



THE PARADOXICAL FRAMEWORK OF FRENCH ROYAL POWER

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ABSTRACT

The French monarchy is not organized by a particular Bulla aurea, because it has never known a counter-power strong enough to impose rules on it like in England the Magna carta adopted by Parliament or in Hungary the Bulla aurea of 1222. On the contrary, it triumphed, sometimes by art and sometimes by luck, of all those who wanted to limit it: King of England, German Emperor, Duke of Burgundy and various local lords or the mayor of Paris, parliamentarians, States General. But becoming an absolute monarchy, the Crown then had to paradoxically protect itself from the will or weaknesses of its own kings. With the Hundred Years War against England, it first consecrated by its jurists the Salic Law, Frankish customary law put in writing by the first King Clovis around the year 500, and in particular the rule of succession by automatic inheritance and by male primogeniture, which will be applied throughout continental Europe and which prevents the king from choosing his successor. Subsequently, other endogenous rules will be put in place to strengthen the power of the Crown by imposing itself

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Chabrot, C. (2023) 'The paradoxical framework of French royal power' in Balogh, E. (ed.) *Golden Bulls and Chartas: European Medieval Documents of Liberties*, pp. 85–107. Budapest – Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing. https://doi.org/10.47079/2023.eb.gbac.1_4

on the king. These rules which establish French as the official language or which prohibit the dispersal of lands in the royal domain, for example, will become the Fundamental Laws of the kingdom which the monarchs must respect and which still form part of French public law today.

Keywords: Salic law, Fundamental laws of the Kingdom, Continuity of the crown, Inalienability of the royal domain, Royal ordinances of 1357 and 1413, States General, Statutory theory of the Crown, Philippe Pot, Jean de Terre Vermeille, Etienne Marcel, Jean Bodin

The construction of France did not follow the same paths as in England. Here, no immediate conquest by an invader, like William of Normandy who succeeded in having the superiority of his Crown recognized by the Salisbury oath in 1086. No territory rapidly unified within stable borders. No Parliament succeeding in imposing on the king texts protecting the freedoms of nobles and inhabitants, such as the *Magna carta* of 1215, the *Petition of Rights* of 1628, the *Habeas corpus act* of 1679 or the *Bill of Rights* of 1689, which will inspire undoubtedly the social contract of John Locke.

Paradoxically, it is on the contrary the initial fragility of the Crown in France that will lead to the assertion of a strong central power. After the break-up of the Roman Empire and the great European migrations, the continent was in fact divided into a very wide variety of local lordships which have long been able to compete with or oppose the monarch from the first Frankish dynasties, such as the county of Toulouse, the Duchy of Burgundy or the Kingdom of Provence. The whole challenge for the kings of France will then be, through a work spanning several centuries, to enlarge the royal territory initially concentrated around Paris, and to subdue and unite the populations by force, intelligence and law. As with Locke, Rousseau's social contract, which seeks social unification and the legitimation of a higher power, is marked, consciously or unconsciously, by the historical issues of the society he wants to seize.

But this gradual conquest of an uncertain territory by a central power still contested will be based in France on two key elements. The first lies in the recognition by the Catholic Church of the legitimacy of royal power in relation to other local lords since the conversion of Clovis

1st, the first king of the Franks who became Catholic with his soldiers after the battle of Tolbiac in 496. This religious recognition conferring a symbolic superiority will be confirmed for the Carolingian dynasty, of which Charlemagne was crowned emperor in Reims in 800, and for the following Capetian dynasty initiated by Hughes Capet in 987. The second element which allows Parisian power to transcend history is the continuity of this Capetian dynasty since 987, which makes it the oldest dynasty in Europe if not in the world¹. Thus, the national construction project planned by the first kings will be able to be carried over from generation to generation in an extension both historical and family.

Thereby France is the result of continuous expansion, of a regular and successful process of integration of different territories, where the central power often has to impose itself by force and faces numerous centrifugal opposition forces. The populations are divided by language², the provinces have different legal and fiscal statuses³, some duchies are rebels like in Burgundy. To establish the unity of the country as well as the superiority of the central authority, the French monarchy

1 This dynasty of the Capetians will include direct descendants (987-1328) with in particular the great kings Philippe Auguste, Saint Louis and Philippe the Nice, then will continue through the cousin branches of the Valois and the Orléans (1328-1589), then the Bourbons (1589-1792, and 1814-1848) including Henri IV, Louis XIV or Louis XVI and, after the Revolution, Louis XVIII or Louis-Philippe. Including the two Robertian kings who reigned before 987 and ancestors of Hughes Capet, this dynasty will reign in all 960 years through 37 kings of France. She will also produce 13 kings of Naples-Sicily, 11 kings of Spain including the current Philip VI, 4 Hungarian kings, 3 Polish kings, 2 Grand Dukes of Luxembourg including the current Henry, 32 Portuguese kings and 2 Brazilian emperors.

2 France is traditionally divided horizontally into two, with the langue d'oïl countries north of the Bordeaux-Mulhouse line and the langue d'oc countries to the south of this line ("oil" and "oc" being the two ways to say "yes", next to "si" in countries such as Spain and Italy in Dante's typology). But we must add other specific languages: Breton, Flemish in the north, Francic in the east, etc. A 1998 study still counted nearly 90 languages spoken in France today (with however two-thirds of which in overseas territories).

3 The kingdom is thus divided into personal lands of the king, in lands of the kingdom, in duchies (Brittany, Burgundy, Auvergne...), counties (Provence, Armagnac...), States or Generalities (Languedoc,...) which have more or less autonomy and knowing very different tax regimes. On the analysis of this diversity of the Ancien Régime monarchy, read de Tocqueville, 1856.

will then have to fight with determination all these factors of internal division and impose a single strong reign, dominating any competing counter-power. Which she will eventually do, sometimes luckily and sometimes artfully. Thus in England the Crown was never contested, except under the Commonwealth of Cromwell from 1649 to 1660, but the holder of the throne was regularly worried by the Parliament which imposed its texts on him with each of the various change of dynasties⁴. On the contrary in France the Crown itself is often attacked, but it asserts itself against any counter-power through a single Capetian dynasty which is imposed on all. It is thus the national division and the initial fragility of the monarchy that will lead to asserting its real historical superiority⁵.

But this monarchy, which is gradually becoming absolute, is not necessarily completely free. Texts frame its development. These limitations have different destinies, however. If the monarchy has succeeded in resisting attempts at exogenous supervision by competing powers (I), it will nevertheless submit to texts that it will produce itself, strangely to its advantage (II).

1. AN EXOGENOUS FRAMEWORK INCAPABLE OF LIMITING THE MONARCHY

The affirmation in France of an absolute monarchy, in which the king rules alone, is the fruit of a long work carried out successfully by generations of Capetian kings, while the first Frankish tribes put under control

⁴ The *Magna Carta* is thus imposed by the lords in 1215 on John Lackland who replaces the king Richard the Lionheart gone in crusade, the *Petition of Rights* of 1628 adopted by the parliament intervenes in the first years of the reign of the new Charles 1st Stuart who wants to establish an authoritarian monarchy, just like *Habeas Corpus* in 1679 against King Stuart Charles II, and the *Bill of rights* was imposed in 1689 on the new monarchs Marie of England and William of Orange chosen by Parliament to lead the Glorious Revolution.

⁵ We can note that the final unification could not be completed under royalty, so it will be the Revolution of 1789 which will have to consecrate the omnipotence of the central State in the name of unity and equality.

their chief elected by the warriors⁶. The Capetian monarchy to impose itself will thus seek to overcome local resistance through a skilful and continuous policy aimed at territories⁷ as well as men⁸, to strengthen the place of the monarch in institutions, like Philippe Auguste who now imposes his son as legitimate successor directly to his death in 1223 without going through the election of the heir by the peers of the kingdom, even if it had become just symbolic.

Like many Indo-European societies, France in the early Middle Ages was organized according to a tripartite social division, justified by Saint Augustine and in France by Aldebaron of Laon around 1030. Thus, and to be supported in his opposition to the Pope, Philippe the Nice (le Bel) convened in 1302 the first States-General which brought together representatives of the three States of society: the nobility (those who protect and lead), the clergy (those who pray), and the so-called “Third Estate » which reflects all the diversity of workers (at the start were only represented the bourgeoisie “of the good towns “, then the peasants, artisans, workers, lawyers, shopkeepers, doctors, etc.).

6 A symbolic episode tells how Clovis, 1st king of the Franks, could not save in 486 a valuable vessel that he wanted to give to the bishop, during the looting of the churches of Soisson and the collective and equal distribution of the booty according to Frankish custom.

7 The Duchy of Normandy was thus reconquered by the King of France in 1204, the County of Toulouse was invaded by Philippe Auguste at the beginning of the 13th century under the pretext of the crusade against the Cathars, the Duchy of Brittany was attached to the Kingdom of France after three marriages between the duchesses Anne and her daughter Claude to the kings Charles VIII (1491), Louis XII (1499) and to François Ist (1514) which will give the edict of union in 1532, the dangerous Duchy of Burgundy is integrated under Louis XI in 1477, like the territories of Maine, Anjou and Provence in 1481. After an eventful history, Louis XIV militarily annexed southern Flanders, then Alsace at the end of the 17th century.

8 Many popular revolts, which generally develop against taxes and duties, will thus be put down by the king: first great revolt of 1358 led by Jacques Bonhomme (who will give his name to the “jacqueries”), revolts in Languedoc in 1381, in Paris in 1382 (revolt of the Maillots), in Normandy in 1436 or in Brittany in 1489, jacquerie of Pitauds against the new tax on salt in Saintonge in 1548, jacqueries in the south of France in Languedoc and in Bordeaux in 1589-91, in Burgundy in 1592, etc. The aristocrats were also able to rebel against the king, as during the *Fronde* in 1648, when Louis XIV was still a child and under regency, or with the opposition of the Catholics to King Henry IV who was too conciliatory with the Protestants.

Subsequently, and because the king's vassals owed him "help and advice" in the government of the kingdom, the States-General will be convened regularly to settle religious questions⁹, to levy new taxes¹⁰ and to settle territorial¹¹ and military¹² questions, or to settle the succession or regency of the Crown¹³. There have been more than forty summons from these States in 487 years, from their creation to the last one in 1789, which caused the fall of the monarchy.

The convocation of these States-General can be strategic, to weld the constituent bodies of the Kingdom behind the king or to validate complicated decisions by a majority. But it can also translate the impotence of the king to regulate the important questions of the Kingdom, and reinforce the importance of the peoples of France who must for example, through their elected representatives, agree to the tax which the king wants to create or which transmit him their "doléances" (grievances). There is therefore a great danger that the king will see his power compete with these States-General. Moreover, on several occasions they tried to pose as a legitimate and effective counter-power by adopting texts framing royal power, especially in the 14th century (A). But the monarchy will resist effectively while accepting a diminished role of the States-General (B), to gradually impose an absolute government.

1.1. REBEL STATES-GENERAL ATTACKING ROYAL POWER

The monarchy has repeatedly found itself in a position of weakness, which the States-General have tried to take advantage of to impose their will and pass texts limiting the king's powers. Two important moments

9 Judgment of the Pope in 1303, religious questions in 1560 finally postponed, and in 1576 on relations with French Protestants.

10 In 1313, 1322, 1355, in 1356 and 1357 (tax to free King John II prisoner of the English) or in 1380, 1355, 1561 and 1576. The fiscal question is also at the basis of the meetings of 1484, 1614 and 1789.

11 Like the question of the division of Normandy in 1468.

12 The war against England leads to the reunion of the States General of 1326, 1369, or 1439 for exemple.

13 In 1317, 1420, 1484, 1588 and 1593.

mark this standoff, which culminated in the adoption of ordinances which could have played the role of the English *Magna Carta* in French institutions. In vain.

The first conflict will take place in the period 1355-1358, and will be the strongest attempt to establish a parliamentary monarchy in France. In the early days of the Hundred Years War which began in 1337, France suffered many defeats, such as the Battle of Crécy in 1346 when the new King Philippe VI of Valois pitifully fled losing all credibility. To continue the war, his son Jean II said as le Bon (the Good) had to convene the States-General from December 1355 (in Paris, in the Oil provinces) to March 1356 (in Toulouse, in the Oc provinces¹⁴) to obtain the creation of a tax on salt (the “gabelle”) and on any trade in order to finance its armies. The States-General accept these new taxes with difficulty and manage to impose certain constraints on the king in return, such as their annual meeting, control over the king’s agents responsible for collecting these taxes or the prohibition to grant a truce to the enemy without the agreement of the States, with a right of resistance against any royal officer who does not respect these principles. This agreement will be registered in the long ordinance of December 28, 1355 ratified by King John II¹⁵.

This King John II was taken prisoner during the battle of Poitiers in September 1356, so it was his son Charles, aged 18 and future Charles V said as Le Sage (the Wise), who would exercise the regency of the Crown and bring together the States-General in November 1356 to negotiate the payment of the royal ransom. During this meeting, while the branch of the Valois is very disputed, the provost of the merchants of Paris¹⁶

14 Until 1484, the States General met differently in the two linguistic regions of France

15 Ordinance of December 28, 1355, available at: <https://gallica.bnf.fr/ark:/12148/bpt6k118975q/f160.item>

16 In the Middle Ages, certain corporations of merchants in Paris and in particular the navigators on the Seine who supplied the city by the river (the “nautes”, whose coat of arms became that of the city of Paris) organized themselves in brotherhoods, directed by a “provost”. This provost will establish himself as the *de facto* ruler of the city of Paris, alongside the provost of Paris appointed by the king. Saint Louis (Louis IX) will more officially organize this provost of the merchants in 1263. Too threatening for the king, as the revolt of Etienne Marcel will prove, it will be dissolved after the revolt of the Maillotins against Charles VI in 1382 and reunited with the provost royal.

Etienne Marcel, and Robert le Coq, magistrate and bishop of Laon, directly oppose the claims of the regent Charles, and want to establish a monarchy controlled by the States-General on the basis of the ordinance of December 28, 1355. Pressed and contested, the Dauphin¹⁷ ends up adopting the great ordinance of March 3, 1357¹⁸ imposed on him by the States-General, by which he agrees to dismiss many personal advisers very criticized, and takes up the main provisions of the decree of December 1355. From now on, he can reign only under the control of a council of the Dauphin of a dozen members and comprising half of the bourgeois representing towns and mainly Paris, and another larger council of States, composed of thirty-six members (twelve representatives from each of the three States). The royal administration and in particular the financial administration is purified and controlled by the States-General, taxes can only be created by these States-General and collected by agents appointed by them, the nobles are no longer exempt from taxes, etc. The monarchy came under the control of the States-General, called to meet annually and whenever necessary¹⁹.

But in practice this ordinance will not establish a parliamentary monarchy. It was firstly canceled on April 6, 1337 by King John II the Good, still captive of the English in Bordeaux. For his part the regent Charles, more and more supported by his administration, came into direct conflict with Etienne Marcel and Robert le Coq, to whom he prohibited in August 1357 from meddling in royal affairs. The two camps opposed each other during the new States-General of January 1358, but in the context of riots started by Etienne Marcel upon the discovery of the treaty negotiated by John the Good for his liberation, which left a third of the kingdom to the English. The royal palace is invaded and Etienne Marcel forces the regent Charles to confirm and execute the ordinance of 1357. He does not dare, however, to take the step of

17 Title given to the son heir to the King of France since the purchase of Dauphiné, around Grenoble, in 1349.

18 See (with the error on the year): <https://gallica.bnf.fr/ark:/12148/bpt6k5622562f/f2.item>

19 See the thesis of S. Stavisky *The Ordinance of March 3, 1357. Les Valois dans la tourmente*, ed. Canopy 2001.

dismissal, and maintains him as regent of the crown in particular so that he can oppose to his father's treaty.

But Etienne will end up losing his support. The States-General gathered outside Paris to ratify these new royal ordinances will ultimately support, and in particular the nobility, the Dauphin Charles. Likewise the great Jacquerie of May-June 1358, a popular uprising in several provinces of France indirectly supported by Etienne Marcel, brought the castes of merchants closer to the regent who promised a return to order. It will even be Charles of Navarre, a former ally of Etienne Marcel, who will lead the armies that have come to defeat the Jacques. At the end, during a final siege of Paris the population of Paris will turn against Etienne Marcel accused of treason, and he will end up massacred by the mob on July 31, 1358.

The Dauphin Charles will return triumphant to Paris with the support of the various layers of the population and no longer having any direct opponent, neither Etienne Marcel, nor Charles of Navarre nor the States-General. While it was about to disappear, the Capetians-Valois monarchy grew stronger and Charles would even be fully supported by the new States-General meeting in March 1359 to counter the claims of the English. The opposition of the States-General has lived. The one-man opposition was not structured enough in this troubled time, and revolt did not turn into revolution.

But this opposition will manifest itself again when King Charles VI, son of Charles V the Wise, summons the States-General of January 30, 1413 to resolve a new budgetary crisis. His opponent, the Duke of Burgundy Jean sans Peur (John Fearless), will then influence part of the deputies and the population to demand reforms of the state and the monarchy. He thus obtains the meeting of a commission made up of magistrates, bishops, aldermen and academics from the Sorbonne university to prepare the text of this reform which will be based on the main lines of the ordinance of 1355. While this commission is working from March, Paris is agitated by demonstrations of the Brotherhood of Butchers led by Simon Caboche, supported by the Duke of Burgundy. This growing revolt eventually invaded the Bastille and the royal palace, and on May 21 forced Charles VI to ratify the long text of 259 articles drawn up by the commission and which would become the so-called

“Cabochian” ordinance of May 26-27, 1413²⁰. This ordinance is extraordinarily long and complex, undoubtedly too much, dealing with many subjects: election of royal offices, control of the royal administration and in particular of tax and finance agents by the States-General, supervision of judges to avoid their corruption, functioning of the local Parliaments, or scientific level of the deputies, etc.

But here too, the text has difficulty in being quickly implemented, and the Cabochian revolt ends up being defeated by the Armagnacs, nobility of southwestern France who supports King Charles VI against the Duke of Burgundy. The king will be able to return again triumphant to Paris, and will annul in great ceremony in the Parliament of Paris²¹ his ordinance of May, which will be torn in public place. The king again succeeds in preventing the monarchy from becoming parliamentary, and the States-General will no longer be able to impose themselves on the king.

But was that really the objective of the Duke of Burgundy? He wanted to reduce the power of Charles VI to take his place. But no doubt he was not ready to rule under the control of the States-General afterwards either. Here too, the fragility of the popular revolts against the king, the solitary strategies of conquest of power, the divisions of the nobility whether or not supporting the rebellion, the complexity of the reforms envisaged and the lack of substantive reflection shared by the greatest number, prevented the consecration of an effective counter-power to the monarch within the States-General. After the storm, the king even ends up strengthening his power. And the following States-General won't really worry the monarchy anymore.

20 To see on <https://gallica.bnf.fr/ark:/12148/bpt6k55621t.image>

21 Alongside the States-General, which meet from time to time, the Parliaments sit on a regular basis, in Paris and in the major provinces of the territory (Parliament of Brittany, Dauphiné, Languedoc, Burgundy, etc.). These assemblies, composed essentially of an aristocratic “sword” nobility but which will soon be joined by a “dress” nobility (rich merchants who can buy this function), are called to do justice by applying the royal ordinances that they register. In the event of a rebellion, the king can himself come in person to register his ordinances and impose his will in a “lit de justice” (“bed of justice”) by which he takes back his delegated powers to Parliament to rule himself.

1.2. DOMESTICATED STATES-GENERAL SUPERVISED BY ROYAL POWER

While the monarchy is strengthening, the States-General have on a few occasions manifested a different conception of power and sought to assert their legitimacy. The clearest affirmation of this desire for a parliamentary monarchy will be made during the States-General of Tours in 1484. These States-General are convened to discuss the regency of young King Charles VIII, exercised since 1483 by his sister Anne de Beaujeu, known as also Anne of France, and her husband Pierre, but contested by Louis II of Orleans²². For the first time these States-General merge the assemblies of *langue d'oïl* and *langue d'oc*, and the deputies are now appointed by election of the entire population, with a Third State comprising, for example, peasants and no longer just bourgeois from "good cities". Two theses collide here. The first, supported by the deputies of Paris and the North, entrusts only the nobles and peers of the kingdom the government and the choice of the advisers of the regency when the king is minor. The other, carried in particular by Burgundy and Normandy, maintains that the power actually belongs to the People represented in their States, and that it is up to them to choose the king's regency council.

Several deputies will support this "party of States" against the "party of Princes", but history will retain above all the name of Philippe Pot, Grand Seneschal of Burgundy. In his speech of February 7, Philippe Pot indeed expresses in a remarkable way these democratic theses also supported by the University of Paris. He then lays down very modern principles: *"Originally, it was the people who chose a king to entrust them with their interests, and the king is only placed at the head of the country with the consent of this people. If he is not old enough to rule, the kingdom returns to the people, that is, to all of the inhabitants of the land. The States-General, which represent them, are responsible for administering*

22 Louis II of Orleans himself became king of France from 1498 to 1515, on the death of Charles VIII, under the title of Louis XII. He is the great-grandson of Charles V, and claims the throne or the regency as the grandson of Louis I of Orleans who was the brother of King Charles VI.

the kingdom “, and therefore for appointing the regents. It is a real plea for popular sovereignty, legitimate to impose its will on the monarch and princes²³.

Finally, at the end of these States-General on March 14, 1484 and as supported by Philippe Pot, the regency of Anne de Beaujeu will be confirmed and will last moreover until 1491. But it should be noted that this same Philippe Pot will oppose on February 12 to a formal vote of the States which wanted to formalize “*that the Lord and the Lady of Beaujeu are with the person of the king as they have been there until now*”. Because that would have officially registered that it was indeed the States-General who had taken the decision to confirm the regency and who therefore had the initial sovereign power, which then risked being imposed on the regents and future kings. However, Philippe Pot, very close to the Beaujeu, probably did not really want to go that far. While he was opposed to the Princes’ party, as a good Burgundian, he was also an aristocrat who did not want to give up entire power to the States, because he could participate in monarchical power later and therefore did not want to restrain it completely in advance. The States-General then contented themselves with an implicit confirmation of the regency, without an official vote.

The doctrinal construction of sovereign States-general stopped there. The “monarchomachs” who postulate for a limitation of the royal power like the theologian Théodore de Bèze, will be few in France, not very influential, and especially used during the religious conflicts, when the Catholics will want to oppose the coming of a Protestant king, Henri IV (1589) and when Protestants want to limit the power of a catholic king. Otherwise, it is rather the jurists of sovereignty and royal power such as Jean de Terre Vermeille (1370-1430)

23 This speech is reproduced in Latin by Jehan Masselin, deputy of the clergy of Rouen, in Normandy, in his *Journal of the States General of France held in Tours in 1484* (reprinted by ed. Bernier, Paris 1834). But it is likely that it was in fact rewritten by Masselin from different theses supported by several pro-state power speakers. See the analysis of this speech in Bouchard, 1950, pp. 33-40.

<https://bm.dijon.fr/documents/ANNALES%20BOURGOGNE/1950/1950-022-02-033-040-1362982.pdf>

and then Jean Bodin (1530-1596) who will lay the foundations for the superiority of the Crown.

The influence of the counter-powers then began to wane. On the one hand, certain taxes established definitively from John II the Good around a strong currency, the *franc*, made it possible to no longer systematically bring together the States-General on these fiscal and financial matters. On the other hand, the monarchy developed a whole strategy to remove from the agenda demands on administrative and political reforms, as in 1560. Likewise, the monarchs have always rejected an annual meeting of the States-General obtained under Etienne Marcel, or the biannual meeting promised by Charles VIII in 1484, and any other identical request formulated by the States on various occasions. The convocations remain at the sole goodwill of the king, who brings together his States according to his needs and without obeying them. These meetings then begin to become rarer²⁴. Instead, "assemblies of notables" will be called together, bringing together selected aristocrats and bourgeois, to provide advice to the King as in 1527 and 1558. But these assemblies remain docile, not very ambitious, not very dangerous for the monarchy. No limiting text is derived from it. And if the States-General asked in 1576 to be able to appoint permanent commissioners to receive complaints between two summons, the king would reject the proposal recalling that he can always himself receive permanently the requests of his people.

Anyway, the grievances arising from extensive consultations in each order, and transmitted by the States-General to the King at the end of their meeting, will never obtain binding force. The king disposes of it as he pleases. While he sometimes takes this into account and then adopts ordinances to deal with the problems raised as in 1561 or 1576, it is

24 76 years separate the States-General of 1484 and the following of 1560, and after a few meetings at the end of the 16th century (1561, 1576, 1588, 1593, in a troubled period of wars of religion and uncertain succession), the States will no longer be united under Louis XIV and Louis XV, from 1614 to 1789. Finally, only the bankruptcy of the State after financial aid to the American Insurgents will oblige Louis XVI to convene the States-General for the last time in 1789, in view of the resistance of the nobility to any tax reform.

neither systematic nor immediate²⁵. The States-General still owe “help and advice” to the king, but now he no longer needs it and in return does little to meet the expectations of the deputies of the three States. The monarchy has won its fight against States, and can become absolute. But then it will submit to other constraints, which it will produce itself.

2. AN ENDOGENOUS FRAMEWORK AFFIRMED FOR THE BENEFIT OF THE CROWN

The Capetians thus succeeded in gradually asserting the superior power of the monarch. Jean Bodin, in his work *La République*, which appeared in six volumes in 1576, even provided all the theoretical and legal bases for establishing the “sovereign” power of the king. From then on, an absolute monarchy was established, of which Louis XIV (1643-1715) will be the symbol in his court of Versailles. But the monarch is not God. He still has to obey higher rules that Bodin himself identifies. If indeed the Sovereign has a “*perpetual and absolute power*”, that is to say he has “*the power of legislation over all in general and over each in particular ... without begging the approval of a superior, equal or inferior*”, he remains subject “*to the laws of nature and of God*” as well as to the treaties he has signed and to the commitments made to his subjects, and finally also to the fundamental laws of the Kingdom²⁶. There is therefore a framework at the will of the king, but which often comes from the monarchical rules themselves.

Among these rules, appears first the Salic law which was used to preserve the French royal dynasty (A), and which will be the first of the

25 The grievances expressed during the States-General of 1614 gave rise to several meetings of notables in 1617 and 1626 before an ordinance was finally adopted on the points raised in 1629, fifteen years later. See “The role of the States General in the government of the kingdom (XVI-XVIIth centuries)” by Y.-M. Bercé, in *Minutes of the sessions of the Académie des Inscriptions et des Belles Lettres*, n° 4-2000, pp. 1221-1240 (https://www.persee.fr/doc/crai_0065-0536_2000_num_144_4_16207)

26 Bodin, 1756 (facsimile of the Elibron Classics eds), p. 266, 276, 314 or 318, and p.436. See also Spitz, 1998, p. 12 and s. or 79 and s.

fundamental laws of the kingdom intended paradoxically to reinforce the power of the monarchy by limiting the risks of its weakening (2.2.).

2.1. A SALIC LAW PRESERVING THE FRENCH MONARCHY

The Capetians from Hughes Capet²⁷ form the third Frankish dynasty, which succeeds the Carolingian dynasty from Charles Martel and Charlemagne²⁸, which itself replaced the Merovingian dynasty from Clovis²⁹. These dynasties are those of the Franks known as “Saliens” (Salians), that is to say bringing together the Frankish tribes located in the north of present-day France and in the south of present-day Belgium³⁰.

The Franks of the time are still governed by their customs. But their establishment in the lands of the fallen Roman Empire prompted them to gradually adopt legal rules whose form and substance are influenced by Roman law. Thus, the great Frankish customs such as the Salic law (of the Salian Franks) and the Ripuaire law will be written down³¹, which will then be amended or supplemented by “capitulars” adopted by the Frankish assemblies and subsequent kings. The *lex salica* written in Latin under Clovis in 511 contained about 65 articles but it contains almost a hundred after the additions of Charlemagne after 800 (*lex Salica Karolina*

27 The name “Capetians” is given to the kings who succeed Hughes Capet, who became king in 987. But the dynasty dates back to the “Robertians”, ancestors often bearing the first name of Robert and of whom two members were elected king during the Carolingian period, and who were close servants of the last Merovingian kings.

28 The son of Charles Martel, Pépin le Bref (the Brief) will be the first Carolingian king in 751. His son is Charlemagne, crowned king of France in 768 and crowned emperor in Rome in 800.

29 Descendant of Mérovée, son of Clodion the Hairy, Clovis becomes king of the francs in 481. His name will be gradually transformed to become Louis, used by many kings of France.

30 The Salian Franks are thus distinguished from the Riparian Franks who bring together the Frankish tribes settled on the banks of the Rhine and whose capital will be Cologne. Some historians have, however, demonstrated links between Carolingians and Riparian Franks.

31 See also the laws of the Burgundians and the Laws of the Visigoths, or the Gallo-Roman breviary of Alaric in 506.

*emendata*³²). This Salic law includes very diverse provisions, particularly in criminal law, such as the price of penalties, or the rules relating to incest, the transfer of property, royal protection, etc. It is especially called upon to govern personal relations within the Frankish kingdom.

It will however be used to frame the transmission of royal power. Article 62 of this law provides that in matters of inheritance, women cannot inherit or transmit family property (the “*alleux*”), which allows them to be kept in the family patrimony instead of being lost through the marriage of girls³³. This rule of private law will be exploited in a very timely manner to organize the succession of the Crown.

Succession problems will indeed arise at the end of the “Capetian miracle” which, from 987 until 1316 had always allowed the king to have an heir son. King Louis X, son of Philippe IV said as the Nice (“*le Bel*”), died in June 1316 having a daughter from a first marriage, Jeanne of Navarre, and his new wife being pregnant³⁴. His brother Philippe V will succeed in removing Jeanne from the crown and will be proclaimed regent then king by the States-General meeting at the beginning of the year 1317. When he also dies without son, he is replaced by his brother Charles IV in 1322, who also died in 1328 without son³⁵. The crown of France is then claimed by Edward II, King of England, for his son whom he had with Isabelle of France, last daughter of Philip IV the Nice and sister of Charles IV, whom he married in 1308. For to prevent the crown of France from being then recovered by the King of England, French jurists will seek legal justifications. As in 1317

32 View a copy: [https://commons.wikimedia.org/wiki/Category:Lex_Salica_\(manuscript_107\)](https://commons.wikimedia.org/wiki/Category:Lex_Salica_(manuscript_107))

33 Article 62 *in fine* : « *De terra salica nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terrae hereditas perveniat* » (“as for the salic land, that no part of the inheritance goes to a woman, but that all the inheritance of the land passes to the male sex”). To see on https://upload.wikimedia.org/wikipedia/commons/1/1e/Lex_Salica_Emendata_66.jpg.

34 She will give birth to a son, John the Posthumous, five months after the death of Louis X. But this child himself will die five days after his birth.

35 The line of the direct Capetians then disappears with these “cursed kings” who died without male heirs (Philippe the Nice, father of Louis X, Philippe V and Charles IV, would have been cursed in 1314 by the grand master of the Temple Jacques de Molay, whom he had arrested and burned in Paris at the end of the *île de la Cité* to seize the Templar treasure).

custom or the weakness of women will be invoked, and the States-General will award the crown to the “French” successor they have finally chosen. In 1328 it will thus be Philippe VI son of Charles of Valois, the brother of Philippe the Nice, who will therefore become the first king of the Valois branch, the only one of the four other contenders to descend by the males. The King of England will eventually oppose this succession and will then begin the long Hundred Years War, from 1337 to 1453³⁶.

This War was a succession of military but also legal battles. In search of arguments to strengthen the defense of the “French” dynasty, we will then rediscover the Salic law in 1358. Its article 62 was gradually interpreted and used from 1388 by jurists such as Pierre Lescot, then Jean de Montreuil in 1413 and Jouvenel des Ursins to counter the claims of the King of England and the Duke of Burgundy. For example, the “terra salica” will be assimilated to the “kingdom of France” and the rule which excludes the inheritance of girls, initially reserved for private use, will be extended to the public domain of the Crown: if women can inherit property monetary, they cannot inherit land or titles. The throne of France cannot therefore be transmitted by women.

This is the position that will defend French jurists of the Dauphin Charles, son of Charles VI and future Charles VII, in particular to oppose the Treaty of Troyes of 1420 which made the King of England the successor to the Crown of France³⁷. This time, it is no longer the custom or

36 To assert the claim to the throne of France, the monarchs of England have officially called themselves since 1328: “... by the Grace of God, King of England, Scotland, and France, Defender of the Faith, etc. “. It is George III who will benefit from the new act of union in 1800 creating the United Kingdom of Great Britain and Ireland who will renounce adding “France” to his title.

37 French king Charles VI being stricken with mental illness, he was placed under the regency of Philippe III, Duke of Burgundy. However, the latter made an alliance with Henry V of England. The Treaty of Troyes signed by Charles VI and Henry V then provides that the latter will marry Catherine of Valois, daughter of Charles VI, and will inherit the Crown on the death of Charles VI, in place of Charles VII (son of Charles VI, who had had Philippe de Bourgogne’s father killed to reduce the threat from the Dukes of Burgundy). Charles VII will then take refuge in Bourges (he will become the “king of Bourges”) and will then participate in the reconquest of the kingdom with the support of Joan of Arc. The Treaty of Troyes of 1420 will then be annulled by the Treaty of Arras of 1435 between Charles VII and Philippe III of Burgundy.

the weakness of women that is invoked but the Salic law reinterpreted to prohibit the transmission of the Crown by women. “*The lily cannot spin into a distaff*” says the saying from the Gospel (Matthew, VI, 28), the lily symbolizing the crown of France and the distaff the women, which allows them to spin wool. This interpretation of the Salic law, which imposes royal succession by male primogeniture and the non-transmission of the title by women, will be applied several times in France thereafter: in 1498 for the succession of Charles VIII, in 1515 on the death of Louis XII and in 1589 on the death of Henri III, the last of the Valois, all died without direct male descent. It will also be used by most of the European courts descending from the Franks, except in French Celtic Brittany which will allow Anne to become duchess in 1488, nor of course in England which disputes its use to claim the throne of France. Moreover, the English queen Victoria will then be able to inherit from her uncle William IV the throne of England in 1830 but not from the kingdom of Hanover which he also possessed and which will go to a male heir, Ernest-Augustus I, son of George III.

Strange destiny, therefore, of this Salic law: private customary law external to the Capetian dynasty, it ends up being reappropriated by these Frankish kings to become a public endogenous constraint intended to ultimately protect the French monarchy by imposing an objective rule of succession which limits powers of the king, who cannot dispose of his title. It then lays the foundations for other laws binding on the king: the fundamental laws of the kingdom.

2.2. FUNDAMENTAL LAWS OF THE KINGDOM STRENGTHENING THE CROWN

Paradoxically, the monarchy in France will strengthen its power and perpetuate its status by putting in place laws that it will adopt itself to regulate its exercise and the powers of the king, and therefore ultimately to protect it against any personal monopolization and squandering. These constraints, including on the will of the king, will be called the fundamental laws of the kingdom.

On the basis of the Salic law, principles will first develop relating to the unavailability of the Crown itself. Thus, Jean de Terre Vermeille³⁸ will develop a whole so-called “statutory” theory of the Crown opposing the Treaty of Troyes of 1420 which wanted to modify the order of succession to the throne of France. In its conception, the Crown is not a private good which one inherits according to the rules of private law, but a public title which one succeeds, and which does not belong to the king but to French monarchy. The Crown is then transmitted according to the objective rules of public law laid down by the Salic law: the king cannot dispose of it himself, nor transmit it according to his own choices. Nor can he give up wearing it, even by treaty. There follows a whole conception of royalty as “function” and not as “property”, which reinforces royal power while limiting the power of the king himself, who also becomes servant and subject of the Crown. These rules of succession will sometimes be called into question³⁹ but ultimately regularly enshrined and applied⁴⁰. The king therefore no longer owns the Crown but simply holds it during his reign.

It will also follow that the transmission takes place directly, beyond any will of the king or symbolic act. For French jurists, the death of the king automatically transfers the Crown to his successor. It is no longer the coronation that makes the king, it is the rule of succession: “the

38 Jurist of the Dauphin Charles, he published in September 1419 his work *Contra rebelles suorum regum* (“Against the rebels of the king”) which notably contains the *Tractatus de jure futuri successoris legitimi in regni hereditatibus* (“A treatise on the right of a future legitimate successor in royal estates”) which details his statutory theory of the Crown.

39 Thus, the Treaty of Utrecht of 1713 which put an end to the war of succession of Spain waged by England and Austria against France imposes on Philippe V, king of Spain and grandson of Louis XIV, to renounce the Crown of France, to prevent a possible alliance of the two countries which would have disrupted European balances.

40 Louis XIV had wanted by an edict of July 1714 to legitimize his two children born out of wedlock, to allow them to inherit the Crown in place of other descendants he did not love, despite the customary exclusion of bastard heirs since the Carolingians and the theory of the unavailability of the Crown. But dead in 1715, his edict will be revoked in 1717 by the regent of the young king Louis XV, great-grandson of Louis XIV, with a new edict which recalls “the king’s fortunate inability to dispose of the Crown”.

dead seizes the living” (“le mort saisit le vivant”), “the king is dead, long live the king!” (“Le roi est mort, vive le roi !”)⁴¹. And if the Dauphin, his heir, is still under 14, he can still exercise his power but under a regency that the States-General can organize and often entrusted to a member of his close family (mother, sister...). The principle of dynastic continuity is thus consecrated, which completes the Salic law of succession by male primogeniture. From then on, the coronation becomes a single complementary ceremony, which can be organized in due course. It is no longer *constitutive* of royal power but only *confirmatory*: the king already invested does nothing but be blessed there, receives sacred oil (Holy Chrism) and the symbolic insignia of his power. However, the coronation indirectly poses another fundamental law of the kingdom: the king must be Catholic to receive the anointing of the Pope or his representative⁴².

But if the Crown is thus detached from the king and protected by these rules of succession, the assets of the Crown will also be framed by fundamental laws of the kingdom adopted by the king himself in order to prevent the impoverishment of the monarchy. A fundamental rule was thus gradually established: the domains of the Crown do not belong to the king, as the royal jurist Pierre de Cugnières asserted in 1329. He cannot therefore dispose of them freely by selling them according to his will⁴³. Better, he must now defend this public property, and the king must swear during his coronation, from Charles V, to “protect the rights of the Crown”. A strange oath by which the king limits his own freedom. But the stake is important: the power of the king depending

41 On the death of Charles VI in 1422, we hear during the funeral “Dead is King Charles, Long live King Henry!” But it was in 1498 that we switched to an impersonal formula during the funeral of King Charles VIII (“Dead is the King, Long live the King!”). It is then said that “the monarch never dies in France”, or that “The Crown is never without a monarch”.

42 The Protestant Henri IV, who inherited the throne in 1589, could thus accede to the throne after a hard religious war only after his conversion to Catholicism (“*Paris is well worth a mass*”), confirmed by his coronation in Notre Dame cathedral of Chartres in 1594.

43 The Dauphin Charles, future Charles V, will cancel on this basis in 1358 all the alienations made by Philippe the Nice for 50 years. Several other cancellations will be pronounced thereafter.

on his wealth, and his wealth coming from the lands of his kingdom, any land of the king personally owned must be integrated into the royal domain⁴⁴ and any reduction of the royal domain weakening the Crown must be prohibited. This customary fundamental law will then be consecrated and detailed by the Edict of Moulins adopted by Charles IX in February 1566 on the inalienability of the domain of the crown⁴⁵, adopted following the complaints of the States-General who were concerned about the sales of royal lands, and which was confirmed by the Edict of Blois in 1579.

However, the prohibition on the sale of the royal domain concerns only the lands “acquired” from the Great domain of the Crown which exist at the entry into the king’s reign, and not the negligible lands (near, marshes) of the Small domain, or lands “conquered” by him during his reign and which he can sell, manage himself or entrust to others in the form of *appanage* or *engagement*⁴⁶. An appanage was a king’s land which could be very important like a county or a province, allotted to a member of the royal family from whom he derived enjoyment and which he could pass on to his children, but which reverted to the Crown in the event of death without male descendants⁴⁷ or if his beneficiary acceded to the throne. The principle of the inalienability of the royal domain thus admitted this exception because this transmission of a royal land is only temporary and because it is protected by the other principle of imprescriptibility of the domain⁴⁸. The appanage lands will in practice be increasingly reduced, most eventually returning to the royal domain, although the practice continued until the Revolution of 1789.

44 King Henry IV was thus obliged in 1607 to integrate his personal lands in Navarre into the domain of the Crown of France after his accession to the throne in 1589 and following numerous pressures from the Parliament of Paris.

45 See it at: <https://gallica.bnf.fr/ark:/12148/bpt6k517005.pleinpage.f189>

46 An engagement, or a pledge, is royal land given for enjoyment (but not ownership) to a person who has loaned money to the king, as security.

47 This is how Louis XI was able to recover the appanage of Burgundy in 1477 upon the death of Duke Charles the Bold who left only one daughter, Marie, who would then have to marry Maximilian of Austria, from the House of Habsburg and heir to the Empire, to keep her rank.

48 Imprescriptibility prevents the acquisition of ownership of royal land over time, through prolonged detention.

Other fundamental laws will organize the kingdom thereafter, but bearing on the powers instituted more than on the royal institution itself, such as the edict of Villers-Cotterêts of August 1539 relating to justice, which notably imposes the use of French in judgments, or the Edict of Blois of May 1579 which establishes a general regulation of the kingdom, imposing the keeping of registers of baptisms, marriage and burials, laying down the rules of public marriage, universities, hospitals, etc⁴⁹.



Thus, the framework of royal power in France knows several paradoxes. It is because of its initial weakness that the Crown will eventually assert itself, by necessity and by the happy combination of circumstances. And if it was able to free itself, sometimes with difficulty, from external constraints such as attacks from the States-General, then it had to adopt its own rules to preserve and strengthen itself, to the detriment of the power of the king. But as we can see, this framework of the king's powers only concerns the protection of the Crown, and does not allow the assertion of the rights of individuals against the will of the absolute monarch. The king's letters of seal, forced imprisonment or hospitalization, land confiscation, decisions taken beyond the oppositions of the aristocrats when the king comes to sit in person in the Parliaments, recall the king's omnipotence, which echoes today's "Jupiterian" presidents. Finally, we had to wait for the Declaration of the Rights of Man and of the Citizen of August 26, 1789 to see consecrated, 574 years after the English *Magna Carta*, an external right that could oppose the royal will. But this text will then reach a global aura that even exceeds the French monarchy.

49 In a Declaration of May 3, 1788 on the fundamental laws of the kingdom, the Parliament of Paris will consecrate these fundamental laws, citing in particular but not exhaustively the need to be a monarchy, Catholic, of heredity by primogeniture to the exclusion of women, but also the customs of the provinces, the irremovability of magistrates, the right for local courts and parliaments to verify royal ordinances and to refuse them if they prove to be contrary to the fundamental laws of the State, or the right of citizens to be brought before their natural or legal judge when arrested.

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