

The Bourbon Reform of Spanish Absolutism: The Government of the Crown of Aragon,
1665-1746

By

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Abstract

This study of early modern governing practices analyzes the rule of Philip V of Spain (1700-1724, 1724-1746) in relation to his predecessor, the Habsburg Charles II (1665-1700) and his grandfather, Louis XIV of France (1643-1715). Philip creatively engaged the legacy of both monarchs to create a unique set of governing practices that centralized his authority while also maintaining a significant degree of variation in how he related to his subjects based on their social and political standing. Philip followed a particularist model that allowed him to give specific concessions and privileges only to the subjects who requested them. This approach to governing resulted in an ad-hoc administrative and legal patchwork rife with irregularities, but it circumvented the unavoidable problems of replacing multiple complex systems throughout his kingdoms with a uniform legal system. While Philip's reforms left some subjects dissatisfied with his reign, it enabled him to cultivate support among elite groups in his towns and kingdoms, securing his rule in the aftermath of the War of Spanish Succession (1705-1714). The advantages of particularism can be seen in comparison with eighteenth century France, where greater centralization and administrative uniformity created long-term problems that eventually resulted in the French Revolution. The Spanish model, while usually deemed less successful than that of the French, avoided some of the problems that led to the revolution while simultaneously minimizing royal debt. These findings challenge dominant interpretations of state formation in early modern Europe, suggesting that rulers could rationally choose policies that increased administrative and legal fragmentation.

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Chapter One: Introduction

“...my royal intention is that all of the continent of Spain be governed by the same laws, in which the Aragonese and Valencians are very interested, for the communication of my kindness that will allow them, along with the Castilians, access to the posts, honors, and other conveniences that are available in the kingdoms of Castile....” – Philip V of Spain (July 29, 1707)¹

The War of Spanish Succession ended with the fall of Barcelona on September 11, 1714, but the process of establishing the new Bourbon rule in the Crown of Aragon had only just begun. While Philip V, the first Bourbon king of Spain, was safe from foreign invasion, the popular support in the eastern kingdoms of the Crown of Aragon for his rival, the Archduke Charles of Austria, lent the conflict within Iberia the appearance of a civil war. Philip’s subjects in Aragon were confused as to how they should communicate with the victorious king. Communication mattered because the king had levied new taxes and many in war-torn Aragon doubted their ability to pay. On May 7, 1715, the enterprising municipal officials of the town of Alquézar wrote a letter to the city council of the nearby town of Berbegal, asking them to summon a meeting of delegates (*diputados*) from the various towns of the region (*el Partido de Barbastro*) to prepare a joint petition to the king. The petition would be sent by a delegation from the towns with instructions “and the blessing of the region (*Partido*) in common, as well as that of each one of its villages (*pueblos*),” so that they could represent the “miserable state” of the region with accuracy and brevity to secure the “paternal clemency and love of His Majesty.”²

¹ Published in *Novísima recopilación de los Leyes de España* (Madrid: 1805), Book III, Title III, Law II.

² Letter from the Alcaldes y Legidores y Auntamiento de Alquézar to Antonio Ayerbe, Secretario, Señores Alcalde y Regidores de la Villa de Berbegal, 7 May 1715, in the Archivo Histórico Nacional (A.H.N.), Consejos, Leg. 6811A, No. 80.

The meeting, with delegates from at least twenty-seven villages, began three weeks later in a hermitage near Berbegal.³ Early optimism must have faded quickly, however, as a few of the delegates began to warn the others that no one had petitioned the local corregidor, a key royal official, for permission to hold the meeting. The assembled delegates chose to notify the corregidor and reconvene the next day when they expected representatives from 120 villages to attend. The corregidor immediately notified the regent of the royal tribunal (*Real Audiencia*) in Zaragoza, the capital of the kingdom of Aragon. The regent told the commandante general, the Marqués de Casafuerte, who sent the constable (*Alcalde de Crimen*), Don Andrés Montañez, with an escort of fifty dragoons to investigate the true motive of the convocation, apprehend its main instigators, and “mortify” those who might want to copy its example by demonstrating the “pernicious and evil consequences” of organizing similar unauthorized assemblies.⁴

While Montañez was en route to Berbegal, the Marqués de Casafuerte received a letter from the corregidor of Barbastro relating the account he had received from two city councilmen (*regidores*) from Barbastro who had attended the meeting in Berbegal. They explained that the assembly’s only goal was to tell the king about the difficulty these towns would have paying the new taxes. The councilmen then asked for permission to continue the meeting, which was denied by the corregidor. Even though the delegates of the towns had committed a crime by meeting, the corregidor forgave those involved because they acted out of ignorance. He then wrote to Casafuerte for further orders.⁵

³ The Ermita de Santa Águeda or the Ermita de San Gregorio are likely candidates, although none of these records name which hermitage they met in.

⁴ Letter from the Marques de Casafuerte, Commandante General of the Kingdom of Aragon, to Don Miguel Fernandez Duran, 28 May 1715, A.H.N., consejos, Leg. 6811A, No. 80.

⁵ *Ibid.*

When the king met with the Council of Castile to discuss the matter, they concluded that while this meeting, which they called an “arbitrary committee” (*junta arbitraria*), violated the laws of the kingdom, it was done in “total ignorance” and for the purpose of facilitating the timely collection of the new tax with the least harm to the king’s subjects—a goal that the king would no doubt affirm. The council concluded that the crime was “only worthy of a severe warning” to discourage its repetition. Despite the apparent failure of the now-dispersed assembly, however, its message had been received. The council took the Aragonese concerns seriously and suggested that various officials in Aragon collect reports on the villages and their inhabitants’ ability to pay the new tax, but to do so secretly in order to avoid anything that might disturb the public peace. The king agreed with this advice and ordered his ministers to enact all of the council’s recommendations.⁶

The official response to these towns’ attempt at collective negotiation with Philip V reveals his key concerns and strategies for ruling his kingdoms. When the king’s subjects had concerns about royal policy, the king and his advisors were willing to listen, but they insisted on approaching each community separately rather than collectively. The primary reason for opposing the meeting in Berbegal was the fear that the assembly of frustrated subjects could spiral out of control and lead to public disturbances. Direct negotiation with the separate towns had additional benefits, however. It allowed the king to concede only as much as each particular community required, reducing the cost of royal tax concessions on the whole. This form of “particularist” negotiation also focused his subjects’ attention on their relationship with Philip rather than highlighting the shared concerns of his subjects that might distance them from him. The result was that the Aragonese looked to the king for help with local and personal concerns,

⁶ Consulta of the Consejo de Castilla, 6 June 1715, A.H.N., Consejos, Leg. 6811A, No. 80.

linking their interests with the monarch who solved their problems. It also dramatically increased the amount of time and paperwork involved in these negotiations and ultimately led to fragmentation in the privileges granted to the towns and kingdoms of Spain.

This system of government, referred to by historians as particularism, marked a natural, although significant, evolution in the negotiation between king and subject in early modern Spain. Until 1700, there was no “Spain,” but rather an Iberian “composite monarchy” made up of several separate kingdoms united in the person of the monarch but divergent in their administration and law.⁷ The War of Spanish Succession marked a turning point in the Spanish monarchy’s relationship with its subjects and is commonly identified as the beginning of the modern Spanish state, but as this example shows, the reality was complicated. While Philip V claimed to want to rule all of his subjects under the same law so that he could treat them equally, his approach to negotiating with his subjects undercut his steps towards legal and administrative unity and produced a patchwork of divergent privileges instead. While the standard narrative of growing centralization and uniformity under the Bourbons has some virtues to recommend it—most notably the language of centralization in the infamous initial decree of the *Nueva Planta* and the abolition of *fueros* and privileges in the Crown of Aragon—royal practices in eighteenth century Spain reveal surprising continuities in the approaches to ruling employed by the new Bourbon king and his Habsburg predecessors.

Philip V’s transformation of the Spanish government through the adoption and reinvention of Habsburg models of governance did not create a centralized and uniform government. By

⁷ Pablo Fernández Albaladejo, “Cities and the State in Spain,” in *Cities and the Rise of States in Europe, A.D. 1000 to 1800*, Charles Tilly and Wim P. Blockmans, eds. (Boulder: Westview Press, 1994), 168. On composite monarchies, see J.H. Elliott, “A Europe of Composite Monarchies,” in *Spain, Europe & the Wider World, 1500-1800* (New Haven: Yale University Press, 2009), 3-24.

adopting particularism and abolishing many of the intermediate institutions (such as the cortes) that had facilitated the corporate negotiation with the king, Philip V both centralized power and increased the ability of individual subjects and towns to negotiate directly with the king. These reforms allowed him to be much more responsive to their interests and requests, as a town did not need to persuade neighboring communities to support its preferred privileges before it could present them to the king. At the same time, this increase in royal flexibility also multiplied the number of requests, and therefore the volume of paperwork, that the more streamlined royal bureaucracy had to process. Particularism, as implemented by the Bourbons, both increased centralization and decentralization, pushing the loci of those negotiating royal policy into the royal court and simultaneously into each town council and individual household.

Most theories of state formation in the early modern period emphasize the importance of centralization, so suggesting continued fragmentation in Bourbon Spain raises the specter of once again “proving” Iberian backwardness. To repeat the old “Black Legend” of a failed state that was either in decline or had never managed to succeed, however, would require ignoring the true significance of the Bourbon governing strategy and its long-term consequences.⁸ The continued legal fragmentation of eighteenth century Spain is an example of the alternative paths of state development open to absolute rulers in early modern Europe. The Bourbons chose to reform their administration in a way that enhanced local authority and the influence of municipalities while at the same time increasing the security of their own rule. Instead of failing to become a successful nation-state—a *telos* imposed by historians looking backward rather than a goal in the mind of any early modern ruler—the Bourbon kings of Spain reformed their

⁸ For an engaging account of how the narrative of decline was introduced and perpetuated among American scholars of Spain, see Richard L. Kagan, “Prescott’s Paradigm: American Historical Scholarship and the Decline of Spain,” *American Historical Review*, 101, 2 (April 1996): 423-446.

administration in response to immediate challenges with an institutional character all its own. It is a reflection of the unexpected possibilities open to early modern rulers that can be so hard to see from the perspective of the present, which has been colored by nationalist myths and theories emphasizing the importance of state centralization. It also suggests that the desire to claim 1700 as the year of the advent of the Spanish state should be tempered with the recognition that the new Bourbon government was built upon the skeleton of the old composite monarchy.

The last twenty years have reminded the world that each nation-state has its own history, which in turn has shaped its present. Current challenges raise important questions about the origins of states that we believe we know and the inevitability of any particular institutional arrangement. In the midst of the rise of the European Union in 1992, the historian Sir J. H. Elliott suggested that the establishment of such supra-national political institutions had roots in early modern multi-kingdom monarchies, such as the Habsburg empires in Spain and Austria.⁹ Twenty years later, the European Union now appears increasingly unstable as its member states emphasize their autonomy, a position which recent elections have encouraged. Nowhere is this opposition to centralization greater than in Catalonia, where the Catalans are expressing a growing interest in independence from Spain. While these developments could be read as the resurgence of the nation-state as the “imagined community” seeking political self-determination, each of these states contains significant diversity—Catalonia, for example, is itself a multi-ethnic and multi-lingual political unit composed of large immigrant populations from other parts of Spain and the rest of the world—indicating that more is at work than this would suggest.¹⁰ Recent research has further complicated our conception of nationalism at its height in the early

⁹ Elliott, “Composite Monarchies,” 3-24.

¹⁰ See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983).

twentieth century by demonstrating how a preference for local concerns and “indifference to nation” could persist and even co-opt nationalist rhetoric in fascist Germany and Italy.¹¹ These complex political developments demonstrate the need for renewed reflection on the origin of modern state institutions. By focusing on the moment traditionally identified as Spain’s transformation from a multi-kingdom monarchy to a modern nation state, this study reveals how early modern monarchs could co-opt competing local interests through particularist negotiation in a process that simultaneously promoted fragmentation and yet reinforced the monarchy.

The early modern period has often been identified as a crucial period for state formation in Western Europe.¹² Charles Tilly provided an influential framework for analyzing the creation of states in his contributions to *The Formation of National States in Western Europe*. He emphasized the importance of recognizing that the process was open and contingent. For example, in 1600 it was not clear how political institutions would develop nor which would be successful, as evidenced by the many governments that failed to survive into the nineteenth century.¹³ Tilly identified the sixteenth and seventeenth centuries as a period of proliferating

¹¹ Roberta Pergher, “Staging the Nation in Fascist Italy’s ‘New Provinces,’” *Austrian history Yearbook* 43 (2012): 98-115.

¹² For some prominent studies that adopt this framework, see Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton: Princeton University Press, 1975), Theodore K. Rabb, *The Struggle for Stability in Early Modern Europe* (New York: Oxford University Press, 1975), Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution* (New York: Oxford University Press, 1980), Charles Tilly and Wim P. Blockmans, eds., *Cities and the Rise of States in Europe, A.D. 1000 to 1800* (Boulder: Westview Press, 1994), Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton: Princeton University Press, 1994), Thomas Ertmann, *The Birth of Leviathan: Building States and Regimes in Early Modern Europe* (New York: Cambridge University Press, 1997), Paul Kléber Monod, *The Power of Kings: Monarchy and Religion in Europe, 1589-1715* (New Haven: Yale University Press, 1999), and James B. Collins, *The State in Early Modern France*, 2nd (New York: Cambridge University Press, 2009), among many others.

¹³ Tilly, “Reflections on the History of European State-Making,” in *The Formation of National States in Western Europe*, 7.

institutional variety, followed by a period of increasing convergence among the states that survived the increasingly competitive environment of the nineteenth and twentieth centuries.¹⁴ He concluded that the “European state-making process minimized the cultural variation *within* states and maximized the variation *among* states.”¹⁵ This tendency helps to explain the power of the nationalist narratives in the nineteenth and twentieth centuries—the sense of living in an “imagined community” described by Benedict Anderson reflected the growing cultural similarities actively promoted by these states. The states in turn employed these narratives toward defending their various claims to national self-determination. Tilly went on to suggest that administrative and cultural homogeneity increased the likelihood of a population remaining loyal to its government, and that it facilitated efficient “centralized policies of extraction and control,” based on the society’s “relatively uniform” way of life.¹⁶ This emphasis on the state’s extraction and repression led Tilly to interpret sixteenth century Spain as a promising example of state development, presumably because of the centralization associated with the defeat of the revolt of the *comuneros* against Charles V in 1520-1521 and the cultural unification driven by the expulsion of the Jews in 1492 and the Moriscos (whose predecessors had converted from Islam to Christianity a century earlier) in the early 1600s. According to Tilly, these early successes were followed by a period of decline in the seventeenth and eighteenth centuries as the monarchy failed to continue to centralize power in Madrid and homogenize its population. This “decline” led to Spain entering “the age of industry and empire with one of the least stately

¹⁴ Tilly, “Reflections on the History of European State-Making,” 62.

¹⁵ Tilly, “Reflections on the History of European State-Making,” 79.

¹⁶ *Ibid.*

governmental structures of the continent,” according to Tilly.¹⁷ This discouraging narrative is unable to explain how Spain survived the great winnowing of European states in the nineteenth and twentieth centuries, however, which suggests that something must have held the Iberian state together despite its apparent backwardness.¹⁸ Given Tilly’s emphasis on the importance of stately governmental structures to state survival in modern Europe, it appears that there is more to be discovered concerning the development of the Spanish government in the early modern period if this question is to be adequately answered.¹⁹

One way to approach this challenge is to consider the relationship between the basis of governmental authority and its institutional forms. Max Weber did this in his discussion of the kinds of authority employed by rulers in various ages. His description of the kinds of authority that could legitimize the exercise of power and the ways that these cultural foundations manifest in different institutional forms provides a more flexible framework for considering the variations among early modern states. Weber proposed three general kinds of authority. The first he termed “charismatic authority,” which claims legitimacy based “on devotion to the exceptional sanctity, heroism, or exemplary character of an individual person,” which grant the charismatic leader broad authority to define normative patterns to govern collective life. Charismatic authority is the most personal form and the least-relevant for understanding early modern Europe. The second is “traditional authority,” which bases its legitimacy “on an established belief in the sanctity of

¹⁷ Tilly, “Reflections on the History of European State-Making,” 35. See page 44 as well.

¹⁸ Christopher Storrs has argued against precisely this kind of narrative in his book on late-seventeenth century Spain, *The Resilience of the Spanish Monarchy, 1665-1700* (New York: Oxford University Press, 2006).

¹⁹ Tilly has noted the weakness of his emphasis on state formation as a process of “extraction” and “repression” more recently and addressed it in his book, *Coercion, Capital, and European States, AD 990-1990* (Cambridge, Mass.: Basil Blackwell, 1990). See also Tilly, “Entanglements of European Cities and States,” in *Cities and the Rise of States in Europe, A.D. 100 to 1800*, 4-6.

immemorial traditions and the legitimacy of those exercising authority under them.” This form of authority is still personal, but it is based on traditions and institutions to legitimize the personal exercise of power within those traditional bounds. Traditional authority is more helpful when considering early modern states, because the claims to legitimize legal action nearly always invoke some kind of precedent, even when they were employed to justify innovation. Weber’s third form of authority is “rational authority,” which he describes as relying “on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands.” Rational authority is the most modern and least personal form of authority. It is the source of modern bureaucratic states based on arbitrary and abstract rules established by consent (of the elite, at least) rather than any personal or traditional claims to authority. Weber believed that rational authority was the most precise, stable, and reliable form of authority and an essential arrangement for managing the large populations of the modern world.²⁰

This final form of authority, especially when wielded by a modern bureaucracy, has a number of things in common with Tilly’s description of the attributes of successful states, yet Weber’s description of rational authority rules out most early modern states. Weber’s model of traditional authority is more helpful when considering early modern Europe in general and Spain in particular.²¹ Rather than following any of the institutional models for the exercise of traditional authority described by Weber, however, early modern Spain exhibited a peculiar

²⁰ Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, (New York: Bedminster Press, 1968), vol. I, 215-241; quotations from 215.

²¹ Other historians of early modern Spain have come to the same conclusion, although they tend to focus on the Habsburg monarchy. For a helpful summary in English, see James S. Amelang, “The Peculiarities of the Spaniards: Historical Approaches to the Early Modern State,” in *Public Power in Europe: Studies in Historical Transformations*, James S. Amelang and Siegfried Bier, eds. (Pisa: Pisa University Press, 2006), 43-44. Among the works that he draws on here, the most important is Pablo Fernández Albaladejo, *Fragmentos de monarquía: trabajos de historia política* (Madrid: Alianza Editorial, 1992).

blending of the qualities of several of these forms of authority along with a few that are entirely novel. This is especially true following the ascension of Philip V in 1700. Under Philip, the Spanish monarchy became increasingly personal as the king worked to emphasize his own authority to make law and dispense privileges, which is one of the signs of Weber's model of traditional authority when exercised within a patrimonial system that links patronage to the personal rule of the monarchs drawn from the royal family.²² At the same time, Philip granted numerous privileges to individuals and municipalities that he deemed loyal. These concessions constrained the king's political power, forcing him to compromise with those holding seigniorial authority and municipal political power. While Weber described this kind of development as a variation of the patrimonial system, he emphasized the role of corporate bodies such as the French estates and Spanish cortes as the instruments of negotiation between the king and his subjects.²³ Spain under the Habsburgs had already begun to replace the cortes with direct negotiation with towns, and this process accelerated under Philip. Direct negotiation enabled the king to grant each town or individual's most important demands without making the concession generally applicable throughout the king's realm. The increased variation in privileges, while emphasizing the personal link between those privileges and the person of the monarch, led the king's subjects increasingly to identify their interests with those of the monarchy. It also dramatically increased the time and paperwork involved in running the royal bureaucracy.²⁴ This particularist negotiation was the key governing strategy of the Bourbons and stands in dramatic contrast to the centralization and homogenization that figure so significantly in Weber and Tilly's theories of state development.

²² Fernández Albaladejo, *Fragmentos*, 226-227, 231-232.

²³ *Ibid.*, 232, 237, 239.

The tensions between these models of state formation and the institutional reality of early modern Spain have not been adequately addressed in the historical narrative.²⁵ Part of the problem is the tendency for most descriptions of this process to focus on France or England.²⁶ Theorists' concentration on these two cases has had detrimental consequences for scholars' understanding of the development of the Spanish state, as can be seen in a recently published collection of essays by some of the most prominent Spanish historians and legal scholars investigating the formation of the Spanish nation state.²⁷ In his introduction to the volume, José Manuel de Bernardo Ares argues that "the Nation-State" of Spain was created in 1700-1716 and served as the underlying "political organization of the Spanish society" until 1978, when Spain became a "State of Autonomous Regions." By this account, the Habsburg composite monarchy ended with the *Nueva Planta* reforms in Catalonia on January 16, 1716. These reforms initiated the "'National' monarchy of the Bourbons," which was defined by "a unitary power, administrative centralization, and legal uniformity."²⁸ The entire volume is organized around these themes and this chronology. Similar claims often have been made by other historians,

²⁵ Regina Grafe has done some helpful work toward this end, but her focus on the economic development of Spain leaves many questions concerning the development of the Spanish monarchy and its practices of governance unanswered; see *Distant Tyranny: Markets, Power, and Backwardness in Spain, 1650-1800* (Princeton: Princeton University Press, 2012).

²⁶ Paul Monod, *The Power of Kings: Monarchy and Religion in Europe, 1589-1715* (New Haven: Yale University Press, 1999), 8. Ironically, as with Tilly, Monod seems to over-generalize and suggest too much continuity between European monarchies in this work despite his caution against making this error.

²⁷ José Manuel de Bernardo Ares and Santiago Muñoz Machado, eds. *El Estado-Nación en dos encrucijadas Históricas* (Madrid: Fundación Ricardo delgado Vizcaíno, 2006).

²⁸ Bernardo Ares, "Nota preliminary (la perspectiva histórica)," *ibid*, 15. He echoes this argument in his essay in the same volumen, "La España francesa y la Europa británica a comienzos del siglo XVIII. De la monarquía «paccionada» de los austrios a la monarquía «nacional» de los borbones," *ibid*, 154-155.

placing Bernardo Ares clearly among the mainstream interpretation of eighteenth-century Spanish history.²⁹

Such characterizations are commonplace and yet highly problematic on a number of levels. First of all, it is not particularly helpful to claim that the nation state of Spain was created by one decree when that document does not state anything of the sort. The assertion becomes even more doubtful when the decree reaffirms legal irregularity, as the Nueva Planta of Catalonia did by leaving Catalan civil law in place.³⁰ Second, claiming the persistence of the nation state despite significant political upheaval and reconfiguration over two and a half centuries is forced and avoids many of the historical problems that could increase our understanding of the formation of the Spanish nation state. The consistent re-emergence of regional and local loyalties suggests that many of the king's subjects held alternative conceptions of the state during this period. The joint memorial of the *procuradores* of the four capitals of the Crown of Aragon in the Cortes of 1760 asking Charles III for the restoration of their privileges, the emergence of modern Catalan

²⁹ James Amelang's review of the historical literature on the early modern Spanish government reflects this understanding; see Amelang, "The Peculiarities of the Spaniards," especially page 41. For additional examples, see, Ricardo García Cárcel, "Introducción. La significación histórica de los Borbones," in the volume he edited, *Historia de España Siglo XVIII: La España de los Borbones* (Madrid: Cátedra, 2002), 10, 13; Francisco Cánovas Sánchez, "Los decretos de nueva planta y la nueva organización política y administrativa de los países de la Corona de Aragón," in *La época de los primeros Borbones: La Nueva Monarquía y su posición en Europa (1700-1759)*, eds. Francisco Cánovas Sánchez, et al., 2nd Ed. (Madrid: Espasa-Calpe, 1987), 3-4; W. N. Hargreaves-Mawdsley, *Eighteenth-Century Spain, 1700-1788: a political, diplomatic, and institutional history*, (London: Macmillan, 1979), 9; John Lynch, *Bourbon Spain, 1700-1808* (Cambridge: Basil Blackwell, 1989), *passim*, and I. A. A. Thompson, "Castile, Spain, and the monarchy: the political community from *patria natural* to *patria nacional*," in *Spain, Europe and the Atlantic world: Essays in Honour of John H. Elliott*, Richard Kagan and Geoffrey Parker, eds. (New York: Cambridge University Press, 1995), 159.

³⁰ The *Nueva Planta* reforms in Catalonia decreed in 1716 do not rhetorically emphasize uniformity of law and unification of the Spanish kingdoms in the same way that the initial decree of the *Nueva Planta* did in 1707. As I argue in chapter two, the later reforms reaffirm the Philip's revised position which preserved several important regional distinctions. In chapter three, I discuss the significance of the preservation of these alternative civil law traditions.

nationalism in the nineteenth century, and the growing autonomy of Catalonia under the Second Republic in the early 1930s, among other examples, demonstrate that the tensions between the old Crown of Aragon and the old Crown of Castile remained throughout this period of supposed unity.³¹ Finally, it is perplexing to insist that Spain became a modern nation state while remaining a society based on privilege and composed of unequal kingdoms, municipalities, and subjects—the equality of citizens before the state is one of the hallmarks of the modern nation-state that eighteenth-century Bourbon Spain failed to achieve.³² While Bernardo Ares and others correctly identify the early-eighteenth century as a period of significant political change, it is essential to find more accurate language to describe it if we are to make sense of these dynamics.

One term that is often used to describe both the Habsburg and Bourbon monarchies in Spain is absolutism. The Bourbon monarchy in Spain is especially identified as an absolutist regime, either because it was following the French model of Louis XIV, or because it was expanding Castilian practices to the rest of the Iberian kingdoms.³³ Absolutism conjures many images and

³¹ On the memorial, see Pere Molas Ribalta, *El Estado-Nación en dos encrucijadas Históricas* (Madrid: Fundación Ricardo delgado Vizcaíno, 2006), 149. It has been republished in E. Moreu Rey, *El Memorial de greuges de 1760*, (Barcelona: Mediterània Edicions, 1968) and in the collection *Textos Jurídics Catalans as Memorial de greuges de 1760. Projecte de constituci'on de l'estat català de 1883* (Barcelona: Generalitat de Catalunya, 1990).

³² For a discussion summarizing this distinction, see Gail Bossenga, *The Politics of Privilege: Old Regime and Revolution in Lille* (New York: Cambridge University Press, 1991), chapter one; Collins, “Introduction,” *passim*.

³³ On the Nueva Planta as an extension of the French model, see Bernardo Ares, “La España francesa,” where he argues that the Nation State of Spain was the product of Louis XIV’s control of the Spanish court between 1701-1709. On the Castilian influences, see José Antonio Moreno Nieves, *El Poder Local en Aragón durante el Siglo XVIII: Los Regidores aragoneses entre la Nueva Planta y la crisis del Antiguo Régimen* (Zaragoza: Institución «Fernando el Católico», 2004) 11, 519-520. Jean-Pierre Dedieu traced both French and Castilian influences on the Nueva Planta, “La Nueva Planta en su context. Las reformas del aparato del Estado en el reinado de Felipe V” *Manuscrits* 18 (2000):130-139. And while Marta Ruiz Jiménez argued that the Nueva Planta was not simply a French plan, she argued that Philip’s arrival “signified the implantation,

associations and yet has proved a slippery category when employed by historians. Its invocation tends to elide meaningful differences between the governments of various European monarchs by emphasizing the French Bourbon's efforts to centralize royal authority and increase cultural and administrative unity as *the* pan-European model. Part of the allure of this error is that this narrative has been linked to "absolutism" since the word was coined by Châteaubriand in his *Essay on Revolutions* in 1797.³⁴ The term acquired new baggage in the nineteenth century as it came to be associated with "militarism, mercantilism, despotism, inquisition, the Jesuits, [and] ultramontanism," while serving as the opposite of constitutional government and liberty.³⁵ Reflecting this history, our modern conception of absolutism suggests that the monarch was entirely unrestricted.

This understanding misrepresents historical reality. Even in France, absolute monarchs remained meaningfully restricted in their authority by natural law and a duty to act for the "common good" of their subjects even while the king remained technically absolved from complying with the law.³⁶ Modern historical research now tends to reflect this distinction. While twenty-five years ago Richard Bonney concluded his review of the literature on French absolutism by noting the "little agreement among historians on the nature of absolutism," there is

in Spain, of the model of absolutist monarchy imposed by the *roi soleil*" in "La monarquía borbónica francesa del siglo XVIII: un modelo en crisis" *Manuscrits* 18 (2000): 27.

³⁴ James Collins, *The State in Early Modern France*, 2nd (New York: Cambridge University Press, 2009), xv.

³⁵ Fanny Cosandey and Robert Descimon, *L'absolutisme en France: histoire et historiographie* (Paris: Ed. Du Seuil, 2002), 15.

³⁶ See Collins, xvii, and J. H. Burns, "The Idea of Absolutism," in *Absolutism in Seventeenth-Century Europe*, edited by John Miller (New York: St. Martin's Press, 1990).

much greater consensus now.³⁷ Recently, William Beik has observed that the questions about absolutism in France primarily concern its practice. While no one disputes that these kings claimed absolute authority, current research must investigate how much these monarchs could actually do and what real limits existed on their power to enforce their will. The current consensus holds that Bourbon France in the late-seventeenth and early-eighteenth centuries was the product of social collaboration between the king and the regional and local elite. Royal power was constrained by numerous institutions and could not be arbitrarily exercised without the support of many of the king's subjects.³⁸ Ruth MacKay has noted a similar emphasis on negotiation in the practice of absolutism in Habsburg Spain. She argues that the Castilian monarchy was not an oppressive centralized state, but rather a state composed of reciprocal personal obligations that enabled subjects, individually and corporately, to appeal to their king and negotiate their compliance with his orders. The Habsburg monarchs ruled Castile in an increasingly personal manner through these connections and responded to particular concerns in creative and inconsistent ways.³⁹ In both Spain and France, historians have converged on understandings of absolutism that emphasize the role of negotiation and compromise in the daily operation of the government.

Given the many negative and doubtful implications of the word “absolutism” which persist, James Collins has cautioned against its use. He argues that the technical use of a word in a way that differs so dramatically from common usage is profoundly misguided. Collins insists that using the word “absolutism” as if it did not have this baggage is nothing short of “linguistic

³⁷ Richard Bonney, “Absolutism: what’s in a name?” *French History* 1 (1987): 114.

³⁸ William Beik, “Review Article: The Absolutism of Louis XIV as Social Collaboration,” *Past & Present* 188 (2005): 195-224.

³⁹ Ruth MacKay, *The Limits of Royal Authority: Resistance and Obedience in Seventeenth-Century Castile* (New York: Cambridge University Press, 1999), 146, 174.

chicanery.”⁴⁰ Whether or not historians abandon the language of “absolutism,” some new vocabulary is necessary to characterize the royal policies and practices of the Bourbon monarchy in Spain if we are to differentiate them from those of Habsburg Spain and Bourbon France.

Toward that end, this study will employ the term “particularism” to describe the form of social collaboration pursued by Philip V in most of his dealings with the Crown of Aragon. The term has often been used as a synonym for localism or sometimes devolution, especially in the work of Spanish historians where it is generally (and disparagingly) contrasted with “universalism.”⁴¹ Luis Corteguera has refined the use of this term by noting that particularism “underscores not only the indifference of one location or region in the affairs of another—what may be referred to as localism or provincialism—but also of one social group toward another.” In this context, particularism can be employed to describe subjects’ preference to negotiate directly with the monarch for specific concessions and privileges instead of first negotiating a

⁴⁰ Collins, xxv.

⁴¹ In English, see I.A.A. Thompson, “Castile, Spain and the monarchy,” 154-155; *idem.*, “Aspects of Spanish Military and Naval Organization during the Ministry of Olivares,” in *War and Society in Habsburg Spain: Selected Essays* (Brookfield, Vermont: Variorum, 1992), 21-26; *idem.*, “Castile,” in *Absolutism in Seventeenth-Century Europe*, edited by John Miller (New York: St. Martin’s Press, 1990), *passim*; William Beik, *Absolutism and Society in Seventeenth-Century France* (New York: Cambridge University Press, 1985), especially 198-219, 329-339; J. L. Price, *Holland and the Dutch Republic in the Seventeenth Century: The Politics of Particularism* (New York: Oxford University Press, 1994), *passim*; and MacKay, *Limits of Royal Authority*, *passim*.

For a few of the much more numerous examples in Spanish, see Joaquín Pedro López Novo, “El Particularismo reconsiderado. Orinetación de la acción y contacto institucional,” *Reis: Revista española de investigaciones sociológicas* 67 (1994): 31-64; Jon Juaristi, “Los mitos de origen en la génesis de las identidades nacionales. La batalla de Arrigorriaga y el surgimiento del particularismo vasco (ss. XIV-XVI),” *Studia historica-historia contemporánea* 12 (1994): 191-228; *Fundamentos medievales de los particularismos hispánicos: IX congreso de estudios medievales* (Ávila: Fundación Sánchez Albornoz, 2003); Antonio Eiras Roel, “La instauración Borbónica en el antiguo reino de Galicia. ¿modelo nacional castellano o particularismo abortado?” in *El Estado-Nación en dos encrucijadas históricas*, 29-73; and Xavier Gil “¿Centralismo y localismo? Sobre las relaciones políticas y culturales entre capital y territorios en las monarquías europeas del Barroco,” in *Tiempo de política: perspectivas historiográficas sobre la europa moderna* (Barcelona: Universitat de Barcelona, 2006), 115, 118, and 126.

common position with their fellow subjects in the same city or region.⁴² While the terms devolution or localism can also be employed to describe decentralized decision making or the preference for local concerns over the more general interests of a kingdom, particularism allows us to describe the preference of a group within a specific community to look out for its interests through direct negotiation with the king. By focusing on the narrow interests of a particular group, the word particularism allows one to describe the form of social collaboration that is increasingly recognized as the hallmark of early modern monarchical government.

It is worth noting that particularist interests among communities and towns need not always support the monarch. Xavier Gil has noted how recent studies indicate that particularism in England during the Civil War led to indifference to the Charles I's cause. As towns eschewed participation in a war which they did not care about, Charles was unable to raise troops to challenge the professional army that opposed him.⁴³ A similar form of pacifism based upon the local indifference of cities in Holland to "national" or "royal" concerns played an important role in the Dutch revolts of the sixteenth century. The Duchy of Milan provides the counter example, as the Spanish Habsburgs successful use of particularism allowed the monarchy to link the interests of the Milanese ruling elite to their own, which was essential to the Habsburg's continued hold on the Duchy until the eighteenth century. Indifference could be a strong motivation for pacifism, which gave early modern monarchs good reason to pursue policies that linked particularist concerns to royal interests through networks of patronage.⁴⁴

⁴² Luis Corteguera, "Loyalty and Revolt in the Spanish Monarchy," in *Early Modern Europe: From Crisis to Stability*, Philip Benedict and Myron P. Gutmann, eds. (Newark: University of Delaware Press, 2005), 81, 86.

⁴³ For more on this, see Conrad Russell, *The Causes of the English Civil War* (New York: Oxford University Press, 1990).

⁴⁴ Xavier Gil "¿Centralismo y localismo?," 118, 125-126, 128-131.

This perspective complicates traditional narratives, such as those proposed by Tilly and Weber, which emphasize the centralization of power as the key feature of successful early modern states. “Success” in these narratives is almost always defined by military triumphs. Centralization, however, was not the only way for a government to administer justice and pay for an army. I.A.A. Thompson has shown how the devolution of the responsibility to raise and maintain an army could be a very effective strategy in defensive wars, such as those between Habsburg Spain and Bourbon France in the seventeenth century. By invoking the traditional feudal duty of vassals to provide and supply soldiers, Philip IV and Charles I acquired the military they needed at the cost of devolving significant royal authority to various municipalities. The administration of raising troops and paying for them remained entirely outside of royal control, and in the hands of municipal officials instead. This process naturally increased the significance of the negotiation between the monarchy and the local and regional elite providing the military for the king.⁴⁵ Even when the central government appears strong, MacKay has properly cautioned against assuming the impotence of regional and local centers of power, as “a strong center may simply indicate effective management of peripheral jurisdictions, not their elimination.”⁴⁶ Given the complexity of these relationships and the problematic characterizations of eighteenth century Spain that persist, a comparative look at the kingdoms of the Crown of Aragon under the Bourbons is long overdue.

This dissertation will examine state formation in early modern Spain by focusing on the way in which the Spanish monarchy governed the Crown of Aragon under both the Habsburgs and the Bourbons. To understand how Philip V changed the Spanish monarchy through the

⁴⁵ Thompson, “Domestic resource mobilization and the Downing thesis. War and the State in Spain in the mid-17th century,” in *Spain & Sweden in the Baroque era (1600-1660)*, Enrique Martínez Ruiz and Magdalena Pi Corrales, eds., (Madrid: Fundación Berndt Wistedt, 2000).

⁴⁶ MacKay, 11.

institutional reforms of the *Nueva Planta*, one must also grasp the way in which the seventeenth-century Habsburgs exercised their power when facing similar challenges. This is the focus of chapter two, “The Habsburg Practice of Governance,” which argues that the Habsburgs governed their kingdoms in a flexible manner that facilitated negotiation between royal subjects and the monarch. The institutional complexity of Habsburg governance involved multiple authorities in competition with one another for jurisdiction, which created space for these negotiations and provided the king’s subjects with a number of opportunities to appeal or delay decisions that they opposed. The Habsburgs were not lackadaisical monarchs with no desire to increase their power, however, as this chapter will argue based on the increase in royal authority following the revolts in Catalonia in 1640 and in Messina in 1672. Despite these changes, local privileges that reflected traditional custom and preference but did not oppose royal authority were permitted to remain. This peculiar combination of respect for legal forms and customs, along with a very pragmatic and flexible approach to their implementation permitted the Habsburgs to maintain much of their European empire through a century of significant demographic, military, and financial set-backs. This resilience demonstrates the success of particularism as a royal model of governance and challenges the emphasis on uniformity and centralization in Tilly and Weber’s theories of political development.

Chapter three, “Bourbon Reforms of the Crown of Aragon, 1706-1716,” analyzes how Philip V changed this system in the Crown of Aragon and highlights some of the surprising continuities between his approach to governing and Habsburg particularism. This is especially significant as he chose this course of action after the War of Spanish Succession essentially removed the legal restraints that had traditionally defined the king’s relationship with his subjects in the Crown of Aragon. The initial reforms in June 1707 abolished Valencian and Aragonese privileges based on

Philip's right of conquest following their "rebellion" with the explicit intention to govern all of his territories "by the same laws."⁴⁷ He backed away from this policy one month later, however, admitting that not all of his subjects had rebelled and that the communal and individual privileges of those who had been faithful remained. Nevertheless, Philip continued his institutional reforms on the basis of his absolute royal authority despite conceding the right of conquest. This decree immediately created a flood of petitions from towns and individuals throughout Aragon and Valencia for the restoration of their privileges. In 1711, having lost and subsequently regained control of Aragon, and following a significant decline in the French influence on Philip's court,⁴⁸ a new set of reforms were implemented that restored Aragonese civil law and increased the influence of Aragonese officials within their kingdom. This new Aragonese system served as the model for the new governments of Catalonia and Mallorca following the War of Succession and was more-or-less extended to Valencia in 1716.⁴⁹ By emphasizing his authority over his subjects' privileges, Philip gained a powerful tool in his negotiations with his subjects in the Crown of Aragon that he employed to reward those who had demonstrated their fidelity during the war. In this way he created an increasingly fragmented and idiosyncratic web of corporate and individual privileges that were dependent on his personal authority. These privileges cemented the king's support among those who had been faithful to him during the war. Those who had supported Philip's rival, the Habsburg Archduke Charles, served as an example of the cost of challenging the king, as they lost their property, their income, and their eligibility for public office, among other punishments. The effect of these policies was

⁴⁷ *Novísima recopilación*, Book III, Title III, Law II.

⁴⁸ Bernardo Ares, "La España Francesa y la Europa Británica a comienzos del siglo XVIII," 176-182.

⁴⁹ The notable exception is that Valencian civil law was not restored despite the king's willingness to grant this concession, as discussed in chapter two.

not to create a uniform nation-state, as Bernardo Ares and others have contended, but rather a reconfiguration of royal networks of patronage within the Crown of Aragon. The Spanish monarchy remained dependent on social collaboration, and the king's pursuit of particularist policies reflected this reality.

Chapter four, "The Reality of Bourbon Rule, 1717-1746," explores the Bourbon practice of governing the Crown of Aragon after the implementation of these reforms, highlighting the way that Philip and his ministers addressed the particularist concerns of his subjects and preserved significant institutional variety among the kingdoms and towns of the Crown of Aragon. Philip V and his ministers continued to prefer to leave well-enough alone by granting specific exemptions to the general rule when necessary rather than reform the legal system to promote legal uniformity. When difficulties arose, Philip consistently opposed "innovations" in governing practice and pursued policies which had proven successful despite the complexity and incoherence that such approaches to governing promoted. This chapter traces these governing practices through analysis of three issues that arose during Philip's reign: the problems in the financial system created by reforming the *censo*, the complication of administering justice due to the preservation of Aragonese and Catalan civil law, and the jurisdictional disputes that arose when implementing the *Nueva Planta* in Catalonia. As these examples demonstrate, the Bourbon monarchy created a novel patch-work system that was flexible, pragmatic, and ultimately fragmentary. Philip V's primary concern was the creation of a functional government, not some desire for bureaucratic or legal uniformity. When he attempted to impose sweeping reforms, his officials often found that the apparently simple and universal royal decrees raised more questions than they answered when one attempted to apply them to the complex practical and legal situations that they faced in the Crown of Aragon. Particularism allowed Philip to make choices

that affirmed royal authority as the ultimate source of resolution to these difficulties while also freeing him to make decisions that added to the legal and administrative complexity of his government.

The fifth and final chapter, “The Myth of Bourbon Absolutism,” compares the Bourbon monarchy in Spain with that in France to develop the larger implications of Bourbon rule in the Crown of Aragon for an understanding of absolutism and state formation in early modern Europe. Bourbon France, especially under Louis XIV, is traditionally interpreted as the most successful absolutist state in Europe. Because Philip was Louis’ grandson and brought a retinue of French ministers with him to France, many have assumed that the reforms early in his reign were an effort to transplant the French model of governing to Spain. This chapter challenges that narrative based on a comparison of Spanish and French governing practices on matters regarding taxation, the sale of offices, and the role of representative assemblies in the negotiation between king and subject. Over all, the policies adopted by Philip V and the subsequent Bourbon kings of Spain seem to reflect a recognition of the importance of cultivating support from the local and regional elite through granting and protecting their privileges. Louis XIV and his successors, on the other hand, threatened these privileges by introducing new forms of taxation and changing the rules regarding the sale of offices that attempted to shift the fiscal burden of the state to those who had traditionally been exempt from funding it. This shift was a response to dire financial need and reflected Louis’ belief that he had adequate social support to make it work. While this divergence had some long-term consequences, in the short run both Philip V and Louis XIV were able to secure their rule by emphasizing their subjects’ dependence on them while simultaneously improving the financial resources of the Crown. In fact, the absence of the fiscal and bureaucratic problems that led to the French Revolution demonstrate that the Spanish

governing strategy offered some advantages over those employed in Bourbon France.

Divergence in the use of taxation and venality reveal the open and contingent nature of state development in early modern Europe. Among the important factors that shaped rulers' decisions were the customs and expectations of royal subjects, which determined which reforms could plausibly be pursued. The enduring legacy of the Habsburg composite monarchy continued to structure Bourbon Spain as its kings worked to reform its institutional arrangement.

Together, these chapters reveal the weakness of theories that emphasize the inevitability of the formation of the modern nation-state and the necessity of policies promoting centralization and increasing legal and administrative uniformity to that process. In 1700, it was not clear that centralization was the most effective strategy for increasing the stability of a monarchy, and policies that might be described as devolutionary could prove conducive to the preservation of the state. Not only was the Spanish monarchy willing to grant significant privileges to gain support, such actions were mutually beneficial to the king and the local elite that he depended upon—theories that describe early modern government solely in terms of extraction and repression inaccurately suggest that early modern governance was a zero-sum game.

Particularism functioned because it benefited both the monarchy and the local elite. It was an implicit recognition by the king that he needed the support of local leaders and that these leaders were more motivated by their local concerns than by any invocation of the needs of the crown or nation.

Finally, the Spanish Bourbons use of particularism in the government of the Crown of Aragon suggests that early modern Spain followed a different path of state development than its neighbor across the Pyrenees. Given the significance of these differences, the teleology of state development should be reevaluated and the importance of municipalities and local interests

should play a larger role in the narratives of state development in early modern Europe. The peculiar relationship between the Bourbons and their various kingdoms and towns shaped the institutional transformation of Spain with significant results, but imposing a particular goal on the development of this relationship would only obfuscate its true significance: that early modern rulers focused on solving immediate problems rather than trying to create the modern world. More consideration must be given to the accidental nature of state formation and the significance of the diverse paths taken by different states if the history of European states is to be accurately understood. By emphasizing the importance of local institutions and the relationship between localities and the state, it may be possible to make more sense of our world in a way that affirms the many communities that exist without insisting that they develop along a particular path towards “modernity” or risk “backwardness” and irrelevance.

Chapter Two: The Habsburg Practice of Governance, 1665-1700

“Many think it a miracle that the monarchy is still in existence.” – Venetian Ambassador, 1681-1682¹

“Not without cause was Charles II beloved and revered by the Catalan nation... he was, in the end, the best king that Spain ever had... because he was the only king of Spain who gave his life for his subjects.” – Narciso Feliu de la Peña, 1709²

Contemporary accounts of the last Habsburg monarch present a variety of conflicting reports concerning the virtues of the king. Usually these are interpreted as signs of decay and weakness—Charles II, “the bewitched,” had limited mental and physical capacity and the praise of the Catalan reformer Narciso Feliu de la Peña suggests that his incompetence provided the Catalans with a period of salutary neglect following their return to the Spanish monarchy after the Catalan revolt of 1640. Yet at the same time, under Charles II, the Cortes throughout the kingdoms of Spain were all-but abolished in an apparent absolutist triumph achieved by the weakest of the Habsburgs in Iberia. How did Charles’ practice of governing create such seemingly contradictory developments?

The negotiation surrounding a disputed municipal succession in the capital of the Kingdom of Aragon provides some insight into this question. It highlights the way in which the legal process of confirming a royally appointed official provided opportunities to protest the king’s choice while insisting that this opposition was merely the legal exercise of privileges guaranteed by the king. On the morning of July 8, 1699, the Archdeacon of Sobrábe in the Santa Iglesia de Huesca, the Doctor Don Diego Joseph Dormer, prepared to take his oath of office and receive his title as the new deputy of the Court of the Judges (*Tribunal de los Judicantes*) in Zaragoza.

¹ As cited in Christopher Storrs, *The Resilience of the Spanish Monarchy, 1665-1700* (New York: Oxford University Press, 2006), 1.

² Narciso Feliu de la Peña, *Annales de Catalunya*, III, 458-459.

Already well-known for his chronicle of the kingdom,³ he was about to replace Don Joseph Rodrigo and begin his career of royal service. Unfortunately for Dormer, his appointment became the focus of a power struggle between the newly-appointed Viceroy Baltasar Gómez Manrique de Mendoza de los Cobos y Luna, the Marqués de Camarasa, and the members of the *Diputación* of Zaragoza, who considered themselves the principal defenders of the kingdom's liberties. The period for filing objections to Dormer's appointment had passed the preceding day, but unknown to Dormer, late on the night of the seventh the *diputados* filed their objections at the last moment. This sneaky maneuver apparently prevented Dormer from preparing a proper defense for his claim to the office. The public prosecutor (*abogado fiscal*), along with the current officeholder, Rodrigo, argued before the judges that the objection followed the Aragonese *fueros*, the customary laws defining official procedure in this case, and petitioned the judges not to admit Dormer to his office. Over the opposition of the Prelate Don Jacinto Julue, the one *diputado* who found these proceedings "repugnant," the tribunal ruled against Dormer and denied him the title to his office.

The viceroy of Aragon was furious and encouraged the king to take action against the meddling *Diputación*. The viceroy explained how the Márques de San Martin, in collusion with the *diputados* Joseph de Villanueva and Manuel de Las Joyas, had met together and plotted to interfere with the appointment. He considered the last-minute filing of the objection against Dormer an offense to the king. That these officials should betray him in this manner worried the viceroy, who encouraged the king to defend his royal name by suspending the *diputados'* wages and the exercise of their offices.

³ *Anales de Aragón hasta el anno 1525* (1697). For more on Dormer, see the doctoral dissertation at the Universidad Complutense de Madrid of Carmen Oroz Funes, *Vida y obras de Diego Joseph Dormer*, 1970.

In Madrid, the Council of Aragon supported the viceroy's advice, noting that these events were a disgrace to the king. The council hoped that the loss of privileges and income would "mortify them, as they justly deserve" and serve as a "lesson" for all of the other members of the *Diputación*. The majority of the council found no justification for the suspension of Dormer's appointment, although four of them dissented, coming to the opposite conclusion and believing that the *fueros* had been properly followed by the *Diputación*.⁴ Finally, the regent of the council, Don Juan Luis Lopez, supported the plan of the viceroy, but believed that it would cause too many problems if it was implemented immediately. He suggested that the king wait until the *diputados* had completed their terms in office and then punish them appropriately. Charles II decided that "it is not convenient now to execute the Council's proposal for the Deputies," an ambiguous ruling that appears to leave the option of delayed punishment on the table.⁵

Two aspects of this story reflect common trends in Charles II's practice of governing. First, the process of implementing the law and royal appointments included opportunities for royal subjects to express their interests to the king. In Dormer's case, the review period provided opportunities for his opponents to challenge his appointment, and they cleverly used the letter of the law to their advantage. Second, the review process for this case involved a lot of people both in Zaragoza and in Madrid. These officials were split between their concern for the affront to the king's honor caused by the failure of Dormer's appointment, and those who defended the Aragonese privileges that enabled this failure. It is noteworthy that the *Diputación* was

⁴ They even pointed out that the accusations of plotting to interfere with Dormer's appointment was not criminal—in fact, informal meetings by local officials to discuss business were legal in Aragon. The viceroy's advice would in fact introduce significant novelties (*causaria mucha novedad*) in the operation of the Kingdom of Aragon's government, which would be contrary to the king's interests, according to these councilors.

⁵ Consulta del Consejo de Aragon, 14 August 1699, A.H.N., Consejos, Libro 1909, fol. 66-73f.

composed exclusively of subjects from the Kingdom of Aragon, and the council of Aragon was similarly composed of members of the Crown of Aragon. In the end, the defenders of the Aragonese privileges carried the day, but this whole process reinforced an essential source of royal authority—Charles was the defender of the Aragonese privileges and the *diputados* who opposed the royal appointment of Dormer ultimately succeeded because of the king’s affirmation of their privileges. Rather than an absent monarch, this incident demonstrates the king’s central role in resolving a local dispute over a regional office.⁶

The apparent strength of local officials in the Crown of Aragon has led many to emphasize the royal support for local privileges during Charles II’s rule. Half a century ago, J. H. Elliott described Charles II’s reign as “federalism by default,” as the local elite exercised considerable influence because of the weakness of the government in Madrid.⁷ In part, this federalism reflected the views of his father, Philip IV, who sought to avoid a repeat of the Catalan and Portuguese revolts of 1640 by including members of the various regions of Spain in the Junta that governed during Charles’ minority.⁸ The apparently increased influence and autonomy of the peripheral kingdoms of Spain led the Catalan historian Joan Reglá to argue in the 1950s that the reign of Charles II was a period of “neoforalism” during which the traditional privileges of

⁶ Xavier Gil Pujol follows a similar line of analysis concerning royal action in the kingdom of Naples, see “La corona de aragón a finales del siglo XVII: a vueltas con el neoforalismo,” in *Los borbones: dinastía y memoria de nación en la españa del siglo XVIII*, Pablo Fernández Albaladejo, ed. (Madrid: Marcial Pons, 2002), 105-106.

⁷ Elliott, *Imperial Spain, 1469-1716* (New York: Penguin, 1963, 2002), 363.

⁸ *Ibid*, 362. For the composition of the *junta de gobierno*, see Storrs, 153, note 17, and Henry Kamen, *Spain in the Later Seventeenth Century, 1665-1700* (New York: Longman, 1980), 328-239.

the Crown of Aragon were widely respected.⁹ Reglá's thesis continues to be the focus of considerable historical research and defined the analysis of the period decades later.¹⁰

While this “neoforalism” thesis accurately reflects the flexibility with which the government of Charles II approached the peripheral kingdoms of his realm, it has too often been interpreted as a consequence of royal incompetence. Recent research has demonstrated that Charles' government successfully preserved royal authority and its territorial holdings despite significant fiscal and military pressures. By reinforcing and supporting the particularist agendas of the local elite in towns throughout their realm, the Habsburgs increased the security of their kingdoms and survived decades of warfare with Bourbon France. This approach could only succeed because the monarchy responded to local concerns satisfactorily while at the same time maintaining order and raising enough funds to avoid bankruptcy. Surprisingly, the Cortes' absence in these negotiations proved beneficial for the monarchy and for its subjects. The “neoforalism” thesis also fails to account for the moments when the Habsburg government aggressively increased royal control at the municipal level, as happened following the defeat of the rebels in Barcelona in 1652 and in Messina in 1678. At other times, the most prudent course of action was to devolve authority to particular cities and kingdoms, allowing them to assume the responsibility for (and cost of) defending the king's realm. Habsburg pragmatism permitted both centralization and

⁹ See Joan Reglá, *Els virreis de catalunya: els segles XVI i XVII* (Barcelona, Editorial Teide, 1956), 159-160, 171-172

¹⁰ For some helpful recent summaries of the debate over neoforalism, see Gil Pujol, “La corona de aragón a finales del siglo XVII,” 97-115, Julio D. Muñoz Rodríguez, “Consenso e imposición en la conservación de la monarquía. La práctica política en un territorio de la periferia castellana: el reino de murcia (1682-1700),” *Hispania* 63 (2003): 969-974, and Luis Ribot, *El Arte de Governar: Estudios sobre la España de los Austrias* (Madrid: Alianza Editorial, 2006), 144-150.

devolution depending on which strategy appeared most likely to accomplish their larger goals of preserving the monarchy.

I: Negotiation and the shift toward particularism

Prior to Philip V's ascension, the kingdoms of Habsburg Spain typified the complex and idiosyncratic administration of "composite monarchies": multiple kingdoms, each with their own unique institutions and laws, united only in the person of the monarch.¹¹ The marriage of Isabella and Ferdinand in 1469 created this composite monarchy by bringing together the kingdoms of Castile and León and the Mediterranean kingdoms of the Crown of Aragon, which included Aragon, Valencia, and Catalonia. This was a union of equals, yet equals with very different traditions, institutions, demographic weight, and economic power.¹² These differences created significant tensions between the kingdoms of Spain and difficult challenges for their monarchs. As the king resided in Madrid, the seat of the royal court since 1561, tensions between the center of monarchical authority and the periphery of the eastern Aragonese kingdoms were negotiated through a variety of institutional mechanisms. In a tradition with roots in the writings of Isidore of Seville (c.560-636 AD), the Aragonese believed that their monarch was bound by traditional oaths that granted him authority within narrow limits that were constrained by several duties to

¹¹ Elliott, "A Europe of Composite Monarchies," in *Spain, Europe & the Wider World, 1500-1800* (New Haven: Yale University Press, 2009), 3-24.

¹² J. H. Elliott, *Imperial Spain, 1469-1716* (New York: Penguin, 1963, 2002), 15-35.

his subjects.¹³ This republican tradition denied the absolute power of the monarch, emphasized the role of the territories' Cortes, and advocated the preservation of local laws and institutions.¹⁴

Several institutions, both in Madrid and throughout the Spanish kingdoms, guaranteed these privileges by mediating the negotiation between the king and his subjects.¹⁵ Nearest to the king were the royal councils that advised the king on affairs of state and provided an essential space for debate concerning royal policy. The members of these councils often served in several of them simultaneously and they were drawn from the highest circles of the nobility, since they were considered the most qualified individuals to advise the king.¹⁶ Each council had its own jurisdiction and met regularly with the king to discuss the many decisions that he had to make. The Council of State and the Council of War governed all of the kingdoms of Spain and focused on foreign and military affairs, respectively, while the Council of Castile, the Council of the Crown of Aragon, and the Council of Italy each had jurisdiction over domestic affairs within their respective territories. Other important councils included the Council of the Chamber of Castile, which made recommendations on official appointments in Castile, the Council of the Indies, which considered the administration of the empire, and the Council of Finance, which

¹³ Ralph E. Giesey, *If Not, Not: The Oath of the Aragonese and the Legendary Laws of Sobrarbe* (Princeton: Princeton University Press, 1968), 241-242.

¹⁴ Joan-Paul Rubiés, "Reason of State and Constitutional Thought in the Crown of Aragon, 1580-1640" *The Historical Journal* 38 (1995): 1-28; and Luis Corteguera, *For the Common Good: Popular Politics in Barcelona, 1580-1640* (Ithaca: Cornell University Press, 2002), 154-155.

¹⁵ José Manuel de Bernardo Ares provides a helpful but dense description of the institutional arrangement of Charles II's government in "The aristocratic assemblies under the Spanish monarchy (1680-1700)," *Parliaments, Estates and Representation* 21 (2001): 125-143.

¹⁶ *Ibid.*, 133. For more on the councils' composition, see Janine Fayard, *Los miembros del consejo de Castilla (1621-1746)* (Madrid: Siglo Veintiuno de España Editores, 1982), and Jon Arrieta Alberdi, *El consejo supremo de la corona de Aragón (1494-1707)* (Zaragoza: Institución «Fernando el Católico», 1994).

oversaw revenue collection throughout the kingdoms. Each of these councils served an essential role in the monarchy by making sense of the many issues that came before the king and managing the bulk of the paper work produced by governing his realm.

These councils would present the king with *consultas*, formal documents that summarized the history of a particular case and offered the council's advice on the matter. Generating these *consultas* could be quite time consuming. Usually the process began when a subject or royal official petitioned the king, who would then give the petition to the council and ask for their advice. The council would generally solicit reports from officials in Madrid and in the relevant region. These reports would confirm the facts from the original petition and often provide specific recommendations to the council and king about how to respond to the petition. Once the council received these reports, they would draft the *consulta*, which would summarize the initial petition and other reports before offering councilors' advice. This advice might be unanimous or might include several different positions. The king would resolve the issue and the council would then put his decision into effect. This whole process was slow, often taking several months. Despite the many calls for reform to increase the efficiency of the system, the councils and their *consultas* provided a space for the monarchy to consider his subjects' concerns and to respond carefully and thoroughly to them.¹⁷ The historian Bernardo Ares has even suggested that these councils were "real 'parliamentary' assemblies," because of their important role in shaping royal policy.¹⁸ By facilitating the careful consideration of requests from royal subjects, the counciliar system promoted the monarchy's responsiveness to local concerns and thereby helped to maintain the composite monarchy.

¹⁷ Ruth MacKay, *The Limits of Royal Authority: Resistance and Obedience in Seventeenth-Century Castile* (New York: Cambridge University Press, 1999), 25, and Storrs, 182-186.

¹⁸ Bernardo Ares, "Assemblies under the Spanish monarchy," 132-133.

The kingdoms of Spain had several other institutions to facilitate this negotiation that were located away from the royal court in Madrid. Focusing on the Crown of Aragon, each of its kingdoms had a viceroy who acted on the king's behalf as his *alter nos*, embodying his sovereign authority while he was away. While the Council of the Chamber of Castile recommended viceregal appointments to the king, the Council of State and the Council of the Crown of Aragon both oversaw the viceroy, the former in relation to the defense of the kingdom and the latter concerning domestic affairs.¹⁹ The viceroys usually served three-year terms in office and they were often "foreigners" from Castile, or one of the Italian or German states under Habsburg rule.²⁰

The viceroys under Charles II usually had military experience, which was important for the defense of the kingdom against the constant threat of French invasion. As captain generals, the viceroys were in charge of the military in the kingdom during their tenure. While nominally the viceroy had significant autonomy, his proximity to Madrid, which was only four days distant, meant that he rarely acted without consulting the king and the Council of Aragon. In addition to military affairs, the viceroy was also in charge of administering the king's justice.²¹ He presided over the criminal chamber of the chief judicial tribunal, the Real Audiencia, and voted on matters when there was no majority among the judges. In addition to these responsibilities, viceroys also facilitated the councils' work by providing information on petitions originating from their

¹⁹ Reglá, 54-55.

²⁰ There were many exceptions to this three-year rule. For a list of the Viceroys under Charles II and their time in office, see Reglá, 160.

²¹ Elliott, *The Revolt of the Catalans: A Study in the Decline of Spain (1598-1640)* (New York: Cambridge University Press, 1963), 78-83.

kingdoms. In this way, they served as a crucial bridge between the king and his court and his subjects in the peripheral kingdoms.

The Real Audiencias in the Crown of Aragon were the highest judicial body in their kingdoms and also served an important role as the intermediary between king and the kingdom in legal matters. The Audiencia of Catalonia, which was typical of those in Aragon and Valencia, had three halls, the two higher halls for civil proceedings, each with a president and five judges, while the third (and newest) for criminal cases had four regular judges and three special judges. This third hall heard the appeals from the civil halls in addition to criminal cases.²² These judges usually had doctorates in canon or civil law, and with the sale of titles under Philip IV, they increasingly were drawn from the newly ennobled families with legal backgrounds.²³

In addition to these legal responsibilities, the Audiencia also functioned as a council to advise the foreign viceroy on local law and custom. This role increased both the responsibilities and the power of its judges, and often the viceroys found it difficult to decide against the advice of the Audiencia.²⁴ When the viceroy and the Audiencia disagreed, their dispute would go to the king and his councils in Madrid. In general, the Council of Aragon supported the jurisdiction and privileges of the Audiencias against encroachment by the viceroy or other officials—for example, the council prevented the viceroy of Valencia from commenting on any judge who was up for promotion, “since all of them are worthy men” because of their position as judges in the

²² Elliott, *Revolt*, 85. The civil halls were more prestigious even though the criminal hall heard appeals, as demonstrated by civil judges’ higher salaries and by the fact that promotion from the Criminal Hall to the Civil Halls was common.

²³ Reglá, 58-59, James Casey, *The Kingdom of Valencia in the Seventeenth Century* (New York: Cambridge University Press, 1979), 191.

²⁴ Elliott, *Revolt*, 86.

Audiencia.²⁵ The council's support is unsurprising as its members were usually recruited from the Audiencias of Aragon, Valencia, and Catalonia, which naturally aligned their interests.²⁶ The development of royal policy in the Crown of Aragon—through recommendations and reports sent to the king through the council—and the subsequent implementation of these policies generally depended upon both the viceroy and the Audiencia, and each was wary of the other encroaching on its jurisdiction.

The final crucial institutions in the royal administration of the kingdoms of the Crown of Aragon were the *Cortes* (or the *Corts* in Catalonia and Valencia), the representational bodies that had to authorize all taxes. They also could renegotiate the relationship between the king and their kingdom, as the Catalan *Corts* did in 1599 when it restricted the viceroy's use of proclamations to those that complied with the Catalan constitution. This enabled the *Diputació*, composed of members of the *Corts* when it was not in session, to strike down the viceroy's proclamations whenever they were deemed unconstitutional, as they frequently did.²⁷ The *Diputació*—whose principal duty was to oversee tax collection—was composed of *diputats* who considered themselves the guardians of Catalonia's privileges and used their power to curtail encroachment from the viceroy and other officials.²⁸ The Aragonese *Cortes*, along with its standing council called the *Diputación*, functioned in similar ways to prevent the implementation of new taxes and defend its kingdom's traditional privileges.²⁹ Valencia also had a *Cortes* and a *Diputación*,

²⁵ As quoted in Casey, *Kingdom of Valencia*, 197.

²⁶ Casey, *Kingdom of Valencia*, 189.

²⁷ Elliott, *Revolt*.

²⁸ James Amelang, *Honored Citizens of Barcelona: Patrician Culture and Class Relations, 1490-1714* (Princeton: Princeton University Press, 1986), 19-20, and Corteguera, 16-17.

but as the latter could only collect taxes and had neither the authority nor the military support with which to defend Valencian privileges, it was considered the “softest” of the three peninsular kingdoms of the Crown of Aragon.³⁰ The *Cortes* and *Diputaciones* in the Crown of Aragon provided an important institutional space where the king’s subjects could communicate their interests and shape royal policy.

The overlapping jurisdictions of these institutions created additional opportunities for negotiation. By playing the Audiencia and the Council of Aragon against the viceroy and the Council of State, the king’s subjects could find powerful allies for their causes and buy time for their cases. This dynamic parallels the one noted by Ruth MacKay in seventeenth-century Castile, where jurisdictional disputes permitted resistance to royal decrees and enabled subjects to exercise their privileges.³¹ When problems arose and popular revolts took place, they were almost always directed toward the replacement of one of these officials rather than against the king or the ruling elite as a whole.³² J. H. Elliott has similarly argued that the absence of revolt in 1640s Castile—despite bearing a heavier tax and recruitment burden than Portugal or Catalonia, which did revolt—reflects the Habsburg success in responding to local concerns.³³ The institutionalization of a space for negotiation and resistance that could be justified with the

²⁹ Storrs, 201.

³⁰ Casey, 232.

³¹ MacKay, 1-4.

³² Kamen, *Spain in the Later Seventeenth Century*, 175-182.

³³ Elliott, “A Non-Revolutionary Society: Castile in the 1640’s” in *Etudes d’histoire européenne: mélanges offerts à René et Suzanne Pillorget* (Lavoisier, Angers: Presses de L’Université D’Angers, 1990), 253-269.

rhetoric of obedience will have much in common with the institutional arrangement in the Crown of Aragon after the Bourbon reforms of the eighteenth century.

While the institutions described above usually facilitated negotiation in these ways, characterizing the government of Charles II as static and passive would be a serious error. His reign marked some major shifts in channels of negotiation between the king and his subjects in Castile and Aragon as the *Cortes* became marginalized and were circumvented through direct negotiation between the king and the municipal councils of his kingdoms. The history of the *Cortes* and the justification of this transition reveal the value of particularism as a model for early modern governments and will have much in common with the governing strategies adopted by Philip V in the eighteenth century.

The *Cortes* in Castile differed in significant ways from its nominally similar counterparts in the Crown of Aragon, primarily because it only represented twenty-one cities in Castile by the late seventeenth-century. Traditionally, Charles V's suppression of the *comunero* revolt in 1520-1521 is interpreted as a key moment in the centralization of royal authority in Castile, but this interpretation neglects the fact that only two years later the Castilian *Cortes* forced Charles V to respond to their concerns before they would renew the tax grants required to fund his perpetual wars. This concession established Castile as a "commonwealth of self-ruling republics," and demonstrates how far Charles V was willing to go to address the concerns of the towns in Castile after the suppression of the *comunero* revolt.³⁴ The preeminence of the cities in Castile defined the operation of the Castilian *Cortes*—rather than representing the various estates of Castile, it

³⁴ Aurelio Espinosa, *The Empire of Cities: Emperor Charles V, the Comunero Revolt, and the Transformation of the Spanish System* (Boston: Brill, 2009), *passim.*, pg. 11 for the quotation. It is worth noting that Pablo Fernández Albaladejo made a similar argument, although much more briefly, in *Fragmentos de monarquía: trabajos de historia política* (Madrid: Alianza Editorial, 1992), 320-321.

embodied the kingdom as a collection of towns.³⁵ Unlike other representative institutions, such as the English Parliament or the *Estates-General* of France,³⁶ the *Cortes* of Castile was only an intermediary for representatives of the cities that never developed its own interests or character.³⁷ The voting cities of Castile reserved the final decision-making power to themselves (*voto decisivo*), limiting the *Cortes* to an advisory role with only the power to make recommendations (*voto consultivo*) through 1632.³⁸ This meant that the king could consult the “kingdom” of Castile with or without the *Cortes*. If he was not interested in summoning it, then he could consult each town’s city council directly.³⁹

During the tumultuous period from 1601-1665, the *Cortes* of Castile served an important function as the point of contact between the king and the local oligarchs of the Castilian towns. The power of Castilian towns to curtail the collection and to direct the disbursement of royal funds drew significant attention from the Count-Duke of Olivares, but the ultimate failure of his reforms has been interpreted as a sign of the *Cortes* strength.⁴⁰ This victory was short-lived, however, and the end of the *Cortes* as a meaningful political institution—it was no longer summoned after Philip IV’s death in 1665, when it was replaced by direct negotiation between the king and the towns—is often interpreted as a sign of the “political atrophy” of Castile in the

³⁵ Bernardo Ares, “Assemblies under the Spanish monarchy,” 136-137.

³⁶ See Fernández Albaladejo, 305-316 for his discussion of these institutions.

³⁷ Fernández Albaladejo, 321-324.

³⁸ I.A.A. Thompson, “The End of the Cortes of Castile,” in *Crown and Cortes: Government, Institutions and Representation in Early-Modern Castile* (Brookfield, Vermont: Variorum, 1993), 130.

³⁹ Fernández Albaladejo, 330-332, 335-336, and 347-349; Bernardo Ares, “Assemblies under the Spanish monarchy,” 136-138.

⁴⁰ Charles Jago, “Habsburg Absolutism and the Cortes of Castile,” *American Historical Review* 86, no. 2 (1981): 307-326.

late seventeenth century.⁴¹ This perspective has been complicated by more recent interpretations, however.⁴² Pablo Fernández Albaladejo has persuasively argued that the Council of Castile and the towns themselves were more important than the *Cortes* in opposing Olivares' reforms.⁴³ The end of the *Cortes* of Castile as a meaningful institution reflected both the towns' and the king's preference for direct negotiation rather than the royal suppression of a popular representative institution. Charles' mother and regent, Mariana of Austria, took the decisive step in the transformation from corporate to particularist negotiations when she did not call the *Cortes* to renew the grant of the *millones* in 1667.⁴⁴ The Camara de Castilla—the royal privy council—advised Mariana against calling the *Cortes* for three reasons. First, the Camara estimated that it would cost the royal treasury more than 500,000 ducats to pay for the residence of the cities' representatives (*procuradores*) at the *Cortes* even if it lasted less than a year, which would be short in comparison to many previous meetings. This estimate does not include the costs of any concessions, pensions, offices, and the like, so the final cost would likely have been much higher. Avoiding a meeting of the *Cortes* thus provided significant savings to the Crown, as the expense would have increased the monarchy's total non-military spending by about twenty percent.⁴⁵ Second, the previous *Cortes* had been difficult to manage, granting relatively little with the concession of the *millones*, the key source of royal revenue negotiated by the *Cortes*,

⁴¹ Jago, 326.

⁴² In addition to the sources cited below, see Kamen, *Spain in the Later Seventeenth Century*, 30, I. A. A. Thompson, "Castile," in *Absolutism in Seventeenth-Century Europe*, edited by John Miller (New York: St. Martin's Press, 1990), 82, and Storrs, 176.

⁴³ See *Fragmentos de monarquía*, 333-349.

⁴⁴ Thompson, "End of the *Cortes*," 128-130.

⁴⁵ Based on the royal budget for 1678, which is described in Storrs, 115-116.

after forty-nine months in session. The benefits of negotiating with the *Cortes* evidently no longer outweighed its cost and there was no reason to expect this to change during the regency of Charles II. Third, the Camara feared that the *Cortes* would claim a role in the government and insist that representatives from the cities rotate through the *Junta de Gobierno*, which had been created to oversee the Charles during his minority following a precedent from 1391.⁴⁶ Mariana was already in a weak position because Charles II's illegitimate half-brother, Don Juan José de Austria, as his popularity and ambition provided a focus for opposition to her regency. To persuade the cities to renew the *millones* without a *Cortes*, the royal letter to the cities explained the pressing military concerns and emphasized that this was a request for a renewal of the *millones* rather than a new grant that would have required a meeting of the *Cortes*.⁴⁷ While the cities lost the lucrative opportunities to send representatives (*procuradores*) to the *Cortes*, the monarchy rewarded the members of the town councils who brought the letters of assent to the court. More importantly, during a *Cortes* there were only two representatives from the cities, while the cities often sent several city councilors with the letters, spreading the benefits of the negotiation to a larger set of the civic elite.⁴⁸ This accommodation rewarded the city councils, saved the crown from a large financial expense, and decreased the potential for opposition to Mariana's authority as regent.

The transition to particularist direct negotiation of the *millones* did not mean that any town could opt-out of a renewal of the tax grants through voting against them. When the city of

⁴⁶ Thompson, "End of the Cortes," 127-128.

⁴⁷ Thompson, "End of the Cortes," 128-129.

⁴⁸ Thompson, "End of the Cortes," 130-131. Bernardo Ares echoes these benefits for both the king and the kingdom with the abolition of the Cortes, "Assemblies under the Spanish Monarchy," 136-137.

Palencia opposed the tax, the royal government responded that “other cities have given their agreement and since they are a majority your efforts are not now necessary.” These bilateral negotiations obligated all of the towns, including those in the minority, as the *cédula* of November 1, 1667 reaffirmed when it claimed that most of the *Cortes* had renewed the taxes despite the fact that the *Cortes* had not been called.⁴⁹ So despite the Castilian *Cortes*’ absence, Charles II continued to depend on the support of the Castilian towns. In fact, he even petitioned the towns with votes in the *Cortes* for their views on the *Junta de Alivios*, which was convened in 1669 to propose reforms for the improvement of royal revenue in Castile.⁵⁰ The absence of the *Cortes* did not end communication between the monarchy and the towns represented in the *Cortes*, but rather it was a significant shift in the channels through which this communication flowed. Under Charles II, these negotiations took place between the king, or the regent, and each town in isolation while still binding all of the towns by the vote of the majority, rather than the corporate negotiation between the king and the towns assembled together in the *Cortes*. Significantly, there is no indication that the towns of Castile objected to the shift to particularist negotiation or requested a meeting of the *Cortes*.⁵¹

The adoption of particularism and direct negotiation further strengthened the relationship between the towns of Castile and their monarch by making it more personal. As with the creation and multiplication of Castilian towns in the sixteenth century, the Habsburg monarchs “fragmented local administration, creating hundreds of newly autonomous towns,” which were

⁴⁹ Kamen, *Spain in the Later Seventeenth Century*, 30, and Thompson, “End of the Cortes,” 129.

⁵⁰ Storrs, 155, 176.

⁵¹ Kamen, *Spain in the Later Seventeenth Century*, 159.

now “intensely loyal” to the monarch who had granted them their liberty.⁵² A similar dynamic operated in the seventeenth century under Charles II. The direct negotiation between the local elite in the Castilian towns demonstrated their dependence upon royal patronage for their preeminence. For example, the *regidores* and *corregidores* of Murcia recognized that their opportunities for social advancement, particularly through ennoblement, came from the king. This led them to increasingly identify their own interests with those of the king.⁵³

The ownership of towns in the seventeenth century is further complicated by their sale. In order to raise cash, the king sold towns (*villas*) at a rate of roughly 14,000 silver maravedis for each subject (*vecino*) within its jurisdiction. Between 1626 and 1639, nearly 300 towns in Castile were sold, removing nearly a quarter of a million subjects from the king’s jurisdiction. Such purchases allowed the purchaser to enforce the king’s law themselves, or appoint other officials to do so on their behalf. Some of these towns were purchased by nobility, but around thirty-eight percent of these towns purchased their own jurisdiction. The sale of towns decreased under Charles II so that by 1710 about 500 of the 700 largest towns in Castile were outside of royal authority. In the Crown of Aragon the situation was similar: in Valencia the king had jurisdiction over 73 towns while 300 were under various nobles’ jurisdiction and in the Kingdom of Aragon the king controlled about a fifth of the towns. It is important to qualify these numbers by noting

⁵² Helen Nader, *Liberty in Absolutist Spain: The Habsburg Sale of Towns, 1516-1700* (Baltimore: Johns Hopkins University Press, 1990), x, 1.

⁵³ Julio D. Muñoz Rodríguez, “Consenso e imposición en la conservación de la monarquía. La práctica política en un territorio de la periferia castellana: el reino de murcia (1682-1700)” *Hispania* 43 (2003): 974-978.

that the largest cities, such as Madrid, Toledo, Barcelona, Zaragoza, and Valencia (all of which were officially *villas*, or towns), remained under the royal jurisdiction.⁵⁴

Given the high degree of municipal and noble autonomy, it was incredibly important for the king to maintain a personal link with his subjects. This relationship drew upon old forms of reciprocal duties between feudal lords and their vassals, which enabled Charles II to respond to the aggressive campaigns of Louis XIV despite the increasingly dire fiscal straits of the royal treasury. Throughout the seventeenth century, the gap between the expected royal revenue and the funds that actually arrived grew as towns accrued tremendous debt to the Crown in lieu of paying their taxes. The king could not enforce payment, so these debts grew without ever being paid to the detriment of royal finances.⁵⁵ The solution employed by Charles II and his ministers was to call upon the towns to provide a certain number of men of their choice, instead of imposing a troop levy directly, and to insist that the towns perform their duty as loyal vassals to the king by providing for these troops through direct payments in kind. The towns responded well to this arrangement, which enabled Charles II to field an army adequate for the defense of Spain against Louis XIV despite falling real royal revenue. Such success came at the cost of the central administration of the state, however, as the raising of troops and maintenance of the army completely circumvented the royal treasury and central bureaucracy.⁵⁶ The particular

⁵⁴ Kamen, *Spain in the Later Seventeenth Century*, 159-161. It is also important to remember that even though these towns were outside of the king's jurisdiction, their courts still had to enforce royal law; see Storrs, 159.

⁵⁵ Thompson, "Domestic resource mobilization and the Downing thesis. War and the State in Spain in the mid-17th century" in *Spain & Sweden in the Baroque era (1600-1660): international congress records*, Enrique Martínez Ruiz and Magdalena Pi Corrales, eds. (Madrid: Fundación Berndt Wistedt, 2000), 284-289.

relationships between the various towns of the Spanish kingdoms, drawing on feudal language, simultaneously strengthened the monarchy while reducing its ability to act independently from the towns. In recognition of this reality, the government of Charles II worked to satisfy the interests of the local elite and acquired their support.⁵⁷ This had the effect of increasing royal authority, while simultaneously decreasing its power to operate independently.⁵⁸

The transition from corporate negotiation with the king through the *Cortes* in Castile toward direct negotiation by towns and individuals reflects a significant reorientation in the Habsburg administration of Spain. While it became more difficult for the towns to work together to oppose the king, direct negotiation also limited the king's ability to standardize his administration and channel the resources of his kingdoms through the royal treasury. Charles II's adoption of particularism to govern his fragmented monarchy facilitated its survival, however, and while the Castilian *Cortes* was no longer summoned after 1665, the *Cortes* of the Crown of Aragon also declined in relevance under Charles II—neither the Catalan nor the Valencian *Corts* were called during his reign—indicating that this was a pan-peninsular trend.⁵⁹ The neglect of the many *Cortes* continued into the eighteenth century, when Philip V demonstrated a noticeable preference for particularistic negotiation with the towns over negotiation in the *Cortes*. The shift to particularism was not a radical innovation by the Bourbons, as should now be clear, but rather

⁵⁶ Thompson, “Domestic resource mobilization,” 289-301. This system decoupled the relationships between military expansion and the growth of the central state bureaucracy that is central to many narratives of state development.

⁵⁷ William Beik indicates that Louis XIV's administration cultivated a similar relationship with the local elite in Languedoc, although apparently without sacrificing as much power; see *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (New York: Cambridge University Press, 1985).

⁵⁸ Thompson, “Domestic resource mobilization,” 301-306.

⁵⁹ Xavier Gil makes the same point in “La corona de Aragón a finales del siglo XVII”, 105.

a natural evolution of governing practices pioneered by the Habsburgs in the seventeenth century.⁶⁰

II. Royal prerogative: the revolts in Catalonia and Messina

As revealed by the preceding discussion, the reign of Charles II was quite dynamic. In addition to the shift toward particularism in Castile and elsewhere, the reintegration of Catalonia under Philip IV after the Catalan revolt in 1652 and the reforms in Sicily after the War of Messina in 1678 during Charles II's reign increased royal authority to reduce the threat of future opposition to the Crown. In both cases, the king's authority over the selection of local officials increased, and in Messina significant changes to the city government and the privileges of the local nobility reduced their ability to threaten the monarch's rule. Despite these changes, however, local privileges that reflected local custom and preference—and that did not oppose royal authority—were permitted to remain. The Habsburgs demonstrated significant respect for legal traditions in all of their dealings with their subjects, including those that had rebelled against them. Together these targeted reforms increased the loyalty of the urban elite in Barcelona and Messina, reducing the risk of future revolts.

The focus on increasing royal control and local loyalty among the municipal elite is apparent following the revolt of Catalans. As Habsburg victories in Catalonia in 1652 marked the end of the Catalan Revolt, Philip IV sent his illegitimate son Don Juan José de Austria to negotiate the peace on his behalf. The negotiations began with a proposal by the *Consell de Cent*, which called for a general pardon and the restoration of all of their privileges, along with an order that the king recognize that they had remained faithful subjects despite everything that had taken place since

⁶⁰ Storrs identifies other similarities in the Habsburg reforms under Charles II and Philip V, see *Resilience of the Spanish Monarchy*, 189.

1640. Additionally, they wanted a guarantee of all personal privileges and the restoration of estates and goods seized by the king during the war, in addition to a promise that Philip IV's troops would not enter the city of Barcelona. These ambitious demands were probably posturing to establish a good position for negotiation with the king, and it is unlikely that they expected to gain all of these requests, given the circumstances of their surrender.⁶¹ Still, the Catalan's conditions of surrender reflect the interests of the urban elite in preserving their privileges and property despite the rebellion.

When the negotiations came before the Council of the Crown of Aragon, its members advised the king to use this opportunity to affirm his authority over Catalonia. They encouraged the king to occupy the city with troops in case publication of the king's terms led to renewed protests. Their proposals restored stability by reinforcing the noble and burger dominance within the city, reflecting the Council's belief that the revolt reflected peasant intransigence in 1640. Finally, the Council sought to reduce the city of Barcelona to the rank of the other major cities of Spain by granting it only privileges held by other cities and repealing all of its unique privileges.⁶²

Philip IV took a more moderate path that preserved more of Barcelona's privileges and yet still increased his authority over the city. Philip explained his desire to "establish his government in the form that was most convenient for the good administration of justice, and the public good" was not "opposed to all of the privileges and honors (*preeminences*)" of Barcelona. Among his guiding principles were the desires for "quietude" and "security" in his newly reclaimed city.⁶³

⁶¹ Fernando Sánchez Marcos, *Cataluña y el gobierno central tras la guerra de los segadores (1652-1679)* (Barcelona: Universitat de Barcelona, 1983), 49-51.

⁶² *Ibid.*, 55-61.

He confirmed most of Barcelona's traditional privileges, with a few important exceptions. First, he reserved the control of the military in Barcelona, which would be administered by the royally appointed viceroy and not the Catalan *Diputació*. This increased the power and authority of the king's local representative. Second, he acquired the royal veto on the old system of choosing ministers for the *Consell de Cent*, the *Diputació*, and the Audiencia.⁶⁴ The king could then prevent these institutions from filling with individuals opposed to the royal administration. Finally, Philip maintained control of the old baronies of Barcelona in compensation for the expenses he had incurred during the war. Private estates, however, were restored to their previous owners and a general pardon was granted, in addition the restoration of Catalonia and Barcelona's other privileges.⁶⁵

The generosity of these terms has led historians largely to ignore the privileges reserved by Philip IV. Elliott, for example, did not note the exceptions and went so far as to assert that "Catalonia was thus reinstated as part of the Spanish monarchy, enjoying the same laws and privileges as it had enjoyed at the time of the accession of Philip IV in 1621."⁶⁶ Most other historians who discuss this period characterize the reintegration of Catalonia in similar terms, and the few exemptions have not been translated into English. Even the recent and valuable work of Christopher Storrs reflects this oversight.⁶⁷ Their interpretations are problematic, however, as

⁶³ Royal Dispatch of Felipe IV, 3 January 1653, transcribed in Feliu de la Peña, *Annales de Catalunya* (Barcelona: 1709), vol. I, 327-329.

⁶⁴ They were chosen by the "insaculaciones de bolsa," or drawing names out of a sack.

⁶⁵ *Ibid.*, in addition to the helpful discussion by Sánchez Marcos, 61-62.

⁶⁶ Elliott, *Revolt of the Catalans*, 541. See also his *Imperial Spain*, 354.

⁶⁷ Storrs, 194. This oversight is corrected a few pages later, (see page 196), but its significance is buried in a footnote without any analysis or explanation.

the modification to the method of selecting city officials significantly augmented the king's ability to assure their support and fidelity in any future crisis.⁶⁸ Additionally, it is worth noting that royal authority over the defense of the city meant that the viceroy of Catalonia had significantly more military personnel at his disposal and was much less likely to suffer the violent end of the Count of Santa Coloma, the viceroy who died in the revolt of 1640.⁶⁹

While Catalonia's reintegration into the Spanish monarchy appears remarkably untraumatic, especially in comparison to what happened in 1714, it still marked a significant increase in royal authority in Catalonia. The willingness of Philip IV to leave so many of the Catalan privileges intact after the revolt of 1640 and his leniency toward the city's elite were justified by blaming peasants exclusively for the revolt. In reality, members of the elite participated in the revolt and Philip's actions reflected his need to galvanize the support of the leading Catalans against the threat of future French invasion. His reforms reflect a supremely pragmatic form of governance, as they were targeted to reinforce royal rule without upsetting the Catalans, especially the municipal elite whose privileges he had just preserved.

The suppression of the Catalan revolt is clearly of interest to those attempting to understand the later repeal of Catalan privileges under Philip V and the differences between them are

⁶⁸ Luis Antonio García Ribot makes a similar point in *El Arte de Gobernar: Estudios sobre la España de los Austrias* (Madrid: Alianza Editorial, 2006), 146, and Xavier Gil, "La corona de Aragón a finales del siglo XVII: a vueltas con el neoforalismo," in *Los Borbones: dinastía y memoria de nación en la España del siglo XVIII*, Pablo Fernández Albaladejo, ed. (Madrid: Marcial Pons, 2002), 97-99. On the history of the Audiencia under the Habsburgs, see María de los Ángeles Pérez Samper, "La Audiencia de Cataluña en la Edad Moderna," *Revista de historia moderna* 13 (1995): 51-54. On the principles of selection that the Council of the Crown of Aragon and the king employed in selecting members of the Audiencia, see Miquel Àngel Martínez Rodríguez, "La selección de los oficiales reales en la Cataluña de la segunda mitad del seiscientos. Una contribución al estudio de las instituciones forales," *Revista de Historia Moderna. Anales de la Universidad de Alicante* 21 (2003): 7-38.

⁶⁹ He was stabbed to death on the beach by Barcelonan citizens at the beginning of the revolt in 1640; see Elliott, *Revolt*, 3-13.

striking. Immediately following the initial decrees of the Nueva Planta, the royal officials implementing the new policy turned to another instance of the Habsburg's suppression of revolt for guidance—the revolt of Messina. In 1707, the new Regent of the Audiencia of Valencia, Don Pedro de Larreategui y Colón, presented a series of “doubts” to the king, asking for clarification on a number of details concerning the operation of the new government.⁷⁰ His request elicited a response from the Council of the Crown of Aragon addressing his specific questions.⁷¹ The Council believed that Larreategui y Colón had raised three more general issues which required greater reflection, and provided a separate response on these matters to the king. In this document, they suggested that he might look to the example of Charles II's handling of the Revolt in Messina as a model for the new government of Valencia.⁷² So what took place in Messina and how does this relate to the Nueva Planta of the Bourbons?

The revolt in Messina resulted from the tensions between the two very different sides of Sicilian society: that of Palermo, which was feudal and dominated by barons, and that of Messina, which was commercial and run by the new burgers exploiting their monopoly of the silk trade. The Spanish monarchy recognized this but failed to address the growing tension between both factions adequately. In fact, Spanish officials had an important role in the increasing antipathy between the citizens of Messina and the monarchy. In the end, however, the citizens of Messina were not simply revolting against “the state,” as some historians have

⁷⁰ “Papel de Dudas, que ha propuesto a VM Don Pedro de Larreategui y Colón,” 4 June 1707, AHN CS Leg 18190.

⁷¹ Consulta del Consejo de la Corona de Aragón, 14 June 1707, AHN CS Leg 18190.

⁷² “Aunque en otra Consulta tiene respondido el Consulta al Papel de Dudas, que ha propuesto a VM Don Pedro de Larreategui y Colon, ha parecido poner aparte en está con la mayor concision en la Real noticia de VM tres proposiciones tocantes al Gobierno del Reyno de Valencia para que con su inteligencia pueda VM tomar la resolucion, que le pareciere más justa, y conveniente sobre dhas dudas.” sin fecha, AHN CS Lib 18190.

suggested, because city could not maintain its economic and social preeminence in Sicily without external support. The Messinans recognized their need for external support, so they invited the French monarchy in as the new guardian of their privileges. Instead, the revolt was an effort to assert their dominance on the island.⁷³ Despite initial difficulties in responding to the crisis, Charles II was eventually able to get enough soldiers to Sicily to suppress the revolt, which came to a definitive end in 1678.⁷⁴

In the aftermath of the revolt, Charles II implemented significant reforms that redefined the relationship between Messina and the Spanish king. The attitude at court quickly turned against Messina, perhaps at the prodding of the loyal citizens of Palermo. In any case, both the Council of State and the Council of Italy encouraged the king to make an example of Messina so that the king's subjects everywhere would not risk revolt. The Council especially desired to send a strong warning because of the weakness of Spain's military position in the 1670s.⁷⁵

The repression of Messina began with the arrival of the Conde de Santisteban in January of 1679. At the king's order, he replaced the Senate of Messina with a Castilian-style city council (*ayuntamiento*), whose members would be chosen by the viceroy from all over the Spanish territories. The honorific privileges of the old senate disappeared with it. As an indication of the finality of this change, the Palace of the Senate was razed to the ground. An equestrian statue of Charles II slaying the hydra of rebellion—made of the melted-down bell from the old palace—

⁷³ Luis Antonio Ribot García, *La Revuelta Antiespañola de Mesina: Causas y antecedentes (1591-1674)* (Valladolid: Universidad de Valladolid, 1982), 239-245.

⁷⁴ Storrs, 17; Ribot García, *La Monarquía de España y la guerra de Mesina (1674-1678)* (Madrid: ACTAS Editorial, 2002), 194ff.

⁷⁵ Ribot García, *Monarquía*, 622-624.

was erected in its place with an inscription commemorating the suppression of the revolt.⁷⁶ The new city council met in the presence of the royal governor in the Royal Palace. Other local and regional officials were replaced by Castilian ones, such as the Corregidor. Messina's exemption from the taxes of the *gabelas* and the *donativos* also disappeared, along with its secondary schools and its university.⁷⁷ To prevent any future revolt and to demonstrate their reduced prestige, the citizens of Messina, including nobles, had to surrender their firearms. The Messinans were also banned from corresponding with the fugitives who had supported the French on penalty of death. In case these precautions proved inadequate, the monarchy built a fortress between 1680-1683 to secure the city against threats from within or without.⁷⁸ In addition to abolishing Messina's privileges, the city's records were confiscated, erasing the local records that had guaranteed their old relationship with the king. Charles II and his officials were systematically removing the institutions that had protected Messina's privileges, the buildings where its government had met, and the documents that had preserved their traditions and privileges.

These reforms parallel the most severe institutional, physical, and symbolic changes imposed by the Philip V on the cities of Valencia and Barcelona, while Zaragoza received much gentler treatment. So did Philip V follow his council's advice and Charles II's model when crafting the *Nueva Planta*? Perhaps, but not initially. In its advice to the king, the council emphasized the limits of the reforms in Messina. It explained that in Messina, Charles II had "removed the city's

⁷⁶ The statue was made by Giacomo Serpotta, and no longer exists, although it may have been there as recently as 1907; see Ribot Garía, *Monarquía*, 626, footnote 26,

⁷⁷ Specifically, the academia de caballeros de la Stella, the Funcia, and the Abbarbicati were shut down; Ribot García, *Monarquía*, 625.

⁷⁸ Ribot García, *Monarquía*, 624-626.

privileges, *fueros*, and exemptions that they had enjoyed in punishment for its rebellion, but in the matters touching on the *pragmáticas*, ordinances, and civil laws of the kingdom, he made an edict ordering the viceroy... to observe them inviolably.”⁷⁹ Following this example, the council encouraged Philip V to recognize the difference between the privileges, which had been forfeited because of rebellion, and those:

...royal orders [*cedulas y real pragmáticas*] that touch on the commutative justice, and assure its good administration, which in no form could be understood as lost because of this rebellion, because they are not *fueros*, nor privileges, but rather laws and rules given by the lord kings to hold them [his subjects] to his [Your Majesty’s] disposition and to assure by means of them his good government, and proper justice; as they are just and holy and approved by the customs of some years, it would be very dissonant to abolish them because of rebellion.⁸⁰

Here the council makes a significant distinction between privileges that benefit only those possessing them and are enjoyed at the king’s good will, and other legal structures that promote justice and good administration. The council advised Philip V to preserve the latter, as there is “no stronger bond for the maintenance and good government of republics than the punctual observation of their laws.”⁸¹ The council’s appeal to the example of Messina indicates that they believed that Philip V was interested in following the legal practices of the Habsburgs. The distinction between legal privileges, which could be lost through rebellion, and the laws and rules essential for good government, which could not, provides a helpful framework for comparing Charles’ policies toward Messina and Philip’s towards Valencia. While this advice was not followed by Philip V in the initial decrees of the *Nueva Planta*, subsequent edicts

⁷⁹ “Aunque en otra Consulta tiene respondido el Consulta al Papel de Dudas...” sin fecha, AHN CS Leg. 18190.

⁸⁰ “Aunque en otra Consulta tiene respondido el Consulta al Papel de Dudas...” sin fecha, AHN CS Leg. 18190.

⁸¹ “Aunque en otra Consulta tiene respondido el Consulta al Papel de Dudas...” sin fecha, AHN CS Leg. 18190.

restored many of the local laws in Aragon, Catalonia, and Mallorca, and Philip publicly indicated his willingness to restore them to Valencia.⁸² Evidently the legal distinction that guided Charles' handling of the revolt of Messina reflected a meaningful distinction in the kinds of privileges and laws and how they shaped the royal administration that transcended both the Habsburg and the Bourbon dynasties—a distinction that Philip V learned through experience rather than his council's advice.

At the same time, there were important difference between the reforms in Messina and those in the Crown of Aragon under Philip V. Both cities were punished for their revolts and both cities' governments were filled with a new elite drawn from other kingdoms. It seems that Philip made more concessions to the Catalans that he positively identified as loyal than were made for the elite in Messina. Perhaps the lack of a homegrown elite did not seem necessary because the defeat of Messina had reinforced the bonds between Charles and the near-by city of Palermo. It is remarkable that the Council of Aragon, in one of their final acts, advised the king to use Messina as a model that demonstrated the value of preserving certain kinds of local privileges. These variations demonstrate how the kings of Spain, Habsburg and Bourbon, did not have a standard operating procedure, but instead made practical decisions based on the specific situations that they encountered.

The same theme can be seen when comparing the cases of Messina and Barcelona in the seventeenth century. In Messina under Charles II and Barcelona under Philip IV, the Habsburgs demonstrated their willingness to redefine the relationship between the Crown and its subjects. The example of Messina is more dramatic than that of Barcelona in 1652, yet the justification for

⁸² The officials in charge of filing the official request to restore Valencian civil law were primarily foreigners, so this never actually took place despite the king's willingness. See chapter two for more on this.

these reforms was based on the language of security. In Barcelona, Philip IV seemed content to solidify his support with the city's oligarchy; in Messina the city officials were implicated in the revolt, which led Charles to curtail further the autonomy of the city's elite. What is difficult to argue, however, is that the government of Charles II was content to ignore its peripheral kingdoms in Europe, as suggested by the "neoforalist" thesis advanced by Joan Reglá. The reforms in Messina demonstrate that Charles' government could be quite active in the defense of royal authority.

More importantly, the royal responses to revolts under the Habsburgs depended upon the specific circumstances surrounding each revolt and its suppression. There was no standard policy that could be applied following a revolt. Indeed, the Habsburgs responded to each of these revolts in a unique way that reflected practical considerations, just as Philip V would follow the apparent revolt of the Crown of Aragon with a contradictory series of royal decrees collectively known as the *Nueva Planta*. This name, which implies that the acts were part of a coherent "new plan," hides the complexity and development of Philip's reform efforts that subsequent chapters will reveal.

III. Conclusions

The Habsburg system of governing the Crown of Aragon under Philip IV and Charles II was flexible and reflected long-standing local traditions. Despite this, however, it would be a mistake to characterize the period as one of "federalism by default"⁸³ or "neoforalism."⁸⁴ Instead, it was a pragmatic balance between royal efforts to maintain stability and security in the Crown of

⁸³ Elliott, *Imperial Spain*, 363.

⁸⁴ Reglá, 159-160, 171-172.

Aragon coupled with respect for the privileges that subjects expected from their monarchs.⁸⁵ In other words, the monarchy increasingly implemented particularism because it proved to be the most effective way for the king to maintain control of his territories. The renegotiation of the relationships between the center and the periphery following the fall of Barcelona in 1652 and the fall of Messina in 1678 indicates that the monarchy was capable of, and willing to, assert its authority while simultaneously maintaining the contractual balance between privileges and duties that characterized the composite monarchy of Spain. The Habsburgs creatively engaged the issues that arose and selected their policies based upon practical considerations, which resulted in unique responses to the various challenges that they faced.

At the same time, the way in which the Habsburg monarchs interacted with their subjects shifted away from negotiation with the *Cortes* to direct negotiations with the towns. While this limited the towns' ability to present a united front against royal intrusions, it also meant that each had the ability to push for the privileges that mattered most to them without having to compromise with the interests of other towns, creating a less homogenous legal landscape. When coupled with Charles II's devolution of the responsibility for military recruitment and provision, these policies marked a significant shift away from the centralized royal control of military affairs.

The complexity of the way in which Charles II governed Spain has led to a split between the scholars of the history of ideas and law, who portray increasingly absolutist tendencies, and those studying government and practice, who describe growing fragmentation in seventeenth century Spain.⁸⁶ These different characterizations reflect the complicated balance that typified the flexible and pragmatic administration of the Spanish Habsburgs. The struggle to balance the

⁸⁵ Gil, 115.

⁸⁶ Thompson, "Castile," 96-98.

security of the state by alternately asserting royal authority and respecting local privileges helps to explain the ability of local officials to interfere with Don Diego Dormer, discussed at the beginning of this chapter. These local officials recognized the importance of their role in the royal administration and knew how far they could push against the king's decisions when they disagreed with them. Just as importantly, they knew how to do so while invoking the rhetoric of obedience that bound king and subject in the reciprocal bonds of duty and privilege. The resilience of Habsburg government depended upon such compromises between royal interests and those of the local elite in the Crown of Aragon. Finding a similar balance would prove essential for the first Bourbon king of Spain.

Chapter Three: The Bourbon Reforms of the Crown of Aragon, 1706-1716

The ascension of the first Bourbon king of Spain, Philip V, raised the possibility of general reform to the flexible Habsburg administration described in the previous chapter. The subsequent War of Spanish Succession and the rebellion of the kingdoms of the Crown of Aragon provided Philip with the opportunity to redefine the reciprocal duties that had bound his predecessors to respect these kingdoms' traditional privileges. Philip's reforms have been identified as a significant moment in the formation of the modern nation state of Spain. Careful analysis of these reforms and the shifting language employed to justify and challenge them suggests that despite the substantial institutional changes that took place, Philip V continued to respect his duty toward his loyal subjects. Ultimately this duty, in conjunction with myriad practical difficulties, led him to back off from establishing the uniform system of government proposed in the initial decrees of the *Nueva Planta* reforms.

Philip V and his ministers developed an ambitious set of reforms during his first two decades as king, and no kingdoms felt this more than those of the Crown of Aragon. The *Nueva Planta* reforms are particularly revealing of royal aspirations because the War of Succession freed Philip from the traditional rights and privileges of these kingdoms, enabling him to redefine the relationship between the king and his subjects. This chapter reveals the royal decision-making process through analysis of the debates among the king's ministers, the language of the royal decrees enacting the *Nueva Planta*, and the immediate consequences of the reforms. Philip and his ministers' decisions in these matters were free of the many institutional constraints that had limited the Habsburgs and demonstrate that the Bourbons were not attempting to create anything that could be described as a modern nation state. Instead, their focus on much more immediate practical matters led the Bourbons to reshape society to maintain the centrality of privilege even

as they reconfigured the political institutions to emphasize the personal rule of the reigning monarch.

This chapter will explore these issues in five sections. The first will consider the various interpretations of the Bourbon reforms, which can be loosely organized into two groups—those which emphasize Philip and his ministers' effort to create a uniform system of government over his kingdoms, and those which focus on the dynamic and ad-hoc nature of the reforming process that eventually produced a decidedly multiform system. The second section will look at the challenge of reestablishing Philip's rule in Valencia in the early years of the war, paying particular attention to his advisor's respect for Habsburg models and avoidance of jeopardizing the war effort through threatening the traditional relationship between the Valencians and their monarch. The third section will analyze the initial decree of the *Nueva Planta*, exploring how it responded to the challenges posed by the earlier form of government and Philip's intentional break from the traditional limitations on royal authority in the Crown of Aragon. The fourth section will consider the new difficulties created by Philip's position and the way in which he shifted the justification for and nature of his reforms in response to the loyalty of many of his subjects in the Crown of Aragon. This renegotiation of the Bourbon reforms eventually led to a new model of government that blended Castilian and Aragonese institutions. The process that created this blended model is the focus of section five, which will examine the arguments for and against it, and its eventual affirmation in the reforms of the Catalan government in 1714. Taken together, this process of reform created a complicated and idiosyncratic government in the Crown of Aragon that embodied respect for personal loyalty to the king while also reducing the institutional limitations on royal authority. The new government reflected royal compromises in addressing a variety of competing concerns. Philip's many concessions to local interests indicate

that a willingness to negotiate continued to typify the royal administration of the Crown of Aragon.

I. The problem of the *Nueva Planta*

Charles II, the last king of the Spanish Habsburgs, died without having produced an heir on November 1, 1700, setting the stage for the War of Spanish Succession. European international politics had revolved around the fate of the kingdoms of Spain for years. In his final will, Charles left the crown to the Bourbon grandson of Louis XIV, who became Philip V of Spain.¹ His claim, however, was contentious, as it came through Maria Theresa, Charles II's half-sister, who had renounced all claims to the Spanish throne when she married Louis XIV of France. Based on her renunciation, the next in line, the Habsburg Archduke Charles of Austria, claimed the throne for himself. Although Charles II's will affirmed the ascension of Philip V, an alliance supporting the Archduke Charles began its war with France and Spain two years later. The fall of the Crown of Aragon in early 1705 forced its subjects to choose between Philip and Charles, giving the conflict the characteristics of a civil war.²

The war increased the tensions between the two Crowns of the king of Spain—that of Castile and Leon, and that of Aragon, composed of the kingdoms of Aragon, Catalonia, Valencia, and Mallorca. The kingdoms of Habsburg Spain formed a composite monarchy: multiple kingdoms,

¹ Henry Kamen, *Philip V of Spain: The King who Reigned Twice* (New Haven: Yale University Press, 2001), 1-5.

² There is some debate over whether or not any rebellion actually took place as the defenses in these kingdoms were inadequate to defend them with or without local support. In either case, there were some supporters of the Archdukes invasion and this ultimately shaped Philip's policy decisions in the Crown of Aragon.

each with their own unique institutions and laws, united only in the person of the monarch.³ Following the principle of *aeque principaliter*, the kingdoms of a composite monarchy were treated as dynastic inheritances rather than conquered territories, which bound the monarch by each kingdom's laws. The kingdoms retained their own laws and traditional liberties and privileges—often collectively referred to as their *fueros*. In some cases this resulted in a monarch with widely varying degrees of authority in the different kingdoms under his rule.⁴ The differences between these two crowns had caused serious tensions for centuries and erupted most famously in the revolt of the Catalans in 1640. The War of Spanish Succession became another moment of significant tension and the apparent revolts against Philip's rule gave him ample legal ground to transform his relationship with his subjects in the Crown of Aragon.

When Philip regained control of Valencia with the Bourbon victory at the Battle of Almansa on April 25, 1707, he began to reform the political institutions of the Crown of Aragon with the *Nueva Planta*. Philip's reforms involved the revocation of the many *fueros*, or traditional privileges, of the kingdoms of the Crown of Aragon, and the significant reorganization of their royal administration. These changes have been a matter of significant interest since its implementation. During the war, interpretations of Philip's reforms by supporters of the Archduke described them as ending the nations and national identities of the Valencians, Aragonese, Catalans, and Mallorcans.⁵ This interpretation identifies the *Nueva Planta* as the

³ J. H. Elliott, "A Europe of Composite Monarchies" *Past and Present* 137 (1992): 50-51.

⁴ *Ibid.*, 52-53.

⁵ The most famous of these early works is Narciso Feliu de la Peña, *Anales de Cataluña*, (Barcelona: Editorial Base, 1999, 1709). Similarly, the Valencian abogado Francisco Javier Borrull argued at the Constitution of the Cádiz that Philip V had centralized Spain and that they should return the Valencia's *Fueros* and liberties; see Enrique Giménez López, *Gobernar con una misma Ley: Sobre la Nueva Planta borbónica en Valencia* (Alicante: Universidad de Alicante, 1999), 7. Another famous and characteristic work in this tradition is Salvador Sanpere

defining reform initiating the creation of the modern state of Spain at the expense of the Crown of Aragon. A recently published collection of essays on the formation of the Spanish state was organized around this narrative and includes several essays by historians of early modern Spain exploring the creation of the modern nation state during the War of Succession.⁶ In the introduction from a historical perspective, José Manuel de Bernardo Ares argues that “the Nation-State” of Spain was born between 1700-1716 and served as the underlying “political organization of the Spanish society” until 1978 when Spain became a “State of Autonomous Regions.” By this account, the Habsburg composite monarchy ended with the *Nueva Planta* reforms in Catalonia on January 16, 1716. These initiated the “‘National’ monarchy of the Bourbons,” which was defined by “a unitary power, administrative centralization, and legal uniformity.”⁷ Similar claims have often been made by other historians, placing Bernardo Ares clearly within the mainstream interpretation of eighteenth century Spain. For example, W. N. Hargreaves-Mawdsley has argued that Bourbon rule “led to efficiency, to the destruction of regionalism, and so of feudalism, and to the concentration of wealth and power in the crown.”⁸ More recently, Ricardo García Cárcel has noted that the need for change in Spain was palpable

y Miquel, *Fin de la nación catalana* (Barcelona: L’Avenç, 1905). For a description of this tradition through the 1950s, see María Teresa Pérez Picazo, *La Publicística Española en la Guerra de Sucesión*, vol. 1 (Madrid: CSIC, 1966), 5-14.

⁶ José Manuel de Bernardo Ares and Santiago Muñoz Machado, eds. *El Estado-Nación en dos encrucijadas Históricas* (Madrid: Fundación Ricardo delgado Vizcaíno, 2006).

⁷ Bernardo Ares, “Nota preliminary (la perspectiva histórica),” *ibid*, 15. He echoes this argument in his essay in the same volumen, “La España francesa y la Europa británica a comienzos del siglo XVIII. De la monarquía «paccionada» de los austrios a la monarquía «nacional» de los borbones,” *ibid*, 154-155.

⁸ W. N. Hargreaves-Mawdsley, *Eighteenth-Century Spain, 1700-1788: a political, diplomatic, and institutional history*, (London: Macmillan, 1979), 9. John Lynch has made similarly sweeping statements in *Bourbon Spain, 1700-1808* (Cambridge: Basil Blackwell, 1989).

in 1700 and that the *Nueva Planta* “ended the federal model” of the Habsburgs.⁹ These characterizations of the *Nueva Planta* as a complete break with the past describe it in positive terms as a necessary step in the creation of the modern Spanish state, in contrast to the many earlier works lamenting the end of the traditional government of the Aragonese kingdoms.

Many historians with this progressive view characterize the *Nueva Planta* as an effort to replace the civilian government of the Crown of Aragon with an efficient bureaucracy of military officials beholden to the king so that he could exercise greater control over his subjects.¹⁰ They emphasize the power of the new Captain Generals that replaced the viceroys of the Habsburgs and Philip’s Council of the Cabinet (*Consejo del Despacho*) that oversaw international diplomacy and the military. These historians contrast these institutions with the regional judicial

⁹ Ricardo García Cárcel, “Introducción. La significación histórica de los Borbones,” in the volume he edited, *Historia de España Siglo XVIII: La España de los Borbones* (Madrid: Cátedra, 2002), 10, 13.

For some additional and representative examples, see James S. Amelang, “The Peculiarities of the Spaniards: Historiographical Approaches to the Early Modern State,” in *Public Power in Europe: Studies in Historical Transformations*, eds. James S. Amelang and Siegfried Beer (Pisa, Italy: Edizioni Plus—Pisa University Press, 2006), 41; Francisco Cánovas Sánchez, “Los decretos de nueva planta y la nueva organización política y administrativa de los países de la Corona de Aragón,” in *La época de los primeros Borbones: La Nueva Monarquía y su posición en Europa (1700-1759)*, eds. Francisco Cánovas Sánchez, et al., 2nd Ed. (Madrid: Espasa-Calpe, 1987), 3-4; and I. A. A. Thompson, “Castile, Spain, and the monarchy: the political community from *patria natural* to *patria nacional*,” in *Spain, Europe and the Atlantic world: Essays in honour of John H. Elliott*, Richard Kagan and Geoffrey Parker, eds. (New York: Cambridge University Press, 1995), 159.

¹⁰ For example, see Juan Mercader Riba, “La ordenación de Cataluña por Felipe V: la Nueva Planta,” *Hispania: Revista Española de Historia*, Vol. 11, No. 41 (1951): 257-366; the work of Enrique Giménez López in both *Militares en Valencia (1707-1808): Los instrumentos del poder borbónico entre la Nueva Planta y la crisis del Antiguo Régimen* (Alicante: Instituto de Cultura “Juan Gil-Albert”, 1990), and *Gobernar con una misma Ley*; José Antonio Moreno Nieves, *El Poder Local en Aragón durante el Siglo XVIII: Los Regidores aragoneses entre la Nueva Planta y la crisis del Antiguo Régimen* (Zaragoza: Institución «Fernando el Católico», 2004); and the recent dissertation by Francisco A. Eissa-Barroso, “Politics, Political Culture and Policy Making: the reform of viceregal rule in the Spanish World under Philip V (1700-1746),” Doctoral thesis, University of Warwick, 2010.

tribunals (the *Audiencias*) filled with civilians (*togados*) and the older council system, which was traditionally dominated by the grandees of Spain. The Cabinet functioned as the key executive body for the king and its creation was certainly one of the most significant early reforms under Philip's reign.¹¹ Historians praising Philip's reforms emphasize how they centralized of royal power by streamlining the royal bureaucracy and the simultaneous appointment of ministers dependent on royal favor to maintain their social positions and wealth.

There is another set of historians who, while describing the new government as significantly different from the Habsburgs, note that the new government in Spain created a rebalanced equilibrium between the civilian nobility and the military officials rather than replacing the civilian institutions wholesale. Pedro Molas Ribalta has described the new government in Valencia as a "diarchy" with power shared between the military officials, particularly the Captain General, and the civilian nobility of the robe, concentrated particularly in the *Audiencia*. According to Molas Ribalta, the joint rule of these two groups created an "unstable equilibrium" that characterized Valencian government in the eighteenth century.¹² This balance also existed at the highest levels of the Spanish government as demonstrated by Juan Luis Castellano. He has argued that both the councils and the Secretaries of the Cabinet (*Secretarias del Despacho*) ruled Spain together.¹³ The latter functioned as chief ministers and they served as the key officials in Philip V's Cabinet. Castellano has convincingly argued, however, that the Cabinet was just as vital to the royal administration as the council—it was in fact dependent upon the councils to

¹¹ Eissa Borroso, 83-87, and Jean-Pierre Dedieu, "La Nueva Planta en su contexto. Las reformas del aparato del Estado en el reinado de Felipe V" *Manuscrits* 18 (2000): 114-118.

¹² Pere Molas Ribalta, "Militares y Togados en la Valencia Borbónica" in *Actes du I.er Colloque sur Le Pays Valencian a l'epoque moderne* (Pau: Universite de Pau, 1980): 174, 185.

¹³ Juan Luis Castellano, *Gobierno y Poder en la España del Siglo XVIII* (Granada: Universidad de Granada, 2006), 12.

register their orders, and, notably, most of the members of the Cabinet also served on the councils.¹⁴ The continued influence of the councils and *Audiencias*, along with that of the new military officials, suggests that Philip's reforms created multiple channels of royal authority with competing jurisdictions. Although the bureaucratic "map" under Philip was certainly different than it was under the Habsburgs, there continued to be several ways for royal subjects to petition their king after the *Nueva Planta*.¹⁵

In addition to this split between historians concerning the degree to which Philip's reforms militarized the government of the Crown of Aragon, there is another dimension dividing the historians of eighteenth century Spain into two separate camps. On one side are those who consider the *Nueva Planta* reforms as part of an intentional effort to homogenize the royal administration of the kingdoms of Spain, while those on the other describe it as an inconsistent and ultimately incoherent effort towards administrative centralization. For example, José Antonio Moreno Nieves identified the theoretical goal of the *Nueva Planta* decrees as "uniformity and centralization," which he has located in a long-standing Spanish tradition. He

¹⁴ Castellano, 24; the members of the Cabinet in 1707 were the Duque de Veragua, the Duque de San Juan, the Duque de Medinasidonia, the Duque de Montellano, Don Francisco Ronquillo (then president of the Council of Castile and later the Conde de Gamedo), and the Conde de Frigiliana (then President of the Council of Aragon). The French Ambassador, Amelot, was always present in its meetings, as well. See Mariano Peset, "Notas sobre la abolición de los fueros de Valencia" in *Anuario de Historia del Derecho Español* XLII (1972): 660.

¹⁵ On how this worked under the Habsburgs, see I. A. A. Thompson, "Castile," in *Absolutism in Seventeenth-Century Europe*, edited by John Miller (New York: St. Martin's Press, 1990) and Ruth MacKay, *The Limits of Royal Authority: Resistance and Obedience in Seventeenth-Century Castile* (New York: Cambridge University Press, 1999). For information concerning the relationship between the Castilian towns and the monarch, see Helen Nader, *Liberty in Absolutist Spain: The Habsburg Sale of Towns, 1516-1700* (Baltimore: Johns Hopkins University Press, 1990). For an example of how royal subjects in Catalonia could communicate with the king and how these relationships could break down, see Luis Corteguera, *For the Common Good: Popular Politics in Barcelona, 1580-1640* (Ithaca: Cornell University Press, 2002).

has explained that its final form reflected both the Castilian model that it “copied” with some minor modifications, reflecting local Aragonese traditions.¹⁶ Jean-Pierre Dedieu has noted both French and Spanish precedents in Philip’s reforms and similarly considered them an effort towards centralizing and homogenizing the bureaucratic apparatuses of state, even though internal resistance, most notably from the Council of Castile, limited it.¹⁷ While contesting the origin of this model, Marta Ruiz Jiménez has agreed with this characterization of Philip’s reforms. She compared his reign to that of his grandfather, arguing that “the arrival of the new dynasty signified the implantation, in Spain, of the model of absolutist monarchy imposed by the *roi soleil*... which entailed centralization, rationalization, and uniformity in all of the spheres of the administration.”¹⁸ These historians consider the *Nueva Planta* an effort to rationalize and standardize the administration of Spain and place considerable significance on the newly created similarities between the governments of Castile and the Crown of Aragon following the reforms.

The alternative position recognizes that there were central goals held by Philip and his ministers, but they emphasize the inconsistencies and reversals in royal policy as these were pursued. Giménez López has described how

the regime of the *Nueva Planta* in 1707 must be understood as an open process that expressed its dynamism over the century, not trying to introduce a Castilian model entirely without procuring conformity to some regimes, now provincial, which provided their own organization, with a distinct tax system, and, over all, endowed with a new and distinctive element: its military character.¹⁹

¹⁶ Moreno Nieves, 11, 519-520.

¹⁷ Dedieu, 130-139.

¹⁸ Marta Ruiz Jiménez, “La monarquía borbónica francesa del siglo XVIII: un modelo en crisis” *Manuscripts* 18. 2000: 27.

¹⁹ Giménez López, *Con Una Misma Ley*, 14.

This new military-centered state was a hybrid that developed through the reform process and not the product of an original plan designed to transplant either a French or a Castilian model of government in Valencia or the other kingdoms of Aragon. Jesús Morales Arrizabalaga has made a similar case for the kingdom of Aragon, arguing that “the reform of Aragon undertaken by the Bourbons was not carried out by developing a ‘single model,’ but on the contrary, there were various models of reform that correspond with the different moments of the war, and which gave expression to distinctive regulations.”²⁰ More recently, he has noted the challenges of making sense of the *Nueva Planta* reforms because of the loaded language of the debate, and has suggested that his own work on the *Royal Acuerdo* of the Audiencia in Zaragoza (the capital of the Kingdom of Aragon) reveals that “the government of the kingdom was generally decided in the kingdom.”²¹ In this, he has challenged the degree to which the *Nueva Planta* centralized the state, in addition to his critique of the standard Bourbon model of uniformity and centralization borrowed either from Louis XIV or the Conde-Duque de Olivares. Finally, Henry Kamen has split the difference between these two camps, if that is possible, by arguing that Philip was drawing on both French and Spanish models while trying to centralize the administration and the finances of state. Philip’s goal in this account was to increase “crown control, military security and, in the words of Louis XIV, ‘the expenses of the state.’”²² Kamen has portrayed Philip as

²⁰ Jesús Morales Arrizabalaga, *La Derogación de los Fueros de Aragón (1707-1711)* (Huesca: Instituto de Estudios Altoaragoneses, 1986), 8.

²¹ Morales Arrizabalaga, *Fueros y Libertades del Reino de Aragón: de su formación medieval a la crisis preconstitucional (1076-1800)* (Zaragoza: Rolde de Estudios Aragoneses, 2007), 187.

²² Henry Kamen, *Philip V of Spain*, 62-64, 84, and 112. Kamen’s descriptions are frustratingly suggestive and very unsystematic. That undoubtedly reflects his lack of focus on the changes in Spain under Philip (he describes this book as a “a short, personal biography of the king.” *Ibid.*, viii), yet it nevertheless makes the work less helpful for our purposes here. He wrote more on this subject in his first book on the topic, *The War of Succession in Spain 1700-15*

rather eccentric and, on the whole, not very focused on the affairs of state. This description has more in common with that of Giménez López and Morales Arrizabalaga than the other camp of historians, because he has not indicated that Philip strove for uniformity and centralization of his administration, but rather on the more modest goals of increasing the power and resources under his command.

In light of these debates, it is important to establish the method with which Philip approached the choices involved in reforming the government of the Crown of Aragon. Toward that end, this chapter will ascertain whether Philip V and his ministers pursued a consistent policy to establish a pre-determined model of administration, or if they instead had specific policy goals that they pursued through a pragmatic and dynamic process.

The development of Philip's reform policy between 1706 and 1716 answers this question. Philip and his ministers initially established a new government in Valencia with limited changes similar to those made following the revolt of the Catalans of 1640 that left largely intact the traditional reciprocal duties between the king and his subjects. This arrangement, however, changed dramatically when Philip revoked all of Valencia and Aragon's traditional privileges on June 29, 1707, in an effort to quickly establish a functioning government. Philip's assertion of royal authority over the Crown of Aragon also provided him with a strong bargaining position while understandably reducing the Catalans' interest in a negotiated peace. His focus was not to create a uniform government, however, as subsequent reforms moderating the initial decree demonstrate. The process began on July 29, 1707, when Philip granted individual and corporate

(London: Weidenfeld and Nicolson, 1969), where he also emphasizes the role of state finance and the military in his narrative. It is important to note, however, that in 1980 he argued against the existence of kingdom identities (i.e., a catalan identity, etc.) and indicated that his arguments in the *War of Succession* required reevaluation in light of this new understanding; see the introduction to *idem.*, *Spain in the Later Seventeenth Century, 1665-1700* (New York: Longman, 1980).

exemptions to his loyal subjects and reconfirmed their privileges. This reflected a major shift in royal policy away from uniform legal and administrative standards toward negotiation between the king and his subjects, towns, and other corporations separately. By responding to the particular interests of these groups and individuals separately, Philip was able to provide what they most wanted in exchange for their support of the monarchy without having to create a universal policy that would have to balance their competing desires. The new administrative approach increased the idiosyncrasies of Philip's administration while also increasing his subjects' dependence upon his personal favor for their privileges. The shift towards accommodating particularist interests continued with the new "mixed" model of government created in Aragon in 1711. There Philip reestablished the kingdom's traditional civil laws and rebalanced the relationship between the judicial and military officials, while maintaining Castilian civil law and a mixture of local and foreign officials throughout the kingdom. The new Aragonese model of government provided the framework for the assimilation and reform of Catalonia after the fall of Barcelona in 1714. Philip then reformed Valencia's government in a similar fashion. The Valencians did not reacquire their civil law in the end, but this result had more to do with opposition from the Castilians on the Audiencia of Valencia than the royal will. Royal flexibility on the many questions that arose concerning which local and regional institutions would be abolished, which retained but reformed, and which allowed to continue with all of their old privileges intact, indicates a willingness by the king and his ministers to tolerate many idiosyncrasies in the government of the Crown of Aragon. The various reconsiderations and reversals of Philip's initial policy reveal his pragmatic approach, which enabled him to shift his policies to better accomplish his goal of firmly establishing royal rule in

the Crown of Aragon. By responding to local concerns and reaffirming his willingness to reward service to the crown, Philip created a new and more personal relationship with his subjects.

II. The new government of Valencia (November 1706-May 1707)

Philip V's policy towards the Crown of Aragon was developed in consultation with the royal councils in a system that had existed for centuries. The records of these consultations reveal the concerns of Philip and his various ministers as they tried to work through the challenges of reforming the royal government of the Crown of Aragon in the middle of the War of Spanish Succession.

Philip initially asked the Council of Aragon for advice concerning the new government of Valencia on November 27, 1706, and they met with him to give their recommendations on December 22. The war was going well and he hoped to take Valencia in the next year when he would need to replace the royal ministers serving in the kingdom's highest judicial body, the Royal Audiencia. Philip ordered the council to propose officials for the Audiencia—he wanted three Valencian ministers, and two Castilians along with an explanation of why they made these particular recommendations. The council responded by citing Philip IV's order that the council “always treat the truth plainly, even when it seems to you that it will be contrary to my will.” With this introduction, the council explained the “inconveniences” that would result from the king's plan.²³

First of all, the ministers of the council explained that such a small Audiencia, with only 3 places for Valencians, would be a great source of despair to the Valencians who had previously

²³ “Dicelo que se le ofrece en execución de la Real orden de VM a Consulta de 27 del pasado, tocante a la Audiencia que se ha de formar en el Reyno de Valencia, y sueldo, que han de gozar los Ministros”, Consulta del Consejo de Aragón, 22 December 1706, Archivo Histórico Nacional (A.H.N.), Consejos, Legajo 18190.

served in the Audiencia. These ministers had fled Valencia when it capitulated to the Archduke Charles. Not only would they not be rewarded, now they would suffer by being deprived of office, which the common people would take as a sign of the ministers having offended the king. The council cautioned that this treatment of these officials would “set the worst possible example, and greatly discourage the good vassals of Your Majesty.”²⁴

Instead, the council advised the king to return the eight Valencian ministers who had previously served in the Audiencia as there would be many prosecutions and other government business for the court to pursue, and they were the best qualified to do it. By uniting these ministers in the Audiencia, rather than giving it a new form, the king would have a tribunal of proven competence in the royal service, which would increase the support for the king and intimidate the “evildoers” in Valencia. Failing to do this, however, and appointing incompetent ministers would upset the fickle Valencians and cause them to once again shake off the yoke of his royal rule. In particular, the council cautioned that the appointment of Castilian ministers now would become:

...the fruitless cause of pernicious consequences to the disservice of Your Majesty, because the Valencian citizens (*naturales*) would know that Your Majesty desires to remove their *Fueros*, and Privileges, and govern them with the same Law with which you govern your other kingdoms, which would put them in a state of desperation and make them obstinate, and reduce them to giving their lives for the conservation of their *Fueros* and Liberties which would touch the strongest alarm to irritate them against Your Majesty *and close the doors to every form of negotiation*, and the hope of being able to reduce them to secure this part for Your Majesty, making the conquest of this kingdom and of the rest of the Crown of Aragon most difficult, as everyone would be warned by the example and have the same suspicions.²⁵

By violating Valencia’s traditional privilege to be governed only by Valencians, the king’s proposal would turn the war from a battle between two claimants to the throne into a war over

²⁴ *Ibid.*

²⁵ *Ibid.*, emphasis mine.

the continued existence of the Crown of Aragon's privileges, which were closely united to the identity of its subjects. The council feared that this would greatly impede the war effort, because it would raise the stakes of surrender so much that Valencia, Aragon, Catalonia, and Mallorca would fight as long as they possibly could.

The council did not defend these privileges, instead offering practical advice for the king to accomplish his goals. The council explicitly stated that they were telling the king not to remove the privileges, *fueros*, and liberties of these kingdoms "which opposed the Royal sovereignty of Your Majesty," but instead recommending their revocation only *after* he recovered his kingdoms. Then he could annul and revoke "everything that had given spirit to the insolence of these natural citizens for opposing Your Majesty and had been the cause of the ease with which they rebelled." With the ongoing war, however, they cautioned that "Now is not the time to execute this, nor to give indications that you desire to do so, because one should not waste the hopes for conciliating the souls of these people and to attract them to the party of Your Majesty to facilitate the reduction of these kingdoms."²⁶ By eschewing all threats to the Valencian *fueros*, the council believed that the king could win the support of the kingdom and hasten victory in the war. Despite their reservations with the whole project, the council did fulfill the king's request that they name five officials to serve in the Audiencia while noting that the Audiencia would have too much work for so few people.

The king agreed with many of their suggestions and ordered the eight Valencians that they named to join the viceroy in Alicante. He did not appoint any Castilians to the Audiencia for the time being. This only delayed the establishment of a government in Valencia, however. Following his decisive victory in the Battle of Almansa on April 25, 1707, Philip quickly

²⁶ *Ibid.*

recovered control of the kingdom of Valencia. It was now imperative to establish a new government, which generated a flurry of paperwork between the council and the king as they decided how to proceed.

Once again, the council discouraged the king from abolishing the privileges of Valencia while the other kingdoms of the Crown of Aragon remained under the Archduke Charles' control. Instead, they advised Philip, that “without speaking of the abolition of privileges, the ministers that Your Majesty puts in the conquered kingdoms should work sanely [*cuerdemente*], and with the least horror [*espanto*] that is possible, being as agreeable to the service of Your Majesty without creating obstacles with the *fueros* [*sin embarazarse con fuero*] that impede them.”²⁷ By reducing the apparent risk of surrender, the council intended to promote the war effort with a smooth transition back to Philip's rule in Valencia. Furthermore, this course of action would permit the king time to consider whether he wanted to repeal all *fueros*, or to “sweeten the resolution by not touching those that do not create obstacles [*no traygan embarazo*] to the absolute order of Your Majesty or his use of Justice.”²⁸

The king, however, had not solicited this advice. His central concern was how many tribunals should exist in Valencia. The council recommended that he maintain the status quo as much as possible, although they advised the king to create a Committee of Confiscations (*Junta de Confiscaciones*), to oversee the investigation of goods that the king could seize. They concluded with an appeal for slow action on the part of the king only after his rule had been fully secured, as his predecessor, Philip IV had done in 1652 following the previous revolt of the Catalans.

²⁷ “En ejecución de lo que VM es servido resolver en Consulta de 13 de este, en que representó lo mucho, que convenia tomar prompta providencia en el gobierno de Valencia con el motivo de su reducción, dice lo que se le ofrece,” Consulta del Consejo de Aragón, 15 May 1707, A.H.N., Consejos, Legajo 18190.

²⁸ *Ibid.*

Spurred on by José de Grimaldo, Secretary of War and Exchequer (*Secretaría del Despacho de Guerra y Hacienda*) since 1705, the king pushed forward with several requests to the council concerning the establishment of his new government in Valencia. Grimaldo replied to the Council's *consulta* the very next day, presenting counter-arguments and practical questions on the implementation of the new government. The Council produced five *consultas* in response to Grimaldo that they presented to the king on May 20, 1707. These addressed various questions related to the establishment of the new government in Valencia, including considerable detail related to its form and the appointment of new officials. These were the most pressing matters, as the current officials running the kingdom had been appointed under the Archduke Charles and had to be replaced immediately because of the tremendous amount of work associated with the transition in government. The issues raised and the council's advice reveal their primary concerns and provide fascinating insights into the decision-making process that led to the administrative reforms in the Crown of Aragon.

The Council continued to discourage royal action that was overtly contrary to the *fueros* and privileges of Valencia. They feared that such action might destabilize the recently acquired kingdom in addition to unnecessarily threatening the war effort in the rest of the Crown of Aragon. When asked to recommend Castilian officials to serve in the Royal Audiencia, the highest judicial tribunal in the kingdom, the council warned that this "could cause the most pernicious consequences... because with this they [everyone in the kingdoms of the Crown of Aragon] would believe that Your Majesty wants to abrogate the ancient laws touching justice and to govern them with those of Castile."²⁹ Here the council warned Philip that an aggressive

²⁹ "Respondiendo a los puntos, que contiene el papel de 16 de este, que de orden de VM ha sido servido mandar remitir al Presidente en vista de la Consulta que hizo en 15 del mismo tocante al gobierno de Valencia," Consulta del Consejo de Aragón, 20 May 1707, A.H.N.,

reform of the *fueros* of the Crown of Aragon would create too many practical problems for the government of the region. They reminded him of their similar cautions from December 1706, noting that the conquest of the rest of the Crown of Aragon seemed so close that there was little to gain and much to lose by raising the stakes of their surrender.

This matter was complicated, however, by the office of viceroy. The Council anticipated the king's desire to appoint a new viceroy, but advised him against it because the oaths of office required that the viceroy uphold the *fueros* of Valencia. Failing to take those oaths would naturally cause suspicions among the Valencians and others that their *fueros* were in danger, so the council recommended returning the previous viceroys of Valencia and Aragon to these kingdoms that they could plausibly avoid making any new oaths that might reaffirm the *fueros* that Philip intended to revoke.³⁰ This path would allow the king the greatest degree of flexibility as he determined how to reform the administration of the Crown of Aragon without revealing his intentions to everyone just yet.

For similar reasons, the council continued to encourage as much continuity as possible between the old government of Valencia and the new one. It consistently advised Philip to appoint Valencians in his government. Not only would this avoid arousing suspicions that he intended to repeal the *fueros*, it would also provide several practical benefits. First of all, this course of action would reward the royal ministers who had fled Valencia following the

Consejos, Legajo 18190. They also made related arguments in "En ejecución de lo que VM ha sido servido resolver en Papel del secretario Don Joseph de Grimaldo, propone personas para la Regencia de Valencia, y de la Audiencia Civil, y Criminal de aquel Reyno," Consulta del Consejo de Aragón, 20 May 1707, A.H.N., Consejos, Legajo 18190.

³⁰ "Respondiendo a los puntos," Consulta del Consejo de Aragón, A.H.N., Consejos, Legajo 18190.

Archduke's invasion.³¹ These ministers already knew the kingdom and how to fulfill their old offices, so reappointing them would be the most efficient way to establish Philip's rule. Additionally, they had demonstrated their loyalty to the Crown through their willingness to suffer on his behalf. The council summarized the stories of some of these officials so that the king would realize his duty to appoint them to office. For example, the council told Philip about Doctor Damian Cerdá, the former Fiscal of the Audiencia of Valencia. After leaving Valencia, his great poverty prevented him from going to the Court in Madrid. Instead, he had lived in a convent in a village in Castile with the support of Don Luys Salvador, Assessor of the Department of the Government of Valencia (*Assesor de la Governación de Valencia*), who helped him because of Cerdá's prior connections with the University. Cerdá had spent the last few months in Vallecas where, because of his great poverty, he had become very ill.³² Stories like Cerdá's were persuasive and often successful in securing an office for the exiled ministers—in this case, the king reappointed Cerdá to his old position as *Abogado Fiscal* of the Audiencia when he established the new government of Valencia.³³ By appointing these exiled Valencians, Philip was able to publicly reward those who had proven their fidelity and establish a government with competent ministers prepared to address the specific needs of Valencia.

The council's concern for practical matters continued in their recommendations for the preservation of local offices. These included local royal officials, such as the *Bailes*, as well as

³¹ Unlike in Catalonia, where half of the ministers of the Audiencia sided with the Archduke, only one of the Valencians in the Audiencia supported him: el Oidor Manuel Mercader y Calatayud. The rest of the judges were scattered, some dying penniless and in obscurity. See Pere Molas Ribalta, *La Audiencia Borbónica del Reino de Valencia 1707-1834* (Alicante: Universidad de Alicante, 1999), 21-22.

³² "En ejecución de lo que VM ha sido servido resolver," Consulta del Consejo de Aragón, A.H.N., Consejos, Legajo 18190.

³³ Real Resolución, 30 May 1707, A.H.N., Consejos, Legajo 18190.

city officials that represented the localities, like the *jurados* of the City of Valencia. The preservation of these local officials, however, sometimes included bringing the institutions more directly under the king's control. For example, the *jurados* were usually selected through a complex local custom that required the assembly of the Committee of the General Council (*Junta del Consejo General*). This was composed of 120 members from the four different estates of Valencian society that chose *jurados* by drawing their names out of a hat. The Council of Aragon strongly discouraged assembling this committee because the council always found it "pernicious to the public quiet, since such plebian congregations have always caused suspicious tumults." In fact, sometimes the *jurados* convoked the Committee with the intention of inspiring fear in the viceroy and the Audiencia. Since the *jurados* were essential to the operation of the city government, their offices could not simply be left vacant. The council advised the king to avoid the convocation of the Committee and directly appoint the *jurados*. This would enable the government to function while avoiding the dangers of the Committee and the overt rejection of local custom.³⁴ The council recommended officials for these positions, and the king followed their recommendation by appointing them directly.³⁵ It is worthwhile to note that this focus on increasing royal influence over the particular officials chosen while maintaining the local institutional forms reflects royal policy during the assimilation of Catalonia in 1652.³⁶

³⁴ "Obedeciendo el Real Orden de VM expresa por menor la Jurisdicción y empleo que tenían los oficios de Jurados racional y sindico de la Ciudad de Valencia, y el Modo de su gobierno y dice lo que se le ofrece en quanto a su reforma," Consulta del Consejo de Aragón, A.H.N., Consejos, Legajo 18190.

³⁵ "Respondiendo a los puntos," Consulta del Consejo de Aragón, A.H.N., Consejos, Legajo 18190, and Real Resolución, 30 May 1707, A.H.N., Consejos, Legajo 18190.

³⁶ Royal Dispatch of Felipe IV, 3 January 1653, transcribed in Feliu de la Peña, *Annales de Catalunya* (Barcelona: 1709), vol. I, 327-329.

Three points are worth noting from the negotiations between the council, the king, and Grimaldo concerning the new government of Valencia. First, while Philip clearly dismissed the council's advice to respect Valencia's *fueros* until he had secured his rule over the Crown of Aragon, they exerted significant influence on the form that government took and the ministers who served in it. Among the more significant changes that they encouraged was the expansion of the Audiencia from five members in the original proposal of December 1706 to twelve when it was actually established.³⁷ The majority of the practical details of the new government were left to the council, reflecting the king's trust in their judgment and perhaps his lack of interest in the details of the plan.

Second, Philip found positions for the Valencian ministers who were loyal to him. The council's consistent appeals to justice for the Valencian ministers who had fled the Archduke Charles' rule also met with great success. Loyalty to the king was highly valued, whatever the nationality of his subject, and Philip rewarded it. The ultimate consequences of the new government were not, in fact, a Castilian take-over of the Valencian government, but instead the creation of a royal administration that integrated Valencian and Castilian ministers.³⁸ In the Audiencia, there was equal representation of Valencians and foreigners. As its practices had not been changed, the Valencian ministers would presumably need to explain Valencian practices to

³⁷ Real Resolución, 30 May 1707, A.H.N., Consejos, Legajo 18190.

³⁸ Even Philip V's infamous minister Melchor de Macanaz called for this kind of integration at this time, embracing the balance between Valencians and Castilians created in this decree: "enviar de aquí (Castilla) un jefe y un fiscal, con cuatro ministros.... prácticos y experimentados en las leyes de Castilla, y que de los que había en aquel reino se podían nombrar otros cuatro, que fuesen igualmente experimentados en sus fueros, por haber en ellos algunas cosas más bien arregladas que en Castilla." As quoted in Molas Ribalta, *La Audiencia Borbónica*, 23. As Molas Ribalta notes, this reflects the basic plan for the Nueva Planta until June 29, 1707, when it shifted from the conservation of the legal practices of the Crown of Aragon that were more favorable for the king than those of the Castile, to the complete abolition of all Aragonese *fueros* and laws.

their foreign colleagues. In general, local officials seem to have remained predominantly of Valencian extraction.

Finally, the new government in Valencia was a provisional government. The council made this point clear. It strove to meet the immediate need for institutions to organize the reacquired kingdom while maintaining as much long-term flexibility as possible for Philip. After all, the king had not yet officially decided to abolish all of the *fueros* and privileges of Valencia, so there was considerable uncertainty in the council about what the government would ultimately look like. For example, throughout the *consultas* the council referred to the viceroy of Valencia as an office that would be abolished in a few months.³⁹ This uncertainty led to caution and a light-handed approach as the council strove to retain local institutions more or less intact while also increasing these institutions' dependence on the king as much as possible.

III. Revocation of the *fueros* (June 1707)

The inadequacies of the Bourbon government in Valencia raised continual questions about how it would function, who would administer it, and which officials would have which specific duties. Rather than working through them slowly, however, Philip V attempted to resolve all of these debates and tensions by transplanting the government of Castile, which required much less of his attention, to the more problematic kingdoms of Valencia and Aragon.

Various challenges and opportunities faced the new officials in the recently re-formed government of Valencia. To resolve these matters definitively, the regent of the new Audiencia in Valencia, Don Pedro Larreatigui y Colón asked the king a series of questions concerning how

³⁹ In fact, the royal resolution of May 30, 1707 creating the new government in Valencia indicates that the king wanted to continue to consult with the council concerning the office of viceroy.

he should fulfill his official duties.⁴⁰ He raised a variety of issues relevant to his role as regent, and suggested solutions reflecting his own aspirations. The king gave this letter to the Council of Castile, which responded in a *consulta* on June 14, 1707.⁴¹ It advised the king concerning Larreatigui y Colón's suggestions, often agreeing with him, but occasionally proposing alternative solutions that they thought would better serve the king. The list of concerns is instructive, as it indicates the challenges of implementing the proposed new government of Valencia.

For example, the first question concerned the role of the Audiencia. It was, by all accounts, to have the same authority as the Chancillerías in Castile, despite its designation as an Audiencia.⁴² Thus Larreatigui y Colón would enjoy the same honor as a President of a Chancillería. Additionally, until the king appointed a viceroy, the regent would sign everything without distinction that was dispatched from the Audiencia.⁴³ Along with these honors, the regent should

⁴⁰ This letter is labeled "Instrucciones para el Presidente de las Audiencias de Valencia, Don Pedro de la Lariategui y Colón," however, in light of its initial paragraph ("Haviendo SM nombrado por Presidente de las Audiencias de Valencia, á Don Pedro de Lareatigui y Colón de su Consejo: Para más bien servir a SM en este empleo, solicita la Solucción de algunas dudas que se le ofrecen que aquivan propuestas para que SM las decida como fuere servido.") and the fact that the Consejo responds point by point to this document in a subsequent *consulta* attributing these to Lareatigui y Colón, it seems that the document must be mislabelled. However, until I have a better method to cite this document, I will use the title on the document in the archive. "Instrucciones para el Presidente de las Audiencias de Valencia," 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁴¹ "En vista del Papel que VM ha sido servido mandar remitir al Presidente Conde de Frigiliana de Don Pedro de Larreatigui y Colon, dice lo que se le ofrece en orden a los puntos, que incluye," *Consulta del Consejo de Aragon*, 14 June 1707, A.H.N., Consejos, Legajo 18190.

⁴² Chancillerías were independent of the Captain General and more prestigious, while the Captain General was officially the head of an Audiencia.

⁴³ In fact, the Consejo de Aragon suggests that the Regente of the Audiencia in Valencia has always held the title of "Regente (de) la Chancilleria," suggesting that the distinctions between Chancilleria and Audiencia were far from clear. In the fall of 1707 this Audiencia was promoted

not be expected to visit anyone except for “certain and very important person,” so that he would not have to waste time on them instead of serving the public cause. He held this prerogative in common with the Presidents of the Chancillerías of Valladolid and Granada.⁴⁴ The council indicated that he intended to preserve his authority by not making way for anyone in his carriage, and only giving way in his house when entering a room or surrendering his seat to Archbishops, Grandees of Castile, or other persons of equal stature. The council considered this taking things too far and a disservice to the king. They encouraged him to check Larreatigui y Colón’s pretension, as he had already begun claiming such precedence, much to the dissatisfaction of the other members of the Audiencia of Valencia.⁴⁵ Larreatigui y Colón’s desire for power and prestige was also apparent in his request to have all of the authority of the vacant office of viceroy devolve to the regent of the Audiencia.⁴⁶ The Council pointed out that doing this would diminish the authority of the Duke of Berwick, then Commandant General of the three kingdoms of Aragon and the highest military official in the Kingdom of Valencia. The Council offered to solicit Berwick’s opinion and assured the king that there would be no inconvenience because of the delay in resolving this matter.⁴⁷

to a Chancillería, only to be reduced to an Audiencia in 1716. “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

⁴⁴ “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁴⁵ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

⁴⁶ “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁴⁷ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

As there was no viceroy in Valencia, Larreatigui asked that he be permitted to make use of the military to execute the orders of the Audiencia. While he promised to try and maintain order through gentleness, Larreatigui y Colón believed that force would be necessary from time to time.⁴⁸ The council noted that even though this might be convenient, the bodyguard of the viceroys was reserved for the command of the *Alter Nos* of His Majesty, and the king would have to make special arrangements for the regent and the Audiencia to exercise this power.⁴⁹

The Regent Larreatigui y Colón also suggested the standardization of legal proceedings in Castilian, instead of having cases tried in Catalan and all decrees published in Latin.⁵⁰ The council opposed both innovations, noting that it would be unnecessarily costly and tedious to translate all of the cases currently being heard. Further, as royal decrees had always been made in Latin and they could not be more clearly articulated in Castilian, the council saw no benefit to the proposed change. They noted that the use of Catalan caused no problems, just as the use of Italian in Naples functioned well. The council worried that change might prove “inconvenient” as the switch from Catalan to French in Roussillon had proven following the Treaty of the Pyrenees.⁵¹

⁴⁸ “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁴⁹ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190. On the significance of the legal construction “*Alter Nos*,” see Ernst Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957, 1997).

⁵⁰ In the Consulta, they use the term “Valencian” for the language spoken in Valencia, as Valencians continue to do. Valencian, however, is identical to Catalan, and the language is generally recognized as beginning in Catalonia and spreading to the region of Valencia during the reconquista. To avoid confusion, I will only use the term “Catalan” when referring to this language. “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

There were several other proposals for changes in the operation of the Audiencia, which included: a requirement that all notarized documents be issued in Castilian instead of Latin; that Valencian courts follow the sentencing guidelines used in Castilian courts; that lawsuits brought in Valencian courts be required to have full citations, instead of expecting the judges to find the relevant precedents; that Castilians be sent to Valencia to serve as scribes; some changes to the oath of the regent and the way in which his title was sent to him; and, finally, the introduction in the Audiencia of Valencia of the practices of the Chancillerías of Valladolid and Granada.⁵²

These proposals, according to the council, should be denied since they either made things worse or unnecessarily complicated the administration of justice. Concerning the final point on the introduction of new practices in the Audiencia of Valencia, the council saw nothing defective in how the Audiencia had operated. Instead, the Council believed that this request reflected “a desire for change in the present state” that could not serve the king and would only create “a general tumult in the administration of justice.”⁵³ As before, the Council attempted to preserve as much of the old system as possible.

The new regent also asked for the king to specify which law the Audiencia should enforce. Recognizing that it was not convenient for the king to speak of revoking the *fueros*, he asked the king to tell the Audiencia which of the “*fueros* are useful for the public cause, royal prerogatives of His Majesty, and the business of the parts, both in the civil causes as in the criminal ones, that

⁵¹ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190. For more on the actual transition, see David Stewart, *Assimilation and Acculturation in Seventeenth-Century Europe: Roussillon and France, 1659-1715* (Westport, Conn.: Greenwood Press, 1997).

⁵² “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁵³ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

are observed, and guarded, not because they are *fueros*, nor laws, but because of the reason on which they were founded.” Larreatigui y Colón wanted the king to identify these useful and reasonable *fueros* and to contrast them with those *fueros* that were “contrary to the royal prerogatives and impediments to the administration of Justice,” which should be ignored.⁵⁴ The council agreed that the king’s instructions to the Audiencia would need to be specific on these matters. The Council repeated its advice from May 15, 1707, which encouraged the king not to discuss the revocation of the *fueros* and instead advise the Audiencia to ignore the *fueros* that were impediments to the administration of justice and detrimental to the king’s sovereignty.⁵⁵ The council proposed that the *fueros* which were “useful for the public cause, royal prerogatives of Your Majesty, and the business of the parts, both civil and criminal,” be followed “not as *fueros*,” but rather because of the reason upon which they are based. When the Audiencia encountered *fueros* that were “noxious or not conducive to the good administration of justice,” they should have recourse to common law or the laws of Castile—the king would need to specify which. This ambiguity would avoid the creation of a legal vacuum while maintaining the Valencian laws that were beneficial to the king and improving upon the ones that interfered with the exercise of royal authority.⁵⁶

Larreatigui y Colón brought up one other issue with profound consequences for the fate of Valencia. He asked to know the king’s will concerning the crime of the past rebellion, whether he desired to proceed against the rebels by laws and by “other methods,” or if he wanted to forget the past and only prosecute current and future crimes. Larreatigui y Colón noted that

⁵⁴ “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁵⁵ Discussed on page 75.

⁵⁶ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

trying the crimes of rebellion would present “infinite impediments,” and would produce “so many tumults that would disturb and delay that which we principally agreed to establish [*dilaten lo que principalmente convenga establecer*].”⁵⁷ The council agreed that this was important and suggested that the king decide quickly, hinting at the guidelines that existed for issuing a general pardon in Valencia, while also noting that they could continue to seize the incomes of particular rebels through the newly established Committee of Confiscations even with a general pardon in effect.⁵⁸ Such a pragmatic solution would decrease the risk of revolt while allowing the king to increase his revenue and punish the important Valencians who had openly betrayed Philip.

Larreatigui y Colón’s questions reflected the complexity of completely overhauling the governing institutions of the Crown of Aragon. It seems that the king wanted most of all to avoid working through all of these challenging details and to establish a functioning government in Valencia as quickly as possible, so he dispensed with all of these difficulties in the simplest way possible and gave himself a strong bargaining position for future negotiations with the Valencians and Aragonese. On June 29, 1707, Philip V issued a Royal Order, traditionally identified as the first act of the *Nueva Planta*, that repealed all of Valencia and Aragon’s *fueros*, privileges, and laws, and replaced them with those of Castile. Additionally, he specified that the Audiencia that he had created in Valencia and the one he was creating in Aragon should govern in the same way as the Chancillerías of Valladolid and Granada, “observing literally the same rules, laws, practices, orders, and customs which they keep in these [*Chancillerías*], without the least distinction nor difference in anything except in those controversies, and points of

⁵⁷ “Instrucciones para el Presidente de las Audiencias de Valencia,” 4 June 1707, A.H.N., Consejos, Legajo 18190.

⁵⁸ “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

ecclesiastical jurisdiction.”⁵⁹ This was the king’s initial answer to the various questions posed by Larreatigui y Colón—his resolution to the council’s consulta stated as much, emphasizing that the solution to all of these problems was to follow the Castilian model.⁶⁰ While these decrees might be considered radical from an Aragonese or Valencian perspective, from the king’s point of view, they resolved the many uncertainties raised by the Valencian Regent by following a proven model. The decrees definitively affirmed the king’s authority over his kingdoms⁶¹ and clearly explained that Valencia and Aragon lost their *fueros* and institutions because of their rebellion against him. The Royal Order of June 29 left no doubt concerning Philip’s belief in his authority to rule and his unlimited legislative power. The assertion of royal authority over the Crown of Aragon placed his subjects in a position where they could at best hope for a partial restoration of their *fueros* and knew that whatever they regained would be dependent on Philip’s good will instead of an ancient tradition that bound the current monarch. Rhetorically, the decree of June 29 transformed the terms of the negotiation between Philip and his subjects in the Crown of Aragon by forcefully demonstrating that the king was no longer bound by the *fueros*.

⁵⁹ *Autos Acordados, Antiguos, Y Modernos* (En Madrid: Por Juan de Ariztia, 1723), Part II, 166-167. Also in *Novísima recopilación de las Leyes de España* (Madrid: 1805), Book III, Title III, Law I.

⁶⁰ The resolution reads: “Having taken the resolution that the council has seen, in which they observe in Aragon and Valencia the laws, customs, and all of the rest as they are in Castile for the natural decisions on all of the points that they touch on here, in which nothing can be done, and return this consulta with the title of the regent so that it can be translated into Castilian. (*Haviendo tomado la resolución que a visto el Consejo de que se observen en Aragón y Valencia las leyes, costumbre, y todo lo demás que en Castilla quedan por su naturaleza dicitidos todos los puntos que aquí se tocan en que no ay que hacer, y vuelve con está consulta el titulo de Regente para que reforme en Castellano.*)” “En vista del papel,” Consulta del Consejo de Aragon, 14 June 1707, A.H.N., Consejos, Legajo 18190.

⁶¹ Philip claimed the right of conquest in Valencia and Aragon, while also affirming that “one of the principle attributes of the sovereignty is the imposition and revocation of laws, those which, with the variety of the times, and changes in customs, I can alter even without the great and fundamental motives and circumstances that today attend them...” *Autos Acordados*, 166.

IV. Reactions and renegotiation (July 1707-1709)

The council of Aragon responded to the royal decree of June 29 a few days later. They presented a message from the *diputados* and *jurados* of Valencia to the king thanking him for extending to the “distinguished natural citizens” of both Valencia and Aragon “his grand clemency the most special honor of making them capable for the employment in the kingdoms of Castile.”⁶² The Council of Aragon also asked who should respond to the delegation of both Valencia and Zaragoza. The king responded that it should work in the same way as it does “for the Kingdoms, Cities, and Chancelleries of Castile.”⁶³ Whenever doubts arose, the king told them to follow Castilian customs, usually without specifying what those were.

The Jurados of the City of Zaragoza also wrote to the king on July 4, 1707. They explained that they were glad to be in the king’s domain once again and presented a memorial asking for the king’s mercy. It represented the suffering of Zaragoza’s “past disgrace” when it was “burning with the fire of sedition” which had prevented them from appealing to Philip for justice. They had failed their duty by submitting to “another lord” because of the Habsburg’s violent occupation of the city. Despite these problems, however, they described the citizens who had “maintained intact the treasure of loyalty to Your Majesty” from all orders of society: the ecclesiastical estate, religious orders, nobles, hidalgos, and even the popular estate. Together they asked the king to “act on the munificent clemency and generous tribute with which Your

⁶² “Sobre el tratamiento que se ha de dar aora a la ciudad, y diputación de ambos Reynos, con el motivo de haver sido VM servido resolver queden abolidos enteramente los fueros, de Aragón, y Valencia, y entender llegar el caso de poder les responder.” Consulta del Consejo de Aragon, 4 July 1707, A.H.N., Consejos, Legajo 18190.

⁶³ I think that this means that the Council of Castile should respond—in any case, the Council of Aragon was abolished 11 days after they presented this matter to the king.

Majesty is adorned,” by restoring “the grace of Your Majesty” to these subjects.⁶⁴ In this petition (*memorial*), these citizens argued that the fall of Zaragoza to the Archduke Charles was not their fault and that members of all parts of society had served the king faithfully even though they were powerless to oppose his enemy’s occupation. This petition was their attempt to communicate that they were not rebels and to ask the king to return his royal favor to them because of their fidelity. This was presented to the king in the Council of the Cabinet on July 7, and three weeks later, he amended the initial decrees of the *Nueva Planta*.⁶⁵

On July 29, 1707, the king issued his second decree concerning the provincial *fueros*. In it, he noted that because many of the inhabitants of Valencia and Aragon:

and of the cities, villages, places (*lugares*), and the rest of the communities and individuals (*particulares*), both ordinary and secular clergy (*así eclesiásticos como seculares*), and everywhere most of the Nobles (*Nobles*), Knights, Nobles (*Infanzones*), Hidalgos, and honored citizens have been very fine and loyal, suffering from the loss of their property (*haciendas*), and other persecutions and acts that have tested their perseverance and refined their fidelity (*ha sufrido su constante y acrisolada fidelidad*); and this being most notorious, in no case can it be understood with reason that my Royal intention noticed, nor punished as delinquents those that are known to be loyal.⁶⁶

Here the king qualifies his previous decree by explaining that those who are obviously loyal are not to suffer personally for the rebellion of their fellow subjects. Indeed, he indicated that the majority of his subjects never rebelled and that they became more loyal through the suffering

⁶⁴ Carta de los Jurados de la Ciudad de Zaragoza a Vuestro Majestad, 4 July 1707, A.H.N., Consejos, Legajo 18190.

⁶⁵ Admittedly, this letter was probably not the only one like it nor was it necessarily the impetus for the change. Still, given the similarities between the claims in this letter and the revisions to the *Nueva Planta* on 29 July 1707, it seems that the king was responding directly to these concerns.

⁶⁶ *Novísima recopilación*, Book III, Title III, Law II. Interestingly, it is titled “*Subsistencia de los fueros y privilegios de los buenos vasallos de Aragon y Valencia, y gobierno de estos reynos uniforme al de Castilla*,” in the *Novísima recopilación*, while a manuscript version from 29 July 1707 was labelled “*Que en Aragón y Valencia concede a os Lugares, Casas, y Familias y personas que han conservado fidelidad, la manutención de sus privilegios, libertades, y prerrogativas*,” Real Decreto, 29 July 1707, A.H.N., Consejos, Legajo 18190.

they endured during the Archduke's rule. This is consistent with Philip's willingness to appoint Valencians and Aragonese to their respective Audiencias, but is a significant departure from the previous decree which made no such distinctions—after all, the citizens of Zaragoza would not have petitioned the king to restore them to his favor if they had not apparently lost it. Still, the king's rhetoric of clarifying his previously declared will enabled him to avoid acknowledging his failure to distinguish between his faithful subjects and those who rebelled. Philip was willing to reconfirm the “privileges, exemptions... and liberties conceded by the Lord Kings my predecessors, or acquired by another just title,” of those “places, houses, families, and persons, whose fidelity is well-known.”⁶⁷ While these faithful subjects had their particular privileges reconfirmed, Philip emphasized that this was unrelated to the change in government: “The difference of government was not in large part occasioned by the past disturbances, but because in the form of government of the kingdoms and people there need not be difference in the laws and styles that are for... the conservation of peace and human society.”⁶⁸ The justification for the change in the government changed from a desire to punish rebelling subjects to a desire for standardization in the administration of his kingdoms. The king further explained that “my royal intention is that all of the continent of Spain be governed by the same laws, in which the Aragonese and Valencians are very interested, for the communication that my mildness frees them, with the Castilians, in the positions, honors, and other conveniences that they have experienced in the kingdoms of Castile some of the Loyal vassals of Aragon and Valencia.”⁶⁹ Here he argued that the Aragonese and Valencians would have greater access to royal favors

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

because they could serve in Castilian offices and hold Castilian titles, affirming the most popular part of his previous decree and emphasizing its benefits for the Valencians and Aragonese. In this way Philip backed off from his prior position and instead tried to convince the Valencians and Aragonese that they would benefit from his reforms. Significantly, he did not imply the abolition of the nations of Aragon and Valencia, but only expressed a desire that the same laws apply across the geographic “continent of Spain”—there is no hint of a Spanish nation in these decrees.

Meanwhile, the king abolished the Council of Aragon on July 15, 1707, giving its jurisdiction to a new office of the Council of Castile for the Iberian regions and to the Council of Italy for the Mediterranean islands. The king also reassigned the members of the council. Three went to the Council of Castile and another three to the Council of Italy, while four others were assigned to various other councils.⁷⁰ Most significantly, however, the Protonotary of the Council of Aragon, Don Juan Milan de Aragón became a new secretary of the Chamber of Castile and of the Council of Castile with responsibility for “all of the papers of the business of the kingdoms of Aragon and of Valencia.” In addition to continuing to manage all of these papers, he was ordered to “indicate to the Chamber the number of officials which are necessary for his secretariat,” including those currently serving in the same capacity as protonotaries and secretaries. So not only did he continue in his job, he also brought his support staff from the

⁷⁰ Don Miguel de Jaca y Niño, Don Francisco Portell, and Don Pedro Joseph Borrul went to the Council of Castile, the Marques de Alcazar, the Marques de Serdañola, and Don Joseph Urries de Navarra went to the Council of Italy, the Marques de Miana and Don Joseph Pastor went to the Council of the Indies, Don Vicente Monserrat went to the Council of the Orders, and finally the Marques del Bosque went to the Council of Property (*Consejo de Hacienda*). “Relación de los empleos que el Rey (dios le Guarde) ha sido servido conferir á todos los Ministros de la Tabla del Consejo de Aragón, que ha resuelto extinguir,” 15 July 1707, A.H.N., Consejos, Legajo 18190.

Council of Aragon with him.⁷¹ This guaranteed continuity in the practices governing communication between Iberian provinces of the Crown of Aragon and the royal council with jurisdiction over them and prevented the paperwork concerning Aragon from becoming mixed up with those concerning Castile.⁷²

It is also worth noting that Philip established an Audiencia in Aragon following the laws, practices, and uses of the Chancillerías of Valladolid and Granada just as he had in Valencia.⁷³ Actually, Philip seemed unsure what to call these new judicial tribunals—initially he created Audiencias with all of the authority and duties of Chancillerías, but later he ordered the Cámara of Castile to change the titles of Don Pedro Larreatigui y Colón and the Conde de Gerena, from Regents of the Audiencias, to Presidents of the Chancillerías of Valencia and Zaragoza.⁷⁴ Gradually the new governments of Aragon and Valencia were beginning to take shape and fulfill their duties by processing the immense paperwork of state.

In response to the decree of July 29, 1707, the subjects of Aragon and Valencia wrote petitions (*memoriales*) to the king explaining their fidelity. The new decree initiated a flood of

⁷¹ *Ibid.*

⁷² The practices employed by Don Juan Milan de Aragon continued those of the Council of Aragon rather than conforming to those of the Chamber of Castile, as María Jesús Alvarez-Coca González has demonstrated in her article, “Aragón en la Administración Central del Antiguo Régimen. Fuentes en el Archivo Histórico Nacional,” in *Ius fugit. Revista Interdisciplinar de Estudios Histórico-Jurídicos*. Vol 2 (1993): 19. See also the directions ordering Don Juan Milan de Aragon to keep the business of Aragon and Valencia separate from that of the four secretaries in charge of the papers for Castile in “Capitulos de los Decretos de la nueva planta, sobre las materias y negociados de los quatro secretarios del Consejo de Castilla” without date, A.H.N., Consejos, Legajo 20078.

⁷³ “Gobierno de las Audiencias de Aragon y Valencia conforme al de las Chancillerías de Valladolid y Granada; y conservacion de las Jurisdicciones eclesiástica y secular en los dos Reynos,” promulgated by Real decreto on 29 June and in Madrid by Real Cédula on 7 September 1707, *Novísima recopilación*, Book V, Title VII, Law I.

⁷⁴ Letter from the King to the Governor of the Chamber and Council of Castile, 2 August 1707, A.H.N., Consejo, Leg., 20078, No. 10.

petitions to the king for the confirmation of privileges by individuals and corporations in Aragon and Valencia. The volume of paperwork was tremendous—Philip V sent 93 petitions to the Council on one day alone.⁷⁵ These requests were processed by the Council of Castile, which would request *informes*, or reports, from the President of the appropriate Chancillería.⁷⁶ In these reports the President would comment on the veracity of the petition—sometimes he would need to contact others, such as generals or other officials, with more specific knowledge concerning the individual or corporation in question. The report would summarize this information and usually conclude with advice concerning how the king should respond to the requested confirmation of privileges. These recommendations might support full confirmation of their privileges, their partial confirmation, or their complete rejection. The Council would write up a *consulta* presenting this information to the king who would make the final decision in consultation with the council. The most important criteria for these decisions was whether or not the king's subjects had proven their fidelity to the king.⁷⁷

While the decree authorizing the confirmation of these privileges stated that the king's goal was to have one law for the continent of Spain, it actually worked to undercut standardization in some significant ways. By confirming particular privileges to various corporations and individuals, the king reinforced the centrality of privilege in his state and increased the idiosyncrasies that would be applied by his more standardized bureaucracy. This change served the royal goal of establishing a loyal base of support in Aragon and Valencia beholden to the

⁷⁵ Letter from the King to the Governor of the Council of Castile, 31 March 1708, A.H.N., Consejos, Legajo 47985.

⁷⁶ In September of 1707 the Audiencias of Valencia and Aragon were promoted to Chancillerias and their regents to presidents, which will be discussed soon.

⁷⁷ For examples, see the Consultas and their supporting documentation (including memoriales and informes) in A.H.N., Consejos, Leg. 6804.

king. By initially abolishing the privileges of his subjects, Philip made those who ultimately regained them dependent on him personally for their way of life. In this way, the relationship between Philip and his subjects in the Crown of Aragon became increasingly personal and dependent on the king's favor, rather than the beneficence of one of his long-dead predecessors.

The rapid moderation of Philip's initial decree of June 29 reflects his willingness to negotiate with his subjects in Valencia and Aragon. His aggressive assertion of royal prerogative gave him a strong position from which to revise his position as he had a lot of ground for concessions while protecting his authority to reform the royal administration of the Crown of Aragon.

V. The blended government of Aragon (1710-1716)

The next few years led to continued negotiation and the creation of a new model of government in the Kingdom of Aragon. Bourbon forces faced significant difficulties in the war. Considerable disagreement existed between Louis XIV and Philip V that further undermined the Bourbon position in Spain. Even more troubling, in 1710 the Archduke Charles' forces conquered Zaragoza and subsequently entered Madrid, forcing Philip's royal court to flee to Valladolid.⁷⁸ Charles confirmed all of the traditional Aragonese *fueros* to solidify his hold on the region and emphasize the difference between him and Philip. When the tide of the war reversed and Philip reentered Zaragoza on January 4, 1711, he was once again forced to create a new government in the Kingdom of Aragon. This time the instability of Bourbon rule in Aragon led to a reconsideration of his prior policies.⁷⁹

⁷⁸ William Coxe, *Memoirs of the Kings of Spain of the House of Bourbon*, 2nd ed. (London: 1815), Vol. II, 31-32.

⁷⁹ On this stage of the War of Succession, see Joaquim Albareda Salvadó, *La Guerra de Sucesión de España (1700 -1714)* (Barcelona: Crítica, 2010), 278-304.

The rapid succession of changes had consequences for Bourbon authority in the region. Philip responded by reforming the Aragonese government once again. On April 3, 1711, he issued a royal decree because “among various things, I have found it convenient to resolve to establish a new government in Aragon,” euphemistically avoiding any mention of his difficulty controlling the region. There were three significant differences between this government and the previous one. First of all, Philip restored Aragonese civil law in all lawsuits except for those with the king as an involved party, in which case they would be tried by the laws of Castile. The Council of Castile was also ordered to judge civil cases based on Aragonese law in the third appeal, a new duty for the long-standing Castilian institution. Second, the king established a Committee of the Treasury (*Junta de Erario*) with authority over the distribution of all rents, tributes, and other impositions in the kingdom. Finally the king reduced the Chancillería to an Audiencia whose members he would appoint “without restriction of province, land, or nationality.”⁸⁰ Significantly, this decree removed any quota related to the composition of the Audiencia, which nevertheless always retained a mix of Aragonese and Castilian members.

While some historians have interpreted this as a trivial concession to buy peace in Aragon while the Bourbon’s began the conquest of Catalonia, the changes introduced at this point were quite significant.⁸¹ First of all, it indicates that Philip was more interested in maintaining his

⁸⁰ “Establecimiento de una nuevo gobierno en Aragon; y planta interina de su Real Audiencia de Zaragoza,” *Novísima recopilación*, Book V, Title VII, Law II.

⁸¹ W. N. Hargreaves-Mawdsley argued that “real rule stemmed from Madrid but, as a gesture of appeasement to flatter local susceptibilities, privileges were extended where they could do no harm to centralism,” as cited, 7. Kamen similarly noted the reinstatement of municipal or civil law, but his focus is on the changes that took place rather than the institutions that Philip left in place; see *War of Succession*, 343-348. More recently, he suggested that the maintenance of Aragonese civil and municipal law was a more successful model than the abolition of these laws that took place in Valencia, yet he does not discuss this or explain why it was significant; see *Philip V*, 112-113. John Lynch also downplayed the significance of Aragonese civil law while

authority in the region than in establishing a uniform legal system throughout his kingdoms. Instead of trying to maintain continuity, even among the kingdoms of the Crown of Aragon, Philip quickly returned their civil law to the Aragonese. Second, this concession was far from trivial. Aragonese civil law differs significantly from Castilian law, otherwise it would be unnecessary to specify that royal contracts would continue to be judged according to Castilian law.⁸² Despite Philip's prior claims that he desired to rule his kingdoms by the same law, he apparently did not regret his concessions to Aragon as neither he nor his successors restored Castilian civil law to Aragon following the war.⁸³ Perhaps this reflects a sense that the change had not worked in Aragon prior to the Archduke's invasion. After all, Aragonese notaries often followed Aragonese law instead of Castilian law from 1707-1711.⁸⁴ The significant problems flowing from the *Nueva Planta* led one of the most prominent Aragonese jurists, Don Diego Franco de Villalba, to publish a tract on the "legal crisis" plaguing the kingdom.⁸⁵ Whatever

emphasizing that "Aragon had felt the weight of Bourbon reforms," in *Bourbon Spain, 1700-1808* (Cambridge: Basil Blackwell, 1989), 64.

⁸² They were sufficiently different to inspire the writing of a legal handbook to aid Castilians judges in Aragon in their decisions—see Manuel Silvestre Martínez, *Librería del Jueces, Utilísima y Universal* (Madrid: 1791), Volume I, which is discussed in the next chapter.

⁸³ In fact, leaving local civil law in place was one of his most consistent policies towards the Crown of Aragon for the subsequent decade.

⁸⁴ Moreno Nieves, 32-33, and Arrizabalaga, *Derogacion*, 45-51.

⁸⁵ Don Diego Franco de Villalba, *Crisis legal, y breve noticia de los fueros privilegiados de Aragón* (Valencia, 1710). Villalba was born in 1672 in the town of Belmonte, in the partido of Calatayud, to a locally prominent Aragonese family that included jurists, military officers, and priests. At the University of Huesca, he studied the humanities, philosophy, and both civil and criminal law. He was licensed to practice law in February of 1691, and was later granted a doctorate in law. After completing his legal education, he moved to Zaragoza where he practiced law as a member of the College of Lawyers of Zaragoza. Villalba acquired one of the most prestigious legal positions in the city, serving as the Assessor for Zaragoza's city council and for the *Diputació de Aragón*, the standing body representing the kingdom during recesses of the Cortes, which was the kingdom's primary representative assembly. See Guillermo Vicente y

Philip's motivations, the decree of April 3, 1711, marked the beginning of a new and more flexible royal approach toward governing the Crown of Aragon.

To clarify the significance of the Chancillería's reduction to an Audiencia, Philip issued two more royal decrees on September 14 and 15, 1711. The first of these identified the Audiencia of Seville as the new model for the Aragonese judicial tribunal, replacing the Chancillerías of Valladolid and Granada. The most significant of these changes was the creation of a second hall for hearing civil cases.⁸⁶ The decree of the next day clarified various "doubts" related to this new Audiencia that usually were resolved by following the model of Seville. These included the end of appeals to the Council of Castile on civil cases. Further, if a judge had to recuse himself from a case, he could have recourse to members of the Council of Castile to fill his seat. The biggest exception to the Sevillian model was that while the Audiencia in Seville had the same authority over the political, economic, and governing parts of the government (*político, económico y gubernativo*), the king explicitly banned the Audiencia of Zaragoza from "meddling" in economic matters, except for serious cases when they seemed to merit reform to the Fiscal of the Audiencia.⁸⁷ Through these changes the government of Aragon took on the form that it would maintain throughout the eighteenth century.

As the war drew to a close, Philip began to take stock of his reforms and considered how he should approach the assimilation of the Principality of Catalonia. In January of 1713, Philip

Guerrero, "El jurist D. Diego Franco de Villalba," *Separata del anuario de ciencias historiográficas de Aragón* 9 (1996): 27-33, 41-42; and Giménez López and Jesús Pradells Nadal, "Servir en Aragón: los corregidores de Borja en el siglo XVIII," *Revista de historia moderna: Anales de la Universidad de Alicante* 10 (1991): 186.

⁸⁶ "Aumento de una Sala Civil en la Audiencia de Aragon; y formacion de esta segun la planta de Sevilla," *Novísima recopilación*, Book V, Title VII, Law III.

⁸⁷ "Declaracion de dudas acerca de la planta de la Audiencia de Aragon establecida por las leyes precedentes," *Novísima recopilación*, Book V, Title VII, Law IV.

asked Melchor de Macanaz⁸⁸ to write a report on the old governments of Aragon, Valencia, and Catalonia, what had happened since the war, and what he recommended to bring them to “perfection.” The final report, presented on May 27, 1713, provides an interesting perspective on the changes that had taken place and insight into this minister’s understanding of Philip’s goals for the king in the Crown of Aragon. The introduction describes the power of the thirteenth century king, Peter III of Aragon (1276-1285), and blames the “fall of the government and (royal) authority” in the Crown of Aragon on Alfonso III (1285-1291). Macanaz believed the *fueros* granted by Alfonso had left the king with “nothing more than the name and honor of king; but without authority nor means.” Macanaz indicated that his proposed reforms would reverse Alfonso’s errors and restore the Crown of Aragon to its former glory.⁸⁹

Macanaz was primarily concerned with increasing the king’s “means” by improving the efficiency of his administration and, above all, increasing his income. Macanaz noted that the royal income did not cover the expenses of the government in each of the kingdoms, which was a common complaint stretching back to the seventeenth century.⁹⁰ To fix this problem, he recommended increasing the economic authority of the *intendente*, whose duties focused on

⁸⁸ Formerly a Secretary of the Council of Castile, Philip sent Melchor de Macanaz to Valencia in 1707 to report on the state of taxation in Valencia and suggest ways to improve it. Macanaz’s success in this effort led to his assignment to Aragon in a similar capacity in 1711. These positions gave Macanaz the experience necessary to write this report and his prior success undoubtedly gave weight to his recommendations. See Rosa María Alabrús Iglesias, “El pensamiento político de Macanaz,” *Espacio, Tiempo y Forma, Serie IV, Historia Moderna* 18-19 (2005-2006): 177-201; Kamen, *The War of Succession in Spain 1700-15* (London: Weidenfeld and Nicolson, 1969), 310-311, 322-323, 343; and John Lynch, *Bourbon Spain, 1700-1808* (Oxford: Basil Blackwell, 1989), 61, 63.

⁸⁹ “Informe dado al rey sobre el gobierno antiguo de Aragon, Valencia y Cataluña; el que se habia puesto de que se las sujetó con las aras y lo que convendria remediar,” in Joaquín Maldonado Macanaz, *Regalías de los señores Reyes de Aragón* (Madrid: 1879), 2-23.

⁹⁰ *Ibid.*, 6, 17, 21, 22.

supplying the army at this time,⁹¹ and increasing the simplicity of the tax system as much as possible so that fewer officials could collect it.⁹² Similarly, much of the report discusses how to increase the king's income from the salt tax in each kingdom.⁹³ Macanaz also discussed the challenges of collecting income from noble estates, suggesting that the king should work on finding ways to seize as many of them as possible given the significant limitations that their tax exemption placed on royal revenue.⁹⁴ In all of these efforts, Macanaz focused on identifying the most effective way to streamline the administration of these kingdoms—he was not interested in tradition nor in accomplishing any theoretical goals based on his conception of monarchy. Macanaz's recommendations were thoroughly pragmatic.

In line with these interests, Macanaz disparaged the many jurisdictional disputes that had taken place in Valencia since 1707. Every reference to the Chancillería is negative—he was particularly frustrated by its failure to compile a list of the useful *fueros* of Valencia. Instead, according to Macanaz, “they only met to devise ways to remove the authority of the generals and their troops, and to process the ancient sins of the natural citizens... every day their excesses grew greater.”⁹⁵ They even ignored Marshal Berwick when he ordered them to stop interfering with the military and work on the compilation of the *fueros*. Macanaz recommended that the Chancilleria be reduced to an Audiencia on the model of Seville as the king had done to the

⁹¹ The intendente was primarily in charge of collecting taxes and securing the army's pay. Henry Kamen, “El establecimiento de los intendentes en la administración española” in *Hispania: Revista Española de Historia* 24 (1964): 369-373.

⁹² *Ibid.*, 13-16, 18-20, 22. This part of his plan was eventually implemented, but not until after the end of the War of Succession.

⁹³ *Ibid.*, 5-6,

⁹⁴ *Ibid.*, 14-15, 18.

⁹⁵ *Ibid.*, 10.

Chancillería of Aragon. Macanaz also indicated that it should be stripped of all power except the judicial authority to try cases and work on the compilation of the useful *fueros*, threatening that if its members meddled in other affairs they should be “sent to their houses.”⁹⁶ While Macanaz did not write a history of the events in Aragon, for both the Aragonese and the Catalans, he suggested that the king follow the same model for streamlining the government and increasing its efficiency. By taming the Chancillerías, abolishing the old Catalan Corts, and reaffirming the *fueros* that increased Philip’s authority over the clergy and other officials, Macanaz attempted to restore “authority” to the king of the Crown of Aragon.

The report from Macanaz reveals what he believed to be Philip’s primary concerns in the Crown of Aragon and the practical ways to attain them that he believed Philip would find compelling. What is conspicuously absent from Macanaz’s report is any reference to absolute principles or an idealized institutional form. While he certainly was interested in promoting legal and administrative uniformity based on other writings, he did not define his practical suggestions in this case.⁹⁷ Instead, his recommendations for the kingdoms varied based on the resources and social composition of each kingdom. Macanaz’s report also indicates that Philip was interested in increasing royal revenue from the Crown of Aragon now that the *fueros* no longer interfered with the imposition of new taxes.

Similar questions arose after the fall of Barcelona to Philip’s forces on September 11, 1714, ending the war of Spanish Succession. On June 13, 1715, the Council of Castile presented its recommendations to Philip concerning the form of the new government in Catalonia. They had solicited reports from one of the council’s ministers, Don Francisco Ameller, and from the Intendente of Catalonia, Don José Patiño. The most important issue addressed by both ministers

⁹⁶ *Ibid.*, 12.

⁹⁷ See Alabrús Iglésies, *passim*.

was the form of the judicial tribunal and its degree of autonomy from the Captain General. Ameller recommended that the king follow a middle path by creating an Audiencia with the Captain General as its head, but “with the limitation that all of the jurisdiction and power, which is ordinary and not delegated, be understood not as given to the Governor and Captain General as head of the Audiencia without all of the mystical body of it [the Audiencia].”⁹⁸ This would avoid the problem of the judicial tribunal being too distant from the military power necessary to enforce its decrees. It also would apparently create a check on the Captain General’s power—as Ameller noted when the Captain General left Barcelona, “the Audiencia could continue to exercise all of its jurisdiction and power.”⁹⁹ Ameller also suggested that all royal decrees would need to go through the Audiencia for publication and that the Captain General would be limited in judicial matters, never having a vote in civil or criminal cases. This arrangement would create a clear separation between the judicial and political government of Catalonia.

José Patiño encouraged the creation of a similarly modified Audiencia in Catalonia. He argued that in the course of economic and judicial matters, it was best for legal professionals to “discuss, resolve, and decide with total independence of the [military] boss, that by his profession of war is not obligated to judge [*dar censura*] in the business of justice.”¹⁰⁰ Nevertheless, given the “quality of the land, the character [*genio*] of the Catalans, and the actual

⁹⁸ “Resumen de la Consulta del Consejo de Castilla sobre el nuevo gobierno que se deve establecer en Cathaluña,” A.H.N., Estado, Leg. 2973, reproduced in Sanpere y Miquel, *Fin de la nació Catalana*, 660-688; the quotation is from page 663. The whole consulta is in A.H.N., Consejos, Legajo, 6811A, No. 84, which has been reproduced in Josep Maria GAY ESCODA, “La génesi del Decret de Nova Planta de Catalunya. Edició de la consulta original del Consejo de Castilla, de 13 de juny de 1715” en *Revista Jurídica de Catalunya*, no 1, (1982): 263-348. I have looked at the original, and I just gained access to this transcription of it, which I will eventually use to refine and develop the subsequent analysis.

⁹⁹ Sanpere y Miquel, 663.

¹⁰⁰ Sanpere y Miquel, 672.

composition of things,” it seemed prudent to give the Captain General the first chair in the tribunal but to prevent him from making any judicial decisions.¹⁰¹ The king would thereby guarantee military support for the Audiencia’s decisions, as Ameller had advised.

The council ultimately recommended this form of Audiencia to the king, emphasizing that it would be the best way “to avoid the jurisdictional disputes that the creation of Chancillerías incite each day between them and the military jurisdiction.”¹⁰² Following Ameller and Patiño, the council recommended that the king ban the Captain General from voting on judicial cases and that the Audiencia and Captain General jointly exercise political and governing jurisdiction in special meetings of the Real Acuerdo.¹⁰³ In this recommendation, Ameller, Patiño, and the council encouraged the perpetuation of the kind of government recently put in place in Aragon and rejected the Valencian model.

There was greater disagreement between Ameller, Patiño, and the members of the council concerning what laws should be enforced in Catalonia. Ameller suggested that Catalan civil law be restored while Castilian Criminal law remained in place.¹⁰⁴ To facilitate the transition, he suggested that loyal Catalans be appointed to the Audiencia who understood the character, laws, and styles of Catalonia and could use these to instruct the Castilians unfamiliar with the region.¹⁰⁵ Patiño went further, arguing that there were many problems from changing the law which would “cause confusion in the land” and impose “a great work on all of the lawyers, notaries, and secretaries of the land, who are many, all of whom would be obliged to begin a new

¹⁰¹ Sanpere y Miquel, 672.

¹⁰² Sanpere y Miquel., 678.

¹⁰³ Sanpere y Miquel, 678.

¹⁰⁴ Sanpere y Miquel, 666-668.

¹⁰⁵ Sanpere y Miquel, 664.

study, exposed to many errors, in prejudice to the parts” of the principality.¹⁰⁶ His solution was to restore Catalan law across the board while also establishing a mechanism for processing changes to reduce the few abuses built into it. The Fiscal of the council agreed with Patiño’s plan, but the majority of the council advised the king of the need for “solid, clear, and rightly established” laws and practices for the subjugation of the “bellicose spirits of the Catalans.” To accomplish this, they recommended the continued application of Castilian law in civil and criminal matters, as any uncertainty now would threaten the stability of Catalonia.¹⁰⁷ Several members of the council disagreed with this recommendation, instead suggesting that some of the Catalan laws benefited the king and were just.¹⁰⁸ They agreed that there were problems with the Catalan laws, but encouraged the king “to order that the Audiencia observe in the practice of civil judgments all of the malicious evasions and impertinent articles that have been introduced under the shadow of their *fueros*.” To fix these problems, the Council proposed a system by which the Audiencia could revoke problematic Catalan practices when they encountered them. Despite the uncertainties and challenges of this system, the councilors believed that abolishing Catalan law punished all Catalans when only some of them had rebelled, so they advised the king against committing a crime against these innocent subjects. Additionally, they suggested that “some laws of Castile” are not proper for the “country and character of these natural citizens, for which reason the Lord Most Christian King has neglected their laws and customs in Roussillon.”¹⁰⁹ Roussillon was a Catalan region that was formally ceded to France in the Treaty

¹⁰⁶ Sanpere y Miquel, 674.

¹⁰⁷ Sanpere y Miquel, 679.

¹⁰⁸ The dissenting councilors were the President of the Council, Don Pasqual de Villacampa, Don Francisco de Arana, Don Luis Curiel, Don Francisco de León y Luna, Don Pedro Lagraba, Don Francisco Molano, and Don Gerónimo Pardo, Sanpere y Miquel, 679.

of the Pyrenees in 1659, and the councilors suggested that Louis XIV's experience with the region should caution Philip against replacing the Catalan laws that were particularly appropriate for the rule of the Catalans.

Finally, the king's advisors disagreed on how best to increase his revenue from the region. Patiño suggested that only the imposition of strict justice would establish "quietude" and serve as the foundation for good government, and he cautioned against creating new taxes that might lead to rebellion, which might make the Crown vulnerable to invasion once again.¹¹⁰ The council feared that the changes in forming a new government would be expensive and temporarily prevent the imposition of a new tax. The Councilor Don Lorenzo Matheu de Villamayor dissented from everyone else, suggesting that the expenses of the new government were too great to be justified and proposed an almost complete return to the old Catalan government. On the matter of changing the law, he pointed out that contracts and wills would continue to use the old language for some time, and that they would always remind the Catalans of their old legal tradition. Instead, by restoring their old system, the king could safely impose a new tax on them and increase his revenue while making his subjects happier.¹¹¹ Yet another dissenting group of councilors proposed a third solution, advising the king to create a strong Chancillería to impose Castilian law little by little and in that way eventually attain reliable peace in Catalonia.¹¹² They had great faith in the power of technically skilled Castilian ministers, and pointed to the Chancillerías of Valencia and Aragon as models of success. What is more, they argued that the

¹⁰⁹ Sanpere y Miquel, 679-680.

¹¹⁰ Sanpere y Miquel, 678, 687.

¹¹¹ Sanpere y Miquel, 687-688.

¹¹² The dissenting ministers were Don Francisco de León y Luna, Don Apóstol de Cañas, Don Luis de Ulloa, and Don Andrés González de Barcia; see Sanpere y Miquel, 688.

reform of the Aragonese government in 1710 had “spoiled” the successes in that kingdom, and that “with the novelty and mixture” of Aragonese and Castilian law, the royal ministers and the Aragonese lived “in a state of perpetual confusion.” As to the “presumed discord and controversies between the Chancillería and the Commandant (or Captain General),” these councilors suggested that they need only ask the king when jurisdictional questions arose, and his quick resolution of these matters would avoid any serious problems.¹¹³

The disagreement among the king’s advisors reflects the tensions between the desire for a rational and uniform order across his kingdoms and the practical desire for stability. These desires led to different recommendations, because the many individuals, corporations, and towns under Philip’s rule each had their own goals that could not be reconciled through a universal policy. Without local support, however, it would be difficult to secure Philip’s rule against the threat of invasion by his enemies, who would benefit from local indifference to Philip’s government. The most fascinating result of the variety of positions presented to the king is that he had to choose from among these options. Had Philip desired to standardize his administration across Castile and the Crown of Aragon, he could have followed the advice of the dissenting councilors who recommended the expansion of the Valencian model of government. This would have required increased royal attention to resolve potential disputes between the Chancillería and the Captain General, but it would also have increased his involvement in the administration and would fit well with an effort to centralize the royal administration. Instead, Philip decided to follow a more moderate path similar to the model established in Aragon. On January 16, 1716, the king established the *Nueva Planta* of Catalonia for the “peace, quietude, and abundance” of

¹¹³ Sanpere y Miquel, 688.

his subjects.¹¹⁴ He created an Audiencia “in which presides the Captain General... (who will) have a vote only in the things of the Government, and this when he is present (*esto hallándose presente*) in the Audiencia.” The regent was charged with giving notice to the Captain General before any discussion of “nominations of office and important matters” so that he could arrange to attend them.¹¹⁵ In this, Philip followed the advice of Ameller and Patiño and extended the system created in Aragon in 1710 to Catalonia. Similarly, the Catalans were granted their civil laws.¹¹⁶ Near the end of this decree, though, Philip made a particularly interesting observation, emphasizing that his subjects were united in their relationship with him and that this relationship trumped their national divisions: “They are to cease the prohibitions of foreigners, because my royal intention is that in my kingdoms the ranks and honors that I confer on them reciprocally to my vassals because of merit, and not because of birth in one or the other of my provinces.”¹¹⁷ Philip’s subjects were thus rewarded for their service to him, and these rewards applied throughout his domain. He seems to have been primarily interested in securing his rule in Catalonia and strengthening the bonds between him and his subjects.¹¹⁸

¹¹⁴ It is interesting that he included “quietude” in the list as it was an important term in Patiño’s proposal. The law can be found in “Establecimiento y nueva planta de la Real Audiencia de Cataluña,” *Novísima recopilación*, Book V, Title IX, Law I.

¹¹⁵ “Establecimiento y nueva planta de la Real Audiencia de Cataluña,” *Novísima recopilación*, Book V, Title IX, Law I.

¹¹⁶ Cánovas Sánchez, 19.

¹¹⁷ “Establecimiento y nueva planta de la Real Audiencia de Cataluña,” *Novísima recopilación*, Book V, Title IX, Law I.

¹¹⁸ Ameller seems to have understood this goal—in his advice to the king concerning the organization of various corporations in Catalonia, Aragon, and Valencia, he noted that the king should emphasize that these privileges did not depend on ancient concessions, but on the concessions of the king and “by way of his grace and during his good pleasure;” see Sanpere y Miquel, 670.

Philip's willingness to compromise on general principles for pragmatic purposes is nowhere more evident than in the appointment of officials in Catalonia. In violation of Castilian law, which provided the model for these offices, Philip appointed locals to fill the important yet relatively unprestigious and poorly paid mayorships (*Alcaldes Mayores*) across Catalonia. Even more telling, Philip was willing to appoint individuals who had actively supported Charles when there were no qualified alternatives.¹¹⁹ This suggests just how far his political actions varied from the principles outlined in the initial decree of the *Nueva Planta*.

Philip V demonstrated his continued desire to follow this pragmatic course with his reform of the Valencian government in the summer of 1716. He reduced their Chancillería to an Audiencia "in the same form as that of Aragon," clearly indicating his desire to perpetuate this new "mixed" form of government throughout the Crown of Aragon.¹²⁰ The decree did not restore Valencia's traditional civil laws, however, and during a royal visit to Valencia in 1719, the city council (*ayuntamiento*) asked Philip to restore their civil laws, and he promised to do so.¹²¹ In 1721, they wrote the king and asked for written confirmation of this concession, and the king granted it to them again.¹²² Despite the royal willingness to restore their civil laws, the Audiencia of Valencia continued to enforce Castilian civil law, apparently because the Audiencia was

¹¹⁹ Rafael Cerro Nargánez, "La implantación de los alcaldes mayores in Cataluña (1717-1720)," *Studia historica, Historia moderna* 21 (1999): 295-314.

¹²⁰ "Reduccion de la Chancillería de Valencia á Audiencia conforme á la de Aragon; y conclusion de los pleytos en ella, con reserva de los recursos de segunda suplicacion al Consejo," *Novísima recopilación*, Book V, Title VIII, Law I. It was resolved in the council on 16 May 1716 and promulgated on 11 June 1716.

¹²¹ Peset, 677-682.

¹²² "Cedula o Provision para que esta Audiencia informe sobre las Leyes municipales de este Reyno," 28 May 1721, Archivo del Reino de Valencia (A.R.V.), Real Acuerdo, Libro 16 (1721), folio 21. Apparently the Audiencia never responded to the king's request for a report on the civil laws of Valencia, so no further action was taken by the king.

composed largely of Castilians who had no interest in learning a foreign legal system.¹²³ In any case, twice Philip indicated his willingness to restore Valencian Civil Law, so it was not his desire to oppress the Valencians or impose Castilian law systematically across his kingdoms that prevented the change.

VI. Conclusions

In light of Philip's consistent flexibility in the creation of the new government of the Crown of Aragon, descriptions of his "ideological" desire for uniformity and administrative continuity between his kingdoms appear to be exaggerated. Instead, Philip's initial assertion of his authority to abolish all of the *fueros* in the Crown of Aragon seems to have been a strategic rhetorical move that simultaneously appeared to resolve the many questions presented by the short-lived initial Valencian government and its blending of Castilian and Valencian traditions. Philip's restoration of individual and corporate privileges for faithful subjects one month later and subsequent turn to yet another model of government less than four years later indicates that his flirtation with a uniform government was not the main priority directing his policies during this period. Instead, it appears to have been a provisional formulation of his royal will that quickly proved inadequate to the task of governing Valencia and Aragon. The pragmatic approach of Philip's various ministers, his rejection of the Valencian model in Catalonia, and his subsequent

¹²³ Mariano Peset and Juan Beneyto Pérez have both tried to explain this – Peset suggests some social reasons while indicating that part of it was "chance," while Beneyto Pérez has argued for a strictly sociological explanation—the members of Valencia's *Audiencia* were overwhelmingly Castilians and had no reason to pursue the implementation of the king's offer to reinstate their traditional civil law. See Peset, as cited, and Beneyto Pérez, "Una explicación sociológica de la no-devolución del derecho civil valenciano," *Revista de estudios Políticos* XLIII (1985): 159-164.

reforms in Valencia reflect the king's desire to establish a stable government in the Crown of Aragon.

Toward that end, Philip V willingly made concessions to his subjects that linked their interests with his own—after all, a privilege guaranteed by the king is only valuable while that king is in charge. By making the local and individual privileges dependent on his personal good will, rather than a legal tradition extending back to the thirteenth century, Philip encouraged various groups and individuals in the Crown of Aragon to support his rule. Building this base of support was more important to him than any desire for the simplicity and efficiency of a more uniform administration. Reinforcing the link between the privileged in these communities and the king who affirmed their particular interests inoculated the body politic from the “indifference to nation” which had plagued Philip's rule in the Crown of Aragon during the War of Spanish Succession.

Chapter Four: The Reality of Bourbon Rule, 1717-1746

By 1717 the form of the regional institutions through which Philip V governed the Crown of Aragon had been settled. The implementation of this new government had only begun, however, and this process would take decades. This chapter will examine some of the ways in which the Bourbon administration of Aragon, Catalonia, and Valencia functioned during this period by focusing on three contemporary issues that the king had to resolve through these new institutions: finance, justice, and the structure of the royal administration. The first issue is the reduction of the maximum interest rate for the main fiscal tool in early modern Spain, the *censo*. The *Nueva Planta* inadvertently created significant confusion concerning the *censo*, which could not be easily resolved because of the variety and number of contracts that would be altered by any reform. The second issue, the preservation of Aragonese and Catalan Civil law, significantly undercut the legal uniformity of the Spanish monarchy and demonstrates Philip's willingness to affirm regional variation. The third issue focuses on the ambiguity concerning the royal will that enabled jurisdictional disputes between the Captain General and the Audiencia in Catalonia. This competition reshaped the institutional structure of the new government in ways that differed significantly from the stipulations of the *Nueva Planta*. Considered together, the royal responses to these issues reveal that when the king's authority was not directly challenged, he was willing to accommodate various interests in ways that appear unlikely based on the language of the *Nueva Planta* and the absolutist claims ascribed to Philip. While he appears to have been quite flexible on these three issues, he also insisted on his role as their final arbiter. Particularism offered a framework for the slow and tedious processing of these challenges that generated practical, if inelegant, solutions to the administrative problems of Philip's government. These solutions continued to emphasize his supremacy while providing him with opportunities to

accommodate local and personal preference even when that required a reversal of the apparent meaning of the *Nueva Planta*. As each example demonstrates, when Philip encountered challenges in implementing his reforms he made pragmatic decisions that undercut uniformity and the goals stated in the *Nueva Planta* decrees.

Phillip V's willingness to accommodate his subjects even when that required fragmenting the legal and bureaucratic administration of his kingdoms demonstrates that his primary concerns were not, or at least did not remain, the creation of a centralized government that ruled all of his kingdoms "with the same law."¹ The continued advocacy of greater centralization and administrative homogeneity by some of his ministers, as shown in the preceding chapter, demonstrate that the shift in policy was an intentional choice to avoid what many theorists, including Charles Tilly and Max Weber, suggest Philip should have desired.² Instead, Philip chose to accommodate the practical realities in the towns and kingdoms of Spain as long as these accommodations did not undercut his power nor challenge his personal right to decide issues. By granting privileges and exceptions to some subjects when they could make a compelling case that these were necessary and just, Philip built a network of support among the local and regional elite that enabled his regime to function. Such networks were integral for all early modern governments, and the tensions unleashed by the War of Spanish Succession had inflamed opposition to Philip, especially in the Crown of Aragon. Stripping those kingdoms of their privileges did little to restore support for him, but through particularism he was able both to reaffirm his own sovereignty and to gain the support of key segments of local and regional society so that he could govern effectively.

¹ *Novísima recopilación*, Book III, Title III, Law II.

² See the discussion on pages 9-14 for my reading of Tilly and Weber.

I. The *censo*

The *Nueva Planta* created a new criteria for what laws were enforced in the Crown of Aragon that produced significant confusion surrounding the interest rate of the *censo*, which was the contract that governed most long-term debt in early modern Spain. These contracts covered many kinds of mortgages and leases and provided much of the income of the churches, monasteries, and municipal elite in early modern Spain. The *Nueva Planta* altered these relationships because it appeared to reduce the maximum interest rate on these contracts, and therefore these individual and corporate entities' incomes, in the Crown of Aragon to the same rate as in Castile. Those paying the interest, which included much of the landed nobility and peasants, were thrilled at the prospect of a reduced interest rate on much of their debt, while those whose income was threatened with a significant drop argued that the reform would lead to their financial collapse and violate the king's promise of ecclesiastical immunity from the *Nueva Planta*. After decades of consideration, the king eventually affirmed the old interest rate in the Crown of Aragon, institutionalizing divergent financial systems among his Iberian kingdoms.

This resolution did not solve the problems of individuals and corporations who were unable to pay the high interest rates, however. The solution for them was to bring their cases to court and request a reduction in the interest on their debts as a part of their court-managed bankruptcy. The king preferred dealing with the specific instances where the old interest rate proved unworkable on a case-by-case basis rather than changing the interest rate throughout the entire Crown of Aragon. The result of particularism in the case of the *censo* was that Philip avoided the destabilizing consequences of major financial reform and ameliorated the worst consequences of the high interest rate through the intervention of his officials. This kept the king and his ministers at the center of his subjects' appeals for financial relief but also increased the volume of cases

and paperwork that they had to process in addition to preserving a barrier to the economic integration of the kingdoms of Spain.

Since the sixteenth century, the old nobility of rural Spain had struggled to manage their finances. Generally noble income was sufficient for the day-to-day needs of noble households, even with the extravagance decried by the reform-minded *arbitristas* attempting to reverse the apparent decline of Spain. Generally speaking, the financial difficulties of the high nobility in the seventeenth and eighteenth centuries reflected their inability to pay the debt of their predecessors. The strength of the entail in Spain prevented these noble houses from losing possession of their land, but this also robbed them of the ability to sell their primary asset when in financial need. When a noble needed more money than he had at a given moment, such as when raising a dowry, which could require as much as 100,000 ducats per daughter, he had to borrow it. These debts were usually contracted through the *cambios*, or short-term letters of exchange, for which we have almost no records because these transactions took place at fairs, which produced few surviving records. When these debts became impossible to pay, the nobles paid them off with money from a bond, called the *censo* or *censal*, which was a lease or mortgage on land (or sometimes its income) that functioned as the primary form of raising large sums of credit in early modern Spain. This form of credit (borrowed from private individuals since no formal banking industry existed) served people when they were in financial distress. The form and regulation of these *censo*s varied from kingdom to kingdom, but they were rarely redeemed and expanded throughout the seventeenth century so that by its end, the nobility was

often incapable of paying the interest on the bonds that the family had accumulated over centuries.³

When families became deeply indebted, the traditional solution was for a noble lord to cover the payments by forcing peasant communities to take out loans on their seigniorial lord's behalf. The lord would, in turn, give his vassals a "letter of safeguard" which stated that the money was really for him and that he promised to pay the debt. This option was abolished in Castile in 1594 where the monarchy increasingly bailed out the high nobility, but in Valencia it persisted into the seventeenth century—as late as the 1690s, the Duke of Gandía simply told his towns to borrow money for him when he needed it.⁴ In the seventeenth and eighteenth century this became less common, which left the nobles with few options. The king regulated the maximum (and default) interest rate of the *censo*, which was initially set at seven percent in 1534, before being reduced to six and two-thirds percent later in that century, and reduced yet again in the early seventeenth century down to five percent.⁵

These general reductions in the interest rate could not be relied upon to save a troubled noble, however, and they often had to make other arrangements when it was impossible to pay their debts. The traditional system was called *secuestro y alimentos* under which nobles who could not

³ See Kamen, *Spain in the Late Seventeenth-Century*, 237-247, and Casey, *The Kingdom of Valencia*, 127-153, and Carla Rahn Phillips, *Ciudad Real, 1500-1700: Growth, Crisis, and Readjustment in the Spanish Economy* (Cambridge: Harvard University Press, 1979), 61-62. There are various other kinds of *censo*, such as the *censo enfiteutico*, which functioned more like a modern lease, but they were not the kind discussed here. For more on various forms of *censo*, see Helen Nader, "Noble Income in Sixteenth-Century Castile: The Case of the Marquises of Mondejar, 1480-1580" *The Economic History Review* 30, No. 3 (Aug 1977): 419-421, and Andrés Blás y Melendo, *Derecho Civil Aragones Ilustrado con la doctrina de los autores forales* (Madrid: 1873), 261-276.

⁴ Casey, 131-132.

⁵ Casey, 143. The reduction took place in 1607 in Castile, was applied to 62 seigniorial lords in Valencia in 1614, and then was made the universal rate in 1622.

service their debts lost control of their estates to a receiver appointed by the Crown. The noble would receive an allowance and the rest would go toward endowments, the costs of administration, and the estate's debts. This arrangement was quite common as about one-third of the nobles in Valencia were on an allowance during some portion of Philip IV's reign (1621-1665).⁶ These sequestrations usually ended when the noble and his creditors came to an agreement (*concordia*) by which the noble regained full financial control over his estate in exchange for guaranteeing an annual payment to his creditors.⁷ Because of the entail, which prevented alienation of noble land for any reason, and the inability of local courts to reach wealth in holdings outside their jurisdiction, the nobles never actually lost their land and maintained their lifestyle despite accruing increasing amounts of debt for centuries.⁸

The necessity of debt relief for the nobility came up early in Philip V's reign. In 1705, Philip published a royal decree (*pragmática*) reducing the maximum interest rate of newly contracted *censos* from five to three percent for the Crown of Castile and Leon.⁹ With the publication of the *Nueva Planta* in the summer of 1707, there was some confusion concerning the interest rate of the *censo* in Valencia and Aragon. Some officials believed that the rate of the *censo* had been reduced to three percent as in Castile, while others approved contracts at the old rate—even officials in Madrid were confused, as the Council of the Crusade indicated when it asked the king to take action to resolve the matter.¹⁰

⁶ Casey, 144.

⁷ Casey, 146.

⁸ Casey, 147-153, and Kamen, 246-247.

⁹ This entire discussion follows the Consulta from 30 June 1734, A.H.N., C.S. Lib 1903, folios 152f-193f.

Things become even more confusing because the king sent different responses to different officials who inquired about whether the reduction of the *censo* applied to Valencia. When the matter came before the king in 1708 and 1709, he followed the advice of Don Melchor de Macanaz and the Council of Castile to leave the *censo* “in the state that they found it prior to the disturbances [of the War of Succession] without innovation.”¹¹ When the administrators of the Generalidad of Valencia asked the king about the *censo* on April 18, 1711, he replied assuring them that the rate had not changed. Meanwhile, on November 13, 1714, the Fiscal of the Chancilleria of Valencia petitioned the king for clarification as the Valencian courts were rejecting every contract of a *censo* if it had a rate higher than three percent.¹² By 1714 the reduction was a well-established precedent supported by a royal order sent from the Marqués de Grimaldo to Don Juan Pérez de la Puente on August 24, 1709, that required the Generalidad of Valencia pay its *censos* at three percent. Similarly, Philip’s generals had forced the city of Orihuela to raise money through a *censo* at five percent to provide for the troops occupying the city following its capture. The king’s payments of the *censo* from 1709-1711 were at the rate of three percent, however, reinforcing the precedent establishing the reduction in Valencia.¹³ The king’s inconsistent orders and actions left his officials to guess what he intended concerning the rate of the *censo* in Valencia.

¹⁰ Consulta from 30 June 1734, A.H.N., C.S. Lib 1903, 153-154.

¹¹ *Ibid.*, 154.

¹² At that time, it was technically a Chancilleria, although it was later reduced to an Audiencia as noted in Chapter Two.

¹³ Consulta from 30 June 1734, A.H.N., C.S. Lib 1903, 155-155f. The king paid the *censo* of Orihuela on 29 February 1709, 12 February 1710, and 25 February 1711.

To resolve the confusion, the Fiscal of the Chancilleria of Valencia asked the king to reduce the *censo* to three percent for Valencia. The Fiscal even addressed the concerns about the reduction of income for merchants, pious works, and the clergy—all of whom were frequently the creditors of the *censos*. He reasoned that concern for these groups had not stopped the king from reducing the *censo* in Castile, so it must not be a serious problem. Further, as the new cap on interest applied to land in Castile that was more productive than that of Valencia, the productivity of land in Valencia could not serve as an objection to the *censo*'s reduction.¹⁴

The church in Valencia took swift action to defend the higher rate of the *censo* when it learned of the petition to reduce it. Throughout Spain the ecclesiastical estate was one of the most important lenders to the nobility, so the church in Valencia stood to lose a tremendous amount should the reduction become law.¹⁵ In defense of its *censos*, the church emphasized that the *Nueva Planta* had explicitly exempted the church from the revocation of its privileges. Applying the royal decree of 1705, which was explicitly limited to Castile, to the church in the kingdoms of the Crown of Aragon on the basis of the *Nueva Planta* would thus violate the ecclesiastical immunity that the Philip had guaranteed. Further, the church argued that the reduction in the *censo* in Castile had only applied to the *censos consignativos*—loans secured by land, similar to a modern mortgage—and not to the *censos enfitéuticos*—leases authorizing someone to use one's land, often with payment based on a percentage of the income produced by the lessee from the land.¹⁶ Since the majority of *censos* in Valencia were the latter, the church insisted that the royal decree would not have any major effect. Every peasant who worked

¹⁴ Apparently the argument was that mortgages on more productive land could bear higher interest payments.

¹⁵ Kamen, *Spain in the Later Seventeenth Century*, 203.

¹⁶ See Blás y Melendo, 263, 275, and Phillips, 61-62.

ecclesiastical land in Valencia would enjoy the equivalent of a rent reduction should the king reduce the *censo*, which was not the case in Castile. Additionally, while the cities of Castile had petitioned the king for the reduction, the cities of Valencia had not done the same, indicating that the reduction was not necessary. To further motivate the king, the church's petition emphasized that a reduction in the *censo* threatened to reduce royal revenue. As if all of this were not enough, the church in Valencia threatened to drive the convents and other pious hospitals into poverty as most of their income came through *censos*. This would harm both the living and the dead as the reduction in the ecclesiastical rents would lead to "the decline of the divine cult" and increase "the sufferings of the souls in purgatory" because there would be less money to fund masses for them.¹⁷ Others were concerned about the *censo*'s rate, such as the Creditors of the Aragonese town of Villa de Piña, which, along with the ecclesiastical estate of Valencia, requested a reduction in its seigniorial payments to the king to compensate for their loss of income because of the reduction of the *censo*.¹⁸

The Guild of the Glovers of the city of Valencia, meanwhile, was among those paying the *censos* that were interested in seeing the rate drop. In their petition, the Guild explained that because of their large contributions to the raising of two *tercios*, or regiments, earlier that year, they were incapable of paying their *censos* at five percent. Their request was accompanied by a letter from the Captain General of Valencia, the Marqués de Villadarias, who described the "many outcries" of those who could no longer borrow at three percent in Valencia because judges had begun to approve contracts including *censos* at five percent.¹⁹ Meanwhile, the city of

¹⁷ Consulta from 26 February 1734, A.H.N., C.S. Lib 1903, 156f-157f.

¹⁸ *Ibid.*, 158f.

¹⁹ *Ibid.*, 157f-158.

Orihuela, which had been operating as if the reduction were in place, asked the king to allow it to continue to pay three percent interest on its debt because the city had made decisions based on the low rate. Retroactively raising the rate of the *censo* to five percent would “destroy the debtors” who were on the hook for the debt that the king’s generals had forced upon Orihuela.²⁰

The inconsistency of royal policy and action on the *censo* had generated considerable confusion. Whether the king reduced the *censo* to three percent or restored it to five percent throughout the Crown of Aragon, he would cause significant financial distress to many of his subjects. When the question of whether the *censo* should be reduced in Catalonia arose following its defeat in the War of Secession, the king had to decide how he would address the issue. The Council advised Philip to leave the *censo* as it stood since they did not know enough about these arrangements to offer meaningful advice. To correct this problem, they encouraged the king to “request clear, expressive, and comprehensive reports [*informes*] on the advantages and inconveniences” of the reduction from Chancillerías and Audiencias of each of the three kingdoms of the Crown of Aragon. This would allow the king and his council to “listen to the subjects about what is most practical.” They even suggested that “those towns [*pueblos*] that are most interested” in the matter could submit individual reports “to facilitate the comprehension and understanding of the advantages and disadvantages [*utilidades y perjuicios*], the roots that produce each of these, and how they can be solved.”²¹ Philip V approved this plan and ordered “every city” to report on the consequences of changing the rate of the *censo* for its citizens so

²⁰ *Ibid.*, 158f-159.

²¹ *Ibid.*, 160.

that he could “act with proper reflection on the advantages and disadvantages that could result to the public [*al comun*]” before he set the rate of the *censo* for the Crown of Aragon.²²

Here Philip and his Council followed the model for negotiation without a Cortes which Charles II had employed in seventeenth-century Castile.²³ While the Castilian Cortes could be called, Charles was not interested in doing so for various reasons, and so he bypassed it through requesting detailed responses from the towns of Castile. Here in the Crown of Aragon, Philip V went one step further by asking all of the towns to participate. While this kind of negotiation reflected the pre-eminence of the city in Castile, where the nobility and clergy never had any direct representation as they had in the Cortes of Aragon, Catalonia, and Valencia, it also reflected Philip’s interest in acting based upon knowledge of his subjects’ advice on the matter. This request for reports is a clear example of Philip’s preference for particularistic negotiation after the *Nueva Planta*.

Each of the kingdoms provided a distinct answer in these reports. The Audiencia of Zaragoza summarized the responses from the ecclesiastical councils of the canons (*cabildos eclesiasticales*) and the city councils (*cabildos seculares*) of the Kingdom of Aragon. The councils of canons uniformly opposed the reduction of the *censo*, arguing that it would cause “notable harm to the pious works, hospitals, and other things like this” and that a reduction would violate their “ecclesiastical immunity.”²⁴ At the same time, the canons acknowledged that the reduction of the *censo*s for the universities in Aragon had worked out well and should be left in place because the reduced value of wool had made the universities unable to pay their debts at

²² *Ibid.*, 160-160f.

²³ For example, Charles II petitioned the towns with votes in the Castilian Cortes for their views on the *Junta de Alivios* in 1669; see Storrs, 176.

²⁴ Consulta from 26 February 1734, A.H.N., C.S. Lib 1903, 161.

the higher rate. Meanwhile, the city councils of the towns of Aragon took the opposite position, advocating the reduction as beneficial to the many towns that were unable to cover the interest on their *censos*, let alone redeem them. A few towns took different positions that the Audiencia noted. In Teruel, for example, the city council repeated the church's arguments and opposed the reduction because of the "great piety of its citizens."²⁵ Borja, meanwhile, recognized the cost to the church, indicating that a reduction in the *censo* would hurt convents' revenue, causing women to bring dowries if they were to become nuns. The City Council of Borja concluded that the reduction would be well worth this cost, however, as it would significantly help the deteriorated noble estates which had no alternative solutions because of "the complete absence of commerce" in the region.²⁶ The Audiencia of Zaragoza, in light of all of these recommendations, suggested a model for change based on the universities of Aragon. They were unable to pay their creditors because of the reduced productivity of their land following the war, so their creditors had voluntarily accepted a reduction in the interest rate of the *censo* from five and six percent to two-and-a-half and three percent, respectively. The example of the universities suggested a patchwork approach to debt relieve that only reduced rates for those unable to pay their debts. The Audiencia advised letting the rates fall through the voluntary *concordancias* negotiated between creditors and debtors rather than extending a universal reduction which would reduce royal income unnecessarily. Meanwhile, the Audiencia encouraged the king to prosecute more

²⁵ *Ibid.*, 161-161f.

²⁶ *Ibid.*, 161f.

aggressively illicit contracts with rates higher than the legal maximum interest rate of the *censo*.²⁷

The Audiencia of Barcelona came to a similar conclusion in its report. After describing that the *censo*s in Catalonia were more varied than those of Castile, the Audiencia argued for the five percent rate, noting that four different popes had approved this rate as it properly “regulated the profit” accrued by the rich when they “pass along their wealth to those who need it” in a way that was “convenient for the public cause.”²⁸ This rate had worked well not only in Catalonia, but also in “all of Europe, which conforms to the common opinion of theologians and jurists.”²⁹ The Audiencia insisted that the *censo* was essential to the Catalan economy and that experiments at changing it had reduced the wealthy Catalans’ investments because of the reduced rate of return on their investments to the detriment of everyone else. A lower rate would force people to sell their estates or seek illegal “usurious” contracts to cover their expenses, neither of which were desirable outcomes.

The Audiencia of Barcelona presented fourteen reasons that the reduction of the *censo* was bad policy as it would run rough-shod over the many particular arrangements that balanced the interests of various segments of Catalan society. First, the interest on the *censo* at three percent did not provide enough income to pay the new tax of the Catastro at ten percent.³⁰ Second, the debtor benefits, but only at the expense of the creditors who were “defrauded” a part of their

²⁷ There were two ministers in the Audiencia that believed the *censo* should be reduced to three percent or less despite the difficulties in doing so, and that the benefits would overcome these challenges. *Ibid.*, 162.

²⁸ *Ibid.*, 163f-164. The Popes listed were Martin V, Nicolas V, Calisto III, and Pious V.

²⁹ *Ibid.*

³⁰ This, of course, suggests that the Audiencia identified with the creditors of the *censo* who received the interest payments, rather than those making the payments. *Ibid.*, 164.

income by the retroactive reduction.³¹ Third, the Audiencia complained that “exempting the debtor of the payment which they offered would infringe on natural equality, without attending to the poverty of the creditor and the convenience of the debtor.”³² Fourth, the monasteries, which had not yet received their debtors’ arrears from delayed payments during the war, would suffer even more because of this. Fifth, the Audiencia repeated the warning that reducing the *censo* would reduce the number of masses for the dead and thereby harm the souls in purgatory and the divine cult. Sixth, it would increase the difficulties of fathers trying to raise a dowry for the marriage (“spiritual or temporal”) of their daughters.³³ Seventh, as the clergy expected a large royal that was tied to the rate of the *censo*, the reduction would seriously reduce their income and delay the clergy’s ability to pay the new taxes.³⁴ Eighth, the king would not be able to afford this subsidy to the church because treasury will have reduced income from the *censo* payments it receives in Catalonia.³⁵ Ninth, the value of the produce of the land tied up in *censos enfitéuticos* had increased five-fold since the contracts began, so the reduction would decrease the interest on the mortgages even as the lands’ productivity increased. This point is particularly interesting, as the productivity of land in Aragon and Valencia was often reported as dropping precipitously, suggesting that there were some significant differences in the agricultural economies between these kingdoms at the beginning of the eighteenth century.³⁶ Tenth, the *concordancias* for

³¹ *Ibid.*, 164f.

³² *Ibid.*

³³ *Ibid.*, 165.

³⁴ *Ibid.*, 165. The subsidy appears to have been ten percent of the royal income from *censos* in the region.

³⁵ *Ibid.*

debtors unable to pay their *censos* were based on a rate of five percent. For *concordancias* reducing this rate by half, the interest rate would become two-and-one-half percent. The Audiencia feared that a general reduction of the *censo* would further drop these renegotiated rates and thereby cause unjust and unreasonable harm to creditors.³⁷ Eleventh, the reduction would destroy the balance between debtors and creditors. If it reversed the *concordancias* between debtors and their creditors, then it would destroy the debtors because it would not be tailored to the debtors' ability to pay. If it would not replace the *concordancias* but simply further reduce the interest payments of the debtors, it would destroy the creditors who would no longer have adequate income for the money that they have loaned out. Either way, the reduction, when applied to *concordancias*, "is opposed to justice by commuting that which is not permitted... without being for the public benefit," which was not the case in Audiencia's assessment.³⁸ Twelfth, the charitable giving of the rich to the poor would stop because the rich would no longer have the resources from which to give because they would need to sell off their estates.³⁹ Thirteenth, in Cerdaña, half of which was in France where the rate of the *censo* is five percent, no one would give *censo* contracts to those on the Spanish side when they needed to raise capital so money would flow out of Spain and in to France.⁴⁰ Fourteenth, many *censo* contracts include provisions requiring debtors to improve the land that they mortgaged. The penalty for not doing this was based on the payment of the *censo*, so the reduction would soften

³⁶ *Ibid.*, 165-165f.

³⁷ *Ibid.*, 165f.

³⁸ *Ibid.*, 165f-166f.

³⁹ *Ibid.*, 166f.

⁴⁰ *Ibid.*, 166f.

this penalty and presumably lead many to ignore the requirement.⁴¹ Because all of these problems would be created by a reduction of the *censo* and there was no public demand for the reduction, the Audiencia of Barcelona discouraged extending to Catalonia the royal order reducing the *censo* to three percent.

What is most striking about the Catalan case against the *censo* is how it indicates the need to preserve the particular arrangements between creditors and debtors in the wide variety of contracts considered *censo*s in Catalonia. This was a much broader term there, and so what was a targeted financial reform in Castile risked destroying many specific arrangements in Catalonia. As many individuals and corporations were simultaneously creditors and debtors, a shift in favor of one or the other could cause dramatic imbalances and the inability of many to meet their obligations. This appreciation for the complexity of the situation led them to reject a universal, one-size-fits-all approach to reform, especially when there was no apparent need for such drastic measures, much as the Audiencia of Zaragoza had argued in their appeal for targeted debt relief through *concordancias* rather than a universal reduction of the *censo*.

The Audiencia of Valencia's report to the Council of Castile echoes themes from the Audiencias of Aragon and Catalonia. Again, the specific agricultural, economic, and legal contexts in Valencia were highlighted in the report, which presented material from several different cities within the kingdom. The city of Valencia emphasized that the "fertility of the lands of the kingdom were increasing every day." Because of this agricultural improvement, the "proportion of its produce corresponds to the interest" of the *censo*, so there were few complaints or requests for the reduction. Even more significantly, the Audiencia explained that the "little interest" in the reduction reflected the experimentation with a rate of three percent in 1680 that

⁴¹ *Ibid.*, 166f-167.

had failed. The Audiencia cautioned that a reduction “would cause serious harm to the nobles, ecclesiastical communities, and those who had taken religious orders [*religions*].”⁴² Meanwhile, the more southern city of Gerona (or Xijona) argued that the reduction would be beneficial because its surrounding land “was among the most sterile in the kingdom.” Gerona’s city council acknowledged the harm that the reduction of the *censo* would cause to the ecclesiastical communities, but maintained its defense of the reduction anyway.⁴³

The Intendente of Valencia, Don Luis Antonio Mergelina, also argued forcefully for the reduction of the *censo*. He explained that Córdoba, which was similar in size to Valencia, had no more than 40,000 pesos of debt and no pension obligations, and yet it enjoyed the reduced rate. Valencia, meanwhile, had 2,500,000 pesos of debt and 32 years of pension obligations, the Generalidad had 600,000 pesos of debt and 450,000 pesos of pensions, and the guilds had their own debt and pensions to pay. Together, these obligations seriously threatened the Valencian economy. As if this were not enough, the Mergelina noted that the large sums of the *censos* charged to the parishioners by their parishes that he calculated to be four million pesos of capital and that the interest on the debt that they already had was six million pesos. The cost of covering all of these *censos* and pensions in Valencia was larger than those of any of the twenty-one provinces of Castile, yet the Castilian cities had lower interest rates than the Valencians.⁴⁴ In addition to these debts, the people of Valencia had been subjected to numerous and “considerable” charges on the king’s behalf and had suffered greatly because of them, leaving the kingdom with dramatically reduced financial resources.⁴⁵ Mergelina insisted that these

⁴² *Ibid.*, 167f-168.

⁴³ *Ibid.*, 168.

⁴⁴ *Ibid.*, 168f-169.

problems should be considered in light of the limited productivity of Valencia, which was much less fertile than Múrcia, Granada, or Córdoba, all of which enjoyed the lower *censo* rate. Given this, it was clear that the *censo* at five percent did not reflect the relative fertility of Valencia. Meanwhile the Marqués de Mirasol, a native of Valencia, advocated a particularistic response to the *censo* much as the Audiencia of Zaragoza had, arguing that where it was impossible to pay the *censo* at five percent the rate should be reduced to three percent or less, and where it was possible to pay the current interest rate no change should be made. For its part, the Audiencia of Valencia noted some differences between the *censos* in Valencia and Castile and the inability of some towns to pay the interest on their *censos* because of the poor quality of recent harvests. They also remarked on the extensive, non-native financial interests in Valencia, where “the largest part” of the kingdom’s commerce “belongs to foreigners of other nations, and only in the fruit of the land is the commerce Valencian.”⁴⁶ In the end, the Audiencia declined to make a final recommendation on the rate of the *censo*, suggesting that powerful segments of Valencian society were divided on the issue.

While there are notable differences in the approaches taken by the subjects and Audiencias of these three kingdoms, each of these reports emphasized the distinctiveness of their kingdom’s use of *censos* and the importance of protecting the delicate balance between creditors and debtors. A universal reduction of the *censo* risked upsetting this balance, partly because so many conditions of the *censo* contracts and the various *concordancias* were tied to the interest rate of the *censo*, such as penalties for failing to fulfill the contract. The way that these documents were written increased the unintended consequences of sweeping royal action for everyone concerned. These reports do seem to emphasize the importance of protecting creditors wealth, especially that

⁴⁵ *Ibid.*, 169.

⁴⁶ *Ibid.*, 169f-170.

of the church and the cities, yet they all do so by acknowledging the ways in which *concordancias* enabled debt-relief when debtors were incapable of meeting their obligations. Because the patchwork system of the *censo* throughout the Crown of Aragon was working well enough, these reports indicate a general tendency to leave well-enough alone.

Despite this dominant voice, there was a clearly articulated opposition to a particularist approach to the *censo*, suggesting that many in these kingdoms would have benefited significantly from a general reduction. The city councils of many towns made this clear as did Mergelina, the Intendente of Valencia. The latter was particularly concerned that the high rate of the *censo* in Valencia was unjust in light of the lower rate in Castile—he could not understand why the rate would remain at five percent in Valencia while the less indebted and more prosperous cities in southern Castile enjoyed a lower interest rate. This juxtaposition, based upon a comparison with Castile that none of the Audiencias seemed to conduct on their own, highlighted the differences in the economies of the king’s various kingdoms and underscores the challenges of developing a single policy that could balance all of the competing interests represented by the individuals, towns, guilds, nobles, and ecclesiastical institutions throughout Iberia.

The Council of Castile presented these reports from the three kingdoms of the Crown of Aragon to Philip V on October 28, 1718. The Council advised the king not to reduce the rate of the *censo* and to affirm that he did not intend to retroactively alter any *concordancias* that had led to lower rates in the kingdoms of the Crown of Aragon. The king resolved “for now not to make any changes to the *censo*.”⁴⁷ Not content with this resolution, in 1720 Mergelina, wrote to the king with additional reasons to reduce the *censo*. He explained that the costs of the *censo*s

⁴⁷ *Ibid.*, 170f.

and other debts (*empeños*) had become impossible for the communities of the kingdom to pay. Mergelina also explained that the only way for the king to address the usurious abuse of the towns in Valencia would be through the extension of the reduction of the *censo* that would make it possible for them to service their debt.⁴⁸

On August 31, 1720, while the Council was considering the material from Mergelina, the king ordered the Council to supervise the negotiation of a new *concordancia* between the city of Zaragoza and its creditors. Along with this request, the king added an additional order “to report generally on the state of the *censos* in the kingdoms of Spain and of the impossibility or difficulty that exists in paying them, and advise me if it is possible to address this general point through some provision.”⁴⁹ There seems to have been some clerical error in complying with this request that led to the Fiscal of the Council of Castile only finding out about it on 12 February 1732, nearly twelve years later.⁵⁰ It was again linked to a pending *concordancia*, this time for Don Pedro Geronimo del Rio, a citizen of Zaragoza. The Council advised the king to dismiss Rio’s specific request and to settle the question of the general reduction once and for all instead.⁵¹

The final report of the Fiscal Don Alonso Rico Villarroel concerning all of the issues surrounding the *censo* was presented to the king on December 24, 1733. Villarroel traced the history of royal actions on the *censo* since the *Nueva Planta* and came to the conclusion that the

⁴⁸ *Ibid.*, 170f-171.

⁴⁹ *Ibid.*, 171f-172.

⁵⁰ *Ibid.*, 172.

⁵¹ *Ibid.*, 172f.

king had consistently denied the extension of the reduction of the *censo*.⁵² In his reading of the reports from the Audiencias of Barcelona, Valencia, and Zaragoza, he believed that each affirmed “the naturalness of the *censo*s of its district” at five percent.⁵³ While the Council of Castile and the king had repeatedly attempted to resolve the matter of the *censo* in general, rather than in a piecemeal way as particular cases arose, was always unsuccessful because the problems were always specific to each case rather than generalizable to a kingdom:

Everything that has been referred to that applied in general for Spain is most effective and powerful in the Kingdoms of Aragon, where with mature examination and full understanding [His Majesty] has ordered so many times not to innovate... not only from these considerations, but also because of the naturalness of the *censo*s of each of these provinces: That being distinct from those [*censo*s] of Castile, the rules of the reduction are not applicable as indicated in the long-delayed result of the reports of the three Audiencias...⁵⁴

Thus Don Alonso emphasized that the variety of uses of the *censo* in the Crown of Aragon made the implementation of any general rule to govern it ill-advised. Instead, he recommended working through specific *concordancias* when the *censo*s became impossible to pay in any particular instance.⁵⁵

The gravity of the issue of the *censo* led the Council to petition a response from yet another Fiscal, Don Pedro Juan de Alfaro, which he presented to them on January 27, 1734. Alfaro’s response argued for the universal reduction of the *censo* and marked a turning point in the case in which most participants had opposed the reduction for the last fifteen years. While the king and his council had repeatedly opposed any innovation in the matter, Alfaro noted that innovation

⁵² *Ibid.*, 173-174.

⁵³ *Ibid.*, 175.

⁵⁴ *Ibid.*, 177f.

⁵⁵ *Ibid.*, 178f-179f.

could be excused “when it produces known benefits” as prior reductions in the *censo* demonstrated.⁵⁶ Alfaro proceeded systematically to challenge the various arguments against the reduction of the *censo*. While the opposition to the reduction pointed to the absence of requests for the reduction from Valencia, Aragon, and Catalonia, Alfaro explained how reports from the principal cities and “republics” of both Valencia and Aragon, along with the testimony of their intendentes, and even the report from the Audiencia of Zaragoza, all indicated the benefits of a universal reduction.⁵⁷ While the Audiencia of Valencia was non-committal and the Audiencia of Barcelona opposed the reduction, their recommendations did not outweigh the benefits of the reduction. Alfaro insisted that this “repugnant request of a province” could not prevent the king “as Universal Father of his subjects” from providing for the “relief of everyone.”⁵⁸ This need had been demonstrated by the many debtors seeking *concordancias* in Aragon. While this was not as common in Valencia, even there the majority of the *censo*s of the Generalidades, communities, and particularities were increasingly in arrears because of their inability to pay them. These difficulties were only growing because of the new contributions to the royal treasury levied on all three kingdoms.⁵⁹

These growing financial demands could not be met by increased effort on the part of the subjects of the Crown of Aragon, despite Villarroel’s insistence that the cause for any variation in the fertility of the land was due to the “laziness” of these subjects. Alfaro countered that while agricultural reforms could increase the land’s fertility, these changes would require “much cost

⁵⁶ *Ibid.*, 180f.

⁵⁷ *Ibid.*, 181.

⁵⁸ *Ibid.*, 181.

⁵⁹ *Ibid.*, 181-181f. These taxes are discussed in greater detail in chapter four.

and work” and most of the land produced little fruit to justify such investment. He also argued that the possibility of improvement did not legitimize the higher interest rate because Murcia, Granada, and Córdoba were more productive than any of the cities in the Crown of Aragon and yet they enjoyed the reduced interest rate because they were in Castile.⁶⁰

Alfaro also denied the ecclesiastical estates’ claim to immunity and was unimpressed by its arguments that the reduction of the *censo* would lead to increased suffering by souls in purgatory and the neglect of the divine cult. He noted that the church in Castile endured had a reduction in its income following the reduction of the *censo* and that this did not interfere with the law “because the motives for the law were deemed for the public convenience.” Further, the Valencian church, which had made this argument repeatedly, had also found it impossible to pay many of its own *censos* at five percent, so the reduction would lower its costs as well as its income. Finally, Alfaro defended the king’s authority to act despite the Valencian church’s invocation of ecclesiastical immunity:

...in Castile [ecclesiastical immunity] was deemed compatible with the reduction, and no one can dispute the sovereign’s faculty to give prices to things, to prescribe rules for contracts without regard to the differences between the estates that are included [in those regulations]...⁶¹

The king’s absolute authority over the economy trumped ecclesiastical immunity in all of his kingdoms according to Alfaro. Further, he emphasized that the needs of the ecclesiastical estate should be considered in light of the needs of the other estates and did not deserve preferential treatment. “The arguable harm to the church” must be weighed against its benefits for the nobility,

⁶⁰ *Ibid.*, 181f-182.

⁶¹ *Ibid.*, 183-183f.

...as it is so very important to the kingdom that they conserve their splendor, that [the reduction] is more universally convenient, as follows for the Generalidades, communities, and the rest of the subjects that compose the general body of the republics, which contribute more to its conservation and the public necessities, and this must prevail over the least bit of one or the other member.⁶²

Not only was the king fully justified in ignoring any ecclesiastical immunity, but in fact he must do so to fulfill his duty to look out for the common good of his kingdoms. To ignore the overwhelming benefits to his other subjects in the interest of protecting ecclesiastical income would be fundamentally unjust according to Alfaro.

Alfaro also addressed the opposition to the reduction based on the harm it would cause to creditors and the availability of credit. He noted that in Castile following the reduction “there was an abundance of money” among both ecclesiastical and secular landlords.⁶³ While some objected that this would impede the flow of credit to Valencia and Catalonia because of the higher rate of return on the *censos*, Alfaro responded that those seeking *censos* in Castile had always been able to find a lender.⁶⁴ He carefully responded to the objections that many kinds of contracts in Valencia and Catalonia were considered *censos* while the corresponding contracts in Castile, if they existed, were not. These concerns led him to recommend that the reduction become general only for the contracts where it made sense to extend it, specifically to those *censos* “which were paid at five percent in Aragon and Valencia, and those called *muertos* in Catalonia,” and with provisions that protected all *concordancias* from alteration because of the reduction.⁶⁵ This was to avoid radically altering the *censos* that were called *violarios* and *dos*

⁶² *Ibid.*, 183f.

⁶³ *Ibid.*, 184.

⁶⁴ *Ibid.*, 184f.

⁶⁵ *Ibid.*, 185-188f, quotation from 188-188f.

vidas in Catalonia, which could have interest rates as high as fifteen percent and were fundamentally different kinds of contracts even though they were still considered *censos*.

Alfaro's argument was persuasive and the Council of Castile followed him in recommending the reduction.⁶⁶ The ecclesiastical estate of Valencia responded immediately by sending a report to the king that repeated their arguments against the reduction.⁶⁷ Despite these objections, the Council voted thirteen to two in favor of the reduction. The Council urged the king to avoid resolving any individual cases seeking a *concordancia* or other relief from *censos* in the Crown of Aragon and to resolve the universal issue once and for all through a general reduction. They warned that additional delays to consider new petitions would accomplish nothing and would only allow the known problems to persist.⁶⁸ The Council failed to persuade the king, who "resolved" the matter by sending additional reports that he had received from the ecclesiastical estates of Aragon and Catalonia to the Council. Philip asked the Council to report what they thought of these new reports and whether they changed the Council's recommendation.⁶⁹ The Council complied and again the *Fiscales* were divided once again in their recommendations—Don Francisco Portel recommended following Don Alonso Rico's advice to reject the reduction, while Don Pedro Juan de Alfaro repeated his recommendation to make the reduction universal with a few minor qualifications. The Council again affirmed Alfaro's advocacy for a general

⁶⁶ *Ibid.*, 190f-191.

⁶⁷ *Ibid.*, 191f. The Council was clearly unimpressed, summarizing the memorial complains as the same harms and inconveniences that they have submitted since 1709 and "which have been examined with the greatest effectiveness and extensive understanding [*eficaz y dilatado conocimiento*], especially in the years 1716, 1717, and 1718...."

⁶⁸ *Ibid.*, 193-193f.

⁶⁹ *Ibid.*, 153.

reduction.⁷⁰ Philip V never resolved this matter despite the Council reminding him of it in another Consulta in 1738.⁷¹ There is a note on the Consulta from 1735 indicating that the Council reminded the king of the matter on October 25, 1746, which was less than four months after Ferdinand VI ascended the throne.

The debates over the reduction of the *censo* and the king's hesitation to act on it reveal how difficult it was to come to any conclusion. There were many different individuals involved and ultimately a reduction of the *censo* would be a mixed blessing for the towns, guilds, nobles, and other subjects in the Crown of Aragon. In general, these groups seem to have preferred lower interest rates, but there were certainly many individuals and probably some secular corporations that stood to lose a fair amount of income from a reduction. That most of these real and legal persons were both creditors and debtors meant that any loss in income would be compensated by at least some reduction in their expenses. The ecclesiastical estates of the Crown of Aragon, on the other hand, aggressively defended the higher interest rate. This partially reflected the insistence on ecclesiastical immunity from the *Nueva Planta* reforms that were the initial basis for considering the exclusively Castilian reduction of the *censo* in the Crown of Aragon. The speed with which the clergy wrote to the king whenever he was advised to reduce the *censo* indicates that they feared significant financial harm should he rule against them, as all of their reports repeatedly insisted.

What makes this case particularly interesting is that the king chose to do nothing despite the apparent extension of the reduction through the *Nueva Planta* and the advice of his Council in the 1730s to extend the reduction for practical reasons. To leave the rate of the *censo* at different

⁷⁰ Consulta from 28 January 1735, A.H.N., C.S. Lib. 1904, 68f-89.

⁷¹ Consulta from 26 August 1738, A.H.N., C.S. Lib. 1906, 200.

levels in his various kingdoms certainly undercut his efforts to govern his kingdoms under a uniform law. It also suggested that the abolition of the laws and privileges of the kingdoms of the Crown of Aragon had some very significant caveats. While Philip and many of his officials would probably have preferred to reduce the *censo* and have a more uniform law, the significant variations in the kinds of contracts that were called “*censos*” in the kingdoms of Spain made it nearly impossible to create a single law to make sense of them all. While these contracts were governed by the king, they often lasted for centuries and so they preserved the financial structures and the legal regulations governing them in each of the various kingdoms. In the end, the king did not even attempt to make all new contracts conform to a single standard, reflecting some level of acceptance of the survival of this aspect of the composite monarchy.

The efforts of the Intendente of Valencia Don Luis Antonio Mergelina, the Fiscal of the Council of Castile Don Pedro Juan de Alfaro, and eventually the majority of the Council of Castile to persuade the king to make the reduction of the *censo* universal reflect another aspect of royal policy. Their contention was that this sweeping reform would reduce the number of specific *concordancias* that had to be negotiated and would be more just as they would treat all of the king’s subjects equally—after all, as they repeatedly noted, the reduction was beneficial in Castile even though the region of Andalucia was at least as productive as the most fertile lands in the Crown of Aragon. The counter to this position, consistently defended by the clergy and other Fiscales, was to emphasize the lack of a general outcry for the reduction. The preference to address the failings of the status quo through the piece-meal negotiation of specific exemptions characterizes Philip V’s preference for particularism.

Finally, it is worthwhile to note that Philip requested reports from all of the towns and corporations of Aragon, Catalonia, and Valencia while he was considering this issue. This

demonstrates that the absence of these kingdoms' Cortes did not signal the end of the king's interest in his subjects' wishes. While the channels of this communication had changed, it still took place and was even initiated by the monarchy. In this regard, Philip V followed the example of Charles II when he sought input on the *Junto de Alivios* in 1669—in fact, Philip V's request for reports was much more inclusive than those of Charles II.⁷² Here again we see Philip's preference for particularism in his choice of how to negotiate with his subjects.

II. The preservation of customary civil law

As discussed in the previous chapter, the final decrees of the *Nueva Planta* reaffirmed the preservation of several civil law codes in the Crown of Aragon following their abolition by Philip a few years earlier. Several historians have argued that these concessions were insignificant, but a consideration of the fundamentally divergent nature of these legal systems suggests otherwise.⁷³ In fact, the preservation of customary civil law in Aragon and Catalonia reflect yet another way in which basic institutional structures from the composite monarchy of the Habsburgs survived the *Nueva Planta* reforms and undermined the legal unification of the kingdoms of Spain.

As with the *censo*, the king's power to shape the legal system made him the arbiter in a complex debate where his subjects' competing interests complicated royal officials' ability to

⁷² See Storrs, 176. Charles only petitioned reports from cities with representation in the Castilian Cortes.

⁷³ See Hargreaves-Mawdsley, *Eighteenth-Century Spain*, 6-7; and Lynch, *Bourbon Spain*, 64. More recently, Henry Kamen has suggested that the maintenance of Aragonese civil law was a more successful model than the abolition of these laws that took place in Valencia, yet he does not discuss this or explain why it was significant. This paper seeks to correct that oversight and demonstrate the enduring significance of the restoration of Aragonese civil law. See *idem.*, *Philip V of Spain: The King who Reigned Twice* (New Haven, 2001), 112-113.

act. As judges from Castile were brought in to Aragon and Catalonia to hear cases following Aragonese and Catalan laws, they were put in a difficult position attempting to learn a new legal system and implement it effectively. In this case, Philip's willingness to accommodate the desire for traditional civil laws significantly increased the difficulties faced by his officials. In fact, the divergence between Aragonese and Castilian civil law reflected a deep difference in their assumptions about the nature of law. Philip and the other Bourbon's tolerated the tensions that these differences created because civil law was important to the Aragonese and Catalan elite whose support he required to rule. While he certainly had the power to abolish these legal systems, the consequences of doing so would be so problematic that he decided to accept legal variation to facilitate the relatively smooth transition to his rule following the War of Succession. The problems with the abolition of Aragonese and Catalan civil law were not primarily overt opposition, although there most likely was some of that. Instead, they reflected the complexity of these legal systems and the degree to which they were bound up with the social lives of Philip's subjects. Replacing one set of laws with another would entail an overhaul in the organization of families and the way in which people interacted with each other that would necessarily provoke dissension and conflict as people grappled with the new laws' implications for their way of life.

Analyzing the regional differences that survived the *Nueva Planta* reforms provides valuable insights into the transition between Habsburg and Bourbon Spain because it reveals the laws' significance for the Aragonese and shows the difficulties of shifting between these legal systems. The preservation of Aragonese civil law is especially significant because of its relevance for the daily life of the people of Aragon and their understanding of the nature of law. In addition to the barriers created by the dominant narrative of state formation in early modern Spain, part of the reason for missing the significance of these laws may be that actual legal practice and the

acquisition of legal knowledge in Bourbon Spain has been largely ignored. Legal handbooks, or guides to legal practice for beginners and quick-reference books for judges such as Silvestre Martínez's *Libreria del Jueces*, provide valuable insights into the way that law was practiced and legal knowledge was disseminated.

The fundamental incompatibility of Castilian law with Aragonese expectations and habits grew out of long-standing differences in the understanding of law in Castile and Aragon. Since the thirteenth-century promulgation of the *Siete Partidas* by Alfonso X (1221-1284), Castilian courts functioned as if there were absolute principals of justice upon which the law depended for legitimacy. This deductive approach to the law followed Roman legal thought, which the *Partidas* acquired from the Code of Justinian. Alfonso intentionally crafted the *Partidas* into a unified and systematic code that was abstract and universal so that it could be used throughout the kingdoms he ruled as Holy Roman Emperor and King of Castile. Prior to this, however, Castilian law had followed a complex customary law based upon local practice rather than a theoretically consistent legal framework.⁷⁴ By replacing this collection of customary practices with the principles of Roman law, Alfonso established a legal system that affirmed the legitimacy of a universal law. In contrast to Alfonso's choice to follow the Roman model of jurisprudence, James I (1208-1276) of Aragon preserved the Aragonese understanding of law as the crystallization of long-established practice when he established the *Fueros*, the codification of Aragonese law. He did not replace the Visigothic customary law with Roman law, instead producing a unique legal code that reflected the practices of his subjects. Whatever his primary concerns in drafting these laws, James chose to preserve the legal practices of the Aragonese

⁷⁴ Robert I. Burns, "The *Partidas*: Introduction," in *Las Siete Partidas* ed. Burns, 5 vols. (Philadelphia, 2001), 1: xi-xxix; Joseph F. O'Callaghan, "Alfonso X and the *Partidas*," in *Siete Partidas*, 1: xxx-xl.

rather than reground their law on abstract principles.⁷⁵ In this sense, Aragonese civil law is inductive and emphasizes the particular, unlike the deductive and systematic *Partidas* in Castile.

In addition to the divergent understandings of law in Aragon and Castile, their legal systems differed in their prescriptions for how people should live their daily lives. Legal handbooks, or guides to legal practice for beginners and quick-reference books for judges provide valuable insights into the way that civil law was understood and applied by judges, lawyers, and notaries. The different legal foundations in Aragon and Castile resulted in significantly different legally-defined social roles in each kingdom. In Aragon, fathers and mothers had more power with fewer legal limits on how they had to treat their children. Aragonese law also provided them more options in how they structured their families through greater freedom in adoption and the designation of tutors and heirs.

The eighteenth century was a period of increased printing in many genres. This increase in printing led to a variety of coping mechanisms to handle the information overload, including the proliferation of handbooks and other shortcuts for study. These earned plenty of criticism, much as Cliff Notes and Spark Notes do today, yet they remained quite popular.⁷⁶ Legal handbooks, which were part of this influx of publications, became increasingly popular as guides to legal practice, as opposed to legal theory. While some scholars denigrated the more practical legal books as the products of “hacks” and emphasized the importance of the great systematic legal scholars, it is important to remember that legal handbooks served a crucial role in transmitting

⁷⁵ See Morales Arrizabalaga, *Fueros y libertades del reino de Aragón: de su formación medieval a la crisis preconstitucional (1076-1800)* (Zaragoza, 2007), 32-40.

⁷⁶ Ann Blair, “Reading Strategies for Coping with Information Overload ca. 1550-1700,” *Journal of the History of Ideas* 64 (2003): 11-13, 22.

legal knowledge.⁷⁷ They reflect actual legal practice and provide insights into the mindsets of early modern jurists that might otherwise have been lost.

These guides to the law were all the more important given the poor legal education available at Spanish universities. Only in the mid-eighteenth century did universities begin to teach Spanish law despite graduates' inability to handle practical legal matters for centuries, and even after these reforms, outside observers still tended to criticize the quality of Spanish legal education.⁷⁸ Under the enlightened monarch Charles III, the Council of Castile undertook repeated efforts to reform the universities of Spain. Their efforts, however, seem to have focused on expanding the abstract discussion of the laws of nature and the laws of nations by including the works of John Locke, Samuel Puffendorf, and Hugo Grotius, among others, rather than adding material on the actual practice of law in Bourbon Spain to the curriculum.⁷⁹

The lack of practical legal training left a significant need that these handbooks attempted to fill. Joseph Berni y Catalá's *Instituta Civil y Real*, which was first published in 1745, is an early example of this kind of book. It offered pragmatic advice to those beginning to practice law based on Berni y Catalá's own experience. For example, he provided basic directions on how to use essential legal resources correctly while writing a legal brief. Berni y Catalá's strategies included the order in which to consult these references and the proper use of the alphabetical index in the books that had them.⁸⁰

⁷⁷ Julia Rudolph, "That 'Blunderbuss of Law': Giles Jacob, Abridgment, and Print Culture," *Studies in Eighteenth Century Culture* 37 (2008): 198.

⁷⁸ Richard Kagan, *Students and Society in Early Modern Spain* (Baltimore, 1974), 234-235.

⁷⁹ See Richard Herr, *The Eighteenth Century Revolution in Spain* (Princeton, 1958), 173-180.

While Berni y Catalá attempted to make Castilian law more approachable, other jurists began writing handbooks to aid those familiar with Roman or Castilian law in coming to terms with Aragonese civil law. Villalba, the author of *Crisis Legal*, began this effort with his legal tract explaining the similarities and differences between Aragonese civil and canon law and those of Castile, *Fororum et observantiarum Regni Araonum Codex sive enodata methodica compilation iure civile et canonica fulcita, legibus Castellae conciliate*, which was published in Zaragoza in 1727. He later revised and expanded this work to two volumes, which he published in 1743.⁸¹ In these books, he provided a systematic explanation of the *Fueros* and their implementation in Aragon organized in a way that allowed Villalba to compare them with those of Roman and Castilian law. This was a significant project, as earlier compilations of the *Fueros* were unsystematic and thematically disorganized, making it difficult to compare them to legal codes based on Roman jurisprudence.⁸² With the publication of Villalba's treatises on Aragonese law, lawyers and judges could read about Aragonese civil law in a way that would make sense to those who had a background in Roman and Castilian law. These handbooks made Aragonese civil law much more approachable to the "foreign" Castilian judges who now had to enforce it.

Drawing on Villalba's work, Manuel Silvestre Martínez published the *Libreria de Jueces* (1763) further improved the accessibility of Aragonese law by presenting it systematically in Castilian rather than Latin. The need to know Aragonese law created significant problems for a

⁸⁰ Joseph Berni y Catalá, *Instituta civil, y real, en donde con la mayor brevedad se explican los SS. de Justiniano, y en su seguida los casos prácticos, según leyes reales de España, muy útil, y provechoso á los que desean el bien común* (Valencia, 1745).

⁸¹ The second Project was entitled: *Fororum et observantiarum regni aragonum codex sive ennodata methodica compilation, jure civile ac canonico fulcita, legibus castellae conciliate, et omnigena erudition conexta*.

⁸² Vicente y Guerrero, "Jurista," 50-51, 55-56.

newly appointed official trained in Castilian law, as Martínez knew from his own experience. His difficulties learning Aragonese civil law as the Mayor of Huesca inspired him to write the first volume of the work. In Huesca he had discovered that knowledge of Castilian law was insufficient to judge civil cases. This difficulty was compounded for judges with three-year appointments and limited means, who “invariably” took “the nature of necessity” and managed without the many books that an exhaustive study of the topic would require.⁸³ The judges, therefore, faced the challenge of making sense of a foreign law with which they must quickly familiarize themselves because of the pressing duties of their new office. Understandably, these officials had little time for the rigorous study of a new legal system. Martínez hoped that his *Librería* would allow them to quickly acquire the essential knowledge necessary to fulfill their official duties.

Martínez’s *Librería* attracted considerable interest as indicated by the number of editions that it went through, suggesting a ready market for his work. When first published in 1763, it was a one-volume book that only dealt with the similarities and differences between Castilian and Aragonese law. Martínez apparently achieved popular success, as *Librería* went through six editions between its initial publication and 1774, when it went into its seventh edition with the addition of seven more volumes discussing a wide variety of legal issues less focused on Aragon.⁸⁴ The eight-volume version of *Librería* went through seven editions between 1774 and 1791. By 1796 it had grown to twelve volumes plus a separate index, bringing the complete work to thirteen volumes. Although Martínez was not the only Spaniard writing legal guides, he seems to have had no difficulties selling *Librería*. The success of his initial volume suggests interest in,

⁸³ Manuel Silvestre Martínez, *Librería del jueces*, 8 vols. (Madrid: 1791), 1: Prologue (no pagination).

⁸⁴ Silvestre Martínez, *Librería* (Madrid: 1791), 2: Prologue (no pagination).

and perhaps even the need for, clarification of the differences between Castilian and Aragonese law.

Martínez systematically explained the differences between the laws of Castile and those of Aragon as they appeared to contemporary legal professionals, revealing the significance of these differences as they were implemented. The differences in the regulation of paternal authority, marriage contracts, adoption, and inheritance resulted in distinct family and social structures in Aragon and Castile. Preserving the laws that governed these basic relationships enabled the Aragonese to maintain their social distinctiveness from Castile in a much more intimate way than the preservation of their representational assembly would have. The far-reaching implications of altering Aragonese civil law on these matters shows the far-reaching consequences of Philip V's decision to maintain it.

One surprisingly significant difference between the Castilian and Aragonese civil law practice concerned *patria potestad*, or paternal authority. Castilian regulations of paternal authority grew out of the *Siete Partidas*.⁸⁵ They define paternal authority as “the authority which a father has over his children,” which includes “the bond of reverence, subjection, and castigation, which should connect father and son.”⁸⁶ Martínez described this authority in Castile: “The fathers of families have authority over their children; this they acquire for the common good of the household and the benefit of those who depend on it, who have the obligation of obeying, respecting, and revering the fathers as such, doing what they order, as long as it is not

⁸⁵ Silvestre Martínez, *Librería del jueces* (Madrid, 1763), 3-4; all subsequent references to Silvestre Martínez refer to the 1763 edition. On the enduring legacy of the *Siete Partidas*, see Charles Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque, 2001), 107-110.

⁸⁶ *Las Siete Partidas*, trans. Samuel Parsons Scott, ed. Burns, 5 vols. (Philadelphia, 2001), 4:960.

contrary to Divine or Human law; because of this, the father is obligated to correct and punish them.”⁸⁷ The father ought to rule in the interests of those dependent on the household, who had the legal duty to obey his orders as long as they did not violate a higher law. The head of the household was obliged to correct and punish his dependents should they violate his commands, along with the corresponding responsibility to God for his failure to do this properly.

The authority of the father over his children extended over all of his children’s wealth and earnings until they reached the age of fourteen, although the father was responsible to preserve the wealth for his children.⁸⁸ Additionally, when both father and child were in danger of starvation, the father could sell his child and save their lives with the money he procures in this method. The law even permitted a father to eat his child if that was the only way for him to survive while his castle was under siege.⁸⁹ Children had no legal identity independent of their father, and so could not bring their fathers to court. The only way for a child to seek legal redress was for her to ask a judge to bring the father into court on her behalf.⁹⁰

Moreover, Castilian paternal authority extended beyond children to others within the household—servants were “under the political-economic authority of their masters, to whom they owed respect as to a parent, and to fulfill the time they agreed to serve for their salary.”⁹¹ This service included the legal duty to preserve the honor of their master by avoiding any words

⁸⁷ Silvestre Martínez, *Librería*, 8.

⁸⁸ The exemption to this was wealth that a child earned in a castle, in the army, or at Court. *Siete Partidas*, 4:961.

⁸⁹ *Siete Partidas*, 4:962.

⁹⁰ *Siete Partidas*, 4:962.

⁹¹ Silvestre Martínez, *Librería*, 9.

or deeds that might bring dishonor to the household that they served.⁹² In this case, however, the law was clear that servants were not slaves. After all, they worked for a wage, to which they were legally entitled.⁹³ Still, as long as a servant was being paid for her service, she was under the authority of her master.

The organization of the household was very different in Aragon, where legal paternal authority did not exist at all. As Martínez explained, “in Aragon there is no paternal authority; and children are only obligated to show their parents that reverence that the Christian religion teaches.”⁹⁴ Following the *Fuero* entitled *Ne pater pro filio*, the father had no legal authority over his children by virtue of being a father. The absence of paternal authority had significant and surprising practical consequences. For example, it appears that mothers had substantial authority over young children. If an infant or small child was taken away while under the age of five, they had to be returned to their mother. Additionally, if the mother and father were separated, the judge had the authority to give custody of the child to either parent or to a third party.⁹⁵

As one might suspect, at least some aspects of paternal authority ended up appearing in Aragonese practice despite its legal absence. First of all, children owed proper respect to their parents, which was a Christian duty. Following the law of nature and of nations, Martínez emphasized that fathers could also exercise “economic authority” over their children, giving fathers the authority and duty to “educate and nurture” them. Children could only be freed from this power when they reached fourteen years old—until then, they had no independent legal

⁹² Silvestre Martínez, *Librería*, 9.

⁹³ Silvestre Martínez, *Librería*, 9.

⁹⁴ Silvestre Martínez, *Librería*, 101.

⁹⁵ Silvestre Martínez, *Librería*, 101.

standing.⁹⁶ Finally, since the Aragonese did not have a notion of paternal authority, fathers had complete control over their children's right of inheritance. Martínez explained the situation: "As there is no paternal authority, it appears idle to put the ways in which it is annulled, mainly there being no understanding of emancipation, nor un-affiliation, with the motive of having the increased ability of disinheriting the children, with or without cause...."⁹⁷ Without the legal concept of paternal authority, there was also no corresponding legal concept of emancipation from this authority. This meant that children could be disinherited for whatever reason until they reached the age of fourteen. They then became legal persons and could pursue legal action to protect their inheritance, even though they were still considered minors until they turned twenty-two. It is profoundly ironic that the absence of legal paternal authority gave fathers greater power over their children's right of inheritance.

One can sense Martínez's frustration at the unsystematic laws of Aragon when he attempted to clarify father's legal authority over their children: "There is no paternal authority in Aragon, and this is so; but despite this general rule, because of which one understands that the father has no power to subject his son with the severity that would be possible if he had it, look at the *fuero único* of the same Title, and you will find cases in which the father may in trial respond for the son...."⁹⁸ So in some instances, fathers could act legally on behalf of his child even without paternal authority. This should come as little surprise, for it was undoubtedly a practical reality of family planning. The absence of paternal authority in Aragon left room for negotiation and the influence of custom in place of the codified legal structure that Castile had adapted from Roman

⁹⁶ Silvestre Martínez, *Librería*, 101.

⁹⁷ Silvestre Martínez, *Librería*, 102.

⁹⁸ Silvestre Martínez, *Librería*, 106.

law. It also reflected the inconsistent habits and customs of the Aragonese, much to the annoyance of Martínez.

Aragonese adoption laws also differed significantly from those in Castile. Although prohibited from adopting children in Castile, women were allowed to adopt in Aragon. The *Siete Partidas* governing Castile prohibited women from adopting children except to replace sons lost in military service to the king, for “if women could do this themselves, it might happen that men would deceive them, or be deceived by them, so that great wrong would result.”⁹⁹ Perhaps the fear expressed here reflects the tendency for fathers to adopt their illegitimate sons to perpetuate the family line—might Alfonso X have worried that women would be more likely to commit adultery if they could adopt their illegitimate children and guarantee their inheritance?¹⁰⁰ In any case, the Aragonese had no such restrictions. Not only were women allowed to adopt, but men physically incapable of producing children could also adopt in Aragon despite the *Partidas*’ prohibition. In fact, only the castrated and children were prohibited from adopting according to Aragonese law. Martínez explained that because adoption in Aragon was not only “for the consolation of those that die without succession,” it was an option for many more people. Nevertheless, it seems likely that many adoptions were for the preservation of familial lines of succession. Because of the absence of paternal authority and the diminution of biological fatherhood, those who were adopted in Aragon even had the right to use the arms of their adopted parents, another privilege prohibited by Castilian law.¹⁰¹

⁹⁹ *Siete Partidas*, 4:956.

¹⁰⁰ Kristen Gager, *Blood Ties and Fictive Ties: Adoption and Family Life in Early Modern France* (Princeton, 1996), 3-4.

¹⁰¹ Silvestre Martínez, *Librería*, 100-101.

The convoluted and ad-hoc nature of Aragonese civil law can also be seen when considering the appointment of legal guardians for orphans and the selection of heirs. In Castile, only a father could designate in his will the tutor for his children should he die, and if he did not do so, then the decision went to the children's paternal relatives. If there were no living relatives, then the judge could appoint a tutor.¹⁰² The situation was quite different in Aragon, where mothers enjoyed much more authority over their children. If one or both parents of a child died without a will, the judge handling the matter had tremendous latitude in deciding whom he could appoint as the child's guardian. While the judge could give the child to its surviving parent, he need not do so—in fact, the judge could give the child to anyone: “he can make guardian whichever legal adult he names,” as no one had “a right to the guardianship, neither as a relative, nor as a mother or father of the ward,” which allowed the judge to “give the child to a stranger” even if one of its parents lived.¹⁰³ Parents who died and left a will designating a guardian for their children similarly had many options at their disposal. For example, if a mother died and named her spouse as the legal guardian of the child in her will, she could stipulate that the father would lose the guardianship of the child if he remarried.¹⁰⁴ If she did not specify this, however, then the father would retain the guardianship of his child even if he remarried.

Once appointed, guardians had the same nearly-unlimited authority over their wards as parents had over their children. While the authority of guardians over their charges was mostly the same as in Castile, in Aragon they could alienate all of their ward's moveable property

¹⁰² Silvestre Martínez, *Librería*, 14-15.

¹⁰³ Silvestre Martínez, *Librería*, 103.

¹⁰⁴ Silvestre Martínez, *Librería*, 103.

without judicial approval if they chose.¹⁰⁵ Similar actions would be considered an abuse of the guardian's authority in Castile, where they had a greater duty to protect their ward's property. Also, if a dispute between a ward and her guardian made it to court, the ward "could ask for nothing but food," as this was the guardian's only legal duty toward their charge.¹⁰⁶ The duty to feed the legal minors under one's charge appears to be one of the most deep-rooted legal duties in Aragon as it often appears as one of the few limits on parents and guardians' authority over the children in their custody.¹⁰⁷

Despite the importance of parents' duty to feed their children, this duty did not prevent parents in Aragon from disinheriting their children if they chose to do so. Castilian law required that children inherit from their parents their full share of the inheritance as stipulated by the law for those who died without a will. Parents could only disinherit their children if they could demonstrate just cause, such as if a son intended to murder his parents, had injured them with his own hands, or had betrayed the king. Daughters could only be disinherited for having been a whore without her parents forcing her to be one because they had refused to let her marry "in her time."¹⁰⁸ Parents in Aragon were much freer to disinherit their children and designate unrelated heirs, as Martínez explained: "In Aragon, there is no obligation of law, *Fuero*, nor observance to make one's children one's heirs, nor for children to do likewise for their parents; but having children from a legitimate marriage, while one need not designate them as heirs, one must leave

¹⁰⁵ Silvestre Martínez, *Librería*, 106-107.

¹⁰⁶ Silvestre Martínez, *Librería*, 106.

¹⁰⁷ It even prevented a father from selling his property to his legitimate children because he owed it to them "by way of food, in respect of the natural law that obligated him to give it to them[.]" Silvestre Martínez, *Librería*, 118.

¹⁰⁸ Silvestre Martínez, *Librería*, 37-38.

them because of their legitimacy, five sueldos, in place of the moveable goods that they could have inherited, and another five in place of the real estate [*raices y sitios*]....”¹⁰⁹ In Aragon, then, there was no duty to designate one’s legitimate children as one’s heirs. For 10 sueldos, a parent could fully satisfy their legal duties to provide for their children and disinherit them, assuming that there was no entail on the estate. While there was an Aragonese judge who attempted to set the precedent that one could not disinherit one’s children with the words, “I disinherit my children, and desire that they be content with the 5 [*sic*] sueldos,” this precedent was not legally binding—only wills that managed to be made “contrary to observances, or *fuero*, or to contain requirements that are impossible to meet” were without legal force. Once basic legality was met, including providing one’s legitimate children with the requisite ten sueldos, the one making the will was free to “designate as heir anyone he [*sic*] chooses.... as if no legitimate child existed,” as long as they did not select a child “of sin, that is one of sacrilege, incest, and adultery, which also includes ‘natural’ children that are engendered in the time that their parents were capable of marrying....”¹¹⁰ If one wanted to leave their inheritance to such “illegal” offspring, one would need to adopt them. Otherwise, the Aragonese were entirely free to designate whomever they chose as their heir. Even foreigners could inherit, for “everyone is the same in this Kingdom of Aragon.”¹¹¹

The way in which the Aragonese could record their wills reflects a similarly more pragmatic and flexible approach to legal affairs than in Castile, where it was much more difficult to demonstrate the authenticity of a will. For example, when a Castilian wanted to certify a “sealed”

¹⁰⁹ Silvestre Martínez, *Librería*, 122.

¹¹⁰ Silvestre Martínez, *Librería*, 122.

¹¹¹ Silvestre Martínez, *Librería*, 123.

will that would remain secret until their death, it had to be signed by seven witnesses and a royal notary, while a sealed will in Aragon required the signatures of just two witnesses and a notary.¹¹² Additionally, if an Aragonese testator chose, their secret will could be hidden in a place that only he or she knew as long as they provided a notary with directions to find the will following its author's death. The Aragonese could also amend their wills with a hand-written note as long as two witnesses could attest to their writing it.¹¹³ If someone was dying and a parish priest was present, presumably to perform their last rites, the priest could serve in place of a notary and was bound to take the oral will and "write it down on the first paper that he encountered, whatever its quality [he must] accept it, and guard it until the testator is buried."¹¹⁴ In this case, unanticipated death, as long as it was not instantaneous, need not prevent one from leaving their will. Aragonese law provided for the changing of one's will regardless of circumstances in addition to the considerable flexibility in what one could stipulate in that will.

While the law did everything possible to enable the Aragonese to leave wills, inevitably some individuals died without recording one. When this occurred, the rules governing who had use of the property and who would inherit it also differed from those of Castile. In Aragon, one could claim the "Right of Widowhood" (*Derecho de Viudedad*) in one's marriage contract, which would provide widows with the use of their deceased spouses' goods "while one lived in widowhood," regardless of who the heir was. In fact, this right could delay the implementation of the deceased's will if they left one. There were several conditions to the Right of Widowhood, however. For example, it would be lost if the widow remarried, entered a religious order, or

¹¹² Silvestre Martínez, *Librería*, 35, 36, 122.

¹¹³ Silvestre Martínez, *Librería*, 124.

¹¹⁴ Silvestre Martínez, *Librería*, 125.

fornicated.¹¹⁵ While the law was unambiguous, loss of the Right of Widowhood for fornication was apparently inconsistently enforced. While loss of the Right of Widowhood because of fornication was not always specified by marriage contracts, the law trumped these contracts. When an official encountered a widow or widower “who has manifestly with him his fornicator” and yet retains the Right of Widowhood “even though he keeps his whore [*puta*] in his house,” the official should “warn” the couple and “correct... the Marriage, or Dowry, Contract [as] this man or woman must tie his or her finger while God gives them life.”¹¹⁶ Apparently some clever Aragonese widows and widowers had chosen to preserve this right by avoiding remarriage to their significant others (or, in some cases, their prostitutes) rather than marry and risk losing the use of their deceased spouse’s property. Even when this arrangement was not prohibited in the marriage contract it remained illegal, so Martínez encouraged his readers to change the contract retroactively to bring it into accordance with the law before forcing the couple out of the property and into married life. Martínez explained how such illegal contracts became notarized in a parenthetical aside about how there are “many mistakes, and errors, born of the inexperience of... royal notaries, who I have seen with sufficient pity [*bastante lastima*] guiding others with equal insufficiency.”¹¹⁷ Martínez’s pity for the poorly-advised couples who believed that they were following the law by avoiding legal marriage did not extend to toleration of their sexual activity, as indicated by his ominous encouragement that the couple marry “while God gives them life.”

¹¹⁵ Silvestre Martínez, *Librería*, 114.

¹¹⁶ Silvestre Martínez, *Librería*, 114-115.

¹¹⁷ Silvestre Martínez, *Librería*, 114.

When someone died without a will and their property was no longer exercised by a widow or widower, the property would be divided equally among the deceased's sons and daughters. If they had no children, then it would be divided among their siblings, as parents never inherit from children in Aragon without a will in another break with Castilian law.¹¹⁸ If one of the deceased's siblings had died before the deceased, but had left children, then the deceased sibling's share of the inheritance would be divided equally among the nieces and nephews.¹¹⁹ Aragonese law on intestate inheritance differed from Castilian law in three additional ways. First, in the event that someone died without a will and without children, and the nearest relatives were split between the maternal line and the paternal line, rather than splitting the inheritance among all of the parties, it would go to the line from which the deceased had inherited the majority of her wealth originally. For example, if the majority of the inheritance had come to the deceased through her mother's line, then it would remain in that line. Second, if in the scenario above, the deceased had earned the property that he left, then both lines would inherit it equally. Third, if the deceased in this same scenario had instead inherited the property from a distant ancestor, then it would be divided between the blood relations closest to both lines.¹²⁰ All of these scenarios deny any automatic legal presumption in favor of the paternal line, and frequently divided the inheritance between several parties. Aragonese inheritance laws differed from Castilian laws in that they usually divided property among more relatives than Castilian law.

While these differences between Aragonese and Castilian law are important, neither set of laws was static and sometimes legal precedent erased the distinctions between them. Martínez

¹¹⁸ Silvestre Martínez, *Librería*, 38, 131.

¹¹⁹ Silvestre Martínez, *Librería*, 129-131.

¹²⁰ Silvestre Martínez, *Librería*, 133.

continued to provide helpful guidance for his readers in these instances so that they could judge, plan, or act appropriately. For example, sons in both Castile and Aragon had to conform to their parents' will concerning marriage or risk losing their inheritance. When it came to women in Aragon, however, the law was less explicit. Martínez explained that in regard to daughters, “no *Fuero* exists that exempts parents from the duty to provide for them... [however] it is best not to trust them, because the jurists of the kingdom have established as a principal that they do not have this obligation.”¹²¹ So while the written law in Aragon indicated that a daughter might continue to receive support from her parents if she married against their will, a judge would likely rule against her should the matter end up in court.

Even with the qualification that Aragonese and Castilian law adapted to one another in some ways that could reduce their divergence, this discussion has demonstrated that the *Fueros* differed from Castilian law in numerous ways with significant consequences for social life in the Kingdom of Aragon. The laws governing paternal authority, marriage contracts, adoption, and inheritance, among others, shaped the most basic aspects of family construction and preservation. By leaving these in place, Philip V preserved the institutional structure that defined the parameters of long-term family planning among the Aragonese, which was especially important for the local elite.¹²² While the loss of the Cortes transformed the channels through which the Aragonese communicated their interests to the king and certainly upset their sense of shared governance with the king, it did not touch the lives of the Aragonese as intimately as the loss of their civil law would have.

¹²¹ Silvestre Martínez, *Librería*, 104.

¹²² In fact, the local elite dependent upon this civil code were integral to the Bourbon governance of Aragon. José Antonio Moreno Nieves, *El poder local en Aragón durante el siglo XVIII: los regidores aragoneses entre la nueva planta y la crisis del antiguo regimen* (Zaragoza, 2004), 519-526.

Modern historians' tendency to ignore the significance of Aragonese civil law impairs our ability to appreciate the persistent regional differences in Bourbon Spain that interested Martínez's readership. While Philip's restitution of Aragonese civil law certainly was a peace-offering to the Aragonese, this should not lead historians to write it off as irrelevant to Bourbon efforts to centralize the institutions of state. The preservation of these local laws and customs enabled Philip V's reforms by preserving the essential aspects of regional legal difference that touched daily life. Had Philip attempted to abolish these privileges, he would have had to deal with rampant non-compliance, as indeed was the case prior to the reinstatement of Aragonese civil law, for his subjects would not have tolerated his reforms. In this respect the preservation of this distinctive civil law reflects the ways in which the Bourbon government had to respect local and regional interests as the Habsburgs had learned. Philip V ultimately treated the Kingdom of Aragon with some respect for his subjects' interests and institutions, more in line with the principle of *aeque principaliter*, or treating various kingdoms as inheritances rather than invoking the right of conquest over them. Despite the necessity of respecting local custom, the preservation of regional differences also created greater difficulties for Bourbon efforts to unify Spain. By maintaining the customary Aragonese civil code, Philip perpetuated a system that reified a legal code that was antithetical to the systematic Castilian law that he hoped to use throughout Spain and the colonies. These tensions reveal the significance of regional differences in understanding eighteenth century Spain and the importance of continuing to investigate the relationships between the peripheral regions in Spain and the central royal government.

III. Jurisdictional disputes within Catalonia

Within the new government created by the *Nueva Planta*, the new officials had to establish a functioning government quickly that would be capable of maintaining royal rule. Officials in each kingdom faced a unique set of challenges based on the progress of the war, which version of the *Nueva Planta* was most recent, and how much adjustment these reforms required of the subjects under their authority. When these officials disagreed about how to implement the *Nueva Planta* they had to appeal to the king for resolution. In these situations, the debate often turned on the nature of the royal will—what exactly did the king want his officials to do and which officials had to change their actions to conform to his will? As with the *censo* and the civil law of Aragon, the king had the final say in the matter but his choice was constrained by the far-reaching consequences of his choice. In the disagreement between the Captain General of Catalonia, who was the most important military official in each kingdom, and the Royal Audiencia of Barcelona, the kingdom's highest court, Philip eventually decided to affirm a practical arrangement that violated the letter of the *Nueva Planta* yet allowed the Captain General to enforce strict military discipline. Phillip consistently opposed any “innovations,” and eventually decided that innovations in the practice of governing should be avoided even if this meant “innovating” in relation to the letter of the law. The final arrangement was much less efficient than the *Nueva Planta*'s model of official action and could delay the registration of royal edicts by months or more even as it improved the Captain General's oversight of the military in Catalonia.

These disputes led to a unique relationship between the Captain General, then the Marqués de Castelrodrigo, and the Audiencia in political matters. The Captain General, as President of the Audiencia, was able to participate in decisions related to the royal orders and decrees of the

various parts of Catalonia. These then would pass through the Royal Acuerdo, or the executive committee for the Principality of Catalonia. This was guaranteed by the royal order (*Real Cedula*) of January 16, 1716 that created the Audiencia of Catalonia.¹²³ According to this law, the Audiencia had to notify the Captain General as to when it would meet and what items would be discussed, but if the Captain General did not come, then they could proceed without him. There were other matters, however, such as the implementation of royal orders pertaining to various local officials in the administrative units (*partidas*) of Catalonia, which the Captain General had always required the Audiencia to send to him for his signature before they were officially registered and promulgated.¹²⁴ This naturally slowed the implementation of these orders and the practice apparently frustrated the subsequent Captain General, the Marqués de Risbourg, who ordered the Regent of the Audiencia to sign “all of the Letters, Orders, and Decrees that are directed to the Corregidores, city councils (*ayuntamientos*), Mayors (*Alcaldes Mayores*), Bayles, Aldermen (*Regidores*), and the rest of the persons of this Principality.”¹²⁵ This order led the Audiencia to begin to act with greater autonomy from the Captain General when he did not show up to meetings of the Real Acuerdo and initiated a three-decade long conflict over the competing jurisdictions of the Captain General and the Audiencia in Catalonia.

The next summer the Audiencia acted without consulting the Captain General concerning the collector of a particular tax (the *rediezmo*) in the town of Monblanch. He had not collected this

¹²³ “Establecimiento y nueva planta de la Real Audiencia de Cataluña,” *Novísima recopilación*, Book V, Title IX, Law I.

¹²⁴ See discussion in the Consulta of the Consejo de Castilla of 19 November 1729 in A.H.N., Consejos, Lib. 1902, 21f-26. There the Council describes an informe of the Audiencia of Barcelona where they explained this system and indicated that it had been in place “since the same day of the formation of the Audiencia.”

¹²⁵ Letter of the Marques de Risbourg to the Real Audiencia of Barcelona, 20 March 1727, in Archivo de la Corona de Aragon (A.C.A.), Real Audiencia, Leg. 173, num. 2.

tax from various people because they claimed ecclesiastical immunity.¹²⁶ When the Captain General learned that the Audiencia had acted on this matter without consulting him, he wrote to the Council of Castile to complain of the Audiencia's "desire to strip his employment of various prerogatives." While Risbourg did "not have decree nor order with which to consolidate the practice of the *consultas*," this practice reflected the "quality of the land, the genius of its citizens, and the constitution of the things inferred from these... circumstances." The government of Catalonia was ruled by an absolute "boss [*un jefe*]," which was important as the Catalans were "accustomed to obey this government better" than the alternative proscribed in the *Nueva Planta*. Risbourg explained that the Audiencia "did not have sufficient force of justice" without the Captain General's involvement for "without this absolute head and the armed soldiers that it contains, the people will be insolent because of their natural aversion to the formalities of the tribunals, and others because of the defunding of the troops." The Marqués de Risbourg thus justified the centralization of political authority in his office by appealing to the way in which his predecessors had exercised its power before him. The centralization of power in the Captain General's hands reflected the need to maintain order and respect for the authority of the Audiencia by increasing its ability to enforce its decrees with military might. Despite the absence of royal authorization for this power grab, the preservation of order in Catalonia required it according to Risbourg.¹²⁷ He also wrote to the Audiencia, complaining that their exclusion of him violated the "accustomed" form for handling these sorts of matters.¹²⁸

¹²⁶ The decision was made in the Consulta of the Real Audiencia of 22 July 1727.

¹²⁷ Letter of the Marques de Risbourg to the Governor of the Council of Castile, 25 October 1727, as described in the Consulta of the Consejo de Castilla of 19 November 1729 in A.H.N., Consejos, Lib. 1902, 21f-26.

The Council of Castile rejected Risbourg's arguments and agreed with the Audiencia. The *Nueva Planta* decrees that created the Audiencia unambiguously supported the Audiencia's position. The reason that the issue had not come up earlier was that the Audiencia did not want to stir up dissension in the government of Catalonia when it was initially created because they believed that such divisions would interfere with establishing a stable government. Now that the Catalan government was firmly established, however, they had chosen to push for stricter enforcement of the king's orders. The Council noted three concerns with the Captain General's usurpation of power.

First, the centralization of power in the Captain General recreated the old office of Viceroy in all but name because the Captain General operated as the *de facto* "head" of the Catalan government. The council noted that the Captain General's usurpation of political authority was "opposed to the actual government of this Principality and to the rest of the kingdoms and provinces of this crown." Philip V had conceded the *Alternos*, the embodiment of his authority in Catalonia, to the Royal Acuerdo, but the Captain General had "now established this same superior direction of the Audiencia" and the government of the Principality. The Council charged Risbourg with "appearing to desire to form an image or resemblance of the ancient viceroy [*lugarteniente*]." This created problems because it reminded the Catalans of their *fueros*, as the Council explained:

This is also seen by those citizens who have suffered the loss of their *fueros* and liberties, so that it seems just not to remind them [of this loss], this being the best way to make amends in this matter and honorable of Your Majesty's consideration, that the motives which encourage moving away from the ancient government are those that the Captain General sets out for the use of the absolute management, ...reviving the ancient memories rather than establishing the new government with the gentleness and rules that enact prudence....

¹²⁸ Letter of the Marques de Risbourg to the Real Audiencia of Barcelona, 2 August 1728, A.C.A., Real Audiencia, Leg. 173, No. 3.

The Council turned the Captain General's argument on its head, suggesting that the Catalans would have less respect for the government because of the centralization of authority in his hands since it would remind them of what they had lost. The problems in Catalonia stemmed from Risbourg's avoidance of the new government. If this government were ever established, the Council believed that it would increase the respect of justice and peace in the land in a way that the continual reliance on the military never could. As most of the King's domain was successfully ruled by tribunals, such as the Audiencia and Real Acuerdo, the Council thought that the unruliness of Catalonia more likely reflected the weakness of the centralized Catalan state than its necessity. Instead of smoothly transitioning to the new government as the king had ordered, the Captain Generals of Catalonia had maintained the old model of concentrated government and encouraged the Catalans' sense of "disunion" from the rest of the Philip's kingdoms. All of this led the Council to suspect the Marqués de Risbourg's fitness for royal office.¹²⁹

Second, the Council believed that the king's rule was weakened by the variation between the Catalan government and those of the rest of the Crown of Aragon. They described the unique Catalan arrangement as "dissonant" with the other kingdoms and criticized the Risbourg for exercising prerogatives over the Audiencia "without jurisdiction, nor independent management," in a way that "was very irregular, and dissonant," to the way it was supposed to function. With only the title of President of the Audiencia, Risbourg exercised "more authority than the Presidents of the Councils, Chancillerías, and Audiencias of the Crown of Aragon." By

¹²⁹ Consulta of the Consejo de Castilla of 19 November 1729, A.H.N., Consejos, Lib. 1902, 21f-26.

unilaterally assuming this undelegated power, the Captain General was compromising the institutions that were the backbone of the new royal government in the Crown of Aragon.¹³⁰

Third and finally, the Council explained that Risbourg's usurpation of power interfered with the efficient administration of justice. The Audiencia's need to consult with the Captain General was prejudicial to those seeking justice, as "the decisions are not made with the brevity that they require" because the Audiencia "spends much time informing and consulting and sending these [reports] to the Captain General." This whole process increased the work of the Audiencia and delayed its decisions to the detriment of everyone as the bottleneck in the resolution of the cases before the Audiencia significantly interfered with its ability to fulfill its function.¹³¹

In light of these three reasons, the Council recommended that the king order the Captain General to observe "the expressed Royal Decree and managing the presidency of the Audiencia in the same form as is done by the rest of the Presidents of the Audiencias of these kingdoms" of the Crown of Aragon.¹³² After some delay, the Philip V followed the Council's advice, sending letters to the Audiencia and the Captain General to this effect on 30 October 1733.¹³³ This never went into effect, however, as the Marqués de Risbourg countermanded the king's order in a letter to the Real Audiencia of Barcelona on 12 November. He explained that he had "the most grave motives for not executing the resolution... which he considered impracticable and very opposed

¹³⁰ Consulta of the Consejo de Castilla of 19 November 1729, A.H.N., Consejos, Lib. 1902, 21f-26.

¹³¹ Consulta of the Consejo de Castilla of 19 November 1729, A.H.N., Consejos, Lib. 1902, 21f-26.

¹³² Consulta of the Consejo de Castilla of 19 November 1729, A.H.N., Consejos, Lib. 1902, 21f-26.

¹³³ Real Provision del Consejo de Castilla of 30 October 1733, A.C.A., Real Audiencia, Leg. 173, No. 9.

to the service of the king and the public good.”¹³⁴ The Audiencia told the Council of Castile about this order on November 20,¹³⁵ and Risbourg wrote to the Council on December 11 to justify his actions. His explanations found a cool reception in the Council of Castile. The Fiscales of the Council considered the Risbourg’s arguments redundant with nothing new to add to his letter of October 25, 1727, which the king had already seen. One of the Fiscales even commented that “it could not be otherwise,” implying that no other possible argument could be made for his indefensible actions. In the end, the Council could find no reason for Risbourg to countermand the king’s order and they encouraged Philip to resolve the matter quickly by reaffirming his desire to follow the *Nueva Planta*. They also suggested that the Marqués de Risbourg had demonstrated repeated insincerity in his letters and that he had repeatedly ignored the king’s orders. They hinted that he was trying to establish himself as an autonomous ruler of Catalonia and encouraged Philip to deal with this problem quickly before it grew out of hand.¹³⁶

While the Philip was deciding the matter, the Risbourg’s order stood and the Audiencia of Barcelona continued to consult the Captain General. This provisional solution was reaffirmed when the Conde de Glimes took over as interim Captain General just prior to Risbourg’s death in 1735. José Patiño affirmed the provisional solution in a letter to the Regent of the Audiencia dated November 23, 1734, which was accompanied by a concurring royal order. Patiño explained that “His Majesty has resolved that for the present you not comply with the expressed provision [of October 30, 1733]... on this point it has appeared convenient to his royal service

¹³⁴ Letter of the Marques de Risbourg to the Real Audiencia of Barcelona, 12 November 1734, A.C.A., Real Audiencia, Registros, Lib. 374, 238f.

¹³⁵ Consulta of the Real Audiencia of Barcelona, 20 November 1733, A.C.A., Registros, Lib 154, 228-228f.

¹³⁶ Consulta of the Council of Castile, 22 January 1734, A.H.N., Consejos, Libro 1903, 79-87f.

that you not innovate the style practiced up to this point for now and in the interim while His Majesty resolves this matter....”¹³⁷ So despite the death of the Marqués de Risbourg, the relationship between the Captain General of Catalonia and the Audiencia of Barcelona remained unchanged as both awaited the king’s decision.

The tensions continued to run high and the Conde de Glimes wrote to the Council of Castile on July 27, 1735 to accuse the Audiencia of not following the royal order of December 3, 1716, which was the sole legal foundation of the Captain General’s claim to authority over the Audiencia. The Audiencia responded to these charges on August 3, 1735, explaining that they had complied with the king’s orders. The issue at hand was Audiencia’s response to a “a letter with orders directed to the Regent” of the Audiencia sent by the Cámara of Castile. The Audiencia had responded without consulting the Captain General. They explained that these kinds of orders had always been handled in this way and that the king’s order of November 23, 1734 requiring them to treat the Conde de Glimes as they had Risbourg. To follow the request of the Conde de Glimes would require innovation, which they had been expressly banned from doing by the king while he deliberated. The Audiencia explained that “the root of these efforts, and consequent damages, believes the Audiencia, is that it has not been clearly established in this Principality what the authorities of the Captain General and of the Audiencia are, so their actions “suffer from such confusion.” These encouraged the king to resolve the issue once and for all, promising that “the Audiencia has no other pretensions nor other determination than to know the sovereign will so that it can gladly consecrate itself to obey it in everything.”¹³⁸ After a rapid

¹³⁷ Royal Order, sent by José Patiño to the Conde de Glimes, Regente of the Audiencia of Barcelona, 23 November 1734, A.C.A., Real Audiencia, Leg. 173, No. 12.

¹³⁸ Consulta of the Audiencia of Barcelona, 3 August 1735, A.C.A., Real Audiencia, Registros, Lib 156, 221f-227f.

exchange of letters between the Conde de Glimes and Bernardo Santos (then the Regent of the Audiencia), the Abad de Vivanco (Secretary of the Cámara of Castile), sent the king's resolution, which directed the Audiencia to send all orders and reports (*informes*) that they received to the Conde de Glimes, "as you did with the Marqués de Risbourg."¹³⁹ To make sure that they understood the order, the Conde de Glimes wrote the Audiencia the next month to emphasize that it should practice its "inviolable observation" to share everything with him. He did this to make sure that the Audiencia understood that "it is not my intention (*animo*) to consent to the least novelty and if [there is one, I will] give account of it to the king."¹⁴⁰ The king's resolution was definitive and supported the practical benefits of consolidating regional authority in the hands of the Captain General even though this directly contradicted the letter of the *Nueva Planta* and ignored the established practice of the corresponding officials in Aragon and Valencia. Apparently Philip was persuaded by Risbourg and Glimes' insistence that ruling Catalonia required the union of military authority with that of registering royal edicts so that no one would mistake the force backing his decrees.

The king's decision did not end the struggle between the Captain General and the Audiencia, however. The Captain General ordered the Regent of the Audiencia, Bernardo Santos, to stop signing his name with "Señor," or Lord, when writing to him, as the Conde was the head of the Audiencia and therefore the Lord of all of the Audiencia's members.¹⁴¹ The Audiencia responded that while the Regent did not sign his name "Lord Regent [*señor regente*]" under the first

¹³⁹ Letter from the Señor Abad de Vivanco to the Regent of the Audiencia of Barcelona, Bernardo Santos, 20 August 1735, A.C.A., Real Audiencia, Leg. 173, No. 18.

¹⁴⁰ Letter of the Conde de Glimes to the Real Audiencia, 15 September 1735, A.C.A., Real Audiencia, Leg. 173, No. 22.

¹⁴¹ Letter from the Conde de Glimes to the Real Audiencia, 6 October 1735, A.C.A., Real Audiencia, Leg. 173, No. 24.

Captain General of Catalonia, the Marqués de Castelrodrigo, this form had been in use for many years, including the years that the Marqués de Risbourg was Captain General. Again the Audiencia deployed the order to follow the practices employed under Risbourg to challenge Glimes, explaining that “it appears that you will need to present this doubt to His Majesty, whose sovereignty alone” could change the customary salutation through a formal declaration.¹⁴² This exchange demonstrates that the Audiencia had not capitulated to the Captain General’s authority and that it would continue to assert its own prestige whenever and wherever it could.

These tensions broke out again in the 1740s during the Conde de Glimes’ second period as Captain General of Catalonia. On May 30, 1741, the king made a number of orders related to the government of the Catalonia, two of which touched on the relationship between the Audiencia of Barcelona and the Captain General. Article 35 stated that “the Capitan General along with the Acuerdo, has a vote in the things of the government” and Article 155 added that the Regent of the Audiencia had to notify the Captain General of the royal decrees that were sent to the Acuerdo. If the Captain General did not ask about them, however, then the Audiencia did not need to consult with him prior to registering the royal decrees. These articles reestablished the relationship between the Captain General and the Audiencia that the *Nueva Planta* had originally outlined. The Audiencia believed that this authorized them register edicts without the Captain General if he did not attend the scheduled meetings of the Real Acuerdo. This upset Glimes, however, and he apparently petitioned the king to reconsider this novelty, which led to a new royal order on February 3, 1742, that was sent to the Conde de Glimes. Glimes sent a copy of the

¹⁴² Consulta of the Audiencia of Barcelona to his Excellency the Conde de Glimes, 11 November 1735, A.C.A., Real Audiencia, Leg. 173, No. 25. It includes a note on a loose piece of paper labelled “Notas de las Consultas en los quales se da tratamiento de Señor al Señor Regente,” which lists five examples from 1735 with it, and one where it was not used. Apparently someone looked into the history of this practice under the Conde de Glimes, but surprisingly no *consulta* is listed in either column from the Marques de Risbourg’s time in office.

letter to the Audiencia of Barcelona on February 12, 1742. The new order commanded the Audiencia to observe the same practices as you did with the Marqués de Risbourg, telling [the Captain General] about them in the same way, so that the Audiencia does not send reports [*representaciones*]... without the signature of the Captain General: This is the order of His Majesty that for now the Audiencia make no innovation... in spite of the cited Articles 35 and 155.” The Glimes was satisfied with this reversal of the royal position and told the Audiencia that it “must consult with me, as you have until the publication of the orders and that you practice as always, preventing the Audiencia from abstaining from executing [this order] for the period, and improper style, that without foundation has been invented in the last six *consultas*.” The Conde de Glimes further insisted that the Audiencia send everything it received from the Court to him “following the form and practice that it had previously followed.”¹⁴³

The Audiencia found the king’s sudden reversal suspicious, however, especially as the decree was not sent the order directly to them. In the Audiencia’s reponse to Glimes’ letter, its members expressed their skepticism in describing this “representation” that “*pretends* that His Majesty revoked the Articles 35 and 155 of his new orders; and second *seems* that the king has ordered that for now the Audiencia is to act without innovation in spite of the cited Articles....”¹⁴⁴ They explained that they were wholly motivated by their desire to obey the king, so they would not obey the most recent order until they received confirmation that it really was the king’s will. The Audiencia clearly indicated their unwillingness to obey an order that would require them to “innovate [*hará novedad*]” by acting contrary to the most recent order that they had received

¹⁴³ Letter of the Conde de Glimes to the Real Audiencia of Barcelona, 12 February 1742, A.C.A., Real Audiencia, Registros Lib. 20, 135f-136.

¹⁴⁴ Consulta of the Audiencia of Barcelona, 20 February 1742, A.C.A., Real Audiencia, Registros, Lib 165, 19-20f. Emphasis added.

from the king on the matter. Among the causes of their suspicion was that this new order had not been sent by the king nor had the original been shown to them. The Audiencia elaborated on this point, explaining to the Conde de Glimes that he “could not complain” as they were only being prudent. The Audiencia insisted that it was following the most-recent declaration of the king’s will and avoiding innovation in their practice.

The Conde de Glimes’ response was indignant, explaining that he had not invented the king’s order and that the Audiencia was willfully violating the king’s will. He expressed awe at their willingness to ignore the law and insisted that the Audiencia refused to do their duty by following the king’s decree. Glimes complained of “the lamentable state” of the Audiencia, which was “notoriously prejudicial to the public cause.”¹⁴⁵ The impasse was finally resolved a few months later when the Audience received assurances that Glimes really had received an order from the king reversing Articles 35 and 155. On May 25, 1742, the Audiencia finally registered the king’s decree from February without any mention of the controversy that had preceded its acceptance.¹⁴⁶ While the Audiencia’s renewed bid for greater independence from the Captain General had failed, their denial of the legitimacy of the royal order had bought them three months to operate without consulting the Captain General on every issue.

Remarkably, the same issue arose once again following the ascension of Philip V’s successor and son, Ferdinand VI. What is striking about all of this is the significant confusion concerning the king’s will concerning the basic roles of the most prominent royal institutions in Catalonia. When disagreements came up, the king’s answer consistently appealed to the established practice

¹⁴⁵ Carta del Conde de Glimes to the Real Audiencia of Barcelona, 21 February 1742, A.C.A., Real Audiencia, Registros, Lib 377, 54-55f.

¹⁴⁶ Consulta to the Conde de Glimes of the Real Audiencia of Barcelona, 25 May 1742, A.C.A., Real Audiencia, Legajo 173, No. 31.

and opposed “innovation,” but questions continued because of uncertainty regarding which tradition mattered: the royal decrees, especially those of the *Nueva Planta* creating the new Catalan government, or the precedent established by the Audiencia and Captain Generals that had always been at variance with the written law. For brief periods in 1727 and 1742, the Audiencia followed the royal decrees but these were both quickly shut down by the aggressive action of the Captain Generals. The king repeatedly struggled to communicate his will in these matters, first delaying his decision for years before eventually affirming the precedent of the Audiencia and Captain General’s practice with an insistence on “not making any innovation” in 1735. Despite this, he apparently forgot his decision when he issued royal orders in 1741 affirming the Audiencia’s authority to act in some cases without consulting the Captain General, but once he learned of the contradiction he reverted to his position of opposing “innovation” in practice rather than insisting that practice follow his official decrees.

Philip’s handling of these matters suggests two things about his government in Catalonia. First, the difficulty communicating his will seems to have grown out of his apparent ignorance of how the Captain General and the Audiencia worked together to administer the royal government of Catalonia. His consistent return to what had worked in the past by opposing all “innovations” (which were always the result of his own royal orders) suggests that Philip was primarily concerned with maintaining a functional government. By the time that these questions first arose, the new government had been in place for eleven years and its continued operation during the years of the king’s indecision confirmed that the centralization of authority in the Captain General was up to the task of governing, despite whatever delays and inconveniences it created.

Second, it suggests that institutional practice and precedent continued to have considerable legal weight in Bourbon Spain despite the major changes imposed by the *Nueva Planta* early in

Philip's reign. This is not to say that a practice's age was the only thing that mattered, for this certainly was not the case. Instead, Philip acted as if established practice was more important than his own orders to his ministers. While Philip was clearly not afraid of reforming institutions, it would be a mistake to claim that he was only interested in the authority of his own words and the rational consistency of his bureaucratic institutions. At least in this case, he was willing to leave in place a system that worked *despite* the fact that it was operating in clear violation of the orders he had made when he created it. Yet he also insisted that it was his decision that established the proper operating procedure for these officials even as he consistently demonstrated gross ignorance about how they performed their duties. This did not matter, however, because both the Captain General and Audiencia always claimed to be following the king's will, which was the only possible authority that could define the duties of royal officials.

IV. Conclusions

In each of these instances, Philip V demonstrated a pragmatic flexibility in the implementation of the *Nueva Planta* that led him to oppose homogenizing reforms and other "innovations" and instead to embrace particularism. In regard to the *censo*, he decided that the *Nueva Planta* had not extended the reduction in its rate to the Crown of Aragon and ultimately opposed his ministers' articulate defense of the reduction. Through the preservation of Aragonese and Catalan civil law, Philip maintained a customary legal system that, by its very existence, practically and theoretically undercut the goal of legal uniformity throughout the kingdoms of Spain. Additionally, it structured social life in these kingdoms on a much more intimate level than criminal law did, suggesting that the practical consequences of its existence also undercut any effort to create a unified "Spain." Finally, Philip's support of the Catalan

Captain General's usurpation of the Audiencia of Barcelona's constitutional role again suggests that he was more interested in having a functional government than a centralized and uniform bureaucracy. Each of these case studies reveals a different way in which the old structure of the Habsburg composite monarchy survived the reforms of the early years of Philip's reign.

Chapter Five: The Myth of Bourbon Absolutism

When Philip V repealed the *fueros* and privileges of Aragon and Valencia on June 29, 1707, he claimed the authority to do so both as a just conqueror and as one of the powers that he held as king: “one of the principal attributes of sovereignty is the imposition and repeal of laws, those that with the variation of the times and mutation of customs I can alter, even without the serious and well-founded motives and circumstances” that led him to act in Aragon and Valencia. Philip went further, insisting that he acted because “I have judged it convenient (this because it is my desire...)” to create a uniform legal system, emphasizing his power to act as he willed and whenever he deemed it convenient.¹ Philip’s insistence on his complete authority over the laws of his subjects at all times and in all circumstances reflects some contemporary views of the authority of rulers, such as those of French Bishop and political theorist, Jacques-Bénigne Bossuet.² This view has been anachronistically identified as one of the central concepts of absolutism, a term that was only coined in the aftermath of the French Revolution, first appearing in Châteaubriand’s *Essay on Revolutions* in 1797.³ Without falling into the trap of ahistorical categories, how should one interpret Philip V’s understanding of royal authority over the law, especially in light of his political actions?

The appearance of the term “absolutism” in the midst of the first French Republic accurately suggests that it is a category that is deeply shaped by the French Revolution. From the vantage of the present, it was clearly a system doomed to failure. The central role of the French monarchy

¹ *Novísima recopilación de los Leyes de España* (Madrid: 1805), Book III, Title III, Law I.

² J. H. Burns, “The Idea of Absolutism,” in *Absolutism in Seventeenth Century Europe*, ed. John Miller (New York: St. Martin’s Press, 1990), 21-22.

³ James Collins, *The State in Early Modern France*, 2nd (New York: Cambridge University Press, 2009), xv.

as the exemplar of absolutism has perpetuated these teleological assumptions, which have bled into the mainstream theories of state development that usually compare and contrast French centralization and absolutism with the (more) representative parliamentary monarchy of Great Britain. In broad brushstrokes, absolutism is usually characterized with a focus on the increasing centralization of the state and uniformity with which it related to its subjects. Philip V's declaration in the *Nueva Planta* appears to affirm this understanding of absolutism as he emphasized his authority to legislate independently that he is exercising to "because of my desire to reduce all of my kingdoms of Spain to the uniformity of the same laws, uses, customs, and tribunals, governing all of them equally by the laws of Castile, which are praiseworthy and reasonable in all of the universe."⁴ The first Bourbon king of Spain apparently brought the French form of absolutism across the Pyrenees.

This mythic interpretation of absolutism must be squared with Philip's actions, however, and these frequently undercut uniformity and demonstrate remarkable responsiveness to practical considerations that often led him to abandon the "absolutist" aspirations described in the initial decree of the *Nueva Planta*. While all of the *Nueva Planta* reforms together did increase the centralization of royal authority in the Crown of Aragon, decades of practical decisions following their implementation resulted in patch-work administration and legal framework. Even more shocking is the apparent success of this "poor" example of absolutism, for the Spanish Bourbons appear to have been at no risk of a revolution like that of 1789, and while the Spanish government has gone through many changes and been without a monarch at several points, a Bourbon sits on the throne of Spain today.

⁴ *Novísima recopilación de las Leyes de España* (Madrid: 1805), Book III, Title III, Law I.

The surprising resilience of the Spanish monarchy in the eighteenth century challenges most interpretations of absolutism as it indicates that it was in some relevant ways more secure than that of France. What was the source of this strength? Philip V's many reforms secured the Spanish monarchy by rearranging the institutions of Spain sufficiently that the king did not need to fight against old institutional barriers, but instead could do things like tax his subjects in the Crown of Aragon without their permission and use those funds in other parts of his vast domain. The institutions and laws of the Habsburg composite monarchy had prohibited this kind of action, but Philip's decisive reforms removed these limitations on royal action. The strength of Philip's rule following these reforms grew out of his freedom to respond to the situations that they encountered. Contrary to the traditional myth of Bourbon absolutism, this did not lead to a monarchy that ignored the desires of its subjects, but instead permitted the kings of Spain to respond to their subjects and make concessions. Without the institutional impediments to royal rule that Olivares, among others, had failed to remove in the seventeenth century, the Bourbons were able to act in a pragmatic way to address the specific needs and concerns of their subjects without seeking a universal solution negotiated corporately through the cortes. Instead, the king's centralized authority enabled him to act in a particularist way that created a less uniform, but more stable, realm.

As this chapter will demonstrate, Philip V acted in accord with Machiavelli's advice in *The Prince* to implement his reforms swiftly and all at once, changing everything that one must at the beginning of one's rule. While disorienting, the swiftness of the changes and violence mean that they come quickly to an end, which allows everyone to begin to adjust to the new norm. By avoiding controversial reforms over the long-haul, this ultimately results in greater stability. The French Bourbons from Louis XIV to Louis XVI did not have an opportunity to reform the

entire system of government in France and had to continually reform their governing system throughout the eighteenth century. These reforms increased tensions between the monarchs and their subjects, a consequence that Machiavelli predicted and warned could lead to the downfall of unwise rulers.⁵

To demonstrate the differences in the governing practices of eighteenth-century Bourbon Spain and France, this chapter will compare royal action in three different areas: the collection of taxes, the sale of offices, and the decline of representative assemblies. Royal policy in all three areas reveals the importance of privilege in both monarchies. It also demonstrates that the transformation of the relationship between king and privileged elite in Spain under Philip V freed him and his successors to protect privilege more effectively than their French analogues throughout most of the eighteenth century. The choices made by the monarchs in these three areas suggest that while the French monarchy found it necessary to challenge the privileges of the nobility and of venal office holders, the Spanish monarchy made fewer adjustments to both systems following the end of the War of Succession and the implementation of the *Nueva Planta*. The latter also negated the need for corporate negotiation in Spain, while in France the monarchs had to continue to circumvent the institutions that facilitated the corporate negotiation of subjects with their monarch as the regional estates continued to exist, even if they played a marginal role in the political life of the kingdom.

While acknowledging these differences, one should not assume that they guaranteed the revolution in France and averted a parallel revolt in Spain. Both the Spanish and French monarchies increased centralization while respecting certain types of privilege to form a social

⁵ Niccolò Machiavelli, *The Prince*, chapter eight. J. H. Elliott uses Machiavelli similarly in his discussion of early modern composite monarchies in “A Europe of Composite Monarchies,” in *Spain, Europe, and the Wider World, 1500-1800* (New York: Cambridge University Press, 2009), *passim*.

alliance in support of the monarchy.⁶ The asymmetry in these alliances and more aggressive efforts by the French bureaucracy to develop a direct system of taxation, while remaining dependent on the low interest rate that the privileged *corps* provided for them, reveals the variety of options open to early modern monarchs as they worked to increase their wealth, power, and prestige, while simultaneously seeking the support of the privileged elite within their realm.⁷ Comparing the two monarchies also highlights the enduring Castilian and Aragonese influence on the structures and practices of Bourbon rule in Spain and cautions against the reading of Philip V's rule that emphasizes the influence of Louis XIV to the exclusion of more Iberian models of royal rule.⁸ French influence ran deep in the court during the early years of Philip's rule, but the governing practices employed south of the Pyrenees conformed to local traditions and expectations that generated a hybrid system unique to Iberia.

I. Taxation and privilege

In both France and Spain, the monarchies had to find ways to increase royal revenue while preserving the social alliance that linked the interests of the privileged elite with those of the

⁶ On Spain, see Regina Grafe, *Distant Tyranny: Markets, Power, and Backwardness in Spain, 1650-1800* (Princeton: Princeton University Press, 2012), *passim.*, and on France, see Mark Potter, *Corps and Clienteles: Public Finance and Political Change in France, 1688-1715* (Burlington, Vt.: Ashgate, 2004), 16-25.

⁷ See Potter, *passim*, but especially 21.

⁸ José Manuel de Bernardo Ares is the most prominent historian emphasizing the French influence on the court of Philip V. For some recent examples of this line of investigation, see Bernardo Ares and Elena Echevarría Pereda, *Las cortes de Madrid y Versalles en el año 1707: estudios traductológico e histórico de las correspondencias real y diplomática* (Madrid: Sílex, 2011), Bernardo Ares, Elena Echevarría, and Emilio Ortega Arjonilla, *De madrid a versalles: la correspondencia bilingüe entre el rey sol y Felipe V durante la guerra de sucesión* (Barcelona: Ariel, 2011), and Bernardo Ares, *Luis XIV rey de España: de los imperios plurinacionales a los estados unitarios, 1665-1714* (Madrid: Iustel, 2008).

king.⁹ To satisfy the need for more funds, monarchs and reforms sought ways to tap the significant wealth that remained largely untaxed by traditional means. Reforms in Spain and France successfully increased royal revenue, and in both cases privilege remained central in defining the relationship between monarch and subject as neither the French nor the Spanish Bourbons sought the abolition of privilege. Instead, both had to renegotiate the relationship between privilege and taxation. In Spain this occurred quickly through the *Nueva Planta* reforms and focused on reducing the geographic privileges that limited the collection and use of tax revenue, while in France both geographic distinctions and the broad social exemptions from traditional forms of direct taxation, such as the *taille*, were gradually eroded to meet the demands of the royal treasury.

The myth behind the tri-partite division of medieval French society explained the origin of the three estates based upon their contribution to society: the clergy ministered to the spiritual needs of the kingdom, the nobility fought on its behalf and upheld justice, and the third estate produced the material goods that satisfied the needs of daily life. The early modern monarchy ultimately took over the responsibilities of the nobility, adding a new essential task that was a prerequisite for the administration of justice and operation of the military—the collection of taxes. Exemptions to paying taxes, especially the *taille*, were increasingly granted to those who served the body politic in civil service based on the traditional divisions within French society. As the Parlement of Paris explained to Louis XVI in 1776:

...every man in the kingdom is your subject, all are obliged to contribute to the needs of the State. But in this contribution one always finds order and harmony. The personal service of the clergy is to fulfill all the functions regarding instruction and religious

⁹ William Beik has contributed significantly to this discussion, especially in *Absolutism and Society in Seventeenth-Century France*, (New York: Cambridge University Press, 1985) and more recently in “Review Article: The Absolutism of Louis XIV as Social Collaboration.” *Past & Present* 188 (2005): 195-224.

worship, and to contribute to the relief of the unfortunate by means of its alms. The noble devotes his blood for the defense of the State and assists the sovereign with its council. The last class of the nation, which is not able to render such distinguished services to the State, discharges its duty to it through tributes, industry, and physical work.¹⁰

This division of services provided a justification for the division of French society into three orders and explained why the nobility and clergy were exempt from the primary direct tax in the seventeenth century, the *taille*. In fact, exemption from the *taille* came to be a socially significant demonstration that one was privileged, even for members of the Third Estate. Although it continued to be evoked, the myth of a tripartite society had less and less bearing on the actual composition of French society throughout the seventeenth and eighteenth centuries.¹¹

The longevity of this myth reflects its usefulness in justifying privilege as a marker of legitimate differences between the members of society. This feudal heritage explained why the king protected the privileges of his subjects and why certain subjects deserved special treatment. The word privilege comes from the Latin for “private laws,” or a law that applies to one group or individual and not to the public at large.¹² By the eighteenth century, the use of privilege had shifted away from anything resembling the ideal medieval society, but its feudal language continued to serve the king, who employed it to justify the privileges he bestowed on officials throughout the regions and municipalities of France.¹³ Louis XIV was particularly adept at using his own prestige to enhance the prestige of those connected to him as officials in his administration.¹⁴ This system collapsed the distinctions between the political and the social

¹⁰ As quoted in Michael Kwass, *Privilege and the Politics of Taxation in Eighteenth-Century France: Liberté, Égalité, Fiscalité* (New York: Cambridge University Press, 2000), 25.

¹¹ Kwass, 25-29.

¹² Bossenga, 5.

¹³ Beik, *Absolutism and Society*, 304.

through an emphasis on differences and privilege defined by service to the king. Exemption from the *taille* became an incredibly important mark of one's status within this society of privilege, and therefore a powerful coin with which the king could attempt to purchase loyalty and support. Those who enjoyed privilege had an interest in protecting it, which required supporting the monarch who dispensed privileges and legitimized those who received them. In this way, the medieval myth became instrumental to the transformation of French society that took place in the early modern period.

The eighteenth century was a period of significant innovation in this arrangement as the monarchy created new direct forms of taxation that threatened the exemption from the *taille*. The most important of these innovations were the *capitation* created to finance the War of the League of Augsburg (1688-1697), and the *dixième*, which financed the War of Spanish Succession (1701-1714). These new taxes were assessed on many of those who were exempt from the *taille*, including the nobility. Even those who remained exempt, such as the clergy, felt pressure to increase their voluntary donations to the royal finances with threats of becoming liable to the new taxes.¹⁵

Questions concerning the implementation of the *capitation* and the *dixième* have long been an important field of historical research. This has become particularly true under the current “revisionist” interpretation of Bourbon France. Betty Behrens first raised the question of how taxation functioned within the *ancien régime* in 1963 when she asked, “Who did in fact escape

¹⁴ Beik, *Absolutism and Society*, especially 316-323, 333-339. In fact, Louis XIV's skill in using patronage to make nobles seek his support rather than viewing him as a competitor that they might surpass is central to Nobert Elias's interpretation of Louis' rule in *The Court Society*, tr. by Edmund Jephcott (New York: Pantheon Books, 1983).

¹⁵ Kwass, 108-113.

paying taxes? [And] in what ways and for what reasons did they manage to do so?"¹⁶ Her analysis, although limited by the scanty material available to her, demonstrated that at least some nobles paid direct taxes, such as the *capitation* and the *dixième* despite their exemption from the *taille*. Contrary to the then common tendency, especially among those interpreting the French Revolution as the result of marxist class warfare, to claim that the unprivileged were oppressed by the taxes that the privileged, including the nobility, avoided. Behrens convincingly argued that the nobles united with the Third Estate to resist the increased taxation, for both privileged and unprivileged who were heavily taxed.¹⁷ While her detractors, most notably Gerald Cavanaugh, noted that she had not proven that the nobility actually paid their taxes, subsequent studies have borne out her argument.¹⁸

The work of Michael Kwass in particular has demonstrated that the French nobility did in fact pay taxes in the eighteenth century. For example, in the *pays d'élection* of Caen, the nobility paid the majority of the taxes assessed on them, effectively paying about 1.5 percent of their income in the direct tax of the *capitation*.¹⁹ Similarly, the *dixième*, which was created a few years after the *capitation*, laid a much heavier tax burden on all French subjects. It remained a larger tax throughout the eighteenth century despite theoretically being halved in 1749 when it was renamed the *vingtième*. The actual amount assessed did not drop with the new name, and since

¹⁶ Betty Behrens, "Nobles, Privileges, and Taxes in France at the End of the Ancien Régime," *Economic History Review* 2nd ser. 15 (April 1963): 453.

¹⁷ *Ibid.*, 473. She even suggests that they may have been the most heavily taxed of the European nobility, 471.

¹⁸ See Gerald Cavanaugh, "Nobles, Privileges and Taxes in France: A Revision Reviewed," *French Historical Studies* (Fall 1974): 681-692. William Doyle discussed this debate in *Origins of the French Revolution*, 3rd (New York: Oxford University Press, 1999), 15, as has Michael Kwass, 63-64.

¹⁹ See Kwass, 74-77.

the *vingtième* was doubled and tripled for much of the late-eighteenth century, the official rate was 11 or 16 percent, respectively. The *dixième* and the *vingtième* were collected with even greater efficiency than the *capitation*—in Caen, nearly all of the taxes assessed on the nobility were collected. While it is difficult to ascertain how much of their income nobles were paying in taxes, Kwass estimates that the actual rates that French nobles paid to the *vingtième* varied between 4.9-10.4 percent.²⁰ It is worth noting that the unprivileged continued to pay even higher tax rates and that these taxes applied to privileged subjects, including the nobility, who now made considerable contributions to the crown's finances. Those without the privilege of exemption from the *taille* continued to pay the highest tax rates, and yet the new taxes presented a significant challenge to the traditional link between privilege and exemption from direct taxation. These taxes also ignored the distinctions between the *pays d'états*, which officially made "free gifts" to the monarchy each year in lieu of taxes, and the *pays d'élections*, which did not have this privilege.²¹ The *capitation*, *dixième*, and *vingtième* levied taxes that applied uniformly across France for the first time and ignored the social and geographic boundaries that had traditionally organized and enshrined privilege in France.

Probably because of their universal application, these new taxes were very effective at raising royal revenue. Contemporaries even attributed the Bourbon success in the War of Spanish Succession to the successful introduction of the *dixième*.²² Historians of France have emphasized

²⁰ The actual rate depended on whether the *vingtième* was doubled or tripled in addition to the accuracy of the assessed income. As Necker implemented improved assessment methods in 1777, the official rates of taxation were probably close to the actual rate paid by those whose property had been reassessed according to the new guidelines. See Kwass, 84-95.

²¹ For a discussion of the different ways that the crown implemented the new form of direct taxation in the *pays d'états* and the *pays d'élections*, see Kwass, 95-103.

²² Kwass, 35-36.

the long-term consequences of the new direct taxation, as it strained the French monarchy's alliance with the privileged elite. These taxes antagonized the privileged classes that had come to look to the king as the source of their privilege in the preceding generation. Kwass has suggested that this could be one of the reasons that the nobility and clergy were supportive of the early French Revolution. If he is right, then the taxes that appear on one level as an indication of the tremendous power of the French monarchs eventually came to undercut royal power by antagonizing the privileged classes that the king had encouraged with his earlier particularistic policies.²³ While Kwass and others make a compelling case, historians should avoid attributing the French Revolution to every policy of the French monarchy during the eighteenth century. While these taxes strained the relationship between the monarchy and the privileged elite that it depended upon, royal privileges and offices continued to be sought by those hoping to join this elite. The privileged only took "revolutionary" action when the monarchy became incapable of dispensing (or protecting) either because of its complete financial collapse.²⁴ So while tax policy shaped and conditioned the alliance between the privileged and the monarchy in ways that mattered for the revolution, these changes were not an attempt to abolish privilege but rather a shift in the way that privilege defined how individuals contribute to the monarchy.

There are many points of contact between the development of taxation in Bourbon France and Bourbon Spain, yet they diverge in two important respects. First of all, the Bourbons in Spain avoided any form of direct taxation that applied to the privileged elite. New revenue was raised primarily through increasing the taxation on the Crown of Aragon, which had traditionally paid much less to the royal treasury than the Crown of Castile. Second, the administration of

²³ Kwass, 311-323.

²⁴ See William Doyle, *Origins of the French Revolution*, 3rd ed. (New York: Oxford University Press, 1999).

taxation within Bourbon Spain depended upon municipal officials more than in France. While the new royal officials, such as the *intendente*, had important roles in managing the finances of the regions, they were dependent on municipal officials to provide them with information and to collect revenue.²⁵ This dependence on local officials reinforced the importance of pursuing a policy of particularism so that these officials were supportive of the monarch. Thus, while the *Nueva Planta* significantly changed the role of regional privileges in shaping taxation, it did not lead to an attack on privilege *qua* privilege, as the monarchy continued to depend upon a social alliance binding the privileged civil elite to the crown.

The goal of financial reform was to distribute the burden of paying for the war and other expenses of state more evenly across the kingdoms of Spain, addressing the fiscal “imbalance” between the Crowns of Castile and Aragon identified by the Count-Duke Olivares and various *arbitristas* throughout the seventeenth century.²⁶ Even more problematic than limitations in the monarchy’s ability to tax the Crown of Aragon was the requirement that money raised in it had to be spent there, and could not be put into the general treasury. With the *Nueva Planta*, these privileges no longer existed and tax reform could focus on reducing the consequences of privilege based on geography rather than individual or corporate status. While differences in the

²⁵ See A. Matilla Tascón, *La única contribución y el catastro de la ensenada* (Madrid: 1947), 29-41.

²⁶ See J. H. Elliott, *The Count-Duke of Olivares: The Statesman in an Age of Decline* (New Haven: Yale University Press, 1986), 193; Virginia León Sanz, “La llegada de los Borbones al trono” in *Historia de España Siglo XVIII: La España de los Borbones*, Ricardo García Cárcel, ed. (Madrid: Cátedra, 2002), 95; Vicente Placio Atard, “Prólogo: La Monarquía Reformadora” in *La época de los primeros borbones: la nueva monarquía y su posición en Europa (1700-1759)*, José María Jover Zamora, ed. 2nd (Madrid: Espasa-Calpe, 1987), xxix; James Amelang, *Honored Citizens of Barcelona: Patrician Culture and Class Relations, 1490-1714* (Princeton: Princeton University Press, 1986), 19-20; Luis Corteguera, *For the Common Good: Popular Politics in Barcelona, 1580-1640* (Ithaca: Columbia University Press, 2002), 16-17; and Kamen, *War*, 391.

relationship between the monarch and his various kingdoms persisted, as the following discussion makes clear, Bourbon tax policy worked to raise revenue from the kingdoms of the Crown of Aragon. The *Nueva Planta* reforms removed the traditional privileges and institutions which had prevented the imposition of new taxes in these kingdoms, and royal officials immediately began working to increase tax revenue to finance the war. While these efforts demonstrated the new relationship between the king and these kingdoms, they also reveal the continued process of particularist negotiation as those paying the taxes acted to adjust royal policy. With the initial *Nueva Planta* decree of June 1707, however, these institutional limits on reform were removed and the door was opened to new forms of taxation in the eastern kingdoms of Spain.

Philip V first took a step toward centralizing the administration of his finances throughout his kingdoms by creating the new office of the intendente. Philip V's first French minister, Jean Orry, initially proposed creating the office of intendente following the model of the Castilian corregidores in 1703, but nothing came of these suggestions. The idea was revived in 1711 by the Duke of Bergeyck, who created the first intendentes in Spain following a French, rather than a Castilian, model. Initially they were deployed throughout Castile and the Crown of Aragon, but the Castilian intendentes only duplicated pre-existing channels of administration and were soon dismissed. Their role in the eastern kingdoms remained important during the war, however, because of the need to provision the troops stationed there and to oversee the collection of taxes.²⁷ In Catalonia, the intendente absorbed the functions of the *Tribunal de Comptes* and the

²⁷ Henry Kamen, "El Establecimiento de los intendentes en la administración española" in *Hispania: Revista Española de Historia* 24 (1964): 369-373.

administration of the Real Hacienda that first assumed fiscal control over the kingdoms of the Crown of Aragon with the abolition of their *fueros*.²⁸

In 1718 the role of the intendentes was revised under the auspices of Philip's first minister, Cardinal Alberoni, and they were reestablished in Castile, although the office was once again abolished in provinces without troops in 1721.²⁹ Nevertheless, they remained in the Crown of Aragon without interruption through their final integration into the Bourbon administrative system in 1749 under Ferdinand VI.³⁰ The duties of the intendentes were defined by Don José Patiño, who divided their responsibilities into four categories: finance, maintaining good order [*policía*], justice, and war. Their primary duty, however, was to oversee the troops and their financial provision. They also assumed the authority and duties of the Castilian corregidor, which mainly involved fiscal administration.³¹ Although the intendentes are often characterized as military officials, they primarily provided for the financial needs of the army, while the Captain Generals oversaw military operations. As contemporary French observers noted, even this more limited role was more than any one person could fulfill. The Council of Castile indicated similar concerns and forced the reduction of the office of the intendente to a purely

²⁸ Placio Atard, xx-xxi.

²⁹ Kamen, "Intendentes," 376-377.

³⁰ Cánovas Sánchez, 16.

³¹ Kamen, "Intendentes," 371-376. Patiño's instructions were published as *Ordenanza de 4 de Julio de 1718 para el establecimiento y instrucción de Intendentes de Provincias y Ejércitos* (Madrid: 1720).

financial office in 1721.³² During these frequent changes and reversals of policy, the intendentes remained the most important financial officials in the kingdoms of Aragon.³³

These new intendentes served the royal government by implementing various tax reforms in the kingdoms of the Crown of Aragon. Unconstrained by the Cortes, the Bourbon monarchy could finally address the long-standing uneven tax burden of the Iberian kingdoms. To begin this process, Philip V reassigned the Secretary of the Council of Castile, Melchor de Macanaz, and sent him to Valencia in 1707 to report on the state of taxation in Valencia and suggest ways to improve it. Macanaz's success in this effort led to his assignment to Aragon in a similar capacity in 1711. These positions gave Macanaz tremendous influence at a crucial moment in the creation of the new financial system in the Crown of Aragon.³⁴ Macanaz advocated the introduction of some of the most important and effective taxes from Castile. Taxes in Castile were not actually systematic, but instead a complex collection of taxes developed over centuries of negotiation between the monarch and the cities of Castile. The most important taxes, accounting for more than ninety-percent of royal revenue, were divided into three categories: the "*rentas provinciales*," the "*rentas estancadas*," and the "*aduanas*." The category of *rentas provinciales* included fifteen major taxes that were subdivided into forty-six distinct categories of taxation. The *alcabala* was the most important of these taxes, which was ostensibly a ten-percent tax on all commercial activity. In the seventeenth century, the Cortes of Castile added a four-percent

³² Kamen, *War*, 376-380.

³³ Cánovas Sánchez, 16, 52, and Leon Sáenz, 95, 98. It is perhaps important to note that this distinguished the Crown of Aragon from the Crown of Castile.

³⁴ Discussed in Chapter Two, as well as in Kamen, 310-311, 322-323, 343; John Lynch, *Bourbon Spain, 1700-1808* (Oxford: Basil Blackwell, 1989), 61, 63. Macanaz's report was also published in "Informe dado al rey sobre el gobierno antiguo de Aragon, Valencia y Cataluña; el que se habia puesto de que se las sujetó con las aras y lo que convendria remediar," in Joaquín Maldonado Macanaz, *Regalías de los señores Reyes de Aragón* (Madrid: 1879), 2-23.

tax, called the *cientos*, to the *alcabala*, bringing the total tax rate on commercial activity to fourteen percent. The *rentas provinciales* also included the *millones*, a grant of several thousand ducats originally for the second Spanish armada sent to conquer England under Philip II that had subsequently become a regular tax. There were many other old feudal taxes included among the *rentas provinciales* as well. The *rentas estancadas*, meanwhile, were the royal monopolies which produced regular income from the sale of salt and tobacco, among others. Finally, the *aduanas* were import tariffs.³⁵

The most problematic aspect of the description of Castilian taxes, however, is that the *rentas provinciales* officially had almost nothing to do with actual tax collection in Castile. The monarchy was entirely unequipped to collect such complicated taxes, so beginning in the sixteenth century, the royal treasury operated through a process called the *encabezamiento* that involved assessing towns their share of the tax based on their population. Town councils would then decide how to collect the amount for the king. In general, these municipal officials avoided property taxes and taxed the sale of key consumer goods, such as wine, meat, and oil, which meant that the poor paid a large portion of the cities taxes.³⁶ This system proved very reliable for the monarchy, as it provided a high degree of predictability and reliability for tax collection.³⁷ The Spanish crown's dependence on the towns of Castile for royal revenue increased in the late seventeenth century as the monarchy began to bypass the Cortes and negotiate tax assessments directly. This coincided with these towns' growing role in provisioning troops stationed near

³⁵ Josep Fontana, *La hacienda en la historia de españa, 1700-1931* (Madrid: Instituto de Estudios Fiscales, 1980), 16-18.

³⁶ Fontana, 18-20.

³⁷ Francisco Comin Comin and Bartolomè Yun-Casalilla, "Spain: from composite monarchy to nation-state, 1492-1914," in *The Rise of Fiscal States: A Global History 1500-1914*, edited by Bartolomè Yun-Casalilla and Patrick K. O'Brien with Francisco Comin Comin (New York: Cambridge University Press, 2012), 243.

them directly through payments in kind, all of which reflect the monarchy's adoption of particularism and devolution under Charles II.³⁸

The complexity of Castilian taxes, and the disconnect between what they were supposed to be and how they were actually collected, led to considerable confusion when they were first implemented in the Crown of Aragon. The first attempt to raise taxes there began with the imposition of the *alcabala* in Valencia and Aragon. The *alcabala* was assessed at a rate of 14% on all commercial transactions and was charged on every item brought into the city of Valencia in 1707.³⁹ This led to a dramatic overnight rise in prices in the city of Valencia. Everyone who brought goods through the gates of the city had to pay the tax before they could enter that led food sellers to stop bringing their goods into the city. This understandably led to “innumerable complaints and great disorder.”⁴⁰ The historian Francisco Cánovas Sánchez attributes this consequence to the inflexibility of Juan Pérez de la Puente, the superintendant of finance in Valencia and the official responsible for the administration of the *alcabala*.⁴¹ These results were unacceptable and, following this disastrous first year, the *encabezamientos* were never reissued, effectively ending all efforts to collect the *alcabala*. Cities throughout the kingdom of Valencia struggled to pay the tax in addition to meeting the demands of the occupying military forces that naturally appeared more pressing to the local officials and military officers. In Aragon, the

³⁸ Juan Gelabert, “Castile, 1504-1808,” in *The Rise of the Fiscal State in Europe, c.1200-1815*, edited by Richard Bonney (New York: Oxford University Press, 1999), 223-224, and I. A. A. Thompson, “Domestic resource mobilization and the Downing thesis. War and the State in Spain in the mid-17th century” in *Spain & Sweden in the Baroque era (1600-1660): international congress records*, Enrique Martínez Ruiz and Magdalena Pi Corrales, eds. (Madrid: Fundación Berndt Wistedt, 2000), 289-301.

³⁹ Grafe, 153.

⁴⁰ The quotation is from Macanaz, as cited in Kamen, *War*, 326.

⁴¹ Cánovas Sánchez, 16.

alcabala was even less successful. The Crown dropped the nominal almost immediately from 14% to 5%, but this large concession proved insufficient. Continued petitions from Zaragoza to suspend the tax met royal refusal. Efforts to impose the *alcabala* in Aragon between 1708-1711 were foolhardy at best, since Bourbon forces had only tentative control of the kingdom during this period. Ultimately, the *alcabala* brought in a disappointing amount of income. Although Henry Kamen's calculations indicate that this tax increased royal revenue despite these problems, the *alacabala* was officially abandoned in the Crown of Aragon by 1714.⁴² The assessment of unpopular new taxes that had no basis in local practice in the midst of war proved unenforceable and ineffective. As Melchor de Macanaz noted when he reviewed the failure of the *alcabala* in the Crown of Aragon, "the people do not understand this mode of taxation."⁴³

The failure of the attempt to impose Castilian taxes in the Crown of Aragon led to further innovation. The ever-resourceful Macanaz presented a new plan to Philip V in 1713, suggesting the creation of a new supplementary tax that would be equivalent to the many Castilian taxes not in force in Aragon and Valencia. This "equivalent" tax would avoid the confusion of the Castilian system and be much less expensive to enforce.⁴⁴ This reform also benefited from secure Bourbon rule following the Peace of Utrecht and the improvement of the Valencian economy.⁴⁵ Each kingdom had a different name for this "equivalent" tax, but in each case it was almost identical in practice.

⁴² Kamen, *War*, 21, 324-327, and 351-354; Molas Ribalta, 241-243.

⁴³ As cited in Pere Molas Ribalta, "Las finanzas públicas," in *La época de los primeros Borbones*, 240.

⁴⁴ "Informe dado al rey," in Maldonado Macanaz, (Madrid: 1879), 2-23; and Kamen, *War*, 335.

⁴⁵ Cánovas Sánchez, 16-17.

The Valencian equivalent tax, known as the *equivalente*, was first assessed in 1715 at 800,000 Castilian Pesos.⁴⁶ This proved too high for the Valencians, however, so they petitioned the intendente twice before asking Philip V to lower the tax assessment on February 2, 1717. They requested its suspension for a year and the remission of their unpaid taxes from 1716. These requests were denied, but the equivalent tax assessment was reduced to 518,186 Pesos in 1718. This value was more realistic and the *equivalente* became the principal source of royal income from Valencia during the eighteenth century.⁴⁷ The supplementary equivalent tax was successful in the other kingdoms of the Crown of Aragon as well. In the Kingdom of Aragon, it was known as the *única contribución*. Initially it was assessed at 533,000 Pesos,⁴⁸ before being quickly reduced to 333,000 pesos,⁴⁹ where it remained for the duration of Philip V's reign.⁵⁰ Philip V imposed an equivalent tax on Catalonia in 1715, where it was known as the *catastro*. The *catastro* was initially assessed at one-and-a-half million Castilian Pesos, but this was based on the Catalan economy as it was before the war. As in Valencia and Aragon, the initial assessment was unrealistic and it dropped to 900,000 Pesos by 1718.⁵¹

Even though Macanaz tried to create a more efficient and rational tax system, this was not a “modern” direct tax that ignored privilege. Instead, the equivalent taxes were based on

⁴⁶ Or 800,000 Valencian Libras.

⁴⁷ Cánovas Sánchez, 17; Kamen, *War*, 336-337.

⁴⁸ Or 8,000,000 Reales.

⁴⁹ Or 5,000,000 Reales.

⁵⁰ Molas Ribalta, 242-243; Cánovas Sánchez, 37; and Kamen, *War*, 348, 359. There is some doubt concerning when the *única contribución* was first levied in Aragon, but everyone agrees that it occurred sometime between 1714-1718.

⁵¹ Cánovas Sánchez, 53-54.

longstanding models and had more in common with the old French *taille* than with the *dixième*. By respecting the many individual and corporate privileges that the king had granted, the equivalent taxes affirmed the role of privilege in linking the social elite's interest with those of the king.

While the implementation of these equivalent taxes was much more successful than the brief attempt at raising the *alcabala* in the Crown of Aragon, royal officials encountered several challenges while enforcing the new equivalent taxes. At times, the king's subjects remained unable to pay. For example, the Intendente of Valencia, Don Luis Antonio Mergalina, wrote to Don Joseph Rodrigo on August 27, 1720 explaining that many Valencians could not afford to pay the equivalent tax because of the high interest rate on their debt in *censos*. The Intendente encouraged the king to reduce the rate in Valencia to three percent—the same rate as in Castile—so that the kingdom would have sufficient resources to pay its taxes. While the matter was not resolved by Philip, the intendente properly identified the tensions between various royal policies and how they could complicate the enforcement of each other.⁵² Many Valencians also received these censo payments, complicating the king's desire to increase the taxable income of his subjects. In this case, Philip V's indecision reflects caution in regard to the interests of the privileged elite, many of whom depended upon income from the *censo*.

Tax evasion also became a serious problem with the equivalent taxes in the Crown of Aragon. Molas Ribalta's study of the Catalan town of Mataró in the eighteenth-century revealed years of systematic falsification and fraud committed by the city council in the payment of the

⁵² Consulta of the Council of Castile, 30 October 1720, A.H.N., *Consejos*, Lib. 1899, Fol. 91-93f. For more detailed analysis of the controversy surrounding the reduction of the *censo* in the Crown of Aragon, see chapter three.

catastro.⁵³ There were also other cases of tax evasion. In September 17, 1720, the Captain General of Catalonia, Don Francisco Caetano de Aragon, wrote to the Don Joseph Rodrigo to explain that the *bailes* and *justicias* of Catalonia were not enforcing with sufficient “rigor” the decree which required robbers and those convicted of “insults” (*insultos*) pay the *catastro*.⁵⁴ Apparently many municipal officials were not collecting taxes from these criminals, which led to noticeable shortfall in tax receipts. Local officials in Catalonia demonstrated their ability to interfere with tax collection.

City Councils were not the only source of problems. The Archbishop of Tarragona also interfered with the collection of the *catastro*. The Primate of Catalonia, the Archbishop of Tarragona, claimed that all of the sharecroppers (*colonos*) who worked land owned by his archdiocese were immune from the *catastro* in late 1724. On January 6, 1725, the Intendente of Catalonia, Don Andrés Perez Braseho brought this to the attention of the king and the Council of Castile, explaining that this extension of privileges would cause many problems—he feared its extension to the (lay) seasonal workers who helped to collect straw and wool on clerical lands, in addition to the sharecroppers who regularly worked them. He cautioned that the redistribution of the *catastro* among the reduced number of people subject to it would lead to “a most considerable reduction in the value of the *catastro*.” The alternative suggested by the Intendente was to let the royal treasury (*real fisco*) cover the cost for the sharecroppers and respect the exception that appeared to be legitimate to many, including the *juez de competencias*. The Council advised the king to resolve the matter himself by writing the Archbishop of Tarragona

⁵³ Molas Ribalta, 246-247; for more on these problems, see *idem*. *Societat i poder polític a Mataró, 1718-1808* (Mataró: 1973).

⁵⁴ In the Consulta, it is called the *equivelente*, but I have corrected that in my discussion to improve readability. See Consulta of the Council of Castile, 24 October 1720, A.H.N., *Consejos*, Lib. 1899, Fol. 78-79.

directly (through the *via reservada*) and declare his solution as quickly as possible. While Philip does not appear to have responded with the urgency that his council advised (no resolution is recorded), the Archbishop's willingness to challenge the crown and extend his tax privileges to those who worked his land suggest tense relations between the Archbishop and the Crown and yet another source of opposition to the king's efforts to increase the royal revenue.⁵⁵

These attempts at tax evasion by municipal and ecclesiastical officials indicate the limits of Philip's tax reforms. While there were many difficulties collecting these equivalent taxes, the reforms dramatically increased royal income from the Crown of Aragon. In part, this reflects the limits on royal taxation and the use of money collected in the Crown of Aragon prior to the *Nueva Planta* reforms. The stability of these new taxes for nearly thirty years under Philip V and Luis I provided much-needed predictability for the reconstruction of the Valencian, Catalan, and Aragonese economies. Even if their tax burdens were higher than they had previously been, they were consistent and predictable.⁵⁶ In fact, the equivalent taxes in the Crown of Aragon remained fixed at the same value for most of the eighteenth century. As prices rose steadily throughout this period, the tax burden became less onerous throughout the century.⁵⁷

These fiscal reforms, along with the rest of the *Nueva Planta*, increased tensions between the Bourbon monarchy and the Valencians, Aragonese, and Catalans. Naturally, the loss of their traditional privileges, which for centuries had prevented increased royal taxation despite the Habsburgs' efforts, was a source of frustration. The early appeals for suspension of the new taxes, although effective at reducing the tax assessments, reflect the unpopularity of the reforms.

⁵⁵ Consulta of the Council of Castile, 30 January 1725, A.H.N., *Consejos*, Lib. 1900, Fol. 299-302.

⁵⁶ Placio Atard, xxi.

⁵⁷ Fontana, 25-26.

Some in the royal government were aware of these tensions, as the creation of the *Junta del Real Erario* in Aragon reveals. This Junta, composed of eight Aragonese officials, shared jurisdiction over the financial administration of Aragon with the intendente beginning in 1711. The new Intendente, Melchor de Macanaz, had just left Valencia to assume this post and refused to share this power. Macanaz eventually convinced Philip V to disband the Junta rather than lose his services.⁵⁸ This clearly reveals the tensions between some of Philip's ministers and his subjects in the Crown of Aragon. The end of the *Junta de Erario* undoubtedly frustrated those who had served on it, as well as others who may have hoped for more lax tax enforcement from the Junta.

This account shows that Philip V could and did act in accord with traditional descriptions of absolutist monarchs. Nevertheless, the taxation regime in Bourbon Spain continued to respect local and regional customs and preferences, not because of royal weakness but rather because Philip had no interest in abolishing a society based on privilege. While the new equivalent taxes were much simpler than the Castilian tax system, taxes continued to vary in administration and amount between the kingdoms of the Spanish Bourbons. Numerous individuals and corporations remained exempt from taxation. Even though geography mattered less under the Bourbons than under the Habsburgs, it still shaped taxation in meaningful ways as the Spanish monarchs continued to respect privilege on its new standing after the *Nueva Planta* reforms.

Royal policy was also shaped by the local officials who ultimately collected the taxes for the king. These officials were, in turn, limited by the amount that royal subjects would pay. This is clear from the revolt of the Valencian town of Peñíscola. Valencian concerns about their inability to pay the equivalent tax had led the town's governor, Don Sancho de Echevarría, to reduce the

⁵⁸ Kamen, *War*, 344-345.

tax rate on the grain harvest. This was not enough for the citizens of Peñiscola, however, as Henry Kamen explains:

...the day after Echevarría's measure a man got up publicly to say that the people would pay only at gun-point. When the governor ordered his arrest, a riot broke out in the city. The populace proceeded to take over the whole of Peñiscola, threatening death to all the town councillors and the army officers. At least one councillor was killed in the disturbances. In a successful attempt to pacify the rioters, the governor went out to them and promised, in the king's name, pardon for their actions and freedom from current taxes. This seems to have brought the disturbances to an end. Fearful of the possibility that other similar events might recur in a realm so recently pacified by royal troops, the government took a soft line. The king decided to keep the promises made in his name, until such time as the ringleaders in Peñiscola could be singled out and punished. The crisis passed, and Valenica remained quiescent.⁵⁹

Clearly the residents of Peñiscola found an effective way to communicate their concerns about the *equivalente*. What is most telling, however, is that Philip V chose to back Echevarría's promises, indicating his recognition of the need to adjust his tax policy in light of his subjects' inability to pay. It is also worth noting the importance of reliable ministers under the new system, since Echevarría's promises ended the revolt. This helped to maintain Philip's control by properly balancing local concerns and the king's financial needs.

One might suspect that tax evasion, negotiation, and concessions to privilege and violence would lead to insufficient royal revenue in Spain. Surprisingly, the financial position of the Spanish monarchy was dramatically better than that of the French throughout most of the eighteenth century. The Spanish crown's revenue grew twice as quickly in real terms from the 1720s to the 1780s as that of France.⁶⁰ While the crown's "credit rating" was worse than that of

⁵⁹ Kamen, *War*, 340.

⁶⁰ Comín Comín and Yun-Casalilla, 250. Spanish royal revenue also grew faster than English revenue. It is worth noting, however, that Spanish revenue began at about half that of England and a quarter that of France, so in absolute terms Spanish revenue remained smaller than either France or England's even as it became closer to their level of revenue.

many of its regions, leading it to pay a relatively high interest rate on its debt, the Spanish monarchy avoided accruing debt much more effectively than did the British or French. On average, only seven percent of the Spanish treasury's income was spent servicing debt from the end of the War of Succession until the 1780s. During the same period, the British and French governments spent between one-third and one-half of their budgets servicing debt. Even after the Spanish crown had significantly increased its debt preparing for war in 1793, its "national" debt per capita was only five percent of the British that year.⁶¹ The difference appears to be that the Spanish government was more cautious in borrowing money despite the willingness of lenders to lend and the continual military engagement during this period.⁶² While the reason that the Spanish crown borrowed so much less has not been settled—Regina Grafe has suggested that it had to do with the fragmentation of authority that remained in Bourbon Spain—it is clear that the Bourbons in Spain had sufficient revenue despite their avoidance of direct taxes like the *capitation* and *dixième*.⁶³

It is also worthwhile to note that a significant portion of this grown came from increases in the *Rentas Generales*, which included customs duties on goods, including those from the New World. *Ibid.*, 251-252.

⁶¹ Regina Grafe, *Distant Tyranny: Markets, Power, and Backwardness in Spain, 1650-1800* (Princeton: Princeton University Press, 2012), 17-19.

⁶² Income from the colonies alone does not explain the difference, either. See Grafe, 19-25.

⁶³ Grafe, 25-37. Perplexingly, Grafe seems to assume that Spain remained a composite monarchy dominated by municipal elite throughout the eighteenth century. She wrote that "Territorially based jurisdictional fragmentation survived in Spain to an unusual degree. That early modern Spain never overcame its heritage of a composite state of historic territories is a well-known fact and has been stressed by historians from Elliott to Nader." *Ibid.*, 33. None of her sources claim the persistence of the composite monarchy past the reign of Charles II, and those that mention Philip V at all indicate that his reforms marked the end of this system, undercutting her claim that the perpetual fragmentation of Spain "is a well-known fact." This dissertation supports Grafe's contention that the administrative and legal structures of eighteenth century

Finally, it should be noted that the Bourbons in Spain did attempt to impose a direct tax on all economic activity and wealth in the mid-eighteenth century under Ferdinand VI. It was called the *catastro* and applied throughout Castile. Ferdinand even obtained authorization from the Pope in 1757 to collect the tax from the clergy. It was abandoned shortly thereafter, however, because of the united opposition of the clergy and nobility to the loss of their fiscal privileges. The project was attempted again in 1770 under Charles III, and failed a few years later because of the opposition.⁶⁴ These attempts at direct taxation demonstrate that the Spanish Bourbons were willing to attempt reform, but they ultimately proved more responsive to the opposition of their privileged elite than the French. The failure of these reform efforts and continued financial success of the Spanish monarchy for decades following the reform efforts demonstrate that the indirect tax systems of the *ancien régime* could serve royal interests effectively.

The different approaches to raising royal revenue employed in Bourbon Spain and Bourbon France are significant. While Louis XIV had used particularism to solidify his reign and discourage a repeat of the Fronde, in the final wars of his reign he undercut this system by imposing the *capitation* and the *dixième* which threatened the privileges of elite. The Spanish Bourbons demonstrate the alternative fiscal possibilities as Philip V's new taxes in the Crown of Aragon continued along particularist lines by respecting the privileges that he gave to his subjects. The abolition of the *fueros* and Cortes in the Crown of Aragon freed Philip to more consistently affirm individual and corporate privileges because he had demonstrated that privilege came from the king and had also increased royal revenue through the equivalent taxes. This may have worked to the advantage of his successors as the taxes in the Crown of Aragon

Spain remained heterogenous in some important ways, but it is unclear why Grafe believes that this point has been long established.

⁶⁴ Gelabert, 230-231.

did not alienate the privileged members of society. In both cases, the Bourbon's raised royal revenue through challenging traditional sources of privilege. The central difference is that the Spanish Bourbons only raised taxes on the regions that had ostensibly forfeited their privileges in the War of Succession, while the French Bourbons threatened the privileged elite who had remained demonstrably loyal to the monarchy.

II. The sale of offices and privilege

The sale of offices, both in the eighteenth century and now, has a bad reputation as an inherently corrupt system—after all, it suggests that possessing the money that enables one to buy an office is the only necessary qualification for dispensing justice or whatever other official duties the position might entail. Even worse, in modern political discussions, whenever money is discussed in relation to politics, the implication is that money is buying some sort of “public action.” This was not the case with venality, however, as those purchasing offices were acquiring the privilege and duties of exercising royal authority of rather than any particular policy change or political favor. The office certainly might confer certain privileges upon the office holder, such as ennoblement, yet it did not guarantee the venal officeholder a particular political policy.⁶⁵ Rather than the sale of political action, venality was a system for transmitting public responsibilities to those who invested in the success of the monarchy.⁶⁶

The system of venality supported the Spanish monarchy in different ways than in France. First, it was a source of revenue in each. This played out differently between them, however, as the kind of property that one acquired when purchasing an office was fundamentally different

⁶⁵ See the discussion by Jean Pierre Dedieu, “Acercarse a la «venalidad»” in *El poder del dinero Ventas de cargos y honores en el Antiguo Régimen*, Francisco Andújar Castillo and María del Mar Felices de la Fuente, eds. (Madrid: Editorial Biblioteca Nueva, 2011), 20.

⁶⁶ See “Presentación,” *ibid.*

between Spain and France—in the former, it was simply access to an office, while in the latter one owned the office as a heritable good which could serve as collateral for a loan and yielded consistent income. Second, the sale of offices gave officeholders an interest in supporting the king as they were now members of his administration. This linked their prestige and power to that of the monarch—the more glorious the king, the greater the honor of serving him. Because of this connection, venal offices functioned as an important mechanism for social mobility.

Nevertheless, the systems of venality in Spain and France differed significantly in their configuration despite these broad similarities in purpose and function. The systems were asymmetrical as municipal and local offices could be purchased in Spain, while key positions in the king's household and in the *parlements* could be purchased in France despite attempts to end the sale of local offices. These differences reflected different understandings of justice and their concomitant legal traditions. The result was that venality in France functioned as a state system of finance increased royal dependence on its privileged creditors and generated an increasingly independent judicial system, while in Spain it was an ad hoc source of royal revenue that facilitated the formation of a municipal elite. As with the variation between tax reform in Spain and France, these two systems of venality show how traditional practice and local expectations could shape the decisions of absolute monarchs in early modern Europe.

Venality was always contentious in France with various arguments made both in support of and against the practice of selling offices stretching back to the fifteenth century.⁶⁷ Critics charged that the sale of offices gave too much autonomy to the office owners. Their independence and prestige grew through the annexation of royal authority, which worried

⁶⁷ For examples of some of these arguments and a summary of efforts to reform the system from the early sixteenth century through the late seventeenth, see William Doyle, *Venality: The Sale of Offices in Eighteenth-Century France* (New York: Clarendon press, 1996), 3-25. I rely upon this book in the following discussion.

proponents of centralized monarchical rule. Efforts to reform the system of venality always faced an up-hill battle as venality was an essential part of the Bourbon government in France. The monarchy was in a very real way dependent on this system and could not afford to fundamentally alter it. This system was based on the monarch's need for financial capital and competent bureaucrats and administrators, both of which were met by selling offices to the increasingly wealthy bourgeois gentlemen studying law at the university system. In return for their wealth and expertise, they received property in the administration of the state—possession of an office conferred the right and duty of exercising royal sovereignty within its jurisdiction to the office owner. This property provided a reasonable monetary return for the investment in the *gages*, or wages paid by the king, the prestige associated with holding the office, and the power of the exercise of the office.⁶⁸ The strength of the French state made these investments worthwhile. It could protect monopolies granted by offices and was capable of collecting taxes from those subject to the *taille*, which made the exemption from the *taille* granted by many offices an appealing privilege. With the persistence of family control over these offices beginning in 1604, family strategies among the elite in France were shaped around the purchase and preservation of offices. The relationship between officeholders and the king was one of the central pillars supporting the Bourbon monarchy in France.⁶⁹

Just as importantly, venality functioned as a system of state credit. Venal offices in France were property providing regular income that could be sold by the office's owner and inherited by

⁶⁸ Robert Descimon has analyzed these three motivations in “Las élites del poder y el príncipe: el estado como empresa,” in *Las élites del poder y la construcción del estado* (Madrid: Fondo de Cultura Económica, 1997), 133-157.

⁶⁹ See David Bien, “Offices, Corps, and a System of State Credit: The Uses of Privilege under the Ancien Régime,” *The French Revolution and the Creation of Modern Political Culture*, ed. Keith Baker (New York: Pergamon Press, 1987), Vol. I, 89-114, and Sarah Hanley, “Engendering the State: Family Formation and State Building in Early Modern France,” *French Historical Studies* 16.1 (Spring 1989): 6-7.

an heir. As property, offices were very similar to property in land. Offices could be used as collateral for a loan in much the same way. Individuals could borrow money at lower interest rates than the monarchy, and so the creation and sale of offices became a way to persuade individuals to borrow on the behalf of the monarchy at these lower rates.⁷⁰ Sometimes it was difficult to find new buyers for offices, so the king would increase the wages of an office, known as the *augmentations de gages*, and demanded an additional lump-sum of capital from the office holder to pay for the increased value of the office.⁷¹ The officers owning this property were very often organized into corporate bodies, or *corps*. These *corps*, such as guilds, became increasingly important in the eighteenth century as it was more efficient for the king to negotiate *augmentations de gages* with these *corps* than with separate individuals. Even more importantly, the *corps* would often collectively borrow and send the new capital to the king on the behalf of its members at low interest rates because these *corps* could enforce the payment of its debt by its members. The *corps* functioned within the French system of venality as a way to efficiently borrow at low interest rates for the monarchy in exchange for the privileges, wages, and power of holding an office.⁷² This system was yet another dimension of the alliance between the monarchy and the privileged elite in France.

The expansion and contraction of this system was primarily driven by the fiscal needs of the monarchy, and this was largely determined by the costs of frequent war. The Dutch War, the Nine Years' War, the War of Spanish Succession, the War of Polish Succession, the Seven

⁷⁰ Bien, 96.

⁷¹ Bien, 97.

⁷² Bien, *passim*.

Years' War, and the American War each led to an expansion in the venal system.⁷³ A tremendous amount of capital was tied up in these offices—by 1722, property in royal offices totaled approximately 750 million Livres and it continued to grow throughout the eighteenth century.⁷⁴ This wealth had become essential to the French crown's finances and the property of office-holders was much too large for the king to buy them all out had he desired to do so, but by the 1720s there was increasing recognition that the system of venality was in dire need of reform.

Reform was attempted at various points, usually in times of peace when royal finances were in better condition. Each of the major ministers from Louis XIV's reign through 1789 attempted to reform the system in some way. Colbert, Desmaretz, John Law, Maupeou, Terray, Lamoignon, and Necker each attempted reform in various ways with varying degrees of success. In almost every case, these efforts pursued the twin goals of reducing the number of offices and increasing the amount of royal revenue extracted from office holders. Reducing the quantity of venal offices required compensating those losing their offices, usually through paying the last office holder the wages for ten to twelve years following the abolition of the office. At no point did a king of France ever contemplate abolishing an office without some form of compensation for the loss in property.⁷⁵ This meant that only in times of relative peace and prosperity could the king attempt a reduction in the number of offices. These efforts, even when successful, were usually reversed with the creation of new offices to meet the financial demands of a subsequent war.

⁷³ See Doyle, *passim*, but especially 51, 92-93, 98-100, 136-150.

⁷⁴ Doyle, 55.

⁷⁵ Doyle, 48.

In part, this reflected the fact that the creation of new offices was one of the most effective ways for the monarchy to quickly raise a significant amount of revenue. An easy way to do this, and to guarantee that the offices would be purchased, was to create an office with the monopoly on a previously free trade, such as wig-making.⁷⁶ By 1690, it became increasingly difficult to find opportunities like this, however, and many offices were created whose service was either unnecessary or undesirable.⁷⁷ The difficulty in creating new offices that had willing buyers led to more creative means of extracting revenue from office holders. Since the 1520s, office owners were at risk of losing their office even after they had passed it on to a designated successor if they died within forty days of the new officer taking possession. This forty-day rule was a blatant effort by the king to bet on the deaths of his subjects, and it became such a concern that by the reign of Henry III it was possible to buy an exception to this rule for one-third of the original price of the office.⁷⁸ This was much too costly for many officeholders, however, and Henry IV introduced the more affordable option of paying the *paulette*, or more commonly, the *annuel*, with which an officeholder could purchase a one-year exemption from the forty-day rule for only one-sixtieth the price of the office. This turned the sale of exceptions to the forty-day rule into a source of regular income for the crown, and it was continually tinkered with—the re-assessment of office values and the granting of several-years' exemption for a lump sum worth several *annuel*'s were both common practice during periods of war.⁷⁹

⁷⁶ Doyle, 24.

⁷⁷ Doyle, 34-35.

⁷⁸ Doyle, 4-5.

⁷⁹ Doyle, 6-7.

The greatest changes came in the late-eighteenth century. Under Maupeou, the offices were revalued based on their market values rather than their original sale price and assessed a one-percent tax, called the “hundredth penny,” on this new value. It was a much more effective way to raise regular revenue from officeholders than any prior reform, although it naturally inspired many complaints from those subject to the new tax. This new income was then used to buy-out office holders and reduce the number of venal offices in the kingdom.⁸⁰ While the surprising death of Louis XV led to Maupeou’s replacement and the reversal of many of these reforms, the hundredth penny remained a fixture of royal finance.

Maupeou’s short-lived reforms, along with the subsequent reform efforts of Lamoignon and Necker, demonstrated that the system of venality could be reformed in radical ways and increased the defensiveness of officeholders.⁸¹ This threat to the system created a backlash against these reforms, as venal officeholders began to view themselves as a group with united interests opposed to the goals of the king. Surprisingly, they began to defend the sale of offices as a check on tyranny as officeholders held their authority independently from the goodwill of the monarch. In this reading, venality was an institution that defended the liberty of the king’s subjects.⁸² The increasing tensions between the venal officeholders and the king challenged the alliance between the monarch and the privileged elite, as officeholders were less willing to negotiate individually with the king and increasingly interested in uniting to bargain with him in defense of their common interests.⁸³ Just as the *capitation*, *dixième*, and the *vingtième* united the French against their monarch by undercutting the privileges that had been the foundation of the

⁸⁰ Doyle, 124-127.

⁸¹ Doyle, 132-133, 150-151.

⁸² Doyle, 151.

⁸³ Doyle, 195.

king's support among the nobles, the attacks on venality strained the alliance between the king and his subjects and reinforced their sense of unity in opposition to him to protect their privileges. In both cases, fiscal necessity had led to royal policies that drove a wedge between the king and his privileged subjects, threatening the social order of the *ancien regime*. This was ultimately the result of fiscal necessity and the weakness of the French monarchy to protect these privileges and meet its financial obligations.

In early modern Spain, the system of venality was broader and more flexible than in France—in fact, it is difficult to describe as an enduring “system” in any real sense. Venality was not limited to offices in Spain, but included privileges that were entirely unrelated to serving in the royal bureaucracy. For example, it was possible to purchase certification of *limpieza de sangre*, or the “purity of blood” designating a person as an “old Christian” free from the suspicion associated with *moriscos* or *conversos*. As Jean Pierre Dedieu has noted, our categories for making sense of an institution like this are challenged when offices and one's heritage are for sale through similar channels.⁸⁴ While this study will focus on the sale of offices, it is important to keep in mind that this practice operated within the larger system where more was available for sale than in France.

As in France, the sale of offices served a key role in selecting individuals to serve in the royal bureaucracy, although with perpetual charges of corruption. The system was not a zero-sum game in which the king always gained or lost through each sale. The absence of venality does not necessarily indicate greater royal authority and its presence does not necessarily confer improved capacity for royal action.⁸⁵ As in France, it was a trade-off between the twin needs to find someone to fulfill a task and to raise funds for the royal treasury, and the dual costs of alienating

⁸⁴ Dedieu, “Acercarse a la «venalidad»,” 21.

⁸⁵ Dedieu, “Acercarse a la «venalidad»,” 26.

the king's authority and incurring the long-term costs of paying the officer's salary. Venality was deeply entrenched in Habsburg Spain and the most important positions in the monarchy were for sale. For example, in 1699 the offices of both the Mayordomo Mayor in the king's household and the Presidency of the Council of Castile were purchased. All of this changed with Philip V, who issued a royal order less than six months after his ascension in 1700 suspending the sale of offices and canceling the titles of those involved with the administration of justice, including the governors and corregidores in the colonies, at the cost of returning the money that these officials had paid for them.⁸⁶

This last point indicates another significant difference in how venality functioned in Spain and France—the bureaucratic level of the offices for sale. In Spain, positions in the audiencias and chancillerías, which were the most important royal courts in each region, were never for sale.⁸⁷ Even in the Indies where these offices might be for sale, their owners were never permitted to choose their successor. This state of affairs contrasts starkly with the sale of offices in the parlements throughout France that came to provide them with a degree of autonomy from the king as they demonstrated in the latter half of the eighteenth century. At the same time, the Spanish monarchy sold the key offices on the local level while the French monarchy took steps to reclaim control of municipal offices. These differences created a sort of inverse distribution of offices between the two states, which Dedieu suspects accounted for many of the differences in their political systems in the eighteenth century. He has recently noted that there has been no

⁸⁶ Francisco Andújar Castillo, *Necesidad y Venalidad: España e Indias, 1704-1711* (Madrid: Centro de Estudios Políticos y constitucionales, 2008), 5-6. Interestingly, Philip was following Louis XIV's advice in abolishing the sale of offices and had the support of Jean Orry.

⁸⁷ There were noteworthy exceptions to this rule, such as the rampant sale of seats in these judicial tribunals and on the royal councils during the War of Spanish Succession, which will be discussed shortly.

adequate comparative study of venality between Spain and France to explore these connections.⁸⁸ While this study cannot fulfill that role, it will begin to unpack these differences and consider their relevance for a more general understanding of the divergence between Spain and France in the eighteenth century.⁸⁹

The lack of venality in Spanish judicial appointments reflects long-standing legal limits on the expansion of venality. Officially purchasing an office only granted the position to the individual who bought it and offered little beyond this. It was illegal to purchase offices as hereditary property was outlawed. This prohibition was circumvented by the purchase of the privilege of *resignation in favorem*, or resigning in favor of another person. Still, the legal prohibition on permanently annexing royal authority through the purchase of an office prevented the creation of a system of credit through venality as existed in France.⁹⁰

In general, royal appointment was limited by several factors. The individual appointed had to be technically competent. He also had to be socially acceptable to the political elite who held similar offices since the new official would need to be able to interact with them to fulfill the duties of his office. Finally, the candidate had to respect the authority of the king who had given him the office. There were a number of offices that officially could not be sold. Participation in the Cortes, as its members were technically representatives of the cities and not of the king,

⁸⁸ Dedieu, “Acercarse a la «venalidad»,” 26-27. As an example of the French efforts to suppress municipal venality, in the mid-1760s the Comptroller-General L’Averdy attempted to reform municipal government throughout France following a uniform model that involved the suppression of municipal venality despite its costs—the goal, rather, was to reinvigorate “civic responsibility.” See Doyle, 106-108.

⁸⁹ Even more recently Regina Grafe has attempted to make sense of these differences in *Distant Tyranny*, 28-31. While helpful, she is apparently ignorant of the majority of work done on this topic in the last decade. The following discussion will try to bring her analysis and this scholarship into constructive dialogue with one another.

⁹⁰ Grafe, 28-30.

could not be sold. Neither could judicial appoints because justice, while dispensed by the king, belonged to the community. This collective possession of justice meant that the king could not sell corregimientos, positions in the audiencias, or seats in the councils. These officials were chosen based solely on their competence and money was not permitted to enter into the king's choice.⁹¹ The differences between Spain and France on this matter reflected deeply divergent understandings of the nature of communal justice.

In Spain, venal officeholders on the municipal level held considerable ability to influence local affairs. While these officeholders generally worked with the king who sold them their offices, they would sometimes oppose his actions when they appeared to threaten their privileges. They both could and did act to protect their interests when they believed the king's actions opposed them. For example, in 1739 Philip V sold twelve new offices of regidores in Valencia to some of the newly rich families from the area, but the city council of Valencia refused to recognize several of them and the king had to exercise "all of his authority" to impose the candidates.⁹² The king's sale of an office did not guarantee a social rise all by itself—ultimately society had to decide that. All that the king could do was to provide an office as a sign indicating the social significance of the new office holder who must convince his community's elite that he deserved their favor and respect. While the king could insist on recognition of his officers, this was sufficiently costly and troublesome that he eventually gave up doing so in Valencia. In 1765, he officially granted the city council the right to examine the suitability

⁹¹ Jean Pierre Dedieu and Andoni Artola Renedo, "Venalidad en contexto: Venalidad y convenciones políticas en la España moderna," in *El poder del dinero: ventas de cargos y honores en el Antiguo Régimen*, Francisco Andújar Castillo and María del Mar Felices de la Fuente, eds. (Madrid: Editorial Biblioteca Nueva, 2011), 36-37.

⁹² Dedieu and Renedo, 35.

(*idoneidad*) of candidates to fill its vacancies.⁹³ This reflects the king's respect for these local institutions even when he had the power to dictate terms. In Spain, the Bourbons were more interested in cultivating local favor with the ruling elite than in taming them through political or military force.

The sale of offices was one of the most effective mechanisms that the king had to develop these urban oligarchies as a check on the noble seigniorial lords who had traditionally been the most powerful figures in rural Spain.⁹⁴ It provided a way for new families to join the *hidalguía* and the municipal elite that was a crucial channel for social mobility. Even though most offices available for sale in the eighteenth century were municipal, families would purchase offices in various cities within a region to acquire increased influence and prestige.⁹⁵ This enabled families to elevate their standing within the region even though they were generally prohibited from purchasing regional offices such as a position in the *audiencia*. In this way enterprising families could still use *venality* as a vehicle for social mobility.

While the asymmetry between the offices for sale in Bourbon Spain and Bourbon France was generally in force, the historian Francisco Andújar Castillo has examined in detail the exception that proves the rule, which must be kept in mind. From 1704-1711, Philip V engaged in the unofficial sale of offices on a tremendous scale to fund the war and find officials who were invested in his success in the War of Succession despite officially banning the practice on 6 March 1701.⁹⁶ The sale of offices was conducted secretly and through private channels, managed

⁹³ Dedieu and Renedo, 36.

⁹⁴ Maria López Díaz, “Tráfico de cargos y oligarquías urbanas: de lo «público» a lo «privado», y lo contrario (siglos XVII-XVIII),” in *El poder del dinero*, 129.

⁹⁵ López Díaz, 132-136.

⁹⁶ Andújar Castillo, *Necesidad y Venalidad*, 9 and 324-325.

by the financier Bartolomé Flon under the watchful eye of the French ambassador. These sales have long gone unnoticed as the titles of those purchasing these offices do not mention the price paid because they were technically free gifts that went into the general treasury.⁹⁷ This sale of offices was distinctly different from the French system of public finance through the sale of offices regulated by the *corps* as secrecy limited the purchase to a one-time appointment to the office.⁹⁸ This ad-hoc system of selling offices to finance the War of Succession ended abruptly in 1711—a year with several important Bourbon victories including the reconquest of the kingdom of Aragon.⁹⁹ These secret sales briefly defied the standards of the system of venality in Spain under the Bourbons, but were immediately dropped when the income that they generated was no longer essential to the war effort. While these sales demonstrate that Philip could act contrary to the law that he himself had promulgated, Andújar Castillo considers these sales ultimately as an indication that the monarchy was in a “position of clear fragility.”¹⁰⁰ In a sense this is true, as it demonstrated the monarchy’s profound and immediate need for money. At the same time, these offices were only valuable if Philip was successful in the war—holding a position in the losing

⁹⁷ Andújar Castillo, *Necesidad y Venalidad*, 8, 9-12, and 306-315. The desire to have the purchase of the office off the record continued to be worth quite a bit—in 1752 the Genovese trader paid 15,000 reales extra for a declaration of hidalguía so that it did not mention the payment among the reasons for the privilege. The title in the end read that it had been conceded “in attention to the prestige [*lustre*] of the family.” For more on this and some additional examples, see Andújar Castillo, “Los contratos de venta de empleos en la España del Antiguo Régimen,” in *El poder de dinero: ventas de cargos y honores en el Antiguo Régimen*, eds. Francisco Andújar Castillo and María del Mar Felices de la Fuente (Madrid: Biblioteca Nueva, 2011), 74.

⁹⁸ The prices seem to be steeply discounted from the prices paid in the seventeenth century, and even then Spanish offices were generally less valuable than offices in France where there were more guarantees for the property of office purchasers; see Grafe, 30-31.

⁹⁹ Concerning the war effort, see Joaquim Albareda Salvadó, *La guerra de sucesión de España* (Barcelona: Crítica, 2010), 292-313.

¹⁰⁰ *Idem.*, *Necesidad y Venalidad*, 318.

monarch's administration was usually a mark against an official, as the Archduke Charles' appointees discovered after the war. Philip's ability to sell these offices suggests that his government retained credibility as a meaningful institution even during its most desperate moments in the war.¹⁰¹ The end of the sale of these offices also coincided with the recovery of royal revenue from taxes and other sources that in 1713 was nearly double that of 1703.¹⁰²

The stark differences between the French and Spanish systems of venality reveal how long-standing legal traditions and expectations could shape institutions despite the absolute power of these monarchs. While Philip's use of the sale of offices to finance the War of Succession demonstrates that these could be violated when necessary, it created significant problems and was conducted secretly, indicating that these traditions continued to shape the behavior of the king and those purchasing the offices.¹⁰³ Similarly, while there were ways to get around the general prohibition of purchasing heritable property in an office, the necessity of creative legal instruments prevented the development of a system for the annexation of royal sovereignty through the sale of offices. The legal variations concerning the sale of offices in France and Spain shaped the kinds of credit available to the monarchies. They also defined very different opportunities for social mobility through the purchase of offices although both systems provided a way for ambitious families to increase the prestige, power, and income. These differences suggest two key ideas which must remain in tension. First, early modern rulers could make meaningful choices in how they employed the sale of offices as there was more than one way to exercise royal authority to finance wars, cultivate the support of local elite, and reinforce the

¹⁰¹ Bien has noted the importance of a strong state for the sale of offices, *idem.*, 92.

¹⁰² Andújar Castillo, *Necesidad y Venalidad*, 9, and Kamen, *War*, 215 and 223.

¹⁰³ Charges of corruption of incompetence were especially common in the colonies; see Andújar Castillo, *Necesidad y Venalidad*, *passim*.

prestige of the crown. Second, although there were many ways to pursue these ends in the abstract, in practice the institutions and expectations of a monarch's kingdom and subjects shaped the viability of these possibilities, pushing their rulers toward particular methods for selling offices and away from others.

Additionally, it is worth considering the contemporary belief that venal office holders were more independent because their position did not depend on the good will of the king to the same extent as traditional appointees who lacked property in their position. While Spanish venal office holders had fewer legal protections, municipal officials consistently demonstrated their importance to the royal administration and their ability to influence royal policy. The king ultimately could force his will upon them, but this required a significant investment of time and expense and likely reduced his ability to make requests from the city governed by those officials. As revenue and soldier quotas were often requested from municipalities who were left to raise the funds and men however they chose, the king needed a good relationship with the urban oligarchs throughout his realm. The sale of municipal offices allowed these oligarchies to maintain long-term control over their cities, increasing the king's need to cultivate their good will. Similarly, the *parlements* autonomy in France permitted them to function as centers of authority that could challenge royal action in their jurisdiction. While the French monarch had considerable clout, venality did provide adequate security for some officials to complicate the operation of the royal bureaucracy. The asymmetrical concentration of venal officeholders on the regional level in France and on the municipal level in Spain could be one reason that the Spanish Bourbons pursued particularist policies more consistently than their relatives across the Pyrenees during the eighteenth century.

III. The decline of “representational” assemblies

The authority to legislate is central to the early modern understanding of an absolute monarch. As the historian of political thought, J.H. Burns, argued, an absolute ruler rules independently, rather than arbitrarily. Jacques Bénigne Bossuet’s definition also recognized the limits on this power, describing it as “subject to reason,” even while affirming the monarch’s power to “to disregard law, custom, privilege and established rights in the interest of the common good of his subjects.”¹⁰⁴ Similarly, Bodin’s apparently unlimited understanding of sovereignty was in fact limited to the power to command what is in conformity with divine and natural law, much as Thomas Aquinas had argued.¹⁰⁵

Despite such far-reaching theoretical power, there were institutional limitations on royal power, especially that of taxation. In the French *pais d'états* and the kingdoms of Spain, the various Estates and Cortes, respectively, had to approve new taxes. The regional estates primarily functioned as institutions that forced negotiation between the king and the local elite concerning the amount of taxes that the region would pay. This actually worked out well for both sides, since the resulting assessment was a balance between local ability to pay and the King’s needs—William Beik has even suggested that the French kings may have been better off had all of their regions had Estates because these negotiations were effective at avoiding tax revolts and providing consistent funds to the crown.¹⁰⁶ Perhaps, however, the Estates of Languedoc, which Beik studied, survived the mid-seventeenth century because they were so effective, unlike the

¹⁰⁴ J. H. Burns, “The Idea of Absolutism,” in *Absolutism in Seventeenth-Century Europe*, edited by John Miller (New York: St. Martin’s Press, 1990), 22-24, 32; Bossuet as quoted, *ibid.*

¹⁰⁵ Burns, 28; Thomas Aquinas, *Summa Theologia*, First Part of the Second Part, Questions 93.3 and 95.2.

¹⁰⁶ Beik, *Absolutism and Society*, 118-119, 146.

Estates of Normandy and Dauphine that were suppressed under the Cardinals Richelieu and Mazarin.¹⁰⁷ Even when successfully negotiating the amount of taxation, the Estates found themselves in an increasingly weak position relative to the crown as the eighteenth century proceeded. While they continued to negotiate the amount the *pais d'états* paid, rather than maintaining the fiction that this was a “free gift” as the *dons gratuits* given for the *taille* did, the *capitation* and *dixième* were paid in the form of *abonnements*, or lump sums of money paid by the province in lieu of the direct taxes. Even though this was still a meaningful privilege not held by the *pays d'élection*, it was decidedly not a gift. Additionally, the crown proved itself willing to revoke this privilege and assess the *vingtième* directly, as it did from 1750-1755 under the controller-generalship of Machault d'Arnouville.¹⁰⁸ While the actual negotiation taking place in the provincial estates may have been effective, the history of the French Estates from the fifteenth through the eighteenth century is one of declining relevance and influence. The absence of a meeting of the General Estates for nearly two hundred years only underscores this fact.¹⁰⁹

The story of declining relevance is even more noticeable for the Spanish Cortes. In the late seventeenth century, the Cortes of Castile was called less frequently and the negotiation of taxes for Castile increasingly took place directly between the Castilian towns and the king.¹¹⁰ This shift towards particularism in Castile served as a model for the new government in the Crown of

¹⁰⁷ Emmanuel Le Roy Ladurie, *The Ancien Régime: A History of France, 1610-1774*, tr. Mark Greengrass (Malden, Mass.: Blackwell, 1996), 75.

¹⁰⁸ Kwass, 95-97.

¹⁰⁹ See Fanny Cosandey and Robert Descimon, *L'absolutisme en France: Histoire et historiographie* (Paris: Ed. Du Seuil, 2002), 123-128.

¹¹⁰ This issue is discussed more fully in chapter two. Also see I. A. A. Thompson, “Castile,” in *Absolutism in Seventeenth-Century Europe*, edited by John Miller (New York: St. Martin's Press, 1990), 82, and Christopher Storrs, *The Resilience of the Spanish Monarchy, 1665-1700* (New York: Oxford University Press, 2006), 176.

Aragon under Philip V. With the abolition of the Corts and Cortes in Aragon, Catalonia, Valencia, and Mallorca, he officially gave these kingdoms representation in the Cortes of Castile, making it more similar to the Estates General of France. This did not ultimately lead Philip or his successors to call the Cortes into session. It only met three times following the end of the War of Spanish Succession: in 1724, to hear Ferdinand VI's oaths and confirm him as Philip's heir; in 1760 to swear in Charles III's son, Carlos Antonio, as the prince and heir to the throne; