, the councils were a sub-structure in clear opposition to the rationalizing intentions of the Crown, bound to old custom, particularism and privilege. In this line of thought, the classical institutional model based on the centre/periphery opposition ends up by associating these concepts with order/disorder.¹⁴

Considering what has been outlined above, the proposition is made to evaluate the extent to which, during the Middle Ages, the councils willingly developed a coherent political project that may or may not have coincided with the traditional notion of the state. In other words, is the *jurisdictio* granted to these structures used by the political societies that lead them, to cooperate with or to obstruct the construction of the state by the centre?

Political Geography or the Plural Standing of Territorial Communities

The formal uniformity of local power instances in the Late Middle Ages conveyed by readings of the royal legislation hides huge differences. These differences are brought to light by the way the legislative norms were applied.¹⁵ But the inequality among councils resides at a more determinant level, namely that of the political standing claimed by and recognized for each one of these sub-structures.

The political relevance of each council springs from the interplay of a series of factors: social and economic conditioning; jurisdictional evolution; juridical norms regulating communitarian life and its relationship with the Crown; locally developed fiscal and judicial attributions within the scope of the kingdom's

sur le pouvoir municipal aux XIVe et XVe siècles: rejets et conflits', in Adeline Rucquoi (ed.), *Genese Medievale de l'Espagne Moderne, Du refus à la revolte: les resistances* (Nice, 1991), pp. 95–106; Maria da Conceição Falcão Ferreira, 'Relações entre o poder local e poder central – uma síntese', in *Actas do Colóquio Internacional. Universo Urbanístico Português, 1415–1822* (Coimbra, 1999); Amélia Aguiar Andrade, 'Estado, territórios e administração régia periférica', in *A Génese do Estado Moderno no Portugal tardo-medieval (séculos XIII–XV). Ciclo de Conferências, coord. de Maria Helena da Cruz Coelho e Armando Luís de Carvalho Homem* (Lisboa, 1999), pp. 151–88.

¹⁴ Ana Cristina Nogueira da Silva, *O Modelo espacial do Estado Moderno. Reorganização Territorial em Portugal nos Finais do Antigo Regime* (Lisboa, 1998), p. 19.

¹⁵ Cf. Luís Miguel Duarte, 'Eleições municipais no Algarve no início do século XV', in *Actas das I Jornadas de História Medieval do Algarve e Andaluzia* (Loulé, 1987), pp. 297–304.

administration; royal policy regarding each council; positioning in the geographical circuit privileged by the monarchs; local political societies.¹⁶

While it is impossible to provide a detailed analysis of all these topics, they will be dealt with briefly in order to convey the council's relative importance.

In order to understand the political hierarchization of territorial communities of the Late Middle Ages, the urban factor has to be taken into account. This means that the leadership of these sub-structures is entrusted to cities and villages,¹⁷ in particular, to the most economically developed among them. How this leadership came about is an important factor to be later connected to its ability to relate with the power from above.¹⁸

The degree of autonomy enjoyed by communities also varied. What set them apart was the fact that they were either exclusively submitted to royal jurisdiction or dependent upon seigneurial jurisdiction. In the latter case, the lord became the second instance of appeal on judicial procedures, held countless rights and revenues, and his influence over local societies naturally extended to informal mechanisms of domination. In any case, such cataloguing of the councils does not allow, a priori, any general conclusions to be drawn. Therefore, it must be said that, on the one hand, the kinds of jurisdictional concessions and rights granted to the lords by the monarch were quite diverse and, on the other, the jurisdictional evolution of the councils was not stable: a great number of them were ruled exclusively by a noble family, a military order or a queen, for instance, while others were subjected to an intermittent authority, repeatedly returning to the Crown.

Medieval councils constitute a microcosm that allows for an analysis of the way in which the various sources of right that form the juridical order overlap and harmonize. The juridical settings of the territorial communities necessarily diverged from one another, mostly owing to the rules that were compiled and crystallized over the years. Eventually, royal legislation left a wide margin of social relationships unregulated, heeding the observance of all laws in its scope

¹⁶ The synthesis presented in this chapter refers to the author's essay on the political hierarchization of Portuguese cities and villages during the Middle Ages, *O Mundo Urbano em Portugal na Idade Média* (Lisboa, 2004). It includes bibliographical and documental references supporting the statements made in this present chapter.

¹⁷ Only episcopal centres were called cities. Accordingly, there were only nine cities in Portugal during the Middle Ages: Braga, Coimbra, Évora, Guarda, Lamego, Lisbon, Oporto, Silves and Viseu. The other urban nuclei were called villages. This formal distinction, in accordance with ecclesiastical administration criteria, does not strictly match the demographic, economic, social, cultural and political importance of these urban centres (de Oliveira Marques, *Portugal na crise dos séculos XIV e XV*, p. 182). Nevertheless, medievalists often use the generic term 'city' to designate the urban world of those days, cf. António Henrique de Oliveira Marques, Iria Gonçalves and Amélia Aguiar Andrade (eds), *Atlas das Cidades Medievais Portuguesas (séculos XII–XV)*, *História Medieval*, vol. 1 (Lisboa, 1990).

¹⁸ The symbolic evidence for this hierarchy will be substantiated in the following section.

of application: *forais* (urban charters), *costumes* (customary laws), *posturas camararias* (municipal by-laws), privileges and dispensations from the general law granted by the monarchs themselves.

The process of statebuilding from above gave rise to another council hierarchization factor. While enforcing its programme of territorial control, the Crown split the kingdom into five great judiciary circumscriptions (the *comarcas*) and 25 fiscal districts (the *almoxarifados*). Some cities and villages were selected as headquarters for these civil circumscriptions that fiscally and judicially enclosed the population. The centrality assumed by these places within the regional administrative scheme had an undisputed influence on their outward projection and their own social fabric.

The Portuguese Crown also showed a taste for fiscal and economic domination over the territorial communities, that is the urban centres. At certain junctures, a coordinated royal strategy was extended to all of the cities and villages; at other points in time, an intervention was directed at a specific urban centre, usually as a result of its economic prominence. For that purpose the monarchs made use of several measures: (i) urban investment; (ii) property acquisition; (iii) participation in economic activity; (iv) granting privileges to the community or part of its inhabitants.

The relationship of physical proximity that monarchs cultivated with territorial communities was a major factor in the establishment of the political standing of the latter. During the Late Middle Ages, the main axis of royal displacement encompassed Lisbon, Santarém and Évora, restricting itself to an area that set the court farther and farther away from the peripheries of the territory and even from important urban centres.

Finally, in this attempt at a political reading of the organized Portuguese medieval territorial communities, the issue of its cadres has to be dealt with.¹⁹ This refers to the men occupying the positions of elected local administration and the set of Crown officials acting at a regional level.

First a question: do the institutional divisions (council administration vs. royal local administration) accord with groups of autonomous and differentiated individuals?

¹⁹ The study of political societies and of the structure they were integrated into has a long tradition in Portugal. The first systematic studies dealt with the power of the centre, the central administration and its political cadres; cf. Armando Luís de Carvalho Homem, *O Desembargo Régio (1320–1433)* (Porto, 1990) and the MA and PhD theses written in accordance with this author's research guidelines. Local political societies and peripheral political societies at the Crown's service were also analysed; cf. Adelaide Pereira Millán da Costa, '*Vereação*' e '*Vereadores*'. *O governo do Porto em finais do século XV* (Porto, 1993); Maria da Conceição Falcão Ferreira, *Gerir e Julgar em Guimarães no século XV. Subsídios para o estudo dos ofícios públicos* (Guimarães, 1993); Luís Miguel Duarte, *Justiça e Criminalidade no Portugal Medieval (1459–1481)* (Lisboa, 1999).

The testimonies available, although scarce, include cases of complete role indifferentiation, with agents of the Crown holding offices that would normally go to men from the council government. Thus, some centres sent royal officials on missions to represent the community externally, to the point at which Crown officeholders would permanently hold functions in the council's organs in clear disregard of the kingdom's *Ordenações*.

Such examples of municipal and royal service overlap (at a local and regional level) occurred in communities of distinct political and economic relevance. Consequently, there is not a single reason for this but indeed many: from a probable shortage in the local recruitment market for officials, to a lack of distance between the structures of both powers. The latter is encountered in cities and villages in which the court usually sojourned. The problem was not just that there were mixed public careers, but that there was a true intertwinement between the local and central institutional areas. To illustrate this point it may be mentioned that among the Lisbon municipality's men were officials from higher instances of the monarchy.

According to the above exposition, we once again fall back on the centre/periphery model applied to the political and institutional system, materialized in this case by the bonds established between the political staff from the local and regional Crown structures and the holders of council power. Such bonds²⁰ – personal, economic, loyalty – condition these men's public careers, possibly colliding with their self-reference system,²¹ that is their consciousness of belonging to an institution.

²⁰ Several studies have been conducted on the countless relationships regarding the urban elite (and not just the men on councils): Maria da Conceição Falcão Ferreira, *O arcebispo de Braga, a sua Igreja e os privilegiados da Coroa*, offprint from *Actas do IX Centenário da Dedicção da Sé de Braga (Congresso Internacional)* (Braga, 1990); Maria da Conceição Falcão Ferreira, *Ingerências de D. Afonso V na vida municipal de Guimarães: os privilegiados da Coroa*, offprint from *Revista de História*, 8 (Porto, 1988); Luís Miguel Duarte and Maria da Conceição Falcão Ferreira, *Dependentes das elites vimaranenses face à justiça no reinado de D. Afonso V* offprint from *Revista da Faculdade de Letras. História*, 2nd series, vol. 6 (Porto, 1989); Ana Maria Rodrigues, 'As relações de clientelismo nos meios urbanos. O exemplo de uma vila portuguesa no século XV' and 'A sociedade urbana torriense e os privilegiados da Coroa', in Ana Maria Rodrigues, *Espaços, Gente e Sociedade no Oeste. Estudos sobre Torres Vedras Medieval* (Cascais, 1996), pp. 275–316; Filipe Themudo Barata (ed.), *Elites e Redes Clientelares na Idade Média: Problemas Metodológicos* (Lisboa, 2001).

²¹ According to the terminology used by António Manuel Hespanha, Carla Araújo and Angela B. Xavier, 'Les juristes portugais de l'Ancien Regime. Une banque de données prosopographiques', in *L'Etat Moderne et les Elites. XIIIe–XVIIIe siècles. Apports et limites de la méthode prosopographique. Actes du colloque international CNRS-Paris I* (16–19 October 1991) (Paris, 1996), pp. 47–50.

The same problem can be tackled through an analysis of the 'ideological quality'²² of the municipal elites. This condition is measurable, above all, by the degree of individuals' commitment to the municipal business as well as by the level of professionalism and dedication demonstrated. Therefore, while in some cities and villages there were particular political groups with a great will to exercise the magistracy, in others the citizens who were apt and committed to the needs of government seemed scarce, and tried to avoid this burden which pulled them away from their professions.

Another factor in evaluating this 'ideological quality' is the vehemence or docility shown by the elements of municipal power when rejecting or accepting royal or lordly interference; these interferences concerned innovations in the municipality's organization or the intention to appoint officials to posts usually held by the people. Differences can also be found at this level as to the extent to which each council fought for its prerogatives.

There is an obvious conclusion to be drawn from this analysis of the political standing of organized territorial communities in Portugal during the Late Middle Ages: the discernible diversity relative to the various topics presented makes it impossible to speak of a whole. The 'low' of the political system is multifarious and hierarchized, a circumstance that will necessarily have repercussions on the possibilities of relationship with the power from above.

Institutional Dialogue Between 'High' and 'Low': Moments, Forms, Political Actors, Language

In the kingdom of Portugal, the councils were the king's direct political interlocutors as representatives of 'the people'.

In principle, the opportunities to communicate were manifold. As a matter of fact, each council, from the smallest communities to the big cities, could have its voice heard by the central instances of the monarchy. To this effect they sent letters via emissaries (plain messengers or political delegates), if required by circumstances, or profited from the periods the Crown established for a collective hearing: the moment of the kingdom's general assembly, the Courts.²³

Holding courts depended upon a royal convocation, since this sub-structure did not have a set of regulations that clearly established its competence, composition and frequency of assembly.²⁴

²² This expression is used here in a very generic manner, designating the consciousness ascribed to local government men of the fact that the communities they lead are fully integrated into the kingdom's political system, enjoying certain rights and duties.

²³ The *courts* corresponded to the Portuguese parliament. Apart from noblemen and the high clergy, they included the representatives of territorial communities; cf. Armindo de Sousa, *As Cortes Medievais Portuguesas (1385–1490)* (2 vols, Porto, 1990).

²⁴ Cf. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, pp. 90ff.

To come back to the previously stated conclusion on the political reading of the universe of medieval councils, that the 'low' of the political system is multifarious and hierarchized: this feature influences the composition of the courts when the representatives of the communities are considered.

To elaborate on this: no council was prevented access to the monarch, but in effect not all were summoned to the general assemblies and only a number of them had acquired the right to be permanently heard by the king. During the Late Middle Ages, the political representation of territorial communities was of a distinctively urban character.²⁵

The council's jurisdictional domain also limited the chances of engaging in a relationship with the monarch, since the important cities and villages were represented in the assemblies by their lord and not by delegates of 'the people'.²⁶

The political status of the councils was symbolically crystallized in the arrangement of the seats allocated to the people's delegates at the court's opening session. Countless protests and negotiations arose from this issue, indicating that the hierarchy in the 'low' was quintessential to its relationship with the Crown.²⁷

Furthermore, this hierarchy of the 'low' was visible in the fact that the capacity to participate in a general assembly was not equal among all the councils summoned.

In fact, every council presented special chapters, protests or requests to the monarch, which had previously been written and approved by the municipalities, concerning the most pressing problems of the respective region. Following an analysis of the arguments presented in those texts, it is possible to ascertain the existence of a particular character in the rhetoric used by each council that deliberately projected the oligarchy's self-consciousness together with an external image of the community.²⁸

But there is another level of engagement: the general chapters. These texts, which resulted, in principle, from an assemblage of each community's particular requests, were elaborated by delegate commissions during the periods when the courts were held.²⁹ Studies have demonstrated that certain general petitions

²⁵ De Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, pp. 189ff.

²⁶ This was the case with Barcelos and Braga, cf. Maria da Conceição Falcão Ferreira, *Barcelos: terra de condes. Uma abordagem preliminar (Parts I and II)*, offprint from *Barcelos-Revista* (Barcelos, 1991/92), p. 7.

²⁷ Cf. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, pp. 132–5.

²⁸ Recent research only allows this statement to be put forward as a plausible interpretation; cf. Adelaide Pereira Millán da Costa, 'O discurso político dos homens do concelho portuense na época medieval', in *Discursos de Legitimação. Actas do Congresso* (Lisboa, 2003) (digital document) and 'O discurso político dos concelhos portugueses na Baixa Idade Média: convergências e especificidades – o caso de Elvas', in *Des(a)fiando discursos. Homenagem a Maria Emília Ricardo Marques* (Lisboa, 2005), pp. 265–72.

²⁹ Cf. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, pp. 144ff.

conveyed the interests of the elites from the politically strongest and most active cities and villages.³⁰

Under such circumstances, the statement that the people on whose behalf the protests were presented in the courts were reduced to the 'best of the good' (to use an expression of that time) does not sufficiently explain what was going on. It should be added that they were reduced to the 'best of the good' of some economically powerful cities and villages that, politically, enjoyed effective participation in businesses for the common good. There are indeed clues that point to concerted actions taken by some of these cities either during the courts' preparatory periods³¹ or in times of great crisis.³²

In other words, the possible resistance or contribution to statebuilding from below was highly dependent on the political capital that some of the councils had acquired over time.

Still, these councils, as privileged interlocutors to the monarchy, were 'contaminated' by the 'high' in various fashions, although not necessarily cumulatively: (i) because they were situated in a geographical area close to the king's usual residence, (ii) because they authorized royal officials to externally represent the community or, for instance, (iii) because some of its agents lived at court.³³

There was yet a deeper level of 'contamination' of the 'low' by the 'high', patent in the language used in the texts pertaining to their relationship.

In fact, when examining the municipal agreements, a register also filtered by the written word and quite distant from oral expression, the subject of the protest to be eventually presented to the king is dealt with in an objective and concise manner.³⁴ Afterwards, the protest is reformulated in a technical and juridical language appropriate to the formalities of the 'high', making use of justifications that refer to normative theories of society and power.³⁵ The authors of this new formulation, ideologically more in accordance with the language of the state under

³⁰ Cf. Armindo de Sousa, *O discurso político dos concelhos nas cortes de 1385*, offprint from *Revista da Faculdade de Letras. História*, 2nd series, vol. 2 (Porto, 1985), and Armindo de Sousa, 'A estratégia política dos municípios no reinado de D. João II', in *Revista da Faculdade de Letras. História* (Porto, 1989), 2nd series, vol. 6, pp. 137–74.

³¹ Cf. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, p. 125.

³² Adelaide Pereira Millán da Costa, *Projecção espacial de domínios. Das relações de poder ao burgo portuense*, photocopied PhD dissertation (Lisboa, 1999), pp. 255f.

³³ Pereira Millán da Costa, *Projecção espacial de domínios*, pp. 162f.

³⁴ Pereira Millán da Costa, *Projecção espacial de domínios*, pp. 211–18.

³⁵ Note the erudite argumentation, originating in the conceptual framework of Aristotle and the comments by Bartolo da Sassoferrato, presented to the Evora courts of 1481 by the people, to support the withdrawal of men of trade from municipal government (published by Maria Helena da Cruz Coelho and Joaquim Romero Magalhães, *O poder concelhio*, pp. 133–5).

construction, were the men of letters³⁶ assigned to the government structures of cities and villages, who often were also procurators to the courts.

Therefore, as regards its discourse, the relationship between the councils and the Crown contains a permanent appeal to the juridical order's tutelage over the normalization of institutional connections. The justificatory weapons utilized by both the monarch and the communities are basically the same, thus allowing for a dialogue to be established.

The treatment of this topic, in which an attempt was made to dissect the real chances that the territorial communities had to communicate with the Crown, closes with a dissonant note. In effect, the courts, that general auscultation of the kingdom, provided an aperture to those coming from below and who were marginal to the political system itself. This means that these assemblies received the protests and catered for parallel delegations coming from councils that had sent their legitimate representatives in response to the royal convocation. These dissenting delegations' protests were addressed to the officials formally recognized as the representatives of their communities.³⁷ This was a scheme authorized from above and providing for a more sustained vision of the problems, conflicts, pressures and interests that were latent or developing in the kingdom's peripheral areas of influence.

The Political Values of the 'below': Opponents to or Partners in Statebuilding?

All the arguments presented in this chapter are aimed at dissecting the notion of understanding the 'low' of the Portuguese medieval political system as a whole. In fact, it is only possible to analyse the councils (that became the political leaders of the 'low') within the context of their institutional relationship with the Crown.

Under these circumstances, when considering the issue of the possible existence of structured political ideas, one must be aware, a priori, of the fact that there is no common system of values shared by all territorial communities.³⁸ In any case, one should inquire into whether there were objectives that all councils wanted to achieve, overriding the natural particularities that separated them.

This question can be approached by analysing the substance of the political and institutional discourse produced in the courts by the councils, thereby establishing

³⁶ According to the studies carried out in Portugal to date, in the most representative urban nuclei, a group of officials with juridical knowledge gravitated towards the areas of council government; cf. Pereira Millán da Costa, *Projeção espacial de domínios*, pp. 79ff.

³⁷ Cf. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, pp. 210ff.

³⁸ It would be excessive to maintain that there was an unmistakable structuring of political ideas patent in the will and performance of the administrative personnel of all cities and villages. On the other hand, attention should be given to the process in which the protest presented to the courts was 'manufactured'.

whether there is a tendency towards cooperation with or towards obstruction against statebuilding from above.

The preface to the *Ordenações Afonsinas* (a collection of all sources of law existing in the kingdom, completed before 1446)³⁹ claims that its elaboration was motivated by a series of protests brought to the general assemblies by the people, so that it would be possible to overcome any ambiguity in enforcing justice.

While there are no vestiges of any requests presented in the courts by the councils to this effect, it can be assumed that they were lost. Another possible explanation is to look upon the prologue of the *Ordenações* as a written contrivance by the powers from above to show that all the kingdom's bodies were united in adhering to this measure.⁴⁰

Whether or not it was of their own initiative, it was soon after that three of the most important Portuguese cities asked the Crown for copies of that document.⁴¹ This appears to prove that the councils were in fact looking for the juridical order to be cleared up, so that they would not just depend on the norms of law as an argumentative item of their relationship with the 'high', as has been seen above.

The political system's performance and, above all, the cadres embodying its institutions were subjected to a great number of complaints and proposals presented to the courts by the people.⁴²

The image conveyed therein was that of a fiscal and judicial administration prone to corruption and randomness, with the 'people' anxious to rationalize and moralize its operation through the establishment of a system based on norms of positive law.

The intention of such petitions emanating from below was neither to introduce far-reaching reforms of public order, nor to criticize the existence of a local and regional arrangement of royal officialdom.

Accordingly, the following should be considered: there are no demands to abolish public offices but, instead, requests are formulated that its holders be appointed or elected by the communities; an organic definition of the offices (number of agents, mandate duration, type of recruitment, the quality of its holders regarding their level of education and a description of their duties) is called for; a regime of incompatibility is fixed regarding office accumulation by the same agent as well as nepotism and clientelism; this problem is even emphasized by the conviction that certain Crown officials should supervise agents of other powers, namely the lords and even the king's magistrates; and there are demands as to

³⁹ Cf. footnote 11.

⁴⁰ Note that the scrivener states that the lords also requested this compilation, which is known not to have been the case; cf. Duarte, *Justiça e Criminalidade no Portugal Medieval*, pp. 93f.

⁴¹ Duarte, *Justiça e Criminalidade no Portugal Medieval*, pp. 120–3.

⁴² The general complaints of the people were studied by de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*.

public career differentiation between the holders of local power and the Crown's peripheral administration agents.⁴³

Does such a picture mean that the 'people' were in agreement with the Crown with respect to its statebuilding project?

There could be a great distance between the goals declared in the court's chapters and the true aim of their presentation to the monarch, a distance dissembled by the arguments presented in the documents.

To consider a single example: the recurring criticism of the corruption and illiteracy of local and regional royal agents. These protests can be perceived either as a response by the councils directed at the 'high', suggesting that the Crown should discipline and improve the performance of this body of officials, or as a strategy to accomplish the discharge of those agents of royal intervention.

Hence, the issue regarding a council's cooperation with or obstruction against the statebuilding process remains unclear. Surely the people's delegates, raised within the mental framework of a corporative society, did not have an alternative political project to challenge the Crown's. At the most, they wished to enlarge their leeway in the kingdom's business and improve their status within the framework of the installed powers.

This latter purpose slowly materialized in repeated requests to the king that were either granted or altogether denied, depending on the political circumstances.

There were only two moments in Portuguese political history, moments of Crown frailty, when the people's procurators to the courts tried to implement structural reforms. These measures aimed to institute rules for the parliament's functioning and to maximize its capacities.⁴⁴ That is to say, the councils tried (unsuccessfully) to create mechanisms that would allow them to have increased participation in the political system.

To return to the question concerning the existence of goals that all councils wanted to consign: in several areas there would be as many projects as there were cities and villages. The councils' natural aspirations were driven by the particular interests of those that led them. Actually, the conflicts among these communities would proliferate because its elites demanded privileges, in particular economic privileges, that conflicted with the interests of the others.

But these communities also had common interests that coincided with those of the Crown's. There is a consonance between the councils and the Crown's programme regarding the existence of written norms for the regulation of judicial activity and the kingdom's administration. There were objective reasons for this consonance: the struggle against other powers, usually the lords, whose rule was characterized by arbitrariness.

Although the 'low' of the Portuguese medieval political system, that formed the subject of this paper, was elitist and 'contaminated' by the 'high', it remains a

⁴³ Cf. Pereira Millán da Costa, *Projecção espacial de domínios*, pp. 187ff.

⁴⁴ Cf. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, vol. 1, pp. 259–62; de Sousa, *O discurso político dos concelhos nas cortes de 1385*.

fact that it contributed to statebuilding: a contribution that naturally was in strict accordance with the political ideology of the *ancien régime*, based on a corporative conception of society.

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Chapter 15

Informing the Council. Central Institutions and Local Knowledge in the Spanish Empire

Arndt Brendecke

Introduction

At a remarkably early date, Spain established a set of techniques in order to provide the court in Madrid with a constant supply of information about its widespread colonial empire.¹ The somewhat utopian goal was *entera noticia*, ‘full knowledge’.² The state’s curiosity linked political concerns with scientific ones and became manifest in the questionnaires sent to the Americas by the colonial administration. From the times of Philip II through the early nineteenth century, these questionnaires were designed to keep the Council of the Indies in Madrid informed.³

The gathering of information went hand in hand with an impressively early installation of colonial administration and an intensive programme to evangelize the natives abroad. Actions such as the determination of Madrid as the capital city, the construction of the Escorial, and the completion of the first purpose-built central state archive in Simancas, earned Philip II the historiographic reputation as one of the first absolute monarchs.⁴ In hindsight, his self-disciplined commitment to the study of state papers makes him appear even more modern, as a ‘first servant

¹ Special thanks to Andreas Plackinger, Benjamin Steiner and Matthew Vester for their help, insightful reading, and for looking over the translation.

² Jesús Bustamante García, ‘El conocimiento como necesidad de Estado. Las encuestas oficiales sobre Nueva España durante el reinado de Carlos V’, *Revista de Indias*, LX/218 (2000): 33–55.

³ Sylvia Vilar, ‘La trajectoire des curiosités espagnoles sur les Indes. Trois siècles d’“interrogatorios” et “relaciones”’, in *Melanges de la Casa de Velázquez* (Madrid, 1970), vol. 6, pp. 247–308.

⁴ Wilhelm Georg Friedrich Roscher, *Geschichte der National-Oekonomik* (München and Berlin, 1924), p. 380; Ranke considered Philip II, apparently following Leonardo Donato (see below, footnote 18), as the ‘allerthätigste Geschäftsmann von der Welt’, see Leopold v. Ranke, *Die Osmanen und die spanische Monarchie im sechzehnten und siebzehnten Jahrhundert* (3rd edn, Berlin, 1857), p. 149; Alain Milhou, *Pouvoir royal et absolutisme dans l’Espagne du XVI^e siècle* (Toulouse, 1999).

of the state' *avant la lettre*.⁵ In particular, the monastery-palace of Escorial became both a dark caricature of the 'black legend', and a symbol of central power, where information from the whole empire ran together, and where the king seems to have made his decisions and pulled the strings like a spider in the middle of the web. This metaphor is historically misleading for different reasons⁶ and many objections have been raised against such interpretations, which hold interest only for those fascinated by the metanarrative of early modern Spanish 'statebuilding'. But the aim of this chapter is neither to evaluate the political system of early modern Spain as a whole nor to discuss the character of its most emblematic monarch. Instead, the focus will be on the historical relation between idealizations and practices of the 'informed centre' in early modern times. The examples will be taken from the context of the Spanish colonial empire, where some effects of bureaucratic communication can be observed very clearly, not least because of the distance between the court and the territories, the resulting structural gap of knowledge and experience between centre and peripheries, and the growing importance of basing political communication on writing.⁷

The Omniscient King

The connection between 'social control' and means of 'surveillance' found its way from anti-utopian literature into the social sciences in the 1970s.⁸ Michel Foucault reinforced this idea in *Surveiller et punir* (1975), focussing among other things on the panoptical structures of prisons.⁹ His study encouraged a new epistemic approach to the nexus between statebuilding and information practices, not least because Foucault himself identified the techniques of *inquisitio* and *enquête* as the

⁵ Especially Ludwig Pfandl, *Philipp II. Gemälde eines Lebens und einer Zeit* (München, 1938), pp. 537–47 stylized Philip II as 'master of his emotions'.

⁶ Fray Juan de San Jerónimo, a hieronymite charged with supervising the construction of El Escorial, cites a poem of 1580 describing the king as 'a silkworm that spins the cocoon where it is to finally remain'. Cf. Rosemarie Mulcahy, *Philip II of Spain, Patron of the Arts* (Dublin, 2004), p. 31.

⁷ Charles V mentioned in a Real Provisión (21 August 1528) the 'novedad', 'vanedad' and 'gran distancia' of America as causes for 'la necesidad de mas ynformacion', and also referred to the problems of obtaining knowledge about it, Archivo General de Indias, Sevilla [AGI], Indiferente 421, L. 13, F. 304r–305r, 304v.

⁸ James B. Rule, *Private Lives and Public Surveillance* (London, 1973); Edward Higgs, *The Information State in England. The Central Collection of Information on Citizens since 1500* (London, 2004), pp. 13–19; Christopher Dandeker, *Surveillance, Power and Modernity. Bureaucracy and Discipline from 1700 to the Present Day* (Cambridge, 1990).

⁹ Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris, 1975).

roots of both modern science *and* government.¹⁰ Written descriptions can thus be understood as formations of power, and institutions such as the court, the councils or the central state 'archive' can be seen as necessary elements in the supposed attempt of the absolutistic state to govern extensive territories from a somewhat panoptical position. But to what extent were 'description' and administrative communication ever really in the hands of central governments, and therefore reliable indicators of absolutistic tendencies of statebuilding?

The manifold ways in which the subjects of early modern times used the channels of administration in order to pursue their own interests illustrate the shortcomings of models focussing on an omniscient centre. These models are usually based on the simplistic identification of 'knowledge' and 'power', 'information-gathering' and 'surveillance', that can be traced back to Max Weber's concept of 'means of administration' ('*Verwaltungsmittel*') in the hands of the modern state with the 'means of production' in the hands of the capitalist.¹¹ In fact, the accumulation of information does not automatically imply an increase in power for those who have that information at their disposal, and this was even less the case in early modern times, when the practice of information-gathering was not yet firmly linked to a theory and method of statistical surveys and political arithmetic.¹² Knowledge is to some extent inseparably connected to local contexts,¹³ a problem which will be taken up later, and surveillance was originally understood as a divine ability, an idealized precondition of justice,¹⁴ and in medieval times was considered more a pastoral office of bishops than a royal one. The bishops who assembled for the eighth council of Toledo at the end of the seventh century, for instance, attributed to themselves the 'offices of the eyes' (*officia oculorum*) within the *corpus mysticum* of the Church.¹⁵ The early modern idealizations of the omniscient, constantly communicating and deciding king were based, on the one hand, on this model of goodly justice and pastoral custody according to which everyone had to be heard.

¹⁰ Bernhard Siegert, 'Inquisition und Feldforschung. Zur These Michel Foucaults über die Genese der empirischen Wissenschaften im 16. Jahrhundert', *Modern Language Notes*, German Issue, 118 (2003): 538–56, here p. 540; regarding the epistemic side of scientific practices, cf. Bruno Latour, 'Centres of Calculation', in Bruno Latour, *Science in Action. How to Follow Scientists and Engineers through Society* (Cambridge, 1987), pp. 215–57.

¹¹ See Higgs, pp. 10f.; Dandeker, p. 12.

¹² Paul Slack, 'Government and Information in Seventeenth-Century England', *Past & Present*, 184 (2004): 33–68.

¹³ David Turnbull, 'Knowledge Systems. Local Knowledge', in Helaine Selin (ed.), *Encyclopaedia of the History of Science, Technology and Medicine in Non-Western Cultures* (Dordrecht, Boston and London, 1997), pp. 485–90.

¹⁴ Michael Stolleis, *Das Auge des Gesetzes. Geschichte einer Metapher* (München, 2004).

¹⁵ Michel Senellart, *Les arts de gouverner. Du 'regimen' médiéval au concept de gouvernement* (Paris, 1995), pp. 94f.

On the other hand, they already implied the rather technical concept of a perfect disposability of information in order to achieve perfect decisions. Referring to Philip II, the Venetian ambassador Leonardo Donato commented in 1573:

He sees to all his matters and he is informed about everything ... He works with such assiduity, without taking a break, that there is no official in the world, however assiduous he might be, who works as much at official business as His Majesty ... His ministers say that his intelligence is such that there is nothing that he does not know or see.¹⁶

Louis XIV, to quote the archetype of absolutism, described himself as

‘informé de tout, écoutant mes moindres sujets, sachant à tout heure le nombre et la qualité de mes troupes et l’état de mes places, donnant incessamment mes ordres pour tous leurs besoins, traitant immédiatement avec les ministres étrangers, recevant et lisant les dépêches, faisant moi-même une partie des réponses, et donnant à mes secrétaires la substance des autres’¹⁷

Louis XIV used terms of panoptical observation (‘avoir les yeux ouverts sur toute la terre’) and of a penetrating curiosity: ‘être informé d’un nombre infini de choses qu’on croit que nous ignorons, pénétrer parmi nos sujets ce qu’ils nous cachent avec le plus de soin, découvrir les vues les plus éloignées de nos propres courtisans, leurs intérêts les plus obscurs’.¹⁸ Spanish political thought, especially of the seventeenth century, was fascinated by two techniques by which royal omniscience could be secured. First, a small book providing a total survey of all relevant data, according to the example of Caesar Augustus’ *liber totium imperii*,¹⁹ should always be in the hands or under the pillow of the king.²⁰ Second, the king’s secretary should act as a kind of institutional interface between the king and the outside world. This secretary should ‘listen to everybody and inform himself about

¹⁶ Luigi Firpo (ed.), *Relazioni di ambasciatori veneti al Senato. Tratte dalle migliori edizioni disponibili e ordinate cronologicamente. Vol. VIII, Spagna (1497–1598)* (Torino, 1981), pp. 463f.; concerning Emanuele Filiberto of Savoy see Cornel Zwierlein, *Discurso und Lex Dei. Die Entwicklung neuer Denkraumen im 16. Jahrhundert und die Wahrnehmung der französischen Religionskriege in Italien und Deutschland* (Göttingen, 2006), pp. 309–16.

¹⁷ Louis XIV, *Mémoires & Réflexions* (Paris, 1995), p. 21. Concerning a proposal made by Vaubans to optimize the king’s information, cf. James C. Scott, *Seeing Like a State. How Certain Schemes to Improve the Human Condition Have Failed* (New Haven and London, 1998), p. 11.

¹⁸ Louis XIV, p. 15.

¹⁹ Tacitus, *Annales* I, 11 and Sueton, *De vita caesarum*, 101, 4.

²⁰ Diego Saavedra Fajardo, *Idea de un principe político christiano en cien empresas* (Antwerp, 1678), p. 225.

everything', acting both as the 'throat' and as the 'stomach' of the political body, as 'the mover of the king's thoughts, because he shapes each of them through his presentation of the news to the king'.²¹ Whereas the idea of perfectly informed and informing secretaries can be ascribed to the classical model of 'good advisors' assisting a personal ruler, and is based ultimately on 'trust', the idea of the written survey seems to lead to a completely different model of decision-making, based on 'facts' and 'method'. Of course, both ways had their limits in terms of political consequences and feasibility, and the way in which 'facts' were produced, gathered, processed and displayed is itself a highly political operation and an enduring concern of method. Although the idea of one book summarizing all relevant knowledge was beyond practical reach, *entera noticia* became a kind of leitmotif of colonial administration. But what kind of role did the subjects and local officers play in the accumulation of administrative and governmental knowledge?

Willing Informants and the Flexibility of Courtly Information Policy

A treatise of 1714 states that from the Viceroy down to any vassal everybody was 'consulting, informing, proposing, advising or reporting (... everybody is doing it incessantly)'.²² In a large number of cases, the supposed object of governmental observation can be identified as both the initiator and the one most interested in being recorded in the paperwork of the state. This fact is reflected in the attempts of early modern administrations to filter and reduce the incoming stream of papers or to increase the ability of their own bureaucracies to digest information. The latter phenomenon provides a literal example of 'statebuilding', because it generated a physical growth of the administrative apparatus.

Among the incoming reports from Spanish America, the most impressive examples of unrequested information are probably the so-called *relaciones de méritos y servicios*. These reports of personal merits and services, usually sent on the initiative of subjects seeking royal favours, were important for both king and subjects, especially because of the distance between America and the court, the latter being the place where services had to be rewarded. The court needed these *relaciones* 'because these *ynformaciones* are the means to a fair recompense for services rendered',²³ and the subjects and officers in turn used every possible channel to 'inform' the court in order to convert their loyalty into royal grants and

²¹ Francisco Bermúdez de Pedraza, *El secretario del rey* (Madrid, 1620, reprint Madrid, 1973), fol. 15a.

²² Juan Manzano Manzano, 'Un documento inédito relativo a "cómo funcionaba el Consejo de Indias"', *The Hispanic American Historical Review*, 15 (1935): 313–51, here p. 332.

²³ Philip II, El Escorial, 28 September 1587, in *Collección de documentos inéditos relativos al descubrimiento, conquista y organización de las antiguas posesiones españolas de América y Oceanía [CODOIN I]*, vol. 18, p. 184.

favours. The Council of the Indies reacted defensively against the pressure exerted by these incoming *relaciones de méritos y servicios*, regulating them for the first time in 1528. Thenceforward all reports, petitions and personal information had to be accompanied by a statement of a local judge. Writings without that kind of official comment were no longer to be accepted. Additional technical rules concerning the reading of incoming papers in the Council, the automatic expiration of solicitations older than eight months, and so on, helped to protect the court against the barrage of unsolicited reports and petitions.²⁴ The involvement of local judges did, of course, delegate some competence back to the colony, recognizing that, in practice, the central institution of the Council of the Indies was not able to assess the truthfulness of incoming reports without consulting the expertise of local actors. The court had to relocate decisions from the centre to the advisors of the centre, or even further down to the peripheries. Ultimately this meant basing courtly decisions not on *entera noticia*, but factually on the court's 'trust' in those who sorted out information. This demonstrates a basic problem of centralized systems, the inevitably growing 'Vorraum' or 'Korridor der Macht' (Carl Schmitt),²⁵ filled up with people who try to control the communication between the centre and the peripheries. In the case at hand, only information that had been co-approved by a subject and a local judge made it through the filter; in this sense the centre sealed itself off from conflicting information and from the plurality of colonial voices and opinions. But at the same time the court had to keep the channels open for political reasons. Given that the administration itself could only be controlled when the subjects had a chance to bypass it, that is when communication did *not* reproduce the hierarchy of institutions, the courtly information policy could not castigate unofficial channels or spontaneous acts of communication, since it depended to some extent on their existence. We therefore detect a twofold, ambivalent, somewhat paradoxical communication policy, which at the same time insisted on strict rules of bureaucratic communication and showed a high degree of flexibility in applying them.²⁶ Furthermore the Spanish court, like all decision-making centres, was confronted with the communicative dilemma: either to be blinded by the amount and plurality of opinions pouring in, or to blind itself by restricting them. As a consequence, it gave contradictory instructions. For instance, in 1528, the same year in which the *relaciones de méritos y servicios* were restricted, the

²⁴ Ernst Schäfer, *Der königlich spanische oberste Indienrat, I. Teil* (Hamburg, 1936), p. 69.

²⁵ Carl Schmitt, *Gespräch über die Macht und den Zugang zum Machthaber* (Berlin, 1994), p. 18.

²⁶ John Leddy Phelan, 'Authority and Flexibility in the Spanish Imperial Bureaucracy', in Mark Burkholder (ed.), *Administrators of Empire* (Aldershot, Brookfield and Singapore, 1998), pp. 1–19; Jack P. Greene, 'Negotiated Authorities. The Problem of Governance in the Extended Politics of the Early Modern Atlantic World', in Jack P. Greene (ed.), *Negotiated Authorities. Essays in Colonial Political and Constitutional History* (Charlottesville, 1994), pp. 1–24.

king reminded the counsellors of the Council of the Indies of his order to 'obtain information about the Indies through all ways and manners ... both written and oral, from religious ecclesiastical people and others who have spent much time in the Indies'.²⁷ Philip II later repeatedly prohibited all attempts by his officials to hold back letters sent by his subjects.²⁸ Like Louis XIV, quoted above, and in spite of his aversion to audiences, Philip II understood that continuous communication with his subjects was central to his royal obligations.

Those abroad, even Indios, took every opportunity to write directly to the king.²⁹ Nevertheless we can detect distrust in the mere written word and the reliability of administrative communication channels. The most direct way to contact the court was to go there. Thus, despite the great distance and cost of a journey to Spain, Philip II had to take measures against the numerous people, above all members of the clergy, who personally travelled (or sent agents) from America to the court in order to emphasize the concerns expressed in their written petitions. In 1588 the crown declared that any concern of an American petitioner present at court would not be addressed until the petitioner had made his return voyage. This was certainly not the last attempt to strengthen writing as the only official channel of communication.³⁰ It is noteworthy that transatlantic petitioners often tried to improve their chances at court by carrying letters of recommendation signed by local colonial authorities. The archbishop of Mexico described this technique in 1568 in the introduction to a letter of recommendation he wrote in favour of a certain Diego Quijada: 'Because of the great distance from this realm to your Majesty, everybody who has to go from here and to appear before you with his requests and business, tries to take with him a report about the quality of his person and business, thinking that he is going to achieve what he requests with the help of this report.'³¹ Scholars working both on patronage systems and on travel networking in the *respublica litteraria* have highlighted this method of reinforcing one's personal presence with written recommendations.³² In the case of Diego Quijada, not even

²⁷ *Collectión de documentos inéditos relativos al descubrimiento, conquista y organización de las antiguas posesiones españolas de ultramar [CODOIN II]*, vol. 10. III, pp. 87f.

²⁸ Geoffrey Parker, *The Grand Strategy of Philip II* (New Haven and London, 2000), p. 27.

²⁹ Carlos Riba García (ed.), *Correspondencia privada de Felipe II con su secretario Mateo Vázquez, 1567–91* (Madrid, 1959), p. 190f.; Günter Zimmermann (ed.), *Briefe der indianischen Nobilität aus Neuspanien an Karl V. und Philipp II. um die Mitte des 16. Jahrhunderts* (Hamburg, 1970).

³⁰ El Escorial, 22 June 1588, cf. AGI Indiferente 878.

³¹ AGI Gobierno de México 336A, 6 March 1568.

³² Concerning patronage José Martínez Millán, 'Un curioso manuscrito. El libro de gobierno del Cardenal Diego de Espinosa (1512?–1572)', *Hispania. Revista española de historia*, 53,1/183 (1993): 299–344; concerning erudites Franz Mauelshagen, 'Netzwerke des Vertrauens. Gelehrtenkorrespondenzen und wissenschaftlicher Austausch in der Frühen

the archbishop based his recommendation on personal knowledge, but he relied on another written recommendation that Quijada had brought him from a lower authority when arriving in the City of Mexico. The issue finally reached Madrid in a threefold way: Quijada appeared in person, handed over his written petition, and also presented the archbishop's letter of recommendation. One must assume that this sophisticated and expensive procedure was a necessary combination of elements (person, information, trust); that is, that the petition exerted influence only in combination with the petitioner and his reputation. The distance between court and petitioners could not be bridged by letters alone. The historian Juan Páez de Castro explained it in a letter to a friend in 1562: 'I am so retired from the court, that I can't help if not with letters, but they import little, if they are not brought by someone who negotiates importunately.'³³

Central Institutions and Local Knowledge

As mentioned above, Spain pursued a systematic policy of information-gathering and processing in order to acquire the *entera noticia* about its territories. When Juan de Ovando finished his visitation of the Council of the Indies and became its new president in 1571, he took a series of measures to ensure a well-informed Council, from which I will give three examples that shed light on the contemporary relations between central institutions and local knowledge. First: Ovando installed a *cosmógrafo cronista mayor de las Indias*, whose duty consisted in preparing a full description of the American territories and to keep this description permanently up to date. The *cosmógrafo cronista* prepared a questionnaire, which was printed and sent to the local administrators abroad. Receiving the additional right to evaluate texts about the Indies and bearing in mind the printing restrictions for alternative descriptions of America,³⁴ the *cosmógrafo cronista* became a monopolist for the description of Spanish America, who not only combined the office and a de facto right to censor, but above all, disposed of the necessary information, that is, the answers to the questionnaires. But this overstrained the forces of the *cosmógrafo cronista* systematically. How should one man describe America, its nature and history, without any personal experience, only by reading a mass of reports, each of which might be shaped by the personal biases of its local author? A closer look at the implementation in practice gives the answer: Juan López de Velasco, the first *cosmógrafo cronista mayor*, was asked in 1572 to give his opinion about accusations that Hernando de Santillán had made against Diego Fernández de

Neuzeit', in Ute Frevert (ed.), *Vertrauen. Historische Annäherungen* (Göttingen, 2003), pp. 119–51, here pp. 127f.

³³ Juan Francisco Andrés de Uztarroz, *Progresos de la historia en el Reyno de Aragón* (Zaragossa, 1680), p. 488.

³⁴ Juan Friede, 'La censura española del siglo XVI y los libros de historia de América', *Revista de historia de América*, 47 (1959): 45–94.

Palencia's history of the Peruvian civil war, which was about to be printed in Seville. Santillán's objection had stopped the printing press. A copy of the text with marginal notes made by Santillán was handed to the official chronicler in Madrid, who should decide which version of history was the correct one. But López de Velasco had to surrender both politically and methodologically: first he pointed out that a description might well be historically correct and at the same time politically undesirable: 'if we could find out the above-mentioned and it would be right and totally true, it seems still necessary to look if it is serviceable to Our Highness and good for the fidelity which we have to expect from these provinces, to declare these republics and persons disloyal or suspicious ... in a public history with royal licence.'³⁵ Second he insinuated that he was not able to decide which version of the civil war was the correct one. As a consequence, he proposed to delegate the judgement back to the peripheries where the whole story had taken place. They should censor themselves:

If this history should be published, it seems appropriate to assure that it can be published without any inconvenience. Therefore some copies should be sent at first to the Audiencias of Peru, to persons of confidence. They have the history then read out to the elders of those territories who could have knowledge of these things, they consult about errors or omissions and, having discussed everything, they send it back to Our Highness, because, although this diligence is not necessary in ancient history, it is necessary in the history of present times for the danger of committing an error or insult, taking into account the diversity and uncertainty of fame.³⁶

This example shows that even in an astonishingly centralistic institution like that of the *cosmógrafo cronista mayor de las Indias* there is a vivid understanding of the usefulness of negotiation and delegation to be detected, something which can be called a principle of 'locality'.³⁷ The ways in which the inventor of the institution of central cosmographer and chronicler, Juan de Ovando, used local knowledge, will provide the second and third examples. First, a glance will be cast at how Ovando started his visitation of the Council of the Indies. The standard procedure of medieval monastic visitations would have consisted of serial interviews with the councillors, following an interrogatory and an examination of the books. But Ovando decided to apply a complementary measurement. He interviewed external witnesses who had been in contact with the Council of the Indies, that is courtiers who had served in America and even officers still serving

³⁵ AGI Patronato 171, n. 1, r. 19, fol. 1r. in Diego Fernández de Palencia (ed.), *Historia del Perú* (Madrid, 1913), vol. 1, pp. 6–8.

³⁶ Ibid.

³⁷ André Holenstein, "Local-Untersuchungen" und "Augenschein". Reflexionen auf die Lokalität im Verwaltungsdenken und -handeln des Ancien Régime', *Werkstattgeschichte*, 16 (1997): 19–31.

there. In order to do so, Ovando sent questionnaires, asking the officers abroad to consult local witnesses who had made experiences with the administration of the Council of the Indies. The answers refer directly to the conduct of specific councillors, their corruptibility, and their consuetude to accelerate or slow down administrative processes and so on.³⁸ Thus Ovando turned the practice of ecclesiastic and monastic visitations upside down. Instead of judging an institution from its centre, he availed himself of the widespread communication network of the Council of the Indies, evaluating an institution through its most peripheral clients. By using the locals to check the centre, Ovando applied a denouncing practice of the Inquisition.³⁹ At the same time he factually based parts of an absolutistic reform policy, which usually is interpreted as a high tide of rationalist, centralistic policy, on 'local knowledge'. Ovando's main concern, however, was in this case neither the 'centre' nor the 'peripheries'. Being a protégé of Cardinal Diego de Espinosa, he actually used the opinions voiced abroad politically to replace the older courtly elites with newer ones that were loyal to the rising Cardinal.⁴⁰ Local knowledge thus constituted a potential counterweight, which could be – and was – applied in specific political constellations. My third example, pertaining to the measures taken at the end of the visitation shows, however, that Ovando regarded the inclusion of local knowledge not as an arbitrary political manoeuvre, but as a necessary element in the methodological emendation of central knowledge and even in a form of negotiation of applicable law. According to his plan to codify the law of the Indies in seven books, Ovando envisaged a kind of transatlantic proof-reading and piece-by-piece delivery in order to gain experience, sending first as many handwritten copies as there were provincial synods planned, and 'seeing how this book is published and received in the Indies, and how the annotations will come back from there, it then will be sent emended and completed in a printed version everywhere, and another book in each fleet in the same order until all seven are published'.⁴¹

³⁸ Rafael Diego Fernández Sotelo (ed.), *La primigenia Audiencia de la Nueva Galicia, 1548–1572. Respuesta al cuestionario de Juan de Ovando por el oidor Miguel Contreras y Guevara* (Guadalajara, 1994), p. VIII; Juan Manzano Manzano, 'La visita de Ovando al Real Consejo de las Indias y el código ovandino', in *El consejo de las Indias en el siglo XVI* (Valladolid, 1970), pp. 111–23, here p. 115.

³⁹ Concerning his background see Stafford Poole, *Juan de Ovando. Governing the Spanish Empire in the Reign of Philipp II* (Oklahoma, 2004), pp. 29–55.

⁴⁰ Poole, pp. 116–41; José Martínez Millán, 'Introducción. Los estudios sobre la corte. Interpretación de la corte de Felipe II', in José Martínez Millán (ed.), *La corte de Felipe II* (Madrid, 1999), pp. 13–35, here pp. 22f.

⁴¹ Marcos Jiménez de la Espada, *Código ovandino* (Madrid, 1892), p. 14.

The Superiority of Local Knowledge

A fundamental aspect ignored until now is, of course, how the subjects 'below' assessed the value of their own knowledge. Analysing the rhetoric of subjects writing to the court, a self-confident emphasis of their locality attracts attention. The usual argument is that of being an eyewitness. The *alcalde mayor* Gabriel de Chávez attested his report in 1582 with a threefold repetition of this argument: 'that I saw, and I have seen, viewing with my own eyes'.⁴² The Franciscan Pedro Simón, writing *noticias historiales* in his cell in Santa Fe de Bogotá at the end of the 1620s, stressed his methodological advantage over the far-away chronicler in Madrid:

I was able to inform myself and I made myself capable of the things here through inspection (*vista de ojos*). Without it I think that I would not have the courage to start this work, in order not to run into the danger of being laughed at, like others did in talking about geography or the languages of these territories without the right words, because they neither see it nor are well informed, and they rely on reports of all kinds of people.⁴³

The appreciation of eyewitnesses derives not only from legal practices. It was intrinsically tied to the concept of 'historia' and did succeed in modified ways in scientific practices, politics and administration, in methods of delegating evidence, of authorizing descriptions, and of summarizing information.⁴⁴ It was of almost the same value to have heard something, at least if the source was trustworthy. Diego Muñoz Camargo held it like this: 'the things I treat are those which I have seen and heard from people who are reliable, respectable and authentic'.⁴⁵ The argument of being an eyewitness or of being somehow connected to them, constantly used in letters and reports from below, claimed, of course, a structural pre-eminence of direct experience compared with the secondary knowledge of the centre. As a result, a critical discourse emerged about the blindness of the king and the court, on the one hand, and about those 'false informants' who blind it, on the other hand. A seventeenth-century anonymous Spanish mirror of princes described the blindness of the ruler in dramatic words: 'So the princes suffer that blain to have

⁴² René Acuña (ed.), *Relaciones geográficas del siglo XVI. 7. México* (Mexico, 1986), vol. 2, p. 75.

⁴³ Fray Pedro Simón, *Noticias historiales de Venezuela* (Caracas, 1992), p. 17; concerning Gonzalo Fernández de Oviedo cf. Antonello Gerbi, *La naturaleza de las Indias Nuevas de Christóbal Colón a Gonzalo Fernández de Oviedo* (Mexico, 1992), pp. 284f.

⁴⁴ *Ibid.*, pp. 279–83; Barbara J. Shapiro, *A Culture of Fact. England 1550–1720* (Ithaca and London, 2000), p. 35; Luis Cabrera de Córdoba, *De historia, para entenderla y escrivirla* (Madrid, 1611), fol. 10b.

⁴⁵ Diego Muñoz Camargo, *Historia de Tlaxcala* (Ms. 210 of the National Library in Paris) (Tlaxcala, 1998), p. 286.

very rarely knowledge of the truth. They are assisted constantly by falsehood and they stay blind, deaf and confused ... because they use the eyes, tongues and ears of others'.⁴⁶ The cleric Luis Sánchez analysed the information problem concerning America in a memorandum of 1566: 'those who govern these provinces from abroad, never have seen them, and depend therefore on what others say or write'. But:

nearly everybody who comes from the Indies or writes from there, informs badly and just what he wants, pursuing his own benefits ... everybody wants to live in freedom and latitude, and without anybody tying his hands. And they don't have to inform either about their problems, because there is no remedy. And because they [the Indies] are governed through this information, one has erred very often, and the Council [of the Indies] fell into that [trap] and reasonably yet does not know whom it can believe. And because everybody and the Council are so used to the lies they hear, they don't know whom they could believe.⁴⁷

Sánchez used the argument of local knowledge as a two-edged weapon. First he disapproved of the majority of locals as being prejudiced and selfish. But on account of the huge geographical and cultural distance between the colony and the metropolis, local knowledge could still claim methodological superiority, at least when the trustworthiness of the witnesses had been proved. Thus, for example, Luis Sánchez demanded a *junta* assisted by 'people who all have experience in the Indies' in order to reform the Council of the Indies.⁴⁸ Juan de Ovando, the reformer of the Council of the Indies, in fact tried shortly after Sánchez's statements to institutionalize this kind of local knowledge, proposing that new councillors on the Council of the Indies should previously have served in the Americas. However, the idea was rejected.⁴⁹

As has been shown above, the superiority of the eyewitness rested on 'optical' cognition at first glance only. It was essentially based on experience combined with the personal trustworthiness of the witness. Just like modern science, which – as we learned from Steven Shapin – bases knowledge on trustful observers, the Spanish colonial empire expanded a network of political trust,⁵⁰ sustained on the one hand by attempts to consolidate fixed forms of written reports and on the other hand by professionally trained, sworn scribes (*escribanos*), who had to testify 'facts' in situ, before they could enter into the communication channels of bureaucracy. As a result, not only was the content local, but also the authority that

⁴⁶ Real Academia de la Historia, Madrid, Salazar K–19, fol. 63v; concerning Philip II as a 'blind man' see Parker, p 58.

⁴⁷ Luis Sánchez, Memorial, AGI Patronato 171, N. 1, r., 11, fol. 4r–4v.

⁴⁸ Ibid., fol. 5v.

⁴⁹ Schäfer, p. 163; Jiménez de la Espada, pp. 14f.

⁵⁰ Ralph Bauer, *The Cultural Geography of Colonial American Literature. Empire, Travel, Modernity* (Cambridge, 2003), pp. 3f.

admitted its entrance or attested its trustworthiness. At least the most important technique to gather local knowledge systematically, the questionnaire, warrants closer examination.

Answering Questionnaires

The implementation of standardized questionnaires is of high interest for the study of the relationship between centres and peripheries, authority and subjects, because of at least two qualities featured by the questionnaire as a means of communication. First the questionnaire stabilizes the hierarchy between the inquirer and the respondent. While the inquirer has the initiative to ask the questions, the respondent is – more or less explicitly – obliged to answer only and exclusively to the given questions. Anybody who ever filled in a form has experienced the restrictions of this kind of ‘slot-and-filler’ communication. Second, questionnaires put standard questions in order to get a series of equally structured answers. This helps to guarantee the serial and impersonal processing of data in administrative or scientific contexts, in which every exception would require special treatment outside of the routine procedure and would endanger the comparability of the whole set of data. Reducing the features of the observed entities to a number of parameters, the questionnaire establishes a kind of filter or wall between the outside world and the inside necessities of an office or a laboratory. Seen from the perspective of the history of political communication, the modern state – Max Weber’s *iron cage* – has slotted walls, made of the blank spaces of forms and questionnaires.⁵¹ This structure of administrative communication not only restricts messages ‘from below’, but indeed constitutes the ‘below’, because it defines the ‘subjects’ as ‘objects’ of acts of observation and as the potentially *reactive* party in the constantly asymmetric dialogue of administration.

An analysis of the use of questionnaires in early modern times requires some preliminary remarks, especially because lists of questions were not usually treated with the same formalistic rigour with which a present-day administrative form and its blank spaces are faced. Questionnaires rather served as thematic patterns for the parties involved in an act of formal communication. Considering the whole range of answers and the special situation of colonial questionnaires, it becomes clear that the particular understanding of the questionnaire varied greatly depending on the social position, education and cultural background of the respondent and above all on the large gap not only of knowledge and experience, but also of cultural and linguistic backgrounds between those who asked the questions at court and the respondents in the colonies. Of course, there are cases of resistance against questionnaires and strategies to avoid answering, but it seems of higher interest to examine those examples in which the respondent surprises by over-fulfilling his task to answer. Some answered much more than required, others reported without

⁵¹ Concerning Max Weber’s relation to ‘surveillance’ see Dandeker, pp. 7–22.

having been questioned and a lot of them answered questions that nobody had ever asked.

Walter Mignolo has analysed the background of an overdone response to the official questionnaire of 1577, the *Descripción de la ciudad y provincia de Tlaxcala*.⁵² Its *mestizo* author, Diego Muñoz Camargo, wrote about 300 pages. He enriched his own observations of more than 35 years with a large number of classical quotations, there are 80 pictures in addition, and Muñoz Camargo considered his work of such importance that he travelled personally to Spain, delivering it to Philip II.⁵³ The reason for this attitude lies in a totally different interpretation of his role. Whereas the technique of printed questionnaires presupposed a response as an act of fulfillment of duty, some writers understood their answers as an offering for the king. For this reason, Muñoz Camargo had to write as much as possible, in the best style possible, and he had to dedicate and deliver his work in the most obsequious way.⁵⁴ What is remarkable first of all is the king's reaction. In spite of Philip's official policy against history 'from below', he not only accepted the offering of Muñoz Camargo's work, as his successors accepted other such works in several cases, but he also privileged the work by integrating it into his private library. As a consequence, the *Descripción* eluded not only the strict form of a regular response to a questionnaire, but also the official destiny of the *relaciones geográficas* to serve as a source for the *cosmógrafo cronista*'s description of America. Apparently the king was unable to refuse the submissive gesture of a subject who dedicated his work to him. There is an illustration of a comparable situation, the handing over of the *Relación de Michoacán* in 1541 to the Viceroy of Mexico, which has been singled out in order to exemplify the given manifoldness of loyalties and communicative correlations in colonial contexts.

⁵² Walter D. Mignolo, 'El mandato y la ofrenda. La "Descripción de la provincia y ciudad de Tlaxcala" de Diego Muñoz Camargo y las Relaciones de Indias', *Nueva revista de filología hispánica*, XXXV/2 (1987): 451–84.

⁵³ Luis Reyes García, 'Introducción', in Diego Muñoz Camargo, *Historia de Tlaxcala* (*Ms. 210 of the National Library in Paris*) (Tlaxcala, 1998), pp. 5–61, here p. 26.

⁵⁴ Mignolo, p. 464.



Figure 15.1 Jerónimo de Alcalá handing over the ‘Relación de Michoacán’ to the Viceroy of New Spain, Antonio de Mendoza (Front cover of the document Ms. c. IV. 5 of the Biblioteca del Monasterio de El Escorial / © Patrimonio Nacional).

The picture, shown in Figure 15.1 – in the tradition of the dedication miniatures, which had become popular in the fifteenth century⁵⁵ – shows a monk handing over a work to the Viceroy of Mexico. A close inspection of the picture and its context conducted by Cynthia Stone, however, discloses that neither the author nor the recipient of the text are well-defined entities. The Franciscan Jerónimo de Alcalá was identified as the ‘author’, but the writer of the text introduces himself ‘not as the author, but as its translator’. The real ‘authors’ were, according to the text, ‘the old ones of the city of Michoacán’, that is the Indians behind the monk. And indeed, the handing over of information from the monk to the Viceroy is visually framed by authorities of pre-Columbian society. Cynthia Stone managed to identify the Indian heading the group on the left side, as Don Pedro Cuiniarángari, the indigenous governor of the city of Michoacán from 1530 to 1543, that is the group is a representation of local Indian elites.⁵⁶ The Viceroy shown on the right side of the picture is Antonio de Mendoza (1535–1550). At the beginning of his efforts to compile a history of Michoacán, he complained about the plurality of local opinions, but in 1541, the year of the picture, Mendoza still seemed confident to achieve a definitive account of the things of Michoacán. In a letter to the first official chronicler of the Indies, Gonzalo Fernández de Oviedo, he wrote:

I have very especially sought to become familiar with the account of the things of this land and I find diverse opinions because, since there were many lords in each province, they tell things in their own manner. I am in the process of gathering and verifying [these relaciones] and once I have finished [collecting the material] I will send it to you.⁵⁷

But ten years after receiving the *relación*, Mendoza still complained: ‘There are so many opinions and viewpoints and so diverse, that it is not to be believed ... I could swear that I find myself newer and more confused regarding the government [of this land] now than at the beginning.’⁵⁸ Apparently he had failed to obtain a general idea of his territories through written reports. One reason for his frustration might lie in the multilayered loyalties which Stone brought back to light: she showed that the part behind the Viceroy, painted over with a curtain, hides the contour of an Indian authority in a red tunic, probably a son of the *cazonci*, the supreme ruler.⁵⁹ As a consequence, the communication displayed in this picture neither represents the mere fulfilling of a *mandato*, informing the Viceroy about

⁵⁵ Cynthia Stone, *In Places of Gods and Kings. Authorship and Identity in the ‘Relación de Michoacán’* (Oklahoma, 2004), p. 251, footnote 26; for comparable illustrations see Natalie Zemon Davis, *The Gift in Sixteenth-Century France* (Madison, 2000), pp. 56 and 59.

⁵⁶ Stone, p. 56.

⁵⁷ Following the quotation and translation by *ibid.*, p. 17.

⁵⁸ Translation by *ibid.*, p. 27.

⁵⁹ *Ibid.*, p. 61; concerning the term *cazonci* see *ibid.*, p. 29.

Michoacán, nor can it be interpreted as a submissive gesture, a monk handing over information to the Viceroy. The picture gives us insights into the multilayered structure of communication and loyalties at this level of colonial information and illustrates how the Viceroy's desire to have a clear description of his territory at his disposal, which would enable him to base his government on better knowledge, was subverted.

Conclusion

A well-known effect appearing in the examples above is that in any given vertical political communication the people 'below' learn to use the channels of communication in order to pursue their own interests.⁶⁰ Those 'below' are finally those who feed in information according to their convenience, whenever the centre wants to be informed, or – taking the initiative – when they think that the centre should be informed. The pressure on central institutions resulting from unasked or disproportional writing, from attempts to open alternative channels besides the official ones or to highlight one's own interests through personal presence, configured the communicative situation at least as much as the central interest in information did.

As a consequence, neither the king nor the Council of the Indies can justly be characterized as an institution exerting panoptical surveillance, in spite of its policy to dispose of and to monopolize *entera noticia*. Local knowledge turned out to be inescapable in at least three respects. First of all, the locals are, of course, the source of knowledge, whether phrasing the answers to a questionnaire or writing unrequested *relaciones de méritos y servicios*. Second, central institutions were not able to ascertain the truth about certain assertions made abroad, without considering local knowledge, which again had to be verified through local authorities. Third, it was not least for this reason, no matter what kind of measure was taken, that 'trust' remained a decisive and methodologically irreplaceable link in chains of information, even if the administrative structure or the applied technique implied a certain neutrality of the describers and of the resulting descriptions. A Weberian interpretation would probably complain of the unbalanced allocation of bureaucratic spirit amongst the officers, which made it impossible to have a chain of correspondents who were, per se, 'trustful' and duty-bound. It became visible, however, that the contemporary political culture was not really split into bureaucratic reformers, on the one hand, and selfish or untrained 'dissenters', on the other hand, but rather into contradictory interpretations of the meaning of communication held by both local correspondents and central institutions. It was

⁶⁰ Concerning Foucault's interpretation of the *lettres de cachet* see Martin Dinges, 'Michel Foucault, Justizphantasien und die Macht', in Andreas Blauert and Gerd Schwerhoff (eds), *Mit den Waffen der Justiz. Zur Kriminalitätsgeschichte des späten Mittelalters und der Frühen Neuzeit* (Frankfurt/M., 1993), pp. 189–212, here pp. 240–4 and 194.

the same ideal of the 'omniscient' and therefore 'just' king that, on the one hand, led to programmes of *entera noticia* and, on the other hand, impeded their effective realization. Given that the king and his council had to stay demonstratively open towards spontaneous acts of communication from below and that policy was based on a constantly rebuilt network of loyalties, they were neither able nor willing to reduce political communication to the bureaucratic transfer of abstract and impersonal data.

Chapter 16

Peasants and Tax-farmers in Seventeenth-Century Sweden: Local Conflict and Institutional Change

Mats Hallenberg

The Problem and the Background

In the early seventeenth century a new system of tax-farming was introduced in the Swedish realm. This meant that a private contracting procedure came to replace the direct royal administration of taxes that had been in operation for nearly a hundred years. Since the reign of King Gustav Vasa (r. 1523–60), bailiffs appointed by the king had collected taxes and land-rents in the localities.¹ The introduction of the tax-farming system in 1619 meant that the Swedish peasantry were cut off from direct communication with the royal administration at the local level. In this chapter it will be argued that this had fundamental consequences for the Swedish state. Not only did the system of leases trigger off a tide of local protests, this also made new strategies necessary for the peasant estate in the Swedish diet. The measures taken to establish administrative control of the tax-farmers' business were to shape the character of the royal administration for years to come. The final abolition of the tax-farming system in 1635 was a decisive victory for the peasants' political strategy, and from this point on the peasant estate would persistently use the diet as an arena for solving local conflicts.

In seventeenth-century Europe, the system of tax-farming – the leasing of revenue sources by private individuals – was a very widespread phenomenon. The sale of public offices and tax-farms had been an important source of income for the princes of France, Spain and Italy since the late Middle Ages, and in the seventeenth century the system of leasing out revenue spread to England, the

¹ On local administration in sixteenth-seventeenth century Sweden Mats Hallenberg, *Kungen, fogdarna och riket. Lokalförvaltning och statsbyggande under tidig Vasatid* (Stockholm, 2001). A general survey of the history of early modern Sweden Jan Glete, *War and the State in Early Modern Europe. Spain, the Dutch Republic and Sweden as Fiscal-Military States, 1500–1660* (London, 2002), pp. 174–212. The research for this chapter was sponsored by the Swedish Research Council (Vetenskapsrådet).

German states and the Ottoman Empire as well.² The Swedish realm – including present-day Finland – was no exception, but the Swedish experience of tax-farming differed from those of other European nations in some important aspects. First, when the tax-farming system was introduced in Sweden, the Swedish state already had a well-developed system of local administration, covering all parts of the realm. The government therefore had an alternative to the system of leases and never became totally dependent on tax-farmer mediation. Second, tax-farming in Sweden was remarkably short-lived. The system of leases was abolished after only 15 years, and the Swedish state would never again relinquish control over the tax base. Third, with the freeholding peasants controlling nearly half of the landed wealth of the realm, and with the peasant estate represented in the Swedish diet, the system of leases soon became a political issue, when peasants demanded an immediate return to a royal administration of their taxes.

Tax-farming in Sweden

The defeat in the Danish war of 1611, and the subsequent ransom of the important fortress of Älvsborg, left the Swedish state heavily in debt. With taxes already at a painfully high level, the government had to resort to taking loans from international financiers. Ordinary crown revenue was still based on the land-rents and taxes raised from the peasantry – customs and excises contributed only a small part. Sweden's continuous involvement in military conflict resulted in a need for cash to raise armies, which led King Gustav II Adolph (r. 1611–32) to propose the leasing out of tax districts in 1619. At first, only such revenue that could be leased out for a profit was to be subject to tax-farming, but from 1621 all crown revenue – taxes, land-rents, customs and excises, as well as the crown's landed property and the mining industry – was handed over to private contractors.³

In Sweden, as elsewhere, the leasing out of crown revenue was a means for the state administration to secure a steady flow of cash income and to lower its

² Carolyn Webber and Aaron Wildavsky, *A History of Taxation and Expenditure in the Western World* (New York, 1986), pp. 250–98; James B. Collins, *Fiscal Limits of Absolutism. Direct Taxation in Early Seventeenth-Century France* (Berkeley, 1988); Richard Bonney, 'Revenues', in Richard Bonney (ed.), *Economic Systems and State Finance* (Oxford, 1995), pp. 438–47; Michael Braddick, *The Nerves of State. Taxation and the Financing of the English State 1558–1714* (Manchester, 1995); Linda T. Darling, *Revenue-Raising and Legitimacy. Tax Collection and Finance Administration in the Ottoman Empire 1560–1660* (Leiden, 1996).

³ On the Swedish state finances during this period, see Lars Magnusson, *Sveriges ekonomiska historia* (Stockholm, 1996), pp. 157–78; Sven A. Nilsson, *De stora krigens tid. Om Sverige som militärstat och bondesamhälle* (Uppsala, 1990), pp. 117–96; Gunnar Wetterberg, *Kanslern. Axel Oxenstierna i sin tid* (Stockholm, 2002), vol. 1, pp. 173–7, 227–38 and 393–412.

transaction costs. This was of primary importance to the Swedish government, as the system of leases relieved the royal administration of the burdensome task of converting tax payments in kind into more flexible means of payment. The tax-farming system also provided a tool for obtaining credit, for the contractors were obliged to pay a fixed sum of money at a fixed date, regardless of whether the rents had been collected or not.⁴ In the 1620s, the tax-farming system seemed to have fully replaced the old system of direct royal administration. The death of King Gustav II Adolph in the autumn of 1632, however, triggered off a massive wave of protests at the following diets. Eventually, the system of leases was abolished in 1635, never to return.⁵

The system of leases was based on a contracting procedure in which a tax-farmer received the right to all royal income – taxes, land-rents, tenths and even labour services – from a certain district or property, for a specified period of time (usually two to three years). In return he had to pledge to deliver a fixed sum of money for every year and he also had to present the names of his guarantors. Most taxes were still levied in kind but their monetary value was decided by royal decree and the total value of the contract normally represented the expected net yield of the district. The crown thus took no risk at all, but made sure that the tax-farmers would present the same amount of revenue by year as the royal bailiffs had done in the past.⁶

How then was the tax-farmer to make any profit? His best chance of financial gain lay in the trade with commodities obtained from the tax-payers. In rural Sweden, towns and marketplaces were widely dispersed, and there were plenty of opportunities for those who could offer the right commodities for sale at the right time. The early seventeenth century also saw a substantial rise in prices on agricultural products. Furthermore, the combination of financial resources and government authority inevitably placed the tax-farmer in a very strong position towards the peasants.⁷

⁴ The importance of transaction costs in complex organizations is shown by Oliver E. Williamson, *The Mechanisms of Governance* (Oxford, 1996). For the implications on state organizations see Glete, pp. 55–8.

⁵ An outline of the history of tax-farming in Sweden is given by Johan Axel Almquist, *Den civila lokalförvaltningen i Sverige 1523–1630* (Stockholm, 1917), vol. 1, pp. 142–50. The diets of 1633 and 1634 are treated by Nils Ahnlund, *Sveriges riksdag: vol. I:III Ständsriksdagens utdaning 1592–1672* (Stockholm, 1933), pp. 193–206 and Georg Wittrock, *Krona och allmoge under drottning Kristinas förmyndare. Studier rörande allmogens besvär* (Uppsala, 1948), pp. 1–77.

⁶ Almquist; Aleksander Loit, 'The Early System of Leases in Sweden – based on the Polish "Arrenda"?', in Zenon Ciesielski (ed.), *Relations between Poland and Sweden over the Centuries* (Wrocław, 1990), pp. 31–45.

⁷ Birgitta Odén, 'Naturaskatter och krigspolitik – ett finansiellt dilemma', *Scandia*, 33 (1967): 1–19.

When the system of leases was introduced, the government suggested that burghers, local officials and noblemen would all be considered as tax-farmers. In the Finnish part of the realm even peasants should be granted the lease of crown property. But in the end, it was mostly the burghers who were allowed to seek the benefits of tax-farming. Quite a few contractors, though, were ex-bailiffs who jumped at the opportunity to lease the districts in which they had previously functioned as royal officials. This proves that many bailiffs had indeed been able to accumulate substantial capital for themselves.⁸

While the ex-bailiffs and burghers of the small provincial towns represented the rank-and-file of the tax-farmers, rich capitalists and financiers of the crown like Peter Grönberg and Mårten Wewitzer constituted the elite. These men offered sizeable advances and loans to the crown, and to secure their interest they received large districts for tax-farming.⁹ The crown obviously used the system of leases to raise loans from wealthy merchants, but the system also worked as a means for attracting foreign entrepreneurs to Sweden. Men like the Walloon-Dutch mining industrialist Louis de Geer, Dutch shipbuilder Paridon van Horn and the cloth-manufacturing Struve brothers all established large-scale production in rural districts of Sweden. While the cannons, warships and uniforms they produced were indispensable for the Swedish war effort, the entrepreneurs were themselves dependent on tax-farming contracts to exploit the labour and transporting services of the Swedish peasants.¹⁰

If the tax-farmer's profit depended on trading with commodities, naturally he would demand payments in kind from the peasants. But the peasants often preferred to pay their rents in cash, so that they could sell their own produce and benefit from the rising prices themselves. Peasants in Sweden had to be quite market-oriented, as the relative scarcity of resources made the trade with

⁸ Loit; Almquist. On the bailiffs' accumulation of capital, see Mats Hallenberg, 'Piskan och moroten. Om fogdarnas handel ochandel under tidig Vasatid', in Börje Harnesk and Maria Taussi Sjöberg (eds), *Mellan makten och menigheten. Ämbetsmän i det tidigmoderna Sverige* (Stockholm, 2001), pp. 43–67.

⁹ Grönberg's contract of 15 November 1625 obliged him to provide cash advances and gunpowder deliveries to the crown. In return he would keep the lease of the important mining districts of Säter and Näs until 1628 (kontraktsböcker, vol. BIIIAI): 2, fol. 155, Kammarkollegiets arkiv, Riksarkivet Stockholm). Due to the crown's failure to pay interest, the lease was prolonged in 1630 (kontraktsböcker, vol. BIIIAI): 5, fol. 72). The assumption made in Loit that the Swedish state did not use the leasing of tax-districts as a means for borrowing money thus seems misleading. See also similar contracts for Samuel Lotz and Jan van Vessel, and for Bogislaus Rosen, from 1622 (kontraktsböcker, vol. BIIIAI): 1, fol. 135 and 189).

¹⁰ This is stressed by Almquist, p. 144. See also Maj-Britt Nergård, *Mellan krona och marknad. Utländska och svenska entreprenörer inom svensk järnhantering från ca 1580 till 1700* (Uppsala, 2001).

agricultural produce essential.¹¹ The tax-farmer's enterprise thus came into direct conflict with the peasant's claim to control his own production. The contracts also encouraged a much harsher collection of rents than before. The royal bailiffs had often been inclined to tolerate peasant pleas for postponing tax payments in times of hardship.¹² But a tax-farmer had little reason to sympathize with peasants being unable to pay in time, since any arrears would be equivalent to a personal loss for the contractor.¹³

The Protests

When the tax-farming system was introduced in 1619, the government seems to have already anticipated sharp reactions from the tax-paying peasants. The Dutch shipbuilders in the small town of Västervik, Paridon van Horn and Christian Welshuisen, were granted the lease of several districts in the south of Sweden, but the government at the same time took precaution to issue detailed instructions for the provincial governor of Kalmar. He was to supervise the tax-farmers' activities, so that the contractors would not try to coerce the peasants into making extra payments.¹⁴ Nevertheless, conflict broke out as soon as the tax-farmers started their business. Already in the autumn of 1619, the peasants from Northern Småland were complaining that the tax-farmers were using wrong measurements and trying to collect more than their due share. The peasants filed a lawsuit at the local court, which compelled the king to order the provincial governors to investigate the matter thoroughly.¹⁵ This legal process, however, did not stop the king from prolonging the contract with van Horn and Welshuisen the following year.¹⁶

Conflict was not isolated to the province of Småland. In 1620 the people in the mining district of Finspång were protesting against the tax-farmer and mining entrepreneur Willem de Besche, refusing to perform the labour and transporting

¹¹ Åke Sandström, *Plöjande borgare och handlande bönder. Mötet mellan den europeiska urbana ekonomin och vasatidens Sverige* (Stockholm, 1996).

¹² Eva Österberg, *Gränsbygd under krig. Ekonomiska, demografiska och administrativa förhållanden i sydvästra Sverige under och efter nordiska sjuårskriget* (Lund, 1971); Börje Harnesk, 'Något om den lokala självstyrelsens problematik under 1500- och 1600-talen', in Tom Ericsson and Agneta Guillemot (eds), *Individ och struktur i historisk belysning. Festskrift till Sune Åkerman* (Umeå, 1997), pp. 91–105.

¹³ Odén, 'Naturskatter och krigspolitik'. There was a possibility for the leaseholder to negotiate a discount, but that meant starting a bureaucratic procedure with an uncertain outcome.

¹⁴ Royal decree to Sven Månsson Eketrä 16/4/1619, riksregistraturet vol. 131, fol. 160, Riksarkivet Stockholm.

¹⁵ To Herman Wrangel and Sven Månsson 2/9/1619, on the complaints from the districts of Norra and Södra Vedbo, riksregistraturet vol. 133, fol. 348.

¹⁶ Kontraktsböcker vol. BIIIa1): 1, fol. 43.

services he demanded.¹⁷ Meanwhile, peasants in the archipelago of Åland were obstructing labour services at their tax-farmer's local manor.¹⁸ At the diet of 1622 the peasants of the mining districts were protesting against tax-farmers ordering them to do more day-work and longer transports. Transporting heavy loads through the forests and moors of central and northern Sweden was a time-consuming task, and a downright annoyance for the tax-paying peasants. They reacted bitterly to what they perceived to be forced labour, and pleaded for the king to intervene.¹⁹ The government responded immediately with an official declaration, prohibiting tax-farmers' demanding extra money for payments in kind and manipulating weights and measures. No concession was made to peasants offering money rather than commodities, other than a brief statement that in such cases there must be an agreement with the tax-farmer. The reason for this indifference might well be that the government acknowledged that payments in kind were necessary to keep the system going.²⁰ Such ad hoc regulation was characteristic for the evolvement of the tax-farming system in Sweden. The government responded to protests or dysfunctions by issuing new decrees whenever problems occurred.²¹ Echoes of the peasants' grievances also found their way into the contracts with tax-farmers, which generally included conditions regarding the tax-farmer's treatment of the peasantry.²² But the fact that the protests continued indicates that the regulations probably had little effect.

To return to the peasants of Northern Småland: their lawsuit against the tax-farmers of Västervik, originally instigated in 1619, ended up in the chamber court of Stockholm in 1624. Four peasants travelled all the way from their home district to face the tax-farmer Paridon van Horn, and to repeat the complaints against him in front of several high counsellors of the realm.²³ The peasants stated, among other things, that van Horn had violated their earlier agreement that each peasant in the district would give three barrels and one bushel of rye for the extra tax levied for the army in 1620. When the peasants had arrived at Västervik to deliver the grain, they had been compelled to pay extra money as well, and those who had not

¹⁷ Letter to the *bergsmän* of the province of Östergötland 5/2/1620, Kammarkollegiets kansli, skrivelser till orterna, vol. BIIa1): 9, fol. 25, Kammarkollegiets arkiv.

¹⁸ To the bailiff Anders Larsson 10/5/1620, Kammarkollegiets kansli, skrivelser till orterna, vol. BIIa1): 9, fol. 108.

¹⁹ Resolutions for the districts of Ulvesund and Tuna/Skedvi/Husby, riksregistraturet vol. 140, fol. 167.

²⁰ 'Mandat till arrendatorerna', 17/5/1622, riksregistraturet vol. 140, fol. 169. This decree was also printed in a slightly modified version (årstrycket, Kungliga biblioteket, Stockholm).

²¹ This observation is also made by Loit.

²² See for instance the contract with Didrik Dijkman and his consorts dated 5/4/1620, Kontraktböcker vol. BIIIaI): 1, fol. 64.

²³ The trial is documented in Sam Hedar (ed.), *Kammarkollegiets protokoll med bilagor*, vol. 1, 1620–1638 (Stockholm, 1934), pp. 247–51.

been able to pay up there and then had immediately been prosecuted for the debt. The extra tax levied for the castle of Kalmar was another bone of contention. Van Horn had ordered the peasants to deliver their rye to Västervik, and that each barrel of rye would be valued at a price of two *daler* (or eight *mark*). When arriving in town, they had found out that their barrels were only valued at seven *mark*. The peasants complained bitterly of being lured into transporting their grain some 140 kilometres east, when they could have easily sold their produce for the same price at home.

Clearly, the conflict between peasants and tax-farmers here was one of economic interest. Van Horn and his consorts tried to secure as much payments in kind as possible, while also demanding extra monetary compensation. The peasantry, meanwhile, reacted strongly to what they perceived as a manipulation of prices. This story also points to the inability of the central government to control the tax-farmers. When the provincial Governor of Kronoberg asked the peasants why they had not informed him of their grievances, their simple answer was that they would have gladly done so, but for the fear that the royal officer would lend his full support to the tax-farmer. Obviously the peasants of northern Småland did not have much confidence in the system of delegating control to the aristocratic governor of the province. Paridon van Horn was not allowed to renew his lease after 1624, but the peasants had to confront other tax-farmers in the following years.²⁴ These legal processes are evidence of the stubborn resistance of the peasantry towards the tax-farmers, but it was a hard-fought achievement, and they still remained at the mercy of other contractors.

The Arguments of the Peasantry

Protest against the tax-farming system soon became more than just local reactions of dissent. In grievances addressed to the king, peasant communities demanded the full right to pay money for their obligations levied in kind. The peasants seem to have been well aware of the increasing demand for their produce, and they argued that they should be granted the same conditions as the tax-farmers. The king apparently was no stranger to this suggestion, and in 1625 the peasants of the large southern provinces of Småland and Västergötland were offered the right to pay all their obligations in cash. They were, however, also asked to provide a guarantee, and nothing seems to have resulted from the prolonged discussions.²⁵

The following year, the peasant community of Siende in central Sweden petitioned the king for the right to farm their taxes by themselves. The peasants were protesting against the tax-farmer Jesper Jönsson, who they claimed was

²⁴ Van Horn and Welshuisen went on to lease the toll revenues from all Swedish towns in 1624, for the substantial sum of 110,000 Swedish *daler* a year; cf. Abraham Cronholm, *Sveriges historia under Gustaf II Adolfs regering* (Lund, 1864), vol. 4, p. 495.

²⁵ Riksregistraturet, vol. 148, fol. 149.

demanding far too much for the goods that the peasants wanted to replace with money. Their deputies travelled to Stockholm and were quite explicit about their motive. The peasants wanted to give money: 'So that the peasant may enjoy the same advantage as the tax-farmer, that he may sell his goods wherever he likes.'²⁶

The people of Siende, which is situated not far away from the mining districts (where grain prices were generally higher), wanted to profit from the trade with commodities themselves. They even presented the names of some priests and wealthier peasants who were willing to stand as their guarantors.

Initially, the gentlemen of the chamber court seem to have raised no objections against this venture. As long as their vicars could come up with the required guarantee, the peasants should be free to farm their own taxes. The provincial governor of Västerås was ordered to investigate the original complaints against the tax-farmer.²⁷ But the proposed contract nevertheless fell through when the government's financial experts demanded that the people of Siende would also have to pay the wages for the royal bailiff who was to collect their tax payments. A letter to the five vicars of the district gives evidence of further obstacles. They had declared themselves willing to stand as guarantors for the annual tax on farm land, but not for the extraordinary monetary contributions. Since the community of Siende would not accept the same conditions as the other tax-farmers, the chamber court finally decided against the appeal.²⁸ The following day Jesper Jönsson was reinstated as tax-farmer for another three years.

Episodes like this one not only provide ample proof of the Swedish peasants' financial clout, they also show that they were quite able to voice their dissent in more general terms. The tax-paying peasants did not just react to a perceived injustice, they argued for a change and suggested what they reckoned to be a more satisfactory solution to the government's problem. It is also interesting to note the role played by the clergy here. Ericus Holstenius, whom the tax-farmer Jesper Jönsson had accused of deliberately rousing the peasantry, was a learned cleric who taught at the *gymnasium* of the cathedral city of Västerås.²⁹ In this position he was very close to Bishop Johannes Rudbeckius himself, who was later to emerge as the self-proclaimed leader of the commoner estates in the Swedish diet. The alliance of the people of Siende with the parish clergy can thus be seen as a local forerunner of the non-noble coalition that was to play such an important role in national politics in the 1630s. It is quite clear, though, that the initiative must have originated from the peasants. It was they who stood to benefit from the proposal,

²⁶ *Kammarkollegiets protokoll*, vol. 1, pp. 298f.

²⁷ To Bror Andersson (Rålamb) 26/9/1626, *Kammarkollegiets kansli, skrivelser till orterna*, vol. BIIaI): 15, fol. 728.

²⁸ To the vicars of the diocese of Västerås 10/4/1626, *Kammarkollegiets kansli, skrivelser till orterna*, vol. BIIaI): 15, fol. 759.

²⁹ On Holstenius and his family, see Gunnar Ekström, *Västerås stifts herdaminne, vol. II:1* (Västerås, 1971); *Svenskt biografiskt lexikon* (Stockholm, 1971–73), vol. 19, p. 325.

and in demanding control of their own production they followed the same strategy as the peasants in other parts of the realm. But in this case they also had their parish clergy to speak for them. At the local level, then, it seems to have been a case of the peasants rousing the clergy, rather than the other way round.³⁰

The Changing Responsibilities of the Provincial Administration

In 1630 – 10 years after the introduction of the system of leases – local conflict between peasants and tax-farmers still concerned labour and transport services.³¹ Repeated protests against the contractors' valuation of goods as well as coinage indicate that the peasants often had their way when it came to paying their taxes in cash, and that the tax-farmers resorted to manipulating price-rates to ensure their profits.³² In the mining districts, both peasants and burghers objected to the tax-farmers' trading methods, which they claimed were ruining both town and countryside.³³

Despite voicing their protest both locally and in the diet, the peasants' strategy seemed to meet with little success. In 1629 the government discussed the return to direct administration in some provinces, but this seems to have been caused more by the problem of finding contractors willing to lease the less profitable districts. In the province of Västergötland, the tax-farmers terminated their contracts en masse, but Governor Axel Drake was told not to accept any further notices. The king, while away waging war against Poland, had stated that the tax-farmers, who had enjoyed their profit during the good years, must now learn to face the bad times as well.³⁴ The provincial governors of Norrland and of Östergötland, however, were

³⁰ On Johannes Rudbeckius and the non-noble opposition in the diet, see Gunnar Wetterberg, 'Johannes Rudbeckius', in Gunnar Wetterberg, *Levande 1600-tal: Essäer* (Stockholm, 2003), pp. 52–73.

³¹ Letters to Regina Basilier, 6/9/1626, vol. BIIa1): 15, fol. 651; to Erik Jöransson 27/1/1630, vol. BIIa1): 19, fol. 132; to Christoffer Bülow 28/10/1630, vol. BIIa1): 19, fol. 759 (Kammarkollegiets kansli, skrivelser till orterna).

³² Local complaints submitted to the peasant estate: by the hundred of Daga 1627, Södermanlands län, vol. 5477; by the hundred of Östra 1627 and 1629, Jönköpings län, vol. 5456; by the hundreds of Ås and Väne 1629, Älvsborgs län, vol. 5439; Allmogens besvär (microfiche), Riksarkivet Stockholm. For a thorough study on these grievances see Johan Holm, *Konstruktionen av stormakt. Kungamakt, skattebönder och statsbildning 1595 till 1640* (Stockholm, 2007).

³³ Royal decree for the inland towns against the tax-farmers 5/1/1628, riksregistraturet vol. 159, fol. 10; local complaints against the tax-farmers' grain trade: from the districts of Tuna and others 1627, from the district of Västerbergslagen (without date), Allmogens besvär, Kopparbergs län, vol. 5462.

³⁴ To Axel Drake 9/6/1629, Kammarkollegiets kansli, skrivelser till orterna, vol. BIIa1): 18, fol. 513.

ordered to appoint bailiffs that could replace the leaseholders in their respective provinces.³⁵

The government also suffered from a lack of information on local affairs when there were no longer any bailiffs reporting directly to the king. Therefore the provincial governors had to shoulder the responsibility of controlling the tax-farmers – especially concerning their treatment of the peasants. The provincial level of administration had been a major bone of contention between the king and the nobility since the late sixteenth century. The state organization created by King Gustav Vasa was in essence extensive and localized. The king had ruled by issuing personal instructions to hundreds of bailiffs – a so-called ‘flat organization’.³⁶ The need for provincial supervision of the local officials soon became apparent, but the Vasa kings were reluctant to concede too much authority to noble dignitaries.³⁷ In the early seventeenth century, however, the state organization was slowly becoming more hierarchical, and in 1618 King Gustav II Adolph issued a new ordinance which delegated the full responsibility of supervising the local administration to the provincial governors.³⁸

It was the introduction of the tax-farming system, however, that really made the provincial governors indispensable. The governors in effect became the foremost instance for solving local conflict, as the central government habitually submitted disturbances in the localities to be investigated by the chief official of the respective province. From the 1620s onwards, letters addressed to the provincial governors dominate the correspondence of the chamber court. What was at stake was no less than the legitimacy of the regime itself, since the provincial governor was expected to assume the traditional role of the king, protecting his subjects and hearing their grievances.

The letters sent by the chamber court in 1630 to the governor of Närke, Carl Bonde, might illustrate the plight of the provincial governor. In January, Bonde was ordered to look into the complaints by the peasants of Värmland, who maintained that their tax-farmer was burdening them with excessive demands regarding transport and lodging. When the leaseholder of Närke wanted to terminate his contract with the crown in the spring of the same year, Governor Bonde’s task was to investigate the economic consequences of this. He was also to examine whether the peasants had been delivered all the goods that were due to them, according to the contract. The governor then had to find a new contractor or bailiff willing to take charge of the district, as well as assisting the resigning tax-farmer in collecting his arrears. Bonde, like his colleagues in the other provinces, also

³⁵ To Johan Månsson 7/6/1629, fol. 499, and to Erik Jöransson 8/7/1629, fol. 657; Kammarkollegiets kansli, skrivelser till orterna, vol. BIIa1): 18.

³⁶ Hallenberg, *Kungen, fogdarna och riket*, pp. 403–21.

³⁷ There is no major study of the provincial governors in sixteenth-century Sweden, but the problem is discussed by Birgitta Odén, *Kronohandel och finanspolitik 1560–1595* (Lund, 1966), pp. 376–85.

³⁸ Almquist, p. 135.

received instructions concerning the tax-farmers' adherence to the ordinances of the king, and their general handling of the crown revenue.³⁹

As has been demonstrated above, the peasants were often sceptical about the willingness of the provincial governors to provide for their legal protection. But the delegation of local grievances to the provincial level was in the process of becoming institutionalized. The provincial governors also had to respond to various complaints by the tax-farmers on peasants refusing to perform the transports and labour services required from them.⁴⁰ Thus, by 1630 the office of the provincial governor had already come to assume most of the important tasks that were to be codified in the administrative ordinance of 1635, the document that finally established the provincial level in the Swedish state organization.

The End of the Tax-farming System

In the diet, the peasant estate had traditionally supported the king, and they still rallied behind him when he entered the Thirty Years' War in 1630. But the political situation changed dramatically when King Gustav II Adolph was killed in the battle of Lützen in 1632. The peasants had little faith in the aristocratic government that took over for the regency of Queen Kristina (1632–44), and at the diet of 1633 they sided with the priests and burghers to voice their dissatisfaction with the war policy.⁴¹ Local grievances on the tax-farmers' business were more abundant than ever, and they still focused on the problem of transport and work services.⁴² However, peasants from many districts now directly accused the tax-farmers of cheating. In the Finnish part of the realm, the people of the districts of Jääskis and Euprepää flatly maintained that the tax-farmers always took more than their proper share, and therefore ought to be dismissed once and for all. Their neighbours in central Finland accused the tax-farmers of being faithless to the king.⁴³

The peasants had come to conclude that the system of leases was bad, not only for the peasantry, but also for the Swedish state. The tax-farmer did not care for the king, or for the common good. His only objective was his own profit. The peasantry

³⁹ Letters to Carl Bonde, Kammarkollegiets kansli, skrivelser till orterna, vol. BIIa1): 19, fol. 123, 130, 196, 256, 360, 389, 442, 576, 603 and 651.

⁴⁰ See for instance the Chamber court letters to Erik Jöransson, Kammarkollegiets kansli, skrivelser till orterna, vol. BIIa1): 19, fol. 132, 334 and 451; and to Holger Skeding, vol. BIIa1): 19, fol. 264.

⁴¹ Johan Holm, 'Att välja sin fiende. Allmogens konflikter och allianser i riksdagen 1595–1635', *Historisk tidskrift*, 123 (2003): 29–50.

⁴² Complaints from the districts of Jönö and Rönåker (no date), Södermanlands län, vol. 5477; from the hundred of Ås 1633, Älvsborgs län, vol. 5440; Allmogens besvär. Royal letter to the people of the hundred of Jösse 1/8/1634, riksregistraturet, vol. 182, fol. 602.

⁴³ These complaints are mentioned in the royal letters of 29 and 30 July 1634, riksregistraturet, vol. 182, fols 554 and 555.

of Dalsland (in western Sweden) displayed this argument most eloquently in 1633. The tax-farmers' greed in seeking their own gain, they claimed, was driving the peasantry into poverty and despair: 'Wherefore many are compelled into deserting their homes, so that stately houses and farmsteads are left devastated and ruined. As of which also the people and the rents and revenues of the crown are diminished, and deprived of.'⁴⁴

The peasants demanded that all tax-farmers should be disposed of as 'useless destructors of the country'. In the belligerent discourse of seventeenth-century Sweden, this was a clear statement that the peasants did not consider the tax-farmers a worthy part of the nation.

The peasant estate in the diet, representing the people of the localities, demanded the abolition of the whole tax-farming system. The contractors indeed seem to have made few friends, for the other non-noble estates were attacking the system too.⁴⁵ At first, the aristocratic council seemed reluctant to yield to the pressure. A return to direct administration was no alternative, it was argued, since the bailiffs were even worse than the tax-farmers when it came to cheating.⁴⁶ Nevertheless, in the spring of 1635 a policy decision was taken that no tax districts would be leased out in the future. Despite an acute shortage of money, as Sweden continued to fight in the Thirty Years' War, this decision was not reversed. It seems that the peasantry really had won a decisive victory, which finally put an end to the tax-farming system in Sweden.⁴⁷

The system of leases was replaced with a more bureaucratic system in which royal bailiffs collected the taxes from the peasantry. This local administration, however, was now to be supervised in every region by a provincial governor, who in turn had to answer directly to the government. The provincial administration that had become vital for controlling the tax-farmers' business was thus institutionalized. The governor was to personally make sure that the people were of a charitable disposition towards the head of the state. It was therefore his responsibility to control the bailiffs and constables, so that the king's subjects would not suffer any injustice from them. While it might have taken some time for the commoners

⁴⁴ Complaints submitted by the province of Dalsland in 1633, *Allmogens besvär*, Älvsborgs län, vol. 5441.

⁴⁵ The original documents have not survived, but they are mentioned in the records of the council of the realm, Nils Axel Kullberg (ed.), *Svenska riksrådets protokoll* (Stockholm, 1885), vol. 3, pp. 42, 59 and 63. See also Anders Anton von Stiernman (ed.), *Alla riksdagars och mötens besluth*, vol. 2, 1633–1680 (Stockholm, 1729), pp. 843–8, for the council's resolutions.

⁴⁶ The council records of 8/7/1634, *Svenska riksrådets protokoll* (Stockholm, 1886), vol. 4, p. 145.

⁴⁷ The decision is cited in the records of the chamber court of 28/4/1635. Later in that same year, the Head of the Chancellery Per Banér argued for a revival of the system but the council would not change its policy; *Svenska riksrådets protokoll* (Stockholm, 1888), vol. 5, p. 275.

to accept the aristocratic governors as champions of peasant rights, the evidence suggests that many governors eventually came to take this part of the job very seriously indeed. The government had learnt the lesson that local malcontent had to be met by swift government measures already at the provincial level.⁴⁸

The peasants soon found themselves facing an even greater threat than that of the tax-farmers. As the Thirty Years' War continued, crown revenue was being transferred to noble landowners, and to an alarming extent. This meant that a large part of the tax-paying peasantry was in effect placed under the authority of the nobility.⁴⁹ But the peasants' struggle for control of their own production went on. In the vocabulary of peasant protest, the term 'arrendator' – meaning 'leaseholder' – was being used as an invective throughout the seventeenth century, referring to any person who made claims to the peasants' produce that were not considered legitimate. The current term in Swedish for 'tax-farmer' had thus become a weapon to be wielded against political opponents, especially the nobility.⁵⁰ The successful attack against the tax-farming system had proved the worth of a broader alliance in the diet, and the non-noble estates from now on combined their forces to meet the threat of noble power. It was not until 1680, however, that the commoner estates were able to achieve their ultimate goal: the reduction of all noble property alienated by the crown since the death of King Gustav II Adolph.⁵¹

Conclusion

By doing away with the traditional bargaining procedure between peasants and bailiffs, the Swedish tax-farming system posed a direct threat to the independence of the tax-paying peasant. This concerned both his economic and his political standing. The chance to substitute payments in kind, as well as labour services, for cash settlements was crucial for any peasant wanting to control his own production, and negotiating directly with the royal administration also meant

⁴⁸ Hallenberg, *Kungen, fogdarna och riket*, p. 125. The provincial governors after 1635 are treated by Björn Asker, *I konungens stad och ställe. Länsstyrelser i arbete 1635–1735* (Uppsala, 2004); Alexander Jonsson, *De norrländska landshövdingarna och statsbildningen 1634–1769* (Umeå, 2005). For the governors' relationship with the peasantry see Martin Linde, *Statsmakt och bondemotstånd. Allmoge och överhet under stora nordiska kriget* (Uppsala, 2000), pp. 96–110.

⁴⁹ Nilsson, pp. 245–70; Margareta Revera and Rolf Torstendahl (eds), *Bördor bönder börd i 1600-talets Sverige* (Lund, 1979).

⁵⁰ This is demonstrated by Holm, *Konstruktionen*.

⁵¹ On peasant protest in the Swedish diet after 1640, see Georg Wittrock, *Regering och allmoge under drottning Kristinas eget styre. Riksdagen 1650* (Stockholm, 1953); Kimmo Katajala, 'The Changing Face of Peasant Unrest in Early Modern Finland', in Kimmo Katajala (ed.), *Northern Revolts. Medieval and Early Modern Peasant Unrest in the Nordic Countries* (Helsinki, 2004), pp. 159–67.

recognition of the peasant as a direct subject of the king. When the tax-farming system was introduced, the peasantry therefore had little choice but to use the diet as an arena for protesting and voicing their grievances. Local reactions on the assaults of tax-farmers were instant, but in the following years the peasants also began to voice their discontent in more general terms. In grievances addressed to the king, they argued that the tax-farming system was a bad affair for the crown. The leaseholders were in effect ruining the peasantry, it was maintained, so that the peasants could no longer pay their taxes for king and country.

Eventually, the other non-noble estates came to join the peasants in rallying for the abolition of the whole tax-farming system. In 1635, the aristocratic government declared that from that time on no more tax districts would be leased out. The outburst of protest had proved the system, initially designed to lower transaction costs, to be far too expensive for the state. While economic considerations might have influenced the decision, this was clearly an important victory for the peasantry, as well as for the burghers and priests, their newfound allies in the diet. This political constellation, originally inspired by the peasants' resistance to the tax-farming system, was to be a major force in Swedish politics for years to come.

The long-term effect of the experiment with tax-farming in Sweden was, thus, a re-vitalization of the state administration. The channels of interaction were not only re-opened at the local level, but also strengthened at the provincial and central levels. From that time on, the kings and aristocrats who ruled the Swedish realm would have to acknowledge the need for legitimacy and dialogue, which made direct bargaining with the peasantry the most important task of government.⁵²

⁵² For the legitimizing functions of the seventeenth-century Swedish state see Marie Lennersand, *Rättvisans och allmogens beskyddare. Den absoluta staten, kommissionerna och ämbetsmännen, ca 1680–1730* (Uppsala, 1999); Anna-Maria Forssberg, *Att hålla folket på gott humör. Informationsspridning, krigspropaganda och mobilisering i Sverige 1655–1680* (Stockholm, 2005).

Chapter 17

Statebuilding with the Participation of the Estates? East Frisia between Territorial Legislation and Communalist Ritual, 1611–1744

Reemda Tieben

Statebuilding processes were not exclusively the product of conscious efforts by sovereign entities in the territories of the Holy Roman Empire. They were also the result of interactions between the institutions of a sovereign entity and the Estates as well as intermediate powers.¹ ‘Statebuilding from below’ and especially various ‘empowering interactions’ of subjects (André Holenstein) appear to be particularly demonstrable for the territory of East Frisia, in view of the unusually powerful positions of the Estates and the rural communes.

Focussing on assignments of political rights for rural society, this chapter aims to assess the extent to which territorial statebuilding with the participation of the Estates was possible. Political rights were accorded to certain inhabitants of the communes by, on the one hand, the East Frisian rural commune and, on the other, by legislation passed by the Count and the Estates. By taking a closer look at these assignments of rights, the example of East Frisia also illustrates how political entitlement was generated in the rural society of the early modern period.

Assignments of Political Rights through Communal Rituals

Following the conclusion of extensive negotiations between the Count and the Estates in 1611, the county, and later principality of East Frisia, was marked by competition for authority between the territorial rulers and the Estates until it was

¹ Wolfgang Reinhard, *Geschichte der Staatsgewalt. Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (3rd edn, München, 2002), pp. 22ff.: although he mentions negotiations with subjects, Reinhard emphasizes that the impetus towards territorial statebuilding came from the dynasties and was also exercised with force.

taken over by Prussia in 1744.² The rural communes were important intermediate powers (*Intermediatgewalten*). As they were not yet subject to the territorial state, they were able to attain significant powers of self-administration. They largely consisted of free housefathers who lived on fertile marshland and poorer, sandy *Geest* soils.³ They had the right to send delegates to the territorial Diets (*Landtage*) and to elect their own pastors. They were largely self-administering through elected communal officials, the *Bauerrichter* or *Schüttemeister*. As well as administering their own assets, the communes were responsible for communal legislation (*Willkür* or *Bauerrecht*)⁴ and the administration of justice in communal affairs. They owned the common land and organized the discharge of their judicial obligations and the collection of the Estate taxes. However, only certain persons or farmsteads (*Herd*) belonged to the commune. Only housefathers who possessed a full, half or, in some cases, a quarter farmstead (*Herd*) were entitled to vote on communal affairs. In individual cases, this right was also extended to smallholding, day labourer cottagers (*Warfsleute*). However, in general these *Warfsleute* were excluded from administration of justice and communal elections. The village commune in East Frisia was thereby a *Realgemeinde*, that is membership was tied to the ownership of a farmstead. Membership was not, however, explicitly regulated by communal legislation, but was based on legal custom. Therefore the formation of one *Realgemeinde* usually differed a bit from the formation of another.⁵

The East Frisian communes corresponded to the concept of communalism described by Peter Blickle. They had basic judicial and penal powers and the power to pass bylaws, and thus regulated everyday communal affairs as autochthonic communal rights. However, these East Frisian communes were comprised of those

² On East Frisian Estates: Heinrich Schmidt, *Politische Geschichte Ostfrieslands* (Pewsum/Leer, 1975), p. 259; Sabine Heißler, *Die 'ostfriesische Singularität'. Die politische und soziale Stellung der ostfriesischen Landstände im beginnenden Absolutismus 1660–1690* (Marburg, 1995); Bernd Kappelhoff, *Absolutistisches Regiment oder Ständeherrschaft? Landesherr und Landstände in Ostfriesland im ersten Drittel des 18. Jahrhunderts* (Hildesheim, 1982); Bernd Kappelhoff, 'Die ostfriesischen Landstände im Übergang vom Ancien Régime zur konstitutionellen Verfassung des 19. Jahrhunderts', *Emder Jahrbuch*, 61 (1981): 115–74; David Martin Luebke, 'Symbolische Konstruktionen politischer Repräsentation im ländlichen Ostfriesland 1719–1727', *Westfälische Forschungen*, 53 (2003): 183–213.

³ Egbert Koolman, *Gemeinde und Amt. Untersuchungen zur Geschichte von gemeindlicher Selbstverwaltung und landesherrlicher Amtsverwaltung im südlichen Ostfriesland* (Aurich, 1969); Wilhelm Ebel, 'Zur Rechtsgeschichte der Landgemeinde in Ostfriesland', in Konstanzer Arbeitskreis für mittelalterliche Geschichte (ed.), *Die Anfänge der Landgemeinde und ihr Wesen* (Stuttgart, 1964), vol. 1, pp. 305–24.

⁴ Collection of *Bauerrechte*: Wilhelm Ebel (ed.), *Ostfriesische Bauerrechte* (Aurich, 1964).

⁵ On social differentiation in East Frisia: Friedrich Swart, *Zur friesischen Agrargeschichte* (Leipzig, 1910), pp. 214ff. and 229ff.; Koolman, *Gemeinde und Amt*, pp. 16 and 30; Ebel, 'Rechtsgeschichte', p. 316.

persons who were in possession of a *Herd*. Therefore it is not possible to talk of communal equality, unless it is applied to the commune's few entitled members only.⁶

The passage of laws, administration of justice and holding of elections were carried out at a communal assembly, which took place on a particular day once a year. This communal assembly was generally announced through the pealing of bells, personal notification or drums. The outgoing *Bauerrichter* rendered his accounts before the entitled *Realgemeinde*, which usually assembled in the churchyard. The new *Bauerrichter* was elected or appointed in turn and the *Bauerrecht* (responsibility for communal legislation) passed on to him. This rendering of accounts, transfer of office and confirmation of communal legislation was concluded by the drinking of beer, provided by the inhabitants of the commune as a form of fine. The persons who had paid these fines were thereby readmitted to the commune and their offence made good.⁷ The holding of elections (of a *Bauerrichter*), the passage of laws (confirmation of the *Bauerrecht*) and the administration of justice (drinking of beer) were therefore carried out largely in the course of a single assembly.⁸ This assembly can be described as a ritual. It was marked out from everyday life by the designation of a specific time and place and by special symbols for its beginning and its end. It took place publicly, demonstratively and in a specific regulated sequence. In addition, a change of status was effected for the communal officials and the villagers readmitted to the commune.⁹ The processes of election, passage of legislation and administration

⁶ Peter Blickle, *Kommunalismus. Skizzen einer gesellschaftlichen Organisationsform* (2 vols, München, 2000); Peter Blickle, 'Kommunalismus. Begriffsbildung in heuristischer Absicht', in Peter Blickle (ed.), *Landgemeinde und Stadtgemeinde in Mitteleuropa. Ein struktureller Vergleich* (München, 1991), pp. 5–38.

⁷ On redress and keeping the peace through the drinking of beer, taking Thüringen as an example Bernd Schildt, 'Der Friedensgedanke im frühneuzeitlichen Dorfrecht: Das Beispiel Thüringen, Der Friedensgedanke im frühneuzeitlichen Dorfrecht: Das Beispiel Thüringen', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, 107 (1990): 188–235, here p. 205.

⁸ These conclusions arise from the *Willküren* themselves (Ebel, *Ostfriesische Bauerrechte*), from reports by officials on the submission of the *Bauerrechte* to the district administration (Staatsarchiv Aurich [StaA], Rep. 4 B V b 8 Die auf fürstlichen Befehl von den Ämtern eingesandten Bauerrechte und Bauerrollen nebst den Berichten der Amtleute, wieweit dieselben beobachtet werden, vol. II: 1721–1733) and from individual court and other files, of which here reference is made only to the description of one such ritual in the communal laws of Völlen, which Ebel did not consider in his summary of communal legislation: StaA Rep. 4 B IV h 93 Regierung gegen die Schüttmeister zu Völlen (Amt Leer), wegen der sogenannten Schützenrollen zu Leer, Weener und Völlen und der dem Schützenkönig zu verleihenden Immunität von den herrschaftlichen Praestationen 1733–1741, fol. 14–21'.

⁹ On these characteristics of the ritual: Barbara Stollberg-Rilinger, 'Symbolische Kommunikation in der Vormoderne. Begriffe – Thesen – Forschungsperspektiven',

of justice which took place within the ritual were closely interlinked simply through the same location and time of their performance in itself. Furthermore, there were no specific internal criteria for carrying out the various processes. The contemporaries did not differentiate between the procedures of legislation, administration of justice and election.

The most important result of the ritual was the presentation and generation of the housefathers' authority. The difference between entitled housefathers and non-entitled *Warfsleute* was constituted by differences in legal, economic, political and religious status, which in part were placed on display by the ritual. At these central communal assemblies, the entitled housefathers exercised and displayed their authority over both the countryside and the people, that is also over the lower order *Warfsleute* within the area of the commune.¹⁰

The group entitled to participate in the ritual was, through the public nature of the assembly, presented once a year as that group which self-evidently participated in and had always participated in the ritual. The consuetudinary membership of the *Realgemeinde* was therefore reflected in the ritual as well as confirmed and generated through practice. The differentiation between entitled housefathers and non-entitled *Warfsleute* by the ritual applied to all matters of communal life, therefore also including the elections to the territorial Diets. Only the members of the *Realgemeinde*, normally housefathers with their own *Herd*, participated in the active and passive voting rights for the territorial Diets.¹¹

Assignments of Political Rights through Legislation by the Estates and the Count

These ritually generated entitlements will now be contrasted with two ordinances passed by the Count and the Estates in 1620. These dealt with the passive and active voting rights of housefathers regarding the communal elections of Estate delegates. The question arises whether there was communal acceptance of such a

Zeitschrift für Historische Forschung, 31 (2004): 489–528, here p. 503.

¹⁰ On communal authority Heide Wunder, 'Die ländliche Gemeinde als Strukturprinzip der spätmittelalterlich-frühneuzeitlichen Geschichte Mitteleuropas', in Peter Blickle (ed.), *Landgemeinde und Stadtgemeinde in Mitteleuropa. Ein struktureller Vergleich* (München, 1991), pp. 385–402, here p. 388.

¹¹ Heinz Antholz, *Die politische Wirksamkeit des Johannes Althusius in Emden* (Aurich, 1955), pp. 102ff.; Enno Rudolph Brenneysen, *Ost-Friesische Historie und Landes-Verfassung* (Aurich, 1720), vol. 2, p. 515; Harm Wiemann, *Materialien zur Geschichte der ostfriesischen Landschaft* (Aurich, 1982), p. 75: At least before 1620, only the members of the *Realgemeinde* participated. They were usually, but not always, mandated by their commune. The evolution after 1620 will be discussed below.

legal regulation imposed from above because of the participation of the communes in the Estates and thus in the legislative process.¹²

Since the conclusion of the *Landesverträge* (treaties between the Estates and the Count) at the beginning of the seventeenth century, the Estates, that is the curia of the nobility, the curia of the towns of Emden, Norden and Aurich and the third curia of rural housefathers, participated in legislation on a basis of equality with the Count.¹³ The election of housefather delegates was regulated following a conflict between Estates and Count (1618–20), which was related to other fundamental disagreements between them around the turn of the seventeenth century.¹⁴ Between 1618 and 1620, competing territorial Diets were repeatedly convened, some on the initiative of the more influential Estates under the leadership of the town of Emden, others under the influence of the territorial ruler Enno III. The main factor leading to the convening of these rival Diets, each of which disputed the legitimacy of the other, were the changes to the administration and burden of taxation planned by the territorial ruler. Housefather delegates sent by the communes participated in both territorial Diets. Thus the third Estate was divided.¹⁵ By holding these competing Diets, both parties were symbolically claiming the sole right to be able to conclude binding agreements as the embodiment of the state. Each Diet had to be public and correctly convened to be considered as representing the state as a whole (*Land*).¹⁶ The competing territorial Diets accused each other of not being able to represent the state.¹⁷ One possibility to undermine the legitimacy of the competing territorial Diet was to question the qualification of delegates from the housefather curia, present at both Diets. If the communal election of a housefather delegate had not taken place in the correct form in the view of the rival Diet, the legitimacy of the opposing territorial Diet to represent the state as a whole was disputed.¹⁸ The renegade Estates complained that the Count had influenced the election and voting behaviour of the delegates of the third Estate through threats,

¹² Achim Landwehr, “‘Normdurchsetzung” in der Frühen Neuzeit? Kritik eines Begriffs’, *Zeitschrift für Geschichtswissenschaft*, 48 (2000): 146–62, here p. 153: a law was implemented in a specific political, social, cultural and religious context, in which the norm became a more or less significant component of societal life.

¹³ Joseph König, *Verwaltungsgeschichte Ostfrieslands bis zum Aussterben seines Fürstenhauses* (Göttingen, 1955), pp. 332ff. and 481.

¹⁴ Antholz, pp. 141ff. and 190.

¹⁵ Brenneysen, vol. II, pp. 449–596; Antholz, pp. 163ff.

¹⁶ Cf. for this condition: Barbara Stollberg-Rilinger, ‘Einleitung’, in Barbara Stollberg-Rilinger (ed.), ‘Politisch-soziale Praxis und symbolische Kultur der landständischen Verfassungen im westfälischen Raum’, *Westfälische Forschungen*, 53 (2003): 1–11, here p. 6.

¹⁷ Antholz, p. 171; Brenneysen, vol. II, pp. 512ff. and 527.

¹⁸ *Ibid.*, vol. II, pp. 568 and 585f. For the connection between corporation and representation cf. Stollberg-Rilinger, *Vormünder des Volkes? Konzepte landständischer Repräsentation in der Spätphase des Alten Reiches* (Berlin, 1999), p. 94.

surveys and the collection of signatures. The Count together with the Estates loyal to him protested that the same practices were being used by the opposing Estates.¹⁹ Thus, in the first instance, the correctness of the form of the election was disputed. In addition, the Count with the Estates loyal to him and the opposing Estates in turn accused each other of wishing to admit domain tenants and lower order *Warfsleute* to the territorial Diet. Both Diets demanded that delegates should be sufficiently qualified, that is owned enough land. In the second instance, as well as the form of the election, the qualification of the delegates and their electors was also disputed.²⁰

By the end of these conflicts, it had at least been agreed that elections for householder delegates should be regulated with regard to active and passive voting rights. Thus the protesting Estates passed a resolution at their territorial Diet in May 1620 which set apart the housefathers from the aggregate of domiciled residents, the *Eingesessene* or *Warfsleute*: small farmers, village artisans, cottagers, day-labourers and so forth.²¹ Of all the rural residents of a parish, only those were entitled to vote or to stand for election who on the fertile coastal lowlands (*Marsch*), either owned 25 *Grasen* of land outright or 50 *Grasen* of land consolidated under fixed-rent, (hereditary) leasehold (*beheerdische Ländereien*). The residents on the sandy *Geest* had to own a whole *Herd* and in the *Flecken*²² 25 *Grasen* of land owned outright or 1,000 Reichstaler in assets.²³ All smallholders with, for example, half or quarter *Herd* on the *Geest* or with fewer *Grasen* on the *Marsch* (that is including the lower order *Warfsleute*) were excluded from active and passive voting rights. If the size of the land was sufficient, but it was not part of a single *Haus*, that is was not part of a *Herd* with participation in authority, and was therefore designated as *Stückland* (parcels of land), this did not confer entitlement to participation in the territorial Diets.²⁴ The delegates to the Diets were to be 'gute/ehrliche/redliche/vernünfftige und eingebohrne Landsassen' [good/honourable/upstanding/sensible and local subjects].²⁵ Through this stipulation, householders with passive and active voting rights were demarcated from the generality of domiciled residents through property restrictions, the existence of a *Haus* and thereby the participation in authority. This stipulation was based on the legal customs, as has already been

¹⁹ Brenneysen, vol. II, pp. 478 and 512–14.

²⁰ Ibid., vol. II, p. 478.

²¹ Ibid., vol. II, p. 568.

²² Flecken were large villages with market rights, in East Frisia for example: Greetsiel, Weener, Jemgum and Leer.

²³ Brenneysen, vol. II, p. 568: 25 *Grasen* was approximately 9.2 ha. 50 *Grasen* of *beheerdisches* land was 18.4 ha. On the *Geest*, the size of a full *Herd*'s field was 5–8 ha. Meadowland and pasture were added to this (Swart, p. 156). The 1,000 Thaler votes were intended to enfranchise those inhabitants who did not possess adequate land but had enough wealth to be entitled to vote.

²⁴ Kappelhoff, 'Die ostfriesischen Landstände', pp. 159, 160, footnote 154.

²⁵ Brenneysen, vol. II, p. 568.

described for the commune. However, the consuetudinary demarcation between housefathers and lower orders, which had also applied to elections for delegates to the Diets before 1620 and which was based on the frequency or continuity of the gathering and on consuetudinary authority in the communes, did not remain unaffected. Rather the demarcation between entitled housefathers and non-entitled *Warfsleute* was regulated for the whole territory in the same manner. This meant a territory-wide precise standardization of entitlement, which coalesced from local differences. Householders entitled to vote were to some extent 'ennobled' by the high level of the expected property requirements for elections to the Diets in contrast to the requirements resulting from the ritual. In this way the recognition of these expectations about the property requirements should have been made a condition of membership of the communal electoral college. Housefather membership of the electoral college and thus of the Estates gradually became a matter able to be decided and formally organized.²⁶ These formalized entitlements were applicable only to elections for communal representatives at the territorial Diets. Such a political election would have been disconnected from the commune's other activities, if it had been practiced. In contrast to the political election in the commune, which took place together with the passing of laws and administration of justice, it was to be carried out in a manner differentiated from other measures of enforcement, with its own criteria for entitlement.

Only by the introduction of this regulated, gradual formalization of membership was it possible for the Estates to defend the Diet's claim to represent the whole state and its continued authority to make decisions. The existing consuetudinary reality was no longer sufficient to determine the entitlement of housefathers to attend and elect delegates to the territorial Diet. Clearly a precise, formal and territorially valid structure for communal elections to the Diets was required.

Implementation of such a formal structure in the communes themselves was not without its difficulties. Compliance was hardly precisely monitored by the Estates and Count. In addition, it was entirely different from communal customs within the ritual.

The demarcation between the housefathers and the aggregate of domiciled residents was also determined by a resolution of the competing Diet in July 1620, influenced by the Count. However, the resolution of the *Landtag* of 6 July 1620

²⁶ Niklas Luhmann, *Funktionen und Folgen formaler Organisation* (5th edn, Berlin, 1999), p. 38: 'Wir wollen eine Erwartung daher als formalisiert bezeichnen, wenn sie in einem sozialen System durch diese Mitgliedschaftsregel gedeckt ist, d.h. wenn erkennbar Konsens darüber besteht, daß die Nichtanerkennung oder Nichterfüllung dieser Erwartung mit der Fortsetzung der Mitgliedschaft unvereinbar ist. Ein soziales System ist formal organisiert in dem Maße als seine Erwartungen formalisiert sind.' ('We therefore wish to designate an expectation as formalized when it is satisfied within a social system by this membership rule, that is when a recognizable consensus exists that the non-recognition or non-fulfilment of this expectation is not compatible with continued membership. A social system is formally organized to the extent that its expectations are formalized.')

approved the admission of smaller housefathers from the *Geest* to elections and as delegates. Half holdings received active and passive voting rights, whereas the resolution of the opposing *Landtag* of 28 May 1620 entitled only whole holdings.²⁷ The regulation of elections was therefore set out in two resolutions from two competing territorial Diets, which were contradictory with regard to property requirements. As well as property requirements, the issue of who examined the delegates' mandates was also regulated in different ways by the two resolutions – either a collegium made up of two representatives of each of the three curia and the Count's commissar or representatives of the Count only.²⁸ The competing resolutions led to repeated conflicts until 1727.²⁹ Even though the property requirements for active and passive voting rights were also regulated in different ways, disputes were not about them but about who was entitled to examine the mandates.³⁰ The examination of mandates was of such significance, because the party which examined the mandates could reject delegates and – more importantly – could symbolically demonstrate that they had the right to determine the composition of the territorial Diet. To this extent, property requirements were not of critical importance to the Estates and the Count over the following century and were barely checked on a constant basis. Although the validity of either one of the competing *Landtag* resolutions was not determined, it became increasingly the case that the 'anti-Count' resolution of May 1620 was taken as being valid for property requirements, but it seldom occurred that delegates with incorrect mandates were rejected on the basis of the resolution of May 1620.³¹ David

²⁷ Brenneysen, vol. II, pp. 568 and 584.

²⁸ *Ibid.*, vol. II, pp. 568 and 584ff.

²⁹ Heißler, *Die 'ostfriesische Singularität'*, pp. 94, 127–41, 165ff., 179, 188, 193 and 225; Brenneysen, vol. II, pp. 918ff., 1010 and 1028, vol. I, 177; Kappelhoff, *Absolutistisches Regiment*, pp. 138 and 174ff.: particularly between 1660 and 1662, but also in 1664, 1688, 1691 and between 1725 and 1727, the examination of mandates played a repeated role in disputes.

³⁰ Brenneysen, vol. II, p. 177.

³¹ Initially in the *Haagischer Vergleich* of 1662, reference was made to the 'anti-Count' resolution of 28 May 1620. In addition, the resolution of 28 May 1620 was explicitly confirmed in the oath of allegiance of 1744 and in the oaths of allegiance of 1664 and 1708. The chancellor Enno Rudolph Brenneysen, who in 1720 put together and printed resolutions and proceedings of the *Landtage* for his own political purposes, polemicized against the resolution of the 'anti-Count' *Landtag*, but accepted the validity of this resolution in his overview of *Landtag* law. In 1796 and 1820 Freese and Jhering confirmed the validity of the resolution of 28 May 1620 in their descriptions of East Frisia. In addition, in 1793 the historian Wiarda reported extensively on the events between 1618 and 1620, and came to the conclusion that despite the intervention of the United Provinces (*Generalstaaten*) in 1620 and thereafter, it had not really been clarified which resolution should be valid. In 1821 however, he stated in his report on the representation of the Estates, that the anti-Count resolution of 28 May 1620 had informal validity. (Brenneysen, vol. I, p. 171, vol. II, pp. 563, 589, 896, 917ff. and 1087; Johann Conrad Freese, *OstFrieß- und Harlingerland*

Luebke was able to show, for example, that between 1707 and 1727, only 31 of 386 new delegates (8 per cent) were rejected.³² An evaluation of the extensive files on the annual *Landrechnungstage* (fiscal diets) between 1721 and 1740 showed³³ that of a total of 990 delegates who attempted to take part over this period and who were required to present a mandate, only 64 (6.5 per cent) were rejected or left the *Landrechnungstage* individually under protest. Of these 64 delegates, only nine were rejected because of failure to fulfil the property requirements. The rejection of mandates because of delegates' or electors' failure to meet property requirements³⁴ was very much the exception. The reason for this was not, however, that communes complied with the voting regulations. Rather, the territorial and fiscal Diets' documents show that regulations regarding property requirements for both electors³⁵ and deputies were not observed:³⁶ Sometimes *Warfsleute* and half *Herde* elected delegates for territorial Diets or even attended Diets, despite the fact that under the resolution of May 1620 they actually were not entitled to do so. Further irregularities occurred continuously and were often not sanctioned.

(Aurich, 1796), pp. 75ff.; Georg-Christoph von Unruh, 'Georg Christian Albrecht Jherings Denkschrift über die Ostfriesische Gemeindeverfassung', *Unser Ostfriesland*, 5–14 (1961): here no. 9, § 11; Tilemann Dothias Wiarda, *Ostfriesische Geschichte* (Aurich, 1793), vol. 4, pp. 129–39; Gerfried Engelberg, *Ständerechte im Verfassungsstaat dargestellt am Beispiel der Auseinandersetzung um die Rechte der landschaftlichen Repräsentation Ostfrieslands mit dem Königreich Hannover* (Berlin, 1979), pp. 14ff., 70, footnotes 112 and 255ff.).

³² Luebke, p. 188.

³³ StaA Rep. 4 C I h 6 Die Ablegung der Landrechnungen von 1720–1743; StaA Dep. 1, 2134 Konzept und Extrakte des Protokolls der Landrechnungsversammlung 1723, fol. 7ff.: However, the information usually provided for *Landrechnungstage* on the examination of mandates, and thereby on the delegations from the third Estate, is missing for the years 1722, 1724, 1725 and 1726.

³⁴ In just one case was a single vote rejected at the relevant *Landrechnungstagen*, because voters did not meet the requirements for entitlement (StaA Dep. 1, 2134 Konzept und Extrakte des Protokolls der Landrechnungsversammlung 1723, fol. 7ff.).

³⁵ Using the list of all the inhabitants of East Frisia in the census of 1719, it was possible to examine the fulfilment of property requirements of a sample of electors of a delegation to territorial and fiscal Diets. This showed that, for example, for Uttum (1728), Reepsholt and Wiesede (1732), Osteel (1724) and Manslagt (1724), some *Warfsleute*, day-labourers, half *Herde* and simple tenants took part in elections (StaA Rep. 4 C I h 6 Acta die Ablegung der landschaftlichen Rechnung vom May 1728; StaA Rep. 4 C II b 148 Vollmachtenvisitation vom 16. Januar 1732; Kappelhoff, *Absolutistisches Regiment*, p. 227, footnote 308; Erhard Schulte, *Kopfschatzung 1719* (Aurich, 1999)).

³⁶ At least for the *Geest* communes, some *Warfsleute*, day-labourers and half *Herde* attended territorial and fiscal Diets (Kappelhoff, 'Die ostfriesischen Landstände', pp. 154–9). On the *Marsch*, the delegates were largely housefathers with sufficient property. A sample of all *Marsch* delegates at the fiscal Diet of 1727 was examined. (StaA Rep. 4 C I h 6 Den von der kayserl. Subdelegierten Commission auf d. 26 May 1727, angesetzten Land=Rechnungs=Tag zu Aurich betr. die Ablegung der Landrechnung vom May 1726 bis May 1727).

One reason for the communal non-observance of the regulations for property requirements was that the delegates' mandates were not precisely examined and that the rejection of a delegate depended more on the political attitude of the examining committee than on the property requirements in force.³⁷ The passage of legislation in the two Diets' resolutions of 1620 therefore served more to present a claim to authority and representation in the dispute with the Count or opponent Estates and less the actual regulation of communal election procedures.³⁸

The primary reason for the communes to take little notice of the legislation of the Estates and Count lay in the customs of the communes themselves: we know that the communes were informed about the new rules for voting their representatives, but were not able to restructure their customs.³⁹ Within a ritual the passage of laws, the final stage of the administration of justice and the election of the communal representative *Bauerrichter* took place. Through this annual ritual, the complete communal order with all its social differences was symbolically generated and placed on show. The communes had to stick to these entitlements generated by this ritual and these entitlements were also applied to the elections for the territorial diets. Because they were consuetudinary members of the *Realgemeinde*, some day-labourer cottagers and some housefathers, who possessed a half *Herd*, still could attend and elect delegates to the territorial Diets.

By passing the resolutions of 1620 the Estates and the Count put into question the consuetudinary membership of the *Realgemeinde*. The resolution regulated the entitlement of housefathers to attend and elect delegates to the territorial diets. In many communes the new electoral law entailed other criteria for membership to the electoral college than those applied in the ritual. A new procedure was enacted,

³⁷ The reasons for rejection of a delegate included, for example, late arrival, not yet complete execution of the inheritance of a farmstead, non-residence, financial entanglements, being a current office holder in an Estates' tax committee, incorrect form of the mandate or delegation not from the parish, but from another electoral college, for example from a hamlet or from a number of parishes. The majority of delegates were, however, rejected for political reasons, connected to disagreements between the Emden's party and the Count's party (StaA Rep. 4 C I h 6 Die Ablegung der Landrechnungen von 1720–1743; StaA Dep. 1, 2134 Konzept und Extrakte des Protokolls der Landrechnungsversammlung 1723, fol. 7ff.; Kappelhoff, 'Die ostfriesischen Landstände', pp. 69, 154–61 and 165; Kappelhoff, *Absolutistisches Regiment*, pp. 374–7; Antholz, p. 180; Heißler, *Die 'ostfriesische Singularität'*, pp. 225 and 242ff.).

³⁸ Schlumbohm points to the function of legislation for representation and generation of authority: Jürgen Schlumbohm, 'Gesetze, die nicht durchgesetzt werden – ein Strukturmerkmal des frühneuzeitlichen Staates?', *Geschichte und Gesellschaft*, 23 (1997): 647–63, esp. p. 650.

³⁹ The relevant resolution of May 1620 was, despite its age, probably known in the communes, because the communes or individual housefathers retained copies of resolutions (Antholz, pp. 170ff.; Koolmann, *Gemeinde und Amt*, p. 37; Harm Wiemann (ed.), 'Inventar des Bauern J. Groens zu Bunde', *Mitteilungen der Arbeitsgruppe der Ostfriesischen Landschaft*, 9/2 (1978): 57–62; 9/3 (1978): 80–90).

but not practiced by the communes. Since it failed to show the complete communal order and in particular failed to show the extensive, complex differences in rank with regard to authority between housefathers and *Warfsleute*, such a procedure could hardly find legitimacy and be implemented in the communes. To the members of the commune it must have appeared to be purely instrumental and of no significance for the presentation of the complete communal order and the housefathers' comprehensive authority. For this reason the communes violated the law of 1620 and its conditions of membership for the electoral college. They had to abide by consuetudinary membership in the *Realgemeinde*, which was generated by the ritual and had always formed the basis of communal elections of delegates to the territorial Diets.

'Empowering Interactions' and Institutions

Simple participation of subjects in such classic statebuilding processes as the passing of legislation did not lead inevitably to successful 'implementation' and territorial statebuilding through 'empowering interactions'. In order to evaluate the nature and success of 'empowerment' by subjects, we would also need to consider through what institutions subjects conferred power and how their decisions were affected by these institutions. The fact that the resolutions in 1620 were directed towards the Diets' legitimacy to represent the state influenced the Diets' decisions: the Diets passed resolutions which tended to cut off the political elections of delegates to the territorial Diets from other procedures of the communes like elections of *Bauerrichter* or pastors, because the elections of delegates to the territorial Diets should not be based on the consuetudinary membership in the *Realgemeinde*. Although the housefathers participated in the passing of the two laws, the laws contradicted their customs. The implementation of the legislation in the communes remained very superficial. The housefathers in their institutions, that is their communes, were not compelled to adopt it and did not observe the law, since it was otherwise customary that political elections were integrated into all other areas of life: the membership of the *Realgemeinde* was the basis for the memberships of all communal procedures. Political order was produced via legal custom and the ritual representation of the overall order.

In this way, the balance of power between Estates and Count expressed in two antagonistic territorial Diets prevented the passing of practicable legislation. Unenforceable legislation was characteristic of East Frisia until it was taken over by Prussia in 1744. As a result of the disagreements between Estates and Counts/Princes, legislation which was recognized by the Estates and adhered to by the communes was rarely achieved.⁴⁰ Thus monopolization and standardization, that

⁴⁰ As an example, we cite the East Frisian police legislation, which was rarely implemented due to protests by the Estates and was hardly able to be implemented against the will of the communes, so that the issue remained a matter for the rural communes and

is the disempowerment of the commune through legislation imposed by a central power, did not take place in this territory, even though the Estates, with housefather representation, did participate in legislation or passed their own territorial laws and thus represented, at least in part, the central power. The stand-off between Estates and Count/Prince shows that, for successful, implemented standardization and monopolization, it would have been of particular importance, that a single force, generally the dynasty and its officials, gained the power to push through its interests.

their legislation (Brenneysen, vol. II, p. 183; König, pp. 122, 230, 236, 289ff., 295, 298, 308, 332, 460, 481 and 499).

PART IV

HISTORIOGRAPHICAL AND
CONCEPTUAL DEBATES

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Chapter 18

Citizens and their Rulers

Wim Blockmans

Historians find it mostly as difficult as the general public to think about public authority in the past without referring implicitly or explicitly to the states as they exist in their own days. It is hard to talk about countries whose names may still be the same as in the Middle Ages, but whose borders and internal structure were largely different. General and compulsory education played a huge role by imprinting upon our minds the identification with the national state. The history curriculum, as imposed more or less directly by state authorities since the late nineteenth century, belonged to the instruments to foster the sense of belonging to the state. During the nineteenth and the first half of the twentieth century, the ruling state elites have made great efforts to propagate the unity of the populations living within their borders.¹ However, it was difficult to find any state in Europe which did not include more than one nation, meant as a community aware of its distinctive common identity. Most national states tended to undervalue the variety of cultures within their borders, in their educational programmes just as in other domains. Centralized multinational states systematically favoured the dominant culture, pretending its identity to be that of ‘the nation’ – which in reality was an identity constructed by and mainly for the elite.² The combination of social mobility, the increasing influence of state institutions such as compulsory schools, the army, the administration and justice, led to the gradual adaptation of large parts of the non-dominant nations in some countries such as France.³ There, as well as in other states, however, some suppressed national identities resisted and nowadays even show a reinvigorated self-awareness – such as that of the Catalans and the Basques, the Scots and the Welsh, not to speak about the Irish. In other multinational states, where the dominance of the centre over the peripheries was

¹ Wim Blockmans and Jean-Philippe Genet (eds), *Visions sur le développement des Etats européens. Théories et Historiographie de l'Etat Moderne* (Rome, 1993); Paul Nolte, ‘Shifting Boundaries. The Rise and Fall of European Nation-States in Comparative Perspective’, in Joachim Jens Hesse, Jan-Erik Lane and Yoichi Nishikawa (eds), *The Public Sector in Transition. East Asia and the European Union Compared* (Baden-Baden, 2007), pp. 23–38.

² Geoffrey Alderman (ed.), *Governments and Non-dominant Ethnic Groups in Europe, 1850–1940* (8 vols, Dartmouth and New York, 1992–93).

³ Eugen Weber, *Peasants into Frenchmen: the Modernization of Rural France, 1870–1914* (Stanford, 1976).

less effective, disintegration of empires and states followed after the First World War and the revolutions of 1989. The process by which regional communities reclaim their rights from the multinational states is still going on.

This reminds us that the process of statebuilding has all but reached a stable optimum, clearly not in the countries previously belonging to the Soviet Union, and neither in Western Europe. National states are constantly losing power, both to lower, mostly regional, authorities, and to higher, supranational organizations such as NATO and the European Union. In fact, historians should be able to point to such processes as the absolutely normal constant redefinition of any power system and re-positioning of participants in each of them. Nevertheless, popular opinion in various countries often reacts emotionally against this ongoing process. This shows that state elites have been very successful in their generations-long propagation of the idea of the coincidence between state and nation. In fact, the enthusiasm shown by large crowds in August 1914 for their state's engagement in what would become the first mass slaughter on an industrial scale, demonstrates how relatively easy it was to mobilize a still largely heterogeneous population against some other people labelled as an aggressive enemy. Recent examples include the popular support in Britain for the war against Argentina about the Falkland Islands, and the emotional reactions in Greece about the UN plan for the re-unification of Cyprus and about the name of Macedonia.

After the Second World War, West European peoples seemed to have overcome their propensity to unify in wars against each other, as the alleged danger was then identified as the 'red' one in the east. But even then, national states gained authority more than they lost, as they then developed what was called the 'welfare state', binding intricate social and economic regulations to their own fiscal administration. It was only after 1945 that states became the largest employers and producers of services and value, redistributing the blessings of social security. And even within the European Union, which is creating a level and scale of unity unprecedented in European history, it are the national governments which are ostensibly taking the decisions and they mostly advocate them in terms of advantages for their national constituencies. No wonder that they consider cautiously the disintegration of multinational states, as it occurred on a large scale in central, south-east and east Europe after 1989.

It would be naïve to pretend that historical research is immune against biases generated by the state in which they live. As all citizens, historians undergo the influences described above. Moreover, their research depends on source material produced largely by and within the institutions of the state. Legislation, regulations, statistical information have widely been produced and collected by state agents. By far the largest part of all historical research takes place within the borders of states and their former colonies; it is sponsored by state institutions which look favourably at proposals fitting with the national interest. Courageous efforts to widen the scope towards comparative dimensions mostly boil down to a comparison of data available on the scale of states, even if the phenomena to be studied do not necessarily coincide with their boundaries.

The idea of a territory within clear boundaries is the first concept which needs to be clarified: in the course of the process of state-formation, it is likely to be one of the variables, whereby the course of changes not always needs to point to the present. 'States made wars and wars made states', as states Charles Tilly.⁴ Borderlines are drawn at conference tables after major military conflicts, paying little regard to cultural factors such as the sense of community among the populations. However, the sheer existence of such states creates new realities and loyalties, which complicates the always shaky relation between states and nations.

Within any state, the accent is on the dynamic centre, mostly on the person of the ruler. Historiography started with the genealogies of princely families, and this focus on the monarchs as the prime agents in state-formation is still very deeply rooted. The reigns and dynasties formed our concepts of periods having a particular character. We deal with Tudor or Elizabethan England and France of Louis XIV, the Habsburg lands and Bourbon Spain. Personalization is still the easiest way for identification and the creation of emotional bonds with subjects. As such, the role of monarchs was evidently weighty in political systems concentrating far-reaching powers in their hands and reproducing power via patriarchal lines. Norbert Elias described state-formation as a 'royal mechanism', an automatism occurring after the elimination of weaker competitors and the growth of diversification in society. As soon as the monarch could install a 'monopoly of power' and a 'taxation monopoly', he was thought to be in a position to become an absolute king.⁵ This, and many other typically 'top-down' interpretations grossly overestimate the means of penetration and control available for pre-industrial rulers,⁶ and underestimate both the creative impact resistance and revolts by all kinds of subjects had on the distribution of power within any state.⁷ Moreover, they tend to consider the states-in-development as closed systems, taking into account exclusively internal factors. This evidently is a gross simplification, as all kinds of agents, starting with princely and aristocratic dynasties themselves, operated beyond the boundaries of any territory.

So, the territory of a state is one of the variables to be explained rather than a given, and the role of the central power, especially that of the monarchy, requires precision. Other actors in society, such as landed aristocracies, religious,

⁴ Charles Tilly, *Coercion, Capital and European States A.D. 990–1990* (New York and Oxford, 1992).

⁵ Norbert Elias, *Über den Prozess der Zivilisation* (2 vols, Bern and München, 1969), vol. 2, pp. 123–311.

⁶ Stein Rokkan, 'Dimensions of State Formation and Nation-Building. A Possible Paradigm for Research on Variations within Europe', in Charles Tilly (ed.), *The Formation of National States in Western Europe* (Princeton, 1975), pp. 562–600, esp. pp. 563–70; Stein Rokkan et al. (eds), *The Politics of Territorial Identity: Studies in European Regionalism* (London, 1982).

⁷ Peter Blickle (ed.), *Resistance, Representation and Community* (Oxford, 1997).

commercial and industrial powers, as well as external factors, need to be taken into consideration. Therefore, we need to reconsider processes of state-formation from a prospective viewpoint, as advocated by Charles Tilly in 1975.⁸ This implies that all the defining features, such as the territory, the relative centralization and concentration of power in various domains of social action, should be open variables, changing in their nature in the course of the process. One should even set one further step and pay due attention to other forms of community building and the exercise of public power which developed independently of the monarchies, questioning the nature of centralization and diffusion of various forms of power, and investigate their specific paths of development.⁹ In the following pages, I shall try to elaborate on the diverse paths along which public power was vested.

The Competition of Various Political Systems

By about 1500 the autonomous political units in Europe showed great diversity in size, form of government and internal structure. Depending on the nature of the expansive power dominant in a region it is possible to distinguish a whole range of types of public authority. They are listed here in ascending order of extent, with scholarly judgement determining where the dividing line between states and other embodiments of public authority are drawn. If, with Charles Tilly, we define a state as a relatively centralized organization, differentiated from others, claiming to control a well-defined, mostly continuous territory, having at its disposal superior means of physical force,¹⁰ then the late medieval and early modern history of Europe saw the long-lasting coexistence of a great variety of types of states and inter- and supra-state-like structures, all exercising some form of sovereign public authority. I shall try here a typology from the smaller to the largest units.

- Free peasant communities joined in a loose federation (East Friesland, Graubünden);
- autonomous towns with a more or less extensive agrarian hinterland (German free imperial cities such as Nuremberg and Hamburg; Genoa, Novgorod, Ragusa/Dubrovnik);
- local lordships which may at some point have been elevated to a higher status such as a duchy or principality (Mechelen, Salins, Liechtenstein, Monaco, San Marino, Andorra);
- federations of autonomous towns and peasant communities (Swiss Confederation, Friesland);

⁸ Charles Tilly (ed.), *The Formation of National States in Western Europe* (Princeton, 1975).

⁹ Michael Mann, *The Sources of Social Power; Vol. I. A History of Power from the Beginning to A.D. 1760* (Cambridge, 1986), pp. 25–30.

¹⁰ Tilly, *The Formation of National States*, pp. 12–35.

- leagues of towns, sometimes including feudal lords (the German Hanse, the Swabian League);
- regional states dominated by one large city which subordinated other towns, lordships and communities to it (Venice, Florence, Milan);
- ecclesiastical principalities (the papal state, the states of the German Order in Prussia and the states of the Maltese Order, the territorial temporalities of the archbishop of Cologne, the bishop of Liège);
- effectively autonomous (secular) territorial principalities (the duchies of Brittany, Saxony and Ferrara and the County of Toulouse before 1271);
- personal unions of territorial principalities in which each of the constituent entities kept its own institutions, but the prince determined a common policy (Hainault, Holland and Zeeland under the houses of Hainault and Bavaria; the Low Countries under the houses of Burgundy and Habsburg; Jülich, Marck and Berg);
- integrated kingdoms (England, France, Portugal, Scotland, Sweden);
- personal unions of one or more kingdoms and/or territorial principalities (Poland–Lithuania; Bohemia–Moravia–Lausitz; the Crown of Aragon, comprising Aragon–Catalonia–Mallorca–Valencia (1412), later also Sicily, Naples and Sardinia, all united in 1479 with the Crown of León–Castile); Denmark–Sweden–Norway in the Union of Kalmar (1397–1523);
- empires (Holy Roman Empire, Ottoman Empire).

On the geographical outskirts of medieval Europe, there were still particular constellations: from the autonomous mini-‘kingdoms’ of Ireland and the farmer aristocracy of Iceland (tied to Norway after 1262 anyway) in the West, to the Russian confederation in the East. Sovereignty, understood as a power not recognizing any higher authority, was not seen as entirely exclusive, as it was to become in the nineteenth century. It could very well have been located at different levels simultaneously. The Emperor clearly did not recognize any higher authority, the king of France boasted to be ‘empereur dans son royaume’, but even if the dukes, counts, prince-bishops and the ‘free imperial cities’ paid homage to a king or emperor, it did not prevent them from exercising public authority as practically autonomous polities. This diversity of political constellations came into being as the result of complex interactions, and it continues to change. It is more important to observe the reality of the exercise of power than the claims and titles. The famous dynastic states of our schoolbooks, represented in a single colour in historical atlases, in reality showed a high degree of internal variety.

After 1250, the German emperorship meant little more than the theoretical authority enjoyed by the holder of that supreme temporal office and the resources which he had at his disposal as a territorial prince, his *Hausmacht*. Except for the imperial court, the *Reichskammergericht*, founded in 1495, but operational only much later and limited in its jurisdiction by the fierce opposition of the larger principalities, there were no central institutions, no capital city, no general taxation

at the level of the empire.¹¹ Real state power in the empire was to be found at the level of the principalities and free cities. Even if the kingdom of France had a far greater impact on the gradually incorporated duchies and counties, most of them nevertheless maintained until the Revolution a fair degree of autonomy, especially in fiscal and juridical matters.

In the kingdom of Castile the crown exercised jurisdiction over just 55 per cent of the population. The remaining 45 per cent fell under a variety of noble and ecclesiastical landowners who enjoyed immunity and levied taxes, raised armies and administered justice on their own behalf. The contrasts between crown, nobility and towns were less sharp there than in other parts of Europe. During the Reconquest, the crown established towns in the reconquered areas and gave them many freedoms, with the aim of attracting Christian immigrants to replace the Muslims who had fled. The same town governments, which generally consisted of *hidalgos* (knights), were given extensive grants of land in the surrounding areas. Seville was an extreme case: this large, wealthy town was reconquered in 1248 and was granted 9,000 square kilometres of land. Crown, knighthood, town and country showed a certain degree of unity of interests, while elsewhere they were often in direct conflict.¹² The process of development through which large state units were formed explains many of the peculiarities of each constellation. Castile and Aragon were united under the same royal couple in 1469 by dynastic union (Ferdinand of Aragon-Sicily and Isabella of Castile-León, the 'Catholic kings') and have been inherited jointly since then, with each retaining its own identity and institutions. In fact, this pattern may be considered as fairly general: unification at the top mostly did not change the pre-existing institutions and traditions. From the fifteenth to the beginning of the twentieth century, the average superficies of the large estates, the *latifundios*, quadrupled, and the owners fairly preserved most of their seigneurial rights.¹³ Technical problems of communication and mobility hampered the centralization of power and the ability of the centre to penetrate into regional and local communities.

In the first quarter of the fourteenth century the annual revenue of the city of Florence was equal to that of the kingdom of Naples and the pope in Avignon, and half as much as that of the king of France, who in his turn was still surpassed by Genoa. No wonder that such cities could support their own navy and army, and built a state around themselves. So, the alleged overweight of the dynastic state must be

¹¹ Peter Moraw, *Von offener Verfassung zu gestalteter Verdichtung. Das Reich im späten Mittelalter, 1250 bis 1490* (Berlin, 1985); Peter Moraw, 'Der Reichstag zu Worms von 1495', in Claudia Helm (ed.), *1495 – Kaiser, Reich, Reformen. Der Reichstag von Worms* (Koblenz, 1995), pp. 25–37.

¹² Miguel-Angel Ladero Quesada, *El siglo XV en Castilla : fuentes de renta y política fiscal* (Barcelona, 1982); Miguel-Angel Ladero Quesada, 'Aristocratie et régime seigneurial dans l'Andalousie du XVe siècle', *Annales. Economies-Sociétés-Civilisations*, 6 (1983): 1346–68.

¹³ Antonio Miguel Bernal, *Economía e historia de los latifundios* (Madrid, 1988).

reassessed in its relation to internal and external competing public authorities, of which I enumerated some types and examples. During the late Middle Ages and the early modern period, monarchies tended to expand their control over larger territories, incorporating and annexing smaller or weaker competitors. Even then, however, earlier structures remained very tangible, even if new rulers imposed certain exigencies upon them.

The preceding remarks should have made it clear that the common idea of the late medieval and early modern period as being the period during which 'the modern state' became the dominant type of political system, should not bring us to overlook the continuous variety of types of public authority which have not been incorporated in larger dynastic states or, if this did occur, could maintain a fair amount of autonomy. There was no single model of 'the modern state' until the French Revolution imposed top-down a centralized model which nationalized the concept of civil rights by extending the equality before the law to all citizens within the boundaries of the national state. The very term 'citizen', which in its origin referred to the specificity of the urban population, got the broader meaning of a 'citoyen' of a state. It was the military as well as ideological power of the French Revolution which finally broke down the boundaries of local and regional privileges and rules.

Norbert Elias described the process along a single path of monopolization, while in reality far from all smaller contenders in the political strife were swallowed by larger competitors. In many cases, smaller units maintained their local and even regional power, and thus influenced the shape of any larger system in which they might have been incorporated. The reasons for this have mainly to do with the level of accumulation of power and capital in local and regional concentrations, relatively to those available in the centre of a state. Further, logistical impediments limited the possibilities of a centre to effectuate its claims in peripheries. Think of the need to overcome distances and geographical obstacles such as mountains, woods and seas. It proved very hard for landlocked monarchical states to get a firm grip on commercial metropolises located at the outskirts, mostly the coasts, of their territory. The examples of the continued autonomy of Barcelona and Valencia vis-à-vis Madrid, Lübeck, Bremen and Hamburg towards the imperial centres in the south of the empire may suffice to demonstrate this point.¹⁴ Moreover, state bureaucracies had only a weak capacity to homogenize the administration of the regions which over centuries had developed various juridical and institutional traditions, as well as popular identities. External pressure even reinvigorated common cultural practices on the local and regional levels. Even in France, down to the eve of the Revolution, legal, fiscal and cultural practices remained essentially local and regional. The monarchy might have imposed by military force political incorporation as well as the observation of the Catholic cult, but proved unable to

¹⁴ Wim P. Blockmans, 'Voracious States and Obstructing Cities: An Aspect of State Formation in Preindustrial Europe', in Charles Tilly and Wim P. Blockmans (eds), *Cities and the Rise of States in Europe, A.D. 1000 to 1800* (Boulder, 1994), pp. 218–50.

homogenize the population beyond these formalities. The reality of the exercise of political power remained very different between the '*pays d'états*' in which assemblies of estates continued to share power, and those territories where the monarchy had been able to introduce its officials in an early stage.¹⁵

In this respect, the focus on state formation may well have been an overvaluation by historians of that particular form of a political system, while during the whole *ancien régime* the internal power of dynastic states seemed far less impressive than their capacity to mobilize large armies. However, even if continuous warfare helped monarchs to expand their territory as well as to levy ever more taxes, to strengthen their fiscal apparatus and to subdue internal enemies, it may be considered as a factor which had a great impact on the process of state formation, but it surely was not the only and unequivocal one. The variety of geopolitical circumstances, inherited political and institutional traditions, social structures, religious and ideological movements all led to a great complexity of outcomes.¹⁶

If high concentrations of human and material capital could for centuries effectively resist the pressure of statebuilding monarchs, the question can be asked the other way around as well: why have the various federative forms of political systems been less successful in the creation of larger units which could compete with the dynastic states? Much depends on the way the larger union had been realized: was a single dominant centre at the origin, which may have been a city just as well as a monarch, or had integration been forged by formally equal partners in order to resist a common enemy? In the first case, the level of unity depended on the centre's overweight and capacity of penetration into the periphery; in the second case, the continuity of the common interests and the effectiveness of the mobilized defence were the ultimate tests.

Cultural and Economic Factors

There are domains in which monarchical officials in pre-industrial Europe never were or could be the most efficient agents, simply because the means to create unity could materially not be controlled by them. I think here essentially of the emergence of a sense of community and of markets, in other words: the integration on the basis of cultural and economic factors respectively. Elias described correctly the emergence of monarchies out of the competition between a great

¹⁵ Richard Bonney, *The European Dynastic States 1494–1660* (Oxford, 1991), pp. 330–45; Emmanuel Le Roy Ladurie, *L'Etat Royal, 1460–1610* (Paris, 1987).

¹⁶ Steven Gunn, David Grummit and Hans Cools, *War, State, and Society in England and The Netherlands, 1477–1559* (Oxford, 2007), pp. 329–34; Robert von Friedeburg, 'Why did Seventeenth-century Estates Address the Jurisdictions of their Princes as Fatherlands? War, Territorial Absolutism and Duties to the Fatherland in Seventeenth-century German Political Discourse', in Randolph Head and Daniel Christensen (eds), *Orthodoxies, and Heterodoxies in Early Modern German Culture* (Leiden and Boston, 2007), pp. 169–94.

number of local lordships; and in the same line of thought, Tilly rightly pointed to the gradual elimination, between, say, 1500 and 1800, of hundreds of relatively small autonomous political units and their incorporation in larger, mostly dynastic states. What we stressed so far is that this incorporation did not imply assimilation nor homogenization, and that it did not occur everywhere. Pre-existing entities resisted and maintained many of their characteristics, either as autonomous polities or within the multiple states in which they had been incorporated. This resistance proved so effective, that the regional and nationalistic movements arising since the nineteenth century until the present day, largely derived their *raison d'être* from the period preceding the emergence of national states, and this not only in terms of invented traditions.

Communities, self-conscious of their common character as distinct from others, existed long before territorial lords became the rulers over larger units. The common identity was expressed in the same language, lifestyle, customs and law. Infringements by the ruler's officials on customary law led to fierce resistance and frequently to revolt.¹⁷ The extension of a particular community depended much on the geographical conditions which could facilitate or hamper communication, and it was the result of centuries-long movements and contacts between various populations. These factors equally determined the extent of trading relations which were vital for certain types of economic systems. Cattle-raisers and cheese-makers need to export their products to markets and thus to enter into contact with other people. Highly developed urbanized societies equally rely heavily on trade relations with producers of raw materials and buyers of their own products. All those have an interest in securing their capital and in protecting their routes. Therefore, they organized peaceful arrangements for the traders underway and in their foreign destinations. Local communities created confraternities, guilds, hanses, safe havens, urban leagues, confederations, and in Castile the *mesta* to secure regular trade relations, even on long-distance trajectories. Maritime law grew from customary arrangements on particular routes, and it was applied by the magistrates in the harbour cities. Communities dependent for their agriculture and their security on irrigation or drainage systems, developed ever larger organizations on the basis of their common interest. The extent of these associations depended on the geographical conditions. Collaboration between the local communities or their individual members could be enforced by mutual agreement. This implied essential features of any public authority: legislation, the levy of specific taxes, the imposition of labour services, jurisdiction and sanctioning, which, in the case of the water management in the Low Countries, could even include death penalty. Such forms of bottom-up confederations showed their efficacy during centuries,

¹⁷ Peter Blickle (ed.), *Resistance, Representation and Community*, pp. 5–64 and 88–114; Peter Hoppenbrouwers, 'Rebels with a Cause: The Peasant Movements of Northern Holland in the Later Middle Ages', in Wim P. Blockmans and Antheun Janse (eds), *Showing Status: Representations of Social Positions in the Late Middle Ages* (Turnhout, 1999), pp. 445–82.

as many of them continue to function until the present day besides other forms of public authority.

All these forms of self-organization by associations of local communities, mainly for the protection and regulation of economic functions, came into existence long before monarchs even thought of becoming involved in such kinds of affairs. Collaborating communes also mobilized military force against common enemies, such as the Swiss confederation, the German Hanse and urban leagues in Lombardy in the twelfth century and in southern and western Germany in the fourteenth and fifteenth centuries. In the later Middle Ages, larger cities tended to control not only their trading networks through mutual agreements, but also to dominate their direct hinterland in order to secure their vital supplies and routes. Forms of domination included preferential market regulations and jurisdiction, and political cooperation under the leadership of the dominant city. In northern and central Italy, these conditions led, under the absence of an effective central ruler, to what has been called city-states or regional states. Elsewhere in Europe, this tendency was less outspoken due to the smaller demographic and economic supremacy of the capital cities, as well as to the greater presence of monarchs.¹⁸

Expanding territories and powers of monarchs increasingly came in conflict with the pre-existing forms of territorial domination by large cities as well as with other forms of confederation of communes. Their claims on the control of territory and dependent communes clashed. The latter might even prefer the rule of a distant prince rather than that of a regional metropolis. In situations where monarchs were mighty enough to subdue major cities and their dependent territories, institutionalized forms of bargaining between the old and the new holders of power could best serve the interest of both sides. Meetings of urban magistracies continued to be the most effective way to deal with interregional economic relations, with or without the participation of officials of a prince. And even assemblies of estates functioned differently in regions with a tradition of urban self-organization than in rural areas: they met far more frequently and dealt consistently with economic matters, about which princes and their advisers were simply less informed.¹⁹

The political power of dynastic states might well have offered some advantages to subjects, in comparison to the domination by a metropolis. Growing territorial states contained a larger protected area than most city states. The largest of them – Venice's Terraferma measuring about 30,000 km² in the fifteenth century – could only survive until the end of the eighteenth century thanks to its colonial empire, or what remained of it, wealth and relatively protected location vis-à-vis imperialistic powers. Most early modern dynastic states were much larger and thus

¹⁸ Stephan R. Epstein (ed.), *Town and Country in Europe, 1300–1800* (Cambridge, 2001).

¹⁹ Wim P. Blockmans, 'Representation', in Christopher Allmand (ed.), *The New Cambridge Medieval History. Vol. VII. c. 1415 – c. 1500* (Cambridge, 1998), pp. 29–64, esp. pp. 56–61.

offered advantages of monetary unity, protection and career opportunities for the local elites. Their obvious disadvantage, however, was their different rationale in international and internal affairs: the prince's honour drove him into increasingly costly warfare, which did not serve good internal governance nor the economic interest of most of their subjects.

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Chapter 19

Concepts and Approaches in Recent Scholarship on Statebuilding – A Critical Review

Peter Blickle

Statebuilding ‘from below’ has been a topic of research ever since scholars have been thinking about the various forms that the political organization of societies can take. This kind of statebuilding materializes in legislative activity with the participation of the citizens and with the goal of promoting the *bonum commune* (Aristotle). This paradigm has been current in Old European political theory, but it was picked up and pursued vigorously only from the beginning of the nineteenth century. Historically grounded models of statebuilding ‘from below’ were developed by Alexis de Tocqueville (*commune*) and by Otto von Gierke (*Genossenschaft*), both of whom shaped nineteenth-century Liberalism (including the Weimar Constitution). An extremely state-centred phase of historical scholarship in the first half of the twentieth century was followed – in the wake of the definitive democratization of Europe – by a paradigm shift toward the subjects (citizens). As the focal points of research there emerged (1) parliamentarism, (2) resistance, (3) community, (4) public policy and administration and (5) human rights.

(1) As Europe became increasingly parliamentarized, the Old European assemblies of estates ceased to be interpreted as bodies that represented merely special interests. Instead, some scholars (Gerhard, Carsten, Mousnier) emphasized their importance in limiting centralized power,¹ while others (Näf, Brunner) highlighted their significance for the development of the law.² Preferential attention was given no longer to the nobility and the clergy, but to the representation of cities and communes (Mitterauer).³ The ‘most modern’ proto-parliaments in

¹ Dietrich Gerhard, *Old Europe. A Study of Continuity 1000–1800* (New York, 1981); Francis L. Carsten, *Princes and Parliaments in Germany from the 15th to the 18th Century* (Oxford, 1959); Roland Mousnier, *Les institutions de la France sous la monarchie absolue 1598–1789* (2 vols, Paris, 1974–1980).

² Werner Näf, *Die Epochen der neueren Geschichte* (2 vols, 2nd edn, Aarau, 1959–1960), vol. 1, pp. 161–93; Otto Brunner, *Land und Herrschaft* (6th edn, Darmstadt, 1970), pp. 357–440.

³ Michael Mitterauer, ‘Grundlagen politischer Berechtigung im mittelalterlichen Ständewesen’, in Karl Bosl (ed.), *Der moderne Parlamentarismus und seine Grundlagen in*

Europe were undoubtedly those with strong communal representation (Spain in the fifteenth century, Sweden in the eighteenth, the Netherlands, the Tyrol, the southern German territories).

Two theses emerged from this work: estate representation arises not only to solidify royal (princely) rule, but also in places where subjects, thanks to their economic and political power, are able to force the government to establish institutionalized forms of deliberation (Blockmans).⁴ Where no assemblies of estates existed, there was also no modern parliamentarism (Löwenthal).⁵

Methodologically, the study of the *gravamina* and of the laws they prompted was path-breaking. This approach allowed scholars to ascertain the ideals held by the represented groups and their ability to implement them. Today, this approach is being continued and expanded upon in the study of *Suppliken* (Würgler, Nubola).⁶

(2) The debate on Marxism and its theory of revolution promoted an entire field of research: resistance by the subjects. Today, resistance (in city and countryside) is seen as the normal situation within Old European culture.⁷ It led throughout Europe to (a) a weakening of intermediate feudal powers (monasteries and the nobility) (Hilton, Schmale),⁸ (b) a 'juridification' (*Verrechtlichung*) of social conflicts' and to precursors of the state under the rule of law (Schulze, Neveux, Ylikangas),⁹ and (c) treaties with subjects that rose to the level of constitutional standing.¹⁰ This is also one reason behind the 'constitutional fever' of the early nineteenth century

der ständischen Repräsentation (Berlin, 1977), pp. 11–41. Cf. Peter Blickle, *Landschaften im Alten Reich* (München, 1973).

⁴ Wim P. Blockmans, 'Representation (since the Thirteenth Century)', in Christopher Allmand (ed.), *The New Cambridge Medieval History* (Cambridge, 1998), vol. VII, pp. 29–64.

⁵ Richard Löwenthal, 'Kontinuität und Diskontinuität', in Karl Bosl (ed.), *Der moderne Parlamentarismus und seine Grundlagen in der ständischen Repräsentation* (Berlin, 1977), pp. 341–56.

⁶ Cecilia Nubola and Andreas Würgler (eds), *Suppliche e 'gravamina'. Politica, amministrazione, giustizia in Europa (secoli XIV–XVIII)* (Bologna, 2002).

⁷ Cf. Peter Blickle (ed.), *Resistance, Representation and Community* (Oxford, 1997).

⁸ Rodney Hilton, *Bond Men Made Free, Medieval Pesant Movements and the Rising of 1381* (2nd edn, London, 1977); Wolfgang Schmale, *Bäuerlicher Widerstand, Gerichte und Rechtsentwicklung in Frankreich* (Frankfurt/M., 1986).

⁹ Winfried Schulze, *Bäuerlicher Widerstand und feudale Herrschaft in der frühen Neuzeit* (Stuttgart, 1980); Hugues Neveux, *Les révoltes paysannes en Europe XIVe–XVIIe siècle* (Paris, 1997); Heikki Ylikangas, *Klubbekriget. Det blodiga bondkriget i Finland 1596–97* (Stockholm, 1999).

¹⁰ Peter Blickle, *Unruhen in der ständischen Gesellschaft 1300–1800* (München, 1988).

(Würgler).¹¹ When it comes to the organization of resistance, one institution has been identified as being indispensable – the commune (Bookchin, Sabeian).¹²

(3) For a long time, the commune in its urban incarnation was regarded as the model for the modern state, following Max Weber. This thesis has been empirically underpinned and substantially differentiated by *Bürgerstudien* (the study of the bourgeoisie) (Gall, Kocka, Dilcher, Meier).¹³ In the meantime, the approach was extended by scholars (Bader, Fossier, Imsen) who placed the village and *Landgemeinde* (rural commune) as analogous institutions alongside the urban commune.¹⁴ Shared features (*communalism*) lie in autonomous legislating and in independent administration in keeping with the measure of the 'common good'. The commune is the most widespread and most lasting of the forms of non-state societalization (*Vergesellschaftung*), thanks to its spatial framework (*Gebietskörperschaft*) and the enforcement of peace. European history can also be interpreted as a dialogue-like exchange between communes and the state.¹⁵ The explosive political force of this interplay lies in the fact that communes form the root foundation of stable democracies.

(4) Legislating and administration are among the central competencies of the modern state. In the early modern period this was called *gute Policey* (roughly: good public policy and administration). German historical scholarship saw this for a long time as an instrument for disciplining society and boosting the power of the prince. Following the rapid emergence of this field of research (Maier)¹⁶ and its expansion to other European countries (Raeff, Rigaudière, Simon, Iseli),¹⁷

¹¹ Andreas Würgler, *Unruhen und Öffentlichkeit. Städtische und ländliche Protestbewegungen im 18. Jahrhundert* (Tübingen, 1995).

¹² Murray Bookchin, *The Third Revolution, vol. I: Popular Movements in the Revolutionary Era* (London, 1996); David Sabeian, 'Die Dorfgemeinde als Basis der Bauernaufstände in Westeuropa bis zu Beginn des 19. Jahrhunderts', in Winfried Schulze (ed.), *Europäische Bauernrevolten der frühen Neuzeit* (Frankfurt/M., 1982), pp. 191–205.

¹³ Lothar Gall, *Von der ständischen zur bürgerlichen Gesellschaft* (München, 1993); Jürgen Kocka, 'Bildungsbürgertum – Gesellschaftliche Formation oder Historikerkonstrukt?', in Jürgen Kocka (ed.), *Bildungsbürgertum im 19. Jahrhundert, Teil IV* (Stuttgart, 1989), pp. 9–20; Gerhard Dilcher, *Bürgerrecht und Stadtverfassung im europäischen Mittelalter* (Köln, 1996); Ulrich Meier, *Mensch und Bürger. Die Stadt im Denken spätmittelalterlicher Theologen, Philosophen und Juristen* (München, 1994).

¹⁴ Karl Siegfried Bader, *Dorfgenossenschaft und Dorfgemeinde* (Köln, 1962); Robert Fossier, *Paysans d'occident XIe–XIVe siècles* (Paris, 1984); Steinar Imsen, *Norsk bondekommunalisme fra Magnus Lagabøte til Kristian Kvart* (2 vols, Trondheim, 1990–1994).

¹⁵ Peter Blickle, *Kommunalismus. Skizzen einer gesellschaftlichen Organisationsform* (2 vols, München, 2000).

¹⁶ Hans Maier, *Die ältere deutsche Staats- und Verwaltungslehre* (2nd edn, München, 1980).

¹⁷ Marc Raeff, *The Well-ordered Police State* (New Haven, 1983); Albert Rigaudière, 'Les ordonnances de police en France à la fin du Moyen Age', in Michael Stolleis (ed.),

it became evident how indispensable the active consent of 'local society' was to successful *gute Policey*, not only to implement the latter effectively, but to learn about the problems it was meant to address in the first place. *Gute Policey* thus acquired its legitimacy by being rooted in local institutions (Holenstein, Landwehr).¹⁸ It was also on the local level that communal statutory law, local jurisdiction and the state's *Policey* regulations engaged in what one could call, using André Holenstein's phrase, 'empowering interactions'. Chronologically, communal regulations precede *gute Policey*. The public sphere that is created by statutes and regulations is the sphere that exists between households, and it emerges first and foremost in cities and villages.

(5) Historical scholarship over the last 40 years has largely been social history. As such, it has only touched upon cultural history, primarily in the area of the Reformation. We now know that the bearers of the Reformation movement were initially burghers (Moeller, Brady) and peasants (Peasants' War, 1525), not the princes.¹⁹ Communal ideals and the reformers' positions converged (*communal reformation*)²⁰ and led to normative focuses (*normative Zentrierung*), such as common good (Hamm).²¹ In spite of the subsequent, state-sponsored 'confessionalization', elaborated by Wolfgang Reinhard und Heinz Schilling, autonomy on the part of the subjects or faithful was evidently preserved in the organization of religion, at least regionally (Hersche, Schmidt, Forster, Schnyder).²²

The Reformation also reinforced the impulse toward freedom that is demonstrable since the Middle Ages (against villeinage, serfdom), with far-reaching consequences at least for Central Europe. It is possible that Georg

Policey im Europa der frühen Neuzeit (Frankfurt/M., 1996), pp. 97–161; Andrea Iseli, 'Bonne police'. *Frühneuzeitliches Verständnis von der guten Ordnung eines Staates in Frankreich* (Epfendorf, 2003); Thomas Simon, 'Gute Policey'. *Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der Frühen Neuzeit* (Frankfurt/M., 2004).

¹⁸ André Holenstein, 'Gute Policey' und lokale Gesellschaft im Staat des Ancien Régime. *Das Fallbeispiel der Markgrafschaft Baden(-Durlach)* (2 vols, Epfendorf, 2003); Achim Landwehr, *Policey im Alltag. Die Implementation frühneuzeitlicher Policeyordnungen in Leonberg* (Frankfurt/M., 2000).

¹⁹ Bernd Moeller, *Reichsstadt und Reformation* (2nd edn, Berlin, 1987); Thomas A. Brady, Jr., *Ruling Class, Regime and Reformation at Strasbourg (1520–1555)* (Leiden, 1978); Peter Blickle, *Die Revolution von 1525* (4th edn, München, 2003).

²⁰ Peter Blickle, *Gemeindereformation. Die Menschen des 16. Jahrhunderts auf dem Weg zum Heil* (München, 1985).

²¹ Berndt Hamm, *Bürgertum und Glaube. Konturen der städtischen Reformation* (Göttingen, 1996).

²² Peter Hersche, *Muße und Verschwendung. Europäische Kultur und Gesellschaft im Barockzeitalter* (2 vols, Freiburg/Br., 2006); Heinrich Richard Schmidt, *Dorf und Religion. Reformierte Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart, 1995); Marc R. Forster, *Catholic Revival in the Age of the Baroque* (Cambridge, 2001); Caroline Schnyder, *Reformation und Demokratie im Wallis (1524–1613)* (Mainz, 2002).

Jellinek's classical, traditional line of human rights from the *Virginia Bill of Rights* back to England's Free Churches and the Reformation could also be drawn differently.²³

Historical scholarship of the last few decades has laid indispensable foundations for the concept of statebuilding 'from below'. It has offered a plausible scenario in which the purposes of the modern (Western) state and the procedures for realizing them can be traced back also to old European traditions.

²³ Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte. Ein Beitrag zur modernen Verfassungsgeschichte* (3rd edn, München, 1919); Peter Blickle, *Von der Leibeigenschaft zu den Menschenrechten. Eine Geschichte der Freiheit in Deutschland* (2nd edn, München, 2006).

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Chapter 20

No Statebuilding from Below! A Critical Commentary

Wolfgang Reinhard

Were states really built from below? I doubt it! But how can such doubts be possible when the localized micro-perspective is more than essential for the study of early modern politics and political systems – and not only early modern ones? For good reasons this micro-perspective has become as important as the traditional macro-perspective from the centre of the commonwealth.

In my opinion, this is not at all controversial. Nevertheless, concerning the very successful review of current research at this conference and research in future, I should like to make some rather short complementary remarks and then raise a fundamental methodological objection which is intended to lead to a change of focus. I hope that in this way my doubts have a chance to become beneficial for the conceptualization of future research.

Let me begin with seven complementary remarks:

1. Not only localities but also the very centre of a commonwealth could and should be studied with micro-historical methods. The courts and their factions, the people active at central institutions, their networks and interactions are essential for the analysis of a political system and their micro-political configuration has implications for macro-political issues. Together with some of my students, I have practised this kind of research for about 40 years now.
2. The churches and their ministers were another essential part of early modern political life, but they were rarely mentioned at this conference. Especially in cases where ‘states’ had no servants on the local level, ecclesiastics might serve as agents of the ‘state’. But who appointed them, the prince, a central council, or the local community? Was there a difference in political behaviour between ministers of different denominations? Were Anglicans, Catholics and Lutherans automatically inclined to position themselves on the side of the ‘state’, whereas Calvinists and Free Church ministers were to be found on the side of the people? I guess that Professor Castiglione (and also Professor Schorn-Schütte, not present at this conference) hold a different opinion.
3. Much of the research presented here has been done on the eighteenth century because of the comparatively rich sources. But under the conditions

of already well-developed state institutions in that century, the conditions for subject–ruler interaction may differ considerably from those during earlier times. This difference over time should be taken into consideration more carefully. In other words, there was probably more demand for state activity by political consumers in the eighteenth century because of a larger offer from the other side which had created this demand in the meantime.

4. Still more research should be invested into language and symbols. Do rulers and subjects use the same language and the same symbols? And if they do, do language and symbols have the same meaning? Was, for instance, *bonum commune* the same thing for both sides? Do both sides understand each other or do massive misunderstandings occur? Do we come across calculated manipulation of language and symbols?
5. On the other hand, I regret that very little research on popular resistance and popular uprisings and on popular lawsuits against authorities is going on at the moment. There was almost no contribution to this field at our conference. Perhaps the concept of ‘negotiation’ implies a certain harmonization of our understanding of interaction at the local level.
6. In contrast, the study of law, of the making and handling of law, has become essential. But we should not forget that it is an ambiguous story not only because of the existence of different kinds of law in conflict but because of the semi-independent role lawyers could play between rulers and subjects. They might be subservient agents of rulers, but might also contribute to revolutions, until law became monopolized by the state. Yesterday we learned that there is still at least one legal historian who even believes that state law is not good law.
7. We heard many small stories of political interaction from the bottom up at this conference. Nevertheless, the promoters of the concept of statebuilding from below have a great new story in mind. How can this be possible? How can the contents of all those micro-stories be generalized to become a new macro-story? In my opinion, only systematic comparison with generalizing intention is able to demonstrate how far and why things were not identical, but similar and, quite often, functionally equivalent.

Now, I proceed to my general objections not to this extremely rich and instructive conference but to its basic assumption of statebuilding from below.

I agree with almost everything André Holenstein has said in his introductory paper but I still think that he is wrong. How is such a paradoxical statement possible? Because I have reason to believe that the basic concept of statebuilding from below is empirically weak and therefore leads us perhaps not in a completely wrong direction, but at least not in the most promising one. To put it differently, André Holenstein’s arguments are correct, but his conclusions are not radical enough. First, I shall try to deconstruct the concept of statebuilding from below, this time in eight steps:

1. Most of the activities of subjects presented by recent research and by the papers at this conference did not build anything, and certainly not a state. They were interactions of rulers and subjects without specific direction which in some but certainly not in all cases had consequences for the structure of the respective commonwealth. To call this rather modest effect statebuilding is simply a misrepresentation of reality.
2. If there were any consequences at all, these were mostly unintended consequences. Not even the rulers and certainly not the subjects ever intended to build a state. Rulers wanted an increase in their central power. When they were successful, the unintended consequence was the state. Subjects however never had the intention of increasing central power. Demand for more state on the part of political consumers was the exception and not the rule. And, as I said before, this was possible only because of an increased offer from the other side. According to economic theory, offer tends to create its own demand. This may also be true of political offers.
3. Using the concept of statebuilding from below we create another 'statist' teleology which is empirically beside the point. Not even power-greedy rulers had a kind of masterplan for statebuilding. There was no standard path towards that goal but only a chaos of contingency with some tendency to increase the power of rulers, which might finally lead to the development of the state.
4. With their activities, subjects served many different interests, first of all their own local ones and not those of the state. Coincidence of local with central interests was rather the exception and happened incidentally.
5. Even as a term the concept of 'statebuilding from below' is ambiguous and deceptive. Because on the one hand it refers implicitly to the modern state as the result of the statebuilding process, but on the other hand it applies the notion of 'state' to very different varieties of political organization and includes some which never became states at all. This ambiguity may not be calculated but nevertheless it is essential for the concept because it allows historians to book all activities of subjects which might have some consequence for the structure of their commonwealth on account of statebuilding.
6. In doing this, we still pay tribute to Hegel's dialectic of world history where every antagonistic activity inevitably leads to the goal of history, the rise of the modern state. Or, to allude to a famous statement by Marx, the new concept of statebuilding from below is just the old one of statebuilding from above turned upside down.
7. All this is not meant to deny that the activities of subjects sometimes might indeed have consequences for the structure of their respective commonwealth to a very limited degree, even for the creation and stabilization of institutions. But the latter statement refers to urban and rural communities of limited geographical extent. Inside larger states they exercised such influence only indirectly via communities such as the parish,

the borough or the county in England, the *seigneurie*, the village or the *ville* in France. Communities of that size cannot be considered as 'states' in a sense similar to the kingdoms of England or France. In addition, we are sometimes simply led astray by the sources where 'states' quite often is a term for pre-modern 'estates' and not for 'states' in the modern sense.

8. To sum up: there was no widespread statebuilding from below because this was neither within the reach nor in the interest of the people below. By definition, statebuilding is a top-down process because it originates from and is based upon the interests of the people in the centre. Even there, it was not a planned activity but happened as the unintended consequence of their greed of power. For it is almost a rule that history happens as an unintended consequence!

Just consider the two most famous early modern cases, Switzerland and the Netherlands:

1. During early modern times neither Switzerland nor the Netherlands were states; they were not even predecessors of a state, but had a completely different structure of their own. They were not federal states, but inhomogeneous confederations established for the purpose of conserving the status quo without any project for the future.
2. When they finally became more or less modern states, this was not at all the result of an internal statebuilding process from below but the consequence of lost wars, interference from outside, or civil war. Of course, some traditional elements were conserved and used to stabilize the new states: their territory, the Dutch dynasty and the federal character of Switzerland. But such traditions were at the utmost necessary conditions of modern statebuilding, certainly not sufficient ones.
3. Even inside the sovereign provinces of the pre-modern Netherlands and inside the sovereign localities, the 'Orte' of Switzerland, subjects participated only to a limited extent in political activities. Even those small communities were created and governed by their elites, in other words top-down.

Now, having successfully deconstructed the concept of statebuilding from below, let us look for an alternative concept.

1. This is necessary because, from the political point of view, research with the perspective of statebuilding from below suffers from the same obsession with the idea of the state as the older top-down perspective it wants to replace. In both cases, implicitly or explicitly, the modern state remains the point of reference. As a consequence, research with a perspective from below, even research with a critical attitude towards the state, remains affirmative and

contributes to the historical legitimation of the modern state.

2. Nevertheless, the very ambiguity of the concept of the state mentioned before, which is typical of this kind of research, in my opinion contains the same secret message as, for instance, Peter Blicke's concept of 'communalism' or the sometimes rather dubious attempts to declare early modern assemblies of estates as harbingers of modern democracy. It is the message of a critical attitude towards the state, which probably has its roots in a kind of subconscious anarchist desire.
3. This point of view could and should be developed explicitly. Especially today, it has become possible and even necessary to deconstruct that European god called 'the state', to reduce it from the inevitable and therefore omnipresent goal and essence of world history to a mere product of historical contingency. It turns out to be just one possibility among several others for reasons we know have been suppressed, but neither completely nor forever. Such alternatives should become our topic and point of reference instead of the modern state.
4. Let us remember that originally politics was not reduced to the power policy of large national power states which allowed their subjects to participate only symbolically and by suffering. Originally, politics were a creation of the *Polis*, an urban republic and face-to-face society where citizens were entitled to decide upon everything of immediate concern to them.
5. Therefore, in my opinion, it is not the first task of historical research to find out how far subjects may have contributed to the building of that *Moloch* called the modern state, because implicitly we are inclined to consider participation in this process as the only way simple folk can gain some historical dignity.
6. In contrast, our calling as historians should be the discovery of an alternative political world with immediate participation by citizens, which is older than the state. Therefore, it has a historical dignity of its own which is not derived from that of the state. That world did not exist by the grace of the state. This refers not only to the historical facts, which in my opinion are self-evident, but even more to the concepts we use, which make us see things from a certain point of view. Therefore, historiography's ancient central myth of statebuilding from above should not be replaced by a new myth of statebuilding from below, which on closer examination proves to be just a variety of the old one. Instead, the true alternative is the conceptual mythology of a polity without a state.
7. From this historical perspective the modern state is simply a deteriorated kind of European polity. As a rule, citizens and subjects have not been eager to support it or to contribute to its construction. They have rather been suppressed, exploited and cheated by the owners of state power. Sometimes, however, and probably more often than we were inclined to believe because of our fascination with the state, they have been able not only to resist oppression successfully, but even to use the activities of state

power and to transform their outcome for their own purposes. This is the kind of historical concept I should like to propose instead of statebuilding from below.

Chapter 21

Statebuilding from Below – Towards a Balanced View

Jon Mathieu

Wolfgang Reinhard was invited to the Ascona conference on ‘Statebuilding from below’ in 2005 as a critical commentator and he delivered a thought-provoking text (published as Chapter 20 in this volume). Seven of his remarks concern complementary observations on the papers presented at the conference; eight points are dedicated to the deconstruction of the concept of statebuilding from below, with three additional points considering especially Switzerland and the Netherlands in the early modern period. Finally, in seven steps, the commentator looks for an alternative concept.

I will develop four points in my argument. They concern the explicit and practical definitions of the state, the value judgements of the text and its somewhat hidden agenda. In my response to Reinhard’s comment I will refer to the programme of the European Science Foundation on ‘The Origins of the Modern State in Europe’ as a background document. The programme started in the 1980s and can be considered the largest enterprise in European historical research on statebuilding so far.¹ It was one of the inspirations for the conference at Ascona and especially for the main questions: is the relationship between top-down and bottom-up forces, assigned to European statebuilding processes in the programme, balanced by today’s standards? How do we judge the relationship after a quarter of a century, with all the shifts in social theory and historical practice?

Definitions

Wolfgang Reinhard starts his comment with the exclamation ‘No Statebuilding from Below!’ and he sums up his opinion on this point with the sentence: ‘By definition, statebuilding is a top-down process because it originates from and is based upon the interests of the people in the centre.’ Unfortunately, he does not provide us with this definition. So we have to look at the implicit definitions used in his text, and at the explicit ones he uses in other texts on statebuilding. Let us pursue the second way first.

¹ Wim Blockmans and Jean-Philippe Genet (eds), *The Origins of the Modern State in Europe, 13th to 18th Centuries* (7 vols, Oxford, 1995–2000).

In his *Geschichte der Staatsgewalt (History of State Power)* Reinhard starts out with definitions by nineteenth-century German jurists. They assigned the following characteristics or claims to the modern state: (1) an exclusive state territory; (2) a 'state people' in the form of a sedentary 'association of persons with lasting membership' (*Staatsvolk als sesshafter Personenverband mit dauernder Mitgliedschaft*); (3) a sovereign state power which involves (a) the monopoly of the legitimate use of physical violence in the interior, and (b) juridical independence from exterior authorities. The strict homogeneity of territory, people and authority represents a kind of common denominator. There is only one state authority and the state people comprise juridically uniform individuals speaking only one language.²

According to Reinhard, this juridical definition is helpful, but does not really correspond to long-term historical development. The modern state as defined by jurists only existed from the close of the eighteenth century to the second third of the twentieth century. The historian, therefore, instead of referring to a timeless abstract state, should rather focus on specific state power constellations, with their personnel and institutions. There one can find the processes of power formation which finally lead to the institution called 'state'.³

Of course, there have been many other attempts to define the state since the nineteenth century. Charles Tilly, whose studies exerted a considerable influence on the *Modern State* programme, chose the following wording in 1992:

Let us define states as coercion-wielding organizations that are distinct from households and kinship groups and exercise clear priority in some respects over all other organizations within substantial territories. The term therefore includes city-states, empires, theocracies and many other forms of government, but excludes tribes, lineages, firms and churches as such.

Such a definition – Tilly continues – is not exempt from controversy. Some scholars extend the term to whatever structure of power exists in a large population; others restrict it to relatively powerful, centralized and differentiated sovereign organizations which Tilly would call 'national states'. This term includes much more than 'nation-states' where people share a strong linguistic, religious and symbolic identity, corresponding roughly to the homogeneous state of the nineteenth-century definition which turns out to be an extremely narrow version.⁴

² Wolfgang Reinhard, *Geschichte der Staatsgewalt. Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (München, 1999), p. 16; he gives no quote, but seems to refer mainly to the legal philosopher Georg Jellinek (1851–1911).

³ Reinhard, *Staatsgewalt*, p. 16; he then shifts the problem from the notion of state to the notion of power.

⁴ Charles Tilly, *Coercion, Capital and European States, AD 990–1992* (Cambridge MA, 1992), pp. 1–3.

For the present purpose it is not necessary to privilege one or the other definition. The point here is that neither the narrow version proposed by the nineteenth-century jurists nor the wider one from the twentieth-century social scientist support Reinhard's saying that statebuilding is 'by definition' a top-down process. They do not mention the process at all.

Exclusions

Theoretical definitions are one thing; practical inclusions/exclusions are another thing. Generally speaking, the *Modern State*-programme chose an inclusive rather than an exclusive strategy, and this open attitude was an important precondition for the insights produced by the researchers involved.⁵ Reinhard, on the other hand, in his *Geschichte der Staatsgewalt*, does not economize on excluding power structures from being true states:

- the state was invented in Europe, and not in other parts of the world;
- the historical development leading to the state lasted many centuries, and some parts of Europe were particularly slow;
- finally, at the end of the twentieth century, the state has again ceased to exist.⁶

The second point refers mainly to regions dominated by communal structures and is taken up in the comment on the Ascona conference as empirical proof of the impossibility of statebuilding from below:

During early modern times neither Switzerland nor the Netherlands were states; they were not even predecessors of a state, but had a completely different structure of their own. They were not federal states, but inhomogeneous confederations

⁵ See one introductory text: Wim Blockmans, 'Les origines des états modernes en Europe, XIIIe–XVIIIe siècles. Etat de la question et perspectives', in Wim Blockmans and Jean-Philippe Genet (eds), *Visions sur le développement des états européens. Théories et historiographies de l'état moderne* (Rome, 1993), pp. 1–14, and the final statement of the general editors concerning the variability of political developments: 'Not only did this research programme help us adopt a more open-minded attitude to the variability of developments from any given moment in history onwards: it also demonstrated clearly that the development of a few states in western Europe into centralized bureaucratic and absolutist monarchies is inadequate as a standard of reference for developments throughout Europe' ['Origins of the Modern State, General Editors' Preface', pp. vii].

⁶ Reinhard, *Staatsgewalt*, esp. pp. 15 and 535; see also Wolfgang Reinhard, 'Einführung: Moderne Staatsbildung – eine ansteckende Krankheit?' in Wolfgang Reinhard (ed.), *Verstaatlichung der Welt? Europäische Staatsmodelle und aussereuropäische Machtprozesse* (München, 1999), pp. VII–XIV.

established for the purpose of the conservation of the status quo without any project for the future.

When the two countries finally developed state structures during the nineteenth century, this came about because of lost wars, interference from outside, or civil war, and not as a consequence of statebuilding processes from below. Moreover, the pre-modern communal structures in the Dutch provinces and in the Swiss cantons were created and governed by their elites, that is top-down.⁷

In some currents of historical thought there is a time-honoured tradition of opposing the early modern dynastic state with communal structures, and of denying the fact that the latter were part and parcel of developing political systems. Usually this results in the narrative of the ever-growing central state which per se represses and suffocates communal autonomy. There are many voices in research today which do not find this split view very useful any more. One of the troubles with this dichotomy is that it prevents us from dealing properly with the manifold interactions between early modern state structures in more central and more peripheral locations.⁸

A most pronounced case of communal development in early modern Europe was certainly to be found in the Grisons, loosely allied to the Swiss Confederation. Since I happen to know the region first-hand, I take it here as an example. In the 1520s the Grison villagers fought and won their peasant war, and in the following decades to a large extent abolished the feudal tithes. Until the introduction of cantonal taxes in the mid nineteenth century they paid no direct duties to the *Freistaat Gemeiner Drei Bünde* as the encompassing political entity was often called during the *ancien régime*. Despite the lack of a power centre these villages were subject to a process that can be described as structuration of communal life. It was characterized by elements such as the territorial and social demarcation, the writing down and systematization of local constitutions, the increase of communal offices and office business. One of the most important driving forces behind the change can be seen in the dynamics of corporative status competition. If a cultural norm established itself in European societies, sooner or later there was a reason to involve it in the internal game, especially as migration, too, was on the increase.

⁷ See the text in this volume.

⁸ André Holenstein, *'Gute Policey' und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der Markgrafschaft Baden(-Durlach)* (2 vols, Epfendorf, 2003), here vol. 1, pp. 25–106 is a thorough case study and offers a broad theoretical review; Stefan Brakensiek gives many hints as to the historical conditions leading to the dichotomical conceptualization of 'Staat' and 'Gemeinde' in Stefan Brakensiek 'Germany: Fonctionnaires d'Etat et bourgeoisie urbaine en Allemagne', *Histoire, Economie, Société. Epoues moderne et contemporaine*, 2 (2005): 253–78.

Thus the Grisons had a political system with very local power distribution, but they clearly participated in general European trends.⁹

Contrasting this system with the state definitions given above, we notice that the communes and the *Freistaat* were coercion-wielding organizations distinct from family groups and exercising priority in some respects over all other organizations within their region. They had a circumscribed territory, a defined group of persons belonging to it, and written rules restricting the legitimate use of physical violence. Jean Bodin was horrified by the democratic anarchy raging in that country, but he included it in his writings on statehood. Later on, the Grisons were formally mentioned in European peace treaties as being an entity of their own, within the wider *Corpus Helveticum*.¹⁰ No historian of my generation would say that statebuilding activities in the region were all bottom-up (elite power has been a big issue in the studies done in the last 30 years); yet no historian would pretend that all statebuilding activities were top-down either (the practices of popular pressure show up too clearly in the records). And of course, there were some people in this alpine republic at the source of the river Rhine who thought about the future and made projects for it. I presume that this was also the case in the great country at the mouth of the Rhine, the Netherlands.

Value Judgements

At the end of his comment Reinhard looks for an alternative to the concept discussed at the Ascona conference. In his eyes, statebuilding research suffers from the same obsession with the idea of the state whether it stresses top-down or bottom-up processes. Even when we take a critical attitude, our studies contribute to the historical legitimization of the modern state. Behind that critical attitude Reinhard sees subconscious anarchist desires, and he encourages us to opt for a public coming-out. We should explicitly think away ‘the *Moloch* called the modern state’ which simply represents ‘a deteriorated kind of European polity’. Originally, politics were created by the *Polis*, an urban face-to-face society ‘where citizens were entitled to decide upon everything which was of immediate concern to them’. Therefore the old ‘central myth of statebuilding from above’, and its new accomplice stressing popular forces, is no good for scientific endeavour: ‘Instead, the true alternative is the conceptual mythology of a polity without a state.’¹¹

⁹ *Handbuch der Bündner Geschichte, vol. 2: Frühe Neuzeit*, ed. by the Verein für Bündner Kulturforschung (Chur, 2000), with contributions by Jon Mathieu, Max Hilfiker, Randolph C. Head and others; a comparison of state development in the Grisons with regional developments elsewhere in Jon Mathieu, *Geschichte der Alpen 1500–1900. Umwelt, Entwicklung, Gesellschaft* (Wien, 1998), pp. 149–76.

¹⁰ Thomas Maissen, *Die Geburt der Republik. Staatsverständnis und Repräsentation in der frühneuzeitlichen Eidgenossenschaft* (Göttingen, 2006).

¹¹ See the text in this volume.

Statebuilding from above – initially the only kind by definition – has now mutated into a myth and a target, not different from the bottom-up version. It is important to note, however, that Reinhard fights the state in the name of historical dignity, and I do not doubt the noble motivations behind the fight. My doubts concern some other points: the long-term story leading from the bright and shining Greek *Polis* to the dark *Moloch* state fits only too well into the genre of *Niedergangsgeschichten* (stories of decline) that might be psychologically appealing to some social groups, but not really useful for academic research, since these narratives are often too sweeping and value-loaded. In fact, Reinhard does not tell us how we could develop a practical alternative with his ‘conceptual mythology’ ignoring the state, and his own model does not show us the way either (his above-mentioned book has more than 600 pages and cites about 2,500 titles concerning state history and power). Last but not least, one can presume that the deep irritation with the state expressed in the comment has a rather personal background, and does not reflect a general sensibility in European countries about their past.

Statebuilding from Below

Yet the main thrust of Reinhard’s text does not run against statebuilding from below. In fact, he makes many concessions to the possibility and the historical reality of practices which can be categorized under that heading. He mentions them in most of the points in the first parts, albeit with the intention of downplaying the idea. For example: ‘With their activities subjects served many different interests, first of all their own local ones and not those of the state. Coincidence of local with central interests was rather the exception and happened incidentally.’ If one overlooks the problematic exclusion of the local from the state, one certainly agrees: for statebuilding to happen from below, there was no need of identical interests between actors in more peripheral and more central positions, and of course there was no need of a masterplan from anybody. Thus the intriguing model of ‘empowering interactions’, developed by André Holenstein for the Ascona conference, offers space for diverging interests and unintended consequences of ego-centric behaviour.¹²

In spite of the title of his comment, Reinhard’s real sparring partners are not bottom-up processes but the state and state-centred research as such. That is the reason why he can agree ‘with almost everything’ Holenstein says in his introductory paper – but still think he is wrong. And he can tell us that Holenstein’s arguments are correct, but his conclusions are ‘not radical enough’. In other words, they are not very helpful for his goal of thinking away the state.

The Ascona conference was engaged in another enterprise, both more modest and more realistic. It started with the question of the balance between different

¹² See the text in this volume.

kinds of social forces and actors in the history of European statebuilding. We asked ourselves if we should reconsider the relationship between top-down and bottom-up forces, assigned to it in earlier studies and especially in the great programme on ‘The Origins of the Modern State in Europe’. Maybe the fascination with the most obvious and visible aspects of power seduced our predecessors, and still seduces us, to overrate the influence of the elites and to underrate the potential of larger populations. It is up to the reader of this volume and to the research community to judge the idea and its outcome. To my mind, many interesting papers and discussions have shown that the approach was productive.

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Chapter 22

The Impact of Communication Theory on the Analysis of the Early Modern Statebuilding Processes

Barbara Stollberg-Rilinger

What role do approaches derived from communication theory play in the examination of constitutional and political historical phenomena? In order to answer this question, we must first clarify what we mean by communication theory. I draw upon a number of fundamental cultural theoretical premises, which are derived from various theoretical frameworks. Anthony Giddens, Roger Chartier and Pierre Bourdieu have already been cited by André Holenstein.¹ I would add, for example, Alfred Schütz, Ernst Cassirer, Peter Berger, Thomas Luckmann, Erving Goffman and also Niklas Luhmann.² As varied as these approaches are, they appear to me, in certain elementary points, to converge.

It is a basic premise that every social reality is performatively regenerated through individual acts of communication. It follows that all historical phenomena can be treated as communication processes. The dialectic character of how the world is generated, the changing relationship between collective code and individual act of communication, seems to me to be fundamental – communication is, on the one hand, never without preconditions, but is

¹ Anthony Giddens, *Die Konstitution der Gesellschaft. Grundzüge einer Theorie der Strukturierung* (Frankfurt/M., 1988); Roger Chartier, *Die unvollendete Vergangenheit. Geschichte und die Macht der Weltauslegung* (Frankfurt/M., 1992); Pierre Bourdieu, *Zur Soziologie der symbolischen Formen* (Frankfurt/M., 1974); Pierre Bourdieu, *Sozialer Sinn. Kritik der theoretischen Vernunft* (Frankfurt/M., 1987); Pierre Bourdieu, *Das politische Feld. Zur Kritik der politischen Vernunft* (Konstanz, 2001). Cf. the introductory chapter to this volume, by André Holenstein.

² Alfred Schütz, *Theorie der Lebenswelt* (Frankfurt/M., 1998); Alfred Schütz, *Der sinnhafte Aufbau der sozialen Welt. Eine Einleitung in die verstehende Soziologie* (Frankfurt/M., 1993); Ernst Cassirer, *Philosophie der symbolischen Formen* (Darmstadt, 1953); Peter Berger and Thomas Luckmann, *Die gesellschaftliche Konstruktion der Wirklichkeit. Eine Theorie der Wissenssoziologie* (Frankfurt/M., 1980); Erving Goffman, *Wir alle spielen Theater* (5th edn, München, 1991); Erving Goffman, *Interaktionsrituale* (Frankfurt/M., 1971); Niklas Luhmann, *Soziologische Aufklärung. Aufsätze zur Theorie sozialer Systeme* (3rd edn, Opladen, 1972); Niklas Luhmann, *Gesellschaftsstruktur und Semantik. Studien zur Wissenssoziologie der modernen Gesellschaft* (Frankfurt/M., 1980).

always embedded in a social context (*communio*), which prescribes common rules, conventions and standardizations and which stands in opposition to the individual as objective social reality. On the other hand, these collective prescriptions must be constantly subjectively re-adapted and re-completed through individual acts of communication. It is in this context that the term 'performance', which is derived both from speech act theory and from the field of drama, has risen to prominence. It is from speech act theory that we gain the insight that communicative acts effect what they signify, and in this sense have performative character. The derivation of the term from drama principally expresses that meaning is always created only at the moment of expression and performance.

It is a further premise of communication theory that understanding and communication are inseparably mutually inter-referential. Both exist equally in every act of communication and are in a relationship of fundamental reciprocity – in communicating something, I am at the same time assuming understanding of the communication, and vice versa. Communication therefore has the character of a reciprocal event between actors, who assume a mutual intention to communicate and understand. This applies to all possible types of communication – verbal language is just one of many communicative codes, albeit a particularly effective one.

These premises derived from communication theory have now broadly entered into all areas of cultural studies. They are not trivial; rather, they are able to fundamentally alter the perspective on every historical object. This also applies to the history of statebuilding. The theoretical influences referred to are also in the process of changing classical constitutional and political history, in that they blur established institutional categories and allow abstract structures to be seen as flexible social practices. Classical constitutional history was shaped by the constitutionalism of the nineteenth century and the legal positivism of the early twentieth century. Exact legal categories such as state, sovereignty, justice, legislation, state power, public law etc. were taken for trans-historically valid criteria. This remains the case today in many respects – despite the criticism from the point of view of a non-positivist constitutional concept expressed by, for example, Rudolf Smend or Otto Brunner.³ Normative texts formed the crux of research and distorted the way practice was perceived. Subliminally, at least, there was a tendency to work from an understanding of legal and constitutional order which was only made possible by the existence of written constitutions. Erroneous presumptions include the notions of the exactitude, the systematic interconnection and the unambiguous validity of legal norms. It was the arrival of impulses from cultural and communication theory that was, in my opinion, able to overcome the values suggested by modern constitutional law categories

³ Rudolf Smend, *Verfassung und Verfassungsrecht* (München, 1928); Otto Brunner, *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter* (5th edn, Wien, 1965, reprint Darmstadt, 1984).

and was better able to do justice to pre-modern phenomena. They strip the institutions of their objectively factualist character and enable them to appear as fictions – not in the sense of illusions or irreality, but in the sense – and this is essential – of stable validity attributions which direct action, of successfully enforced assumptions. In this way, the potency of linguistic actions, symbolic performances etc. in creating reality becomes tangible. However, not every validity claim has the opportunity to become accepted. In order for a fiction of the type ‘x is considered as y’ to really become a collective director of action and create stable mutual expectations, certain preconditions must be present. For example, the actors must be authorized to act. In other words, every institutional fiction is based on a whole series of other institutionalizations. Institutional orders are to be understood as complex meshes of reciprocal validity claims and attributions.

This does not, however, function without the presence of power and interests. One party’s validity claim becomes accepted at the expense of another party’s validity claim. Latent contradictions between competing validity claims can arise and become the object of conflict – it may then come to a struggle for the assertion of the power of interpretation.

What are the implications of this for our understanding of statebuilding processes? First, abstract institutions can be described as concrete practices (Holenstein has spoken of the ‘constitution *in actu*’).⁴ Second, the mutual, relational character of the statebuilding process becomes clear. In this respect, the term ‘empowering interaction’ proposed by André Holenstein is very helpful. It should be emphasized that relational does not mean symmetric; it does not mean that the various actors would all have had the same opportunities to act. Power does not disappear from this process – on the contrary. Rather the approaches offered by communication theory make clear that power is not a *property* of the powerful, but rather a *relation* which arises from communication processes. In requesting power of decision from the authorities and ascribing it to them, subjects are themselves contributing to the institutional consolidation of this power and the restriction of their own freedom of action.

Further advantages of approaches derived from communication theory for understanding pre-modern institutionalization processes can be discerned. They increase attention to the basic structuring effect of symbolizations of all types (acts and artefacts of all types, representational symbols, rituals, ceremonies etc.) or, in broader terms, for the symbolic-expressive dimension of all action and its significance for the formation of institutions. Symbolizations structure perception, give direction to action and create social reality in the performative sense described above. An existing order, its basic categories of order, its norms and values confront the individual, above all in symbolic form. The particular power of symbolic communication (in contrast to argumentative and discursive

⁴ André Holenstein, *Die Huldigung der Untertanen. Rechtskultur und Herrschaftsordnung (800–1800)* (Stuttgart, 1991).

communication) lies in its ambiguity and indistinctness. It makes, for example, consensual fictions possible, in which differing interpretations of a situation by those involved remain obscured. This can be strategically used to stabilize the order, it can promote collective unity and the capacity to act across the divides between different interests, it can help save face for those involved in a conflict etc.

Approaches derived from communication theory also sharpen the sense for the internal logic of communicative action, for a certain autonomy of the communicative dynamic with regard to the intentions and purposes of the actors. Examples of this include the agonal dynamics of conflicts of honour (Rainer Walz, Martin Dinges),⁵ of rank and status competitions, of reciprocal processes of deception etc. What is traditionally explained using moral or individual psychological categories (such as vanity, ambition or the like) appears, from this perspective, to be an expression of a communicative logic of action, which follows describable social rules.

Further, concepts derived from communication theory teach us to be sceptical about simple end-means models of action. They sharpen our sensitivity for façades of rationality and rationalizations *ex post* which promote coherence – at the level of the historical actors themselves as well as at the level of the historiographical reconstruction of statebuilding processes. (Both the classical model of statebuilding and the more modern negotiative model have a tendency to rationalize *ex post*.) The approaches of modern organizational sociology (Niklas Luhmann,⁶ Karl Weick,⁷ Karl-Siegbert Rehberg,⁸ Nils Brunsson,⁹ Günter Ortmann¹⁰ etc.), which have long displaced the rational end-pursuing model, are of particular interest in this context. The modern *Anstaltsstaat*, which has,

⁵ Rainer Walz, *Hexenglaube und magische Kommunikation im Dorf der Frühen Neuzeit. Die Verfolgungen in der Grafschaft Lippe* (Paderborn, 1994); Martin Dinges, 'Ehre als Thema der Stadtgeschichte. Eine Semantik im Übergang vom Ancien Régime zur Moderne', *Zeitschrift für Historische Forschung*, 16 (1989): 409–40.

⁶ Cf. footnote 2.

⁷ Karl E. Weick, *Der Prozeß des Organisierens* (original english edn 1979, reprint Frankfurt/M., 1995).

⁸ Karl-Siegbert Rehberg, 'Weltrepräsentanz und Verkörperung. Institutionelle Analyse und Symboltheorien – eine Einführung in systematischer Absicht', in Gerd Melville (ed.), *Institutionalität und Symbolisierung. Verstetigungen kultureller Ordnungsmuster in Vergangenheit und Gegenwart* (Köln, Weimar and Wien, 2001), pp. 2–49; Karl-Siegbert Rehberg, 'Institutionen als symbolische Ordnungen. Leitfaden zur Theorie und Analyse institutioneller Mechanismen', in Gerhard Goehler (ed.), *Die Eigenart der Institutionen* (Baden-Baden, 1994), pp. 47–84.

⁹ Nils Brunsson, *The Organization of Hypocrisy. Talk, Decisions and Actions in Organizations* (2nd edn, Oslo, 2002).

¹⁰ Günter Ortmann, *Organisation und Welterschließung. Dekonstruktionen* (Opladen, 2003).

since Max Weber,¹¹ furnished the model for the modern institutional state, is, according to this, not the rational end-means system which one might tend to think it is. The modern state is likewise not the rational end-pursuing 'machine', as it has been programmatically described and symbolically presented since the Enlightenment. This is all the more the case for pre-modern institutions.

Modern organizational sociology describes even highly formal organizations as a juxtaposition of actual, flexible practices and of institutionalized façades of rationality which are essential for the legitimation of the organization and which are enacted in a symbolic ceremonial manner. That which is in fact situationally determined and spontaneous action is subsequently interpreted as problem-solving and directed towards achieving an end. It is important to realize that such fictions of rationality are not simply deceptions, lies or ideology, but are essential for the functioning of the organization and have real effects. They can become increasingly true over time, so to speak. They can anticipate reality as a kind of self-fulfilling prophecy.

This brings me to an objection which is often raised against approaches influenced by communication theory. The general deconstruction of the 'master narrative' raises the question of whether historians are, through communication theory, losing sight of large-scale, long-term processes. In response to this it must be said that it is precisely the approaches offered by communication theory which offer to bridge the gap between micro and macro history, structure and event, individual and society, or even demonstrate that there is no such gap. The above description of the dialectic of objectifying and subjectifying processes in the construction of social reality is an attempt to solve precisely this problem. Approaches derived from communication theory can also contribute to the recording of long-term social transformation. The rejection of end-means models and of teleology does not mean the rejection of process categories per se. A process does not have to be directed towards a goal. This is shown by evolution theory models in the wider sense and in particular by systems theory, which seems to me to be particularly effective in this respect. Systems theory is, of course, also a communication theory. It takes acts of communication as the smallest units of analysis. The statebuilding process can, within this framework, be described as the result of the transformation of the media and channels of communication, that is the consolidation and intensification of statehood can then be described as the differentiation of the political, that is the development of an autonomous political system functioning independently of the social environment. Examples of the fruitfulness of this approach have just been presented (cf. Frank Becker, 2004, with contributions from R. Schlögl, F.J. Arlinghaus, M. Sikora etc.).¹²

¹¹ Max Weber, 'Über einige Kategorien der verstehenden Soziologie', in Max Weber, *Gesammelte Aufsätze zur Wissenschaftslehre*, ed by Johannes Winkelmann (7th edn, Tübingen, 1988), pp. 424–74.

¹² Frank Becker (ed.), *Geschichte und Systemtheorie. Exemplarische Fallstudien* (Frankfurt/M., 2004).

One last personal remark may be permitted. We have to ask ourselves how new approaches depend upon our own everyday experience. In my case, the answer is clear: the experience of today's academic procedures and university politics have had a great influence on my perception of the early modern statebuilding process and have sharpened my awareness of façades of rationality.

Chapter 23

Empowering Interactions and Intertwining Jurisdictions

Angelo Torre

It is clear that a renewed analysis of state formation can only arise from a critique of the dualistic models (both in the top-down and the bottom-up versions) which have marked it up to now. From this point of view, the claim for an approach based on ‘empowering interactions’, which André Holenstein has so powerfully advocated, is welcome and enriches our analytical insights: in particular, the idea that ‘use of state resources’ from below has a relationship with the legitimate strength the state is able to exercise, offers a more persuasive image of statebuilding. Rather than a one-sided process of centralization or of resistance, we should imagine a reciprocal sequence of ‘crossed legitimizations’ between different social, juridical and political actors and the state. So, the process of state formation itself becomes more a matter of communication than of coercion, which is absolutely convincing. However, a number of factors in this communication process have yet to be highlighted. For instance, the conditions which stimulate, or determine, the communication itself, as well as those by which communication develops, are far from clear. These conditions appear to be influenced by the configuration of jurisdictions, and especially by the intertwining of jurisdictions,¹ that is the coexistence of different jurisdictions competing in the same area. Acknowledging this competition allows us to take in two important directions of analysis: social and political practices coming to light thanks to the competition between jurisdictions; and how the outcome of this competition influences the conditions of production of the sources.

Analysis of the communication process should therefore lead to a historical ethnography to be conducted at the topographical scale, from the point of view of actors, their practices, and their relationship with intertwining institutions.

¹ Angelo Torre, ‘Politics Cloaked in Worship. State, Church and Local Power in Piedmont, 1570–1770’, *Past and Present*, 134 (1992): 42–92.

Local History: Internal Mechanisms or Structures and Great Transformations?

These claims have characterized 'Italian Local History' which appeared during the crisis of Italian microhistory. Such a crisis was outlined in the mid 1980s (at its very climax, one should say), when a 'social' contextualization of past phenomena via interpersonal relationships and collective biographies was (and still is) frequently opposed to a morphological analysis of cultural artefacts, such as beliefs, myths and so on.²

At the end of the 1980s, a different option was proposed by Edoardo Grendi, which was more inclined to a tradition of historical ethnography: he invoked a 'symbolic and concrete contextualization' through which one could build a cultural analysis to be grounded on agency rather than on the equation 'cultural that is mental'.³ For Grendi, the possibility of symbolic and concrete analysis of the cultural was endorsed by the local, and more precisely by the topographical scale.

From this point of view, local history could be labelled as a 'third way' of microhistory.⁴ It had to show the 'diversity of peripheries' through emphasis on the plural structure of the Old Regime villages (conglomerate of settlements, for example hamlets, associations, jurisdictions).⁵ The discovery of a new sort of

² On microhistory cf. Edoardo Grendi, 'Micro-analisi e storia sociale', *Quaderni storici*, 35 (1977): 506–20; Carlo Ginzburg and Carlo Poni, 'La micro-histoire', *Le Débat*, 17 (1981): 133–6 (trad. fr. partielle de 'Il nome e il come. Mercato storiografico e scambio disuguale', *Quaderni storici*, 40 (1979): 181–90); Giovanni Levi, 'On Microhistory', in Peter Burke (ed.), *New Perspectives on Historical Writing* (Cambridge, 1992), pp. 93–113; Edoardo Grendi, 'Repenser la micro-histoire?', in Jacques Revel (ed.), *Jeux d'échelles. La micro-histoire à l'expérience* (Paris, 1996), pp. 233–43; Carlo Ginzburg, 'Signes, traces, pistes: racines d'un paradigme de l'indice', *Le Débat*, 6 (1980): 3–44, again in Carlo Ginzburg, *Mythes, emblèmes, traces. Morphologie et histoire* (Paris, 1989).

³ Grendi, 'Repenser', p. 235 marked a distance both from the model of 'bounded rationality' on which social history had grounded, and from the model of 'clues' as cultural symptoms. Historical ethnography aimed also to mark its distance from the reduction of historical documents to texts as in the interpretive anthropology of Clifford Geertz. Grendi was deeply influenced by analytical methods experienced by E.P. Thompson in his masterpiece, *Whigs and Hunters*. On historical ethnography cf. Osvaldo Raggio and Angelo Torre, 'Introduzione', in Edoardo Grendi (ed.), *In altri termini. Etnografia e storia di una società di antico regime* (Milano, 2004), pp. 5–34, esp. pp. 18–31.

⁴ Grendi, 'Repenser'. For this reason Grendi founded a 'Permanent Seminar of Local History' in 1989–90 at the University of Genoa with a historical ecologist, Diego Moreno, with historians of village politics such as Raggio and myself. See Raggio and Torre, 'Introduzione'.

⁵ An example was offered by Grendi itself since 1982 in his study of the political structure of the Ligurian village of Cervo: Edoardo Grendi, 'The Political System of a Community in Liguria: Cervo in the Late Sixteenth and Early Seventeenth Centuries',

historical sources, so-called jurisdictional sources, allowed Grendi to approach the study of sets of actions that he called 'practices' and that were essential components of what he defined the 'social conscience of space': discourses (as before a judge), rituals, maps.⁶

English local history represents a superb model which can inspire anyone who is interested in the topographical approach.⁷ But by that time a gap was dividing it from the 'positivistic' side of that tradition: the gap was represented by a new awareness of the process by which sources are generated in Old Regime society. This does not necessarily imply adopting a hermeneutic stance, because most sources are not texts: as a matter of fact sources often constitute a 'transcription' of moves, and a development of prerogatives. We become aware of their peculiar nature if only we pay attention to the fact that sources are generated by a specific relation between actions and procedures. Documents very often show us dialogues between two or more actors through which twofold processes of mutual recognizance and legitimization develop.⁸ We are indebted to Alain Cottureau for having singled out this process. Studying the procedures of justice in post-revolutionary France, he referred to the sequences of acts, which an audience transforms in practice, to 'establish (found) a precedent'. In disputes and trials, litigants' actions were reciprocally interpreted as 'moves' which, in case of being

in Edward Muir and Guido Ruggiero (eds), *Microhistory and the Lost People of Europe* (Baltimore and London, 1991), pp. 119–58.

⁶ Edoardo Grendi, 'Il disegno e la coscienza sociale dello spazio: dalle carte archivistiche genovesi', in Diego Moreno and Massimo Quaini (eds), 'Studi in onore di Teofilo Ossian De Negri', vol. 3, *Bollettino Liguistico per la storia e la cultura regionale*, 38 (1986): 14–33. For an example of his reading of jurisdictional sources cf. Edoardo Grendi, 'Counterfeit Coins and Monetary Exchange Structures in the Republic of Genoa during the Sixteenth and the Seventeenth Centuries', in Edward Muir and Guido Ruggiero (eds), *History from Crime. Selections from Quaderni Storici* (Baltimore, 1994), pp. 170–205. But the first use of this material can be found in Edoardo Grendi, 'La pratica dei confini. Mioglia contro Sassello, 1715–1745', *Quaderni storici*, 63 (1986): 811–46. On this use of practice cf. Angelo Torre, 'Percorsi della pratica, 1966–1995', *Quaderni storici*, 90 (1995): 191–221.

⁷ William G. Hoskins, *Local History in England* (3rd edn, London, 1984); Edoardo Grendi, *Storia di una storia locale. L'esperienza ligure 1792–1992* (Venezia, 1996).

⁸ This has been acknowledged by hermeneutic philosophers, but at an abstract level: the process is inseparable from an audience and happens within a context. Audience and context give meaning to what is being exchanged. We could use Habermas' formula and say that they give other people something to be understood: Jürgen Habermas, *Morale et communication. Conscience morale et activité communicationnelle* (Paris, 1986), p. 46.

acknowledged as legitimate, would change the prerogatives of those who carried them out.⁹ I myself tried to interpret episcopal visitations along these lines.¹⁰

This interpretative framework allows us to approach **historical records in a new way**. In other words, through the reading of sources as transcriptions we can get an ‘understanding from inside’ the sources. This understanding should aim at a definition of (in Cottureau’s words) ‘the meaning which was given in a situation’ to one or to a set of actions. Historical sources present actors who are moved by practical aims of legitimization. But these aims alone do not produce documentation. One further interaction is necessary to generate historical sources: interaction between the practical aims of those who were depicted (observed, surveyed, named...) in the documentation in the act of saying or of doing something, and the practical aims of those who transcribed them.¹¹

The practical aims of those who depict are usually **analysed in terms of control** and of power strategies. This is of course a misleading and reductionist reading. Rather, we must briefly reflect on the jurisdictional culture of the Old Regime (or, more generally, of traditional societies?) and its roots in a culture that we could call a ‘culture of possession’.¹² Very briefly, the prerogative to judge specific people and matters is conceived in terms of recognition from the magistrate of what was an existing state of affairs (that is different forms of access to resources). The right itself to judge has a nature no different from the possession of goods.¹³ So jurisdiction could be affirmed through the transcription, or legitimization, of those who exercised the practice.

A jurisdictional culture, the transcription of practices in historical sources,¹⁴ the importance of acts for possession, the territorial fragmentation of local politics:

⁹ Alain Cottureau, ‘Justice et injustice ordinaire sur les lieux de travail d’après les audiences prud’homales (1806–1866)’, *Mouvement social*, 141 (1987): 25–59; moves are by far different from strategies.

¹⁰ Angelo Torre, *Consumo di devozioni. Religione e comunità nelle campagne dell’ancien régime* (Venezia, 1995).

¹¹ Cottureau.

¹² Osvaldo Raggio, ‘Costruzione delle fonti e prova: testimoniali, possesso e giurisdizione’, *Quaderni storici*, 91 (1996): 135–56.

¹³ Maria Teresa Silvestrini, *La politica della religione. Il governo ecclesiastico nello stato sabaudo del XVIII secolo* (Firenze, 1997), pp. 52f.; Simona Cerutti, *Giustizia sommaria: pratiche e ideali di giustizia in una società di ancien régime* (Milano, 2003).

¹⁴ Diego Moreno, *Dal documento al terreno. Storia e archeologia dei sistemi agro-silvo-pastorali* (Bologna, 1990); Diego Moreno, ‘Escaping from “Landscape”: the Historical and Environmental Identification of Local Land-management Practices in the Post-medieval Ligurian Mountains’, in Ross Balzaretti, Mark Pearce and Charles Watkins (eds), *Ligurian Landscapes. Studies in Archaeology, Geography and History* (London, 2004), pp. 129–40; Roberta Cevasco, ‘Multiple Use of Tree-land in the Northern Apennines during the Post-medieval Period’, in Ross Balzaretti, Mark Pearce and Charles Watkins (eds), *Ligurian Landscapes. Studies in Archaeology, Geography and History* (London, 2004), pp. 155–79.

these are the elements which we can use to construct a topographical analysis of the surviving documentation. They show the priority that locals placed on space or territory and its resources. This is the key that cultural and social historians and historical anthropologists alike have disregarded, and it is precisely the historical relevance of place. A place has to do with rights, but these rights are different from our legal landscape, and we must still get acquainted with them.

Recently, Arjun Appadurai has made a great step towards a new definition of locality and locality studies: by identifying processes of production of locality. Locality is different from mere neighbourhood: the latter is given in a sense by settlement, dwellings and so on. Instead, the former has to be produced. He pointed to the fact that most material ethnographers and anthropologists have studied and described can aptly be conceptualized as a stock of devices, of techniques used to produce localities.¹⁵

Many scholars could agree with this statement. But what characterizes Appadurai's argument is that not only is locality 'context-driven', it is also 'context-generating': rituals and performances happen within localities and are influenced by them, but in turn they come to constitute the locality itself. To quote: 'locality is ephemeral unless a hard and regular work is undertaken to produce and maintain its materiality'. In this sense we can understand the production of locality as a process which generates citizenship. It produces 'reliable local subjects and local neighborhoods'.

Rethinking the Relationship between Locality and the Regional State

I see a difficulty in rethinking the relationship between locality and the regional state, because the problem of couples is their – implicit or explicit – dual nature. Rather, we would need intrinsically anti-dualistic paradigms. These motifs perhaps explain the success which has been gained by the so-called 'practice paradigm' since the 1980s:¹⁶ this comes in part from the fact that the paradigm itself is derived from phenomenology, which is anti-holistic. Moreover, practices presuppose the linguistic competence of the actors, in terms of the grammar of discourse and/or of the grammar of actions.¹⁷

¹⁵ Arjun Appadurai, 'Production of Locality', in Richard Fardon (ed.), *Counterworks. Managing the Diversity of Knowledge* (London and New York, 1995), pp. 204–25, quotations from pp. 206 and 211. I have discussed the relevance of this approach for historians in Angelo Torre, 'La produzione storica dei luoghi', *Quaderni storici*, 110 (2001): 443–75.

¹⁶ Sherry B. Ortner, 'Theory in Anthropology Since the Sixties', *Comparative Studies in Society and History*, 26 (1984): 126–66, esp. pp. 148f.

¹⁷ Cf. Dorian Tiffeneau, *La sémantique de l'action* (Paris, 1977); Patrick Pharo and Louis Quéré (eds), 'Les formes de l'action. Sémantique et sociologie', special issue of *Raisons pratiques*, 1 (1990); Jean-Luc Petit, *L'action dans la philosophie analytique*

For historians, practices cannot be separated from sources: they see people speaking, or acting, when there are disputes over a 'way of doing' or a 'way of saying'. For this reason an analysis of the geography and structure of sources is necessary, and the intertwining of sources (which can be better observed through a topographical approach) is essential for our analysis. It is essential to grasp when and where a practice is performed, and when and where it is transcribed, in order to evaluate its legitimacy. This is to say that practices cannot be separated from actors and from their categories. I am aware that this introduces an ethnomethodological perspective which has been, and is, seriously contested.¹⁸ But I think that, just in order to avoid many mistakes with the top-down model, we need to take into account the actors' categories and ways of doing things. This analytical procedure changes our representation of the statebuilding process.¹⁹

In a way, this local history is mostly interested in the internal organization of villages: their plural nature opens up new insights into the microdynamics of power between their different components. Settlements, ceremonies, resources and cultivation appear to be the results of social, juridical and cultural practices which are unfamiliar to us. But a critical conception of historical sources, which is at the base of this historiographical practice, opens up new directions in research on the world outside the village.

This is true, for instance, of mutual legitimizations between producers of documents and social actors. For the latter, to be named in a document is a way of obtaining a sort of legitimacy in terms of political and social power. For the former as well, at any rate, to 'name' someone is an act of legitimate power. But the problem remains of knowing how many actors could claim this right at the local and super-local scale.

(Paris, 1991); Jean-Luc Petit (ed.), 'L'événement en perspective', special issue of *Raisons pratiques*, 2 (1991).

¹⁸ The classical critique by Ernest Gellner, 'Ethnomethodology: the Re-enchantment Industry of the California Way of Subjectivity', *Philosophy of the Social Sciences*, 5 (1975): 431–50. For a new approach to the problem of ethnomethodology cf. Luc Boltanski and Laurent Thévenot, *De la justification. Les économies de la grandeur* (Paris, 1991).

¹⁹ Osvaldo Raggio, *Faide e parentele. Lo stato genovese visto dalla Fontanabuona* (Torino, 1990) shows how the protagonists of feuds and vendettas articulated their social landscape: kinship was an actors' way of naming and defining local social stratification. They could not leave aside locality (*villae*), settlements, resources. See also, for a more general view, Osvaldo Raggio, 'Visto dalla periferia. Formazioni politiche di antico regime e Stato moderno', in Maurice Aymard (ed.), *Storia d'Europa. L'età moderna. Secoli XVI–XVIII* (Torino, 1995), vol. 4, pp. 483–527.

Social Forces at Work in the Centre–Periphery Relationship

The way in which we depict the relationship between localities and the state influences the way in which we identify the social forces acting in the ‘political domain’ of the Old Regime.

I must confess that I have some problems with the expression ‘social forces’, which looks like an idiom derived from the liberal social sciences: collective entities consisting of a sum of individuals.

Rather, I think that we should consider how women and men would have asked the question in the Old Regime. The direction in which we would most likely find the answer is the relationship between the notion of ‘person’ and that of ‘body’. To give a tentative answer, we should bear in mind the fact of which A.M. Hespanha has strongly reminded us, that jurisdiction was the category which people used to think about power.²⁰

So, Old Regime women and men would have replied that their village consisted of a number of local bodies: youth, women, kin groups, chapels, hamlets, brotherhoods, charities (*confratrie*), priests, friars, monks, congregations.²¹ Of course, among them, and most likely in a higher position, was the municipality. But also altars and images on church columns had a social and juridical personality. Most likely, individuals would not have been taken into account. Individuals were supposed to be members of social and juridical bodies.²²

Bodies are labels: juridical, fiscal and cultural. The enormous amount of work on French guilds in the eighteenth century shows that there were tensions between the individuals and the guild body. The latter was perceived as an association which was far from a natural one.

But bodies are in tension with each other as well: these tensions were political resources which were exploited by the sovereign and by other jurisdiction holders.²³

²⁰ Antonio M. Hespanha, *Storia delle istituzioni politiche* (Milano, 1993), p. 43 and now Antonio M. Hespanha, *Introduzione alla storia del diritto europeo* (Bologna, 1999), pp. 40–9; Bartolome Clavero, *Derecho comun* (Siviglia, 1979).

²¹ Torre, ‘La produzione storica dei luoghi’.

²² On the interest of this approach to the problem of social and juridical bodies, cf. Simona Feci and Angelo Torre, ‘Premessa’, in Simona Feci and Angelo Torre (eds), ‘Ordini regolari’, *special issue of Quaderni storici*, 119 (2005): 319–32. See also Angelo Torre, ‘Faire la communauté: confréries et localité dans une vallée du Piémont, XVIIe–XVIIIe siècle’, *Annales H.S.S.*, 62 (2007): 101–36.

²³ As David Bien has shown with eighteenth-century French officers, new bodies were continuously forming. They negotiated their juridical and the fiscal obligations in order to obtain exemption from the tax system to which the ‘roturiers’ were subjected. David D. Bien, ‘Les offices, les corps et le crédit de l’Etat: l’utilisation des privilèges sous l’Ancien Régime’, *Annales H.S.S.*, 43 (1988): 379–404. Simona Cerutti, *La ville et les métiers. Naissance d’un langage corporatif* (Turin, 17e–18e siècle) (Paris, 1990).

The problem we are faced with is perhaps the relationship between bodies and the production of locality. Here topographical analysis reveals its relevance: if we study the 'production of a village', we discover a number of competing bodies and jurisdictions, from the landlords to the brotherhood, from the charities to kin groups and their ecclesiastical institutions. All of them coexisted. This coexistence of a plurality of collective entities defines the process of 'reform' of local politics which characterizes the eighteenth century. But a detailed study of local cases would show that it was impossible in the Old Regime to hold so general a jurisdiction as to be able to deal with all the bodies of a locality.²⁴

²⁴ Torre, 'La produzione storica dei luoghi'.

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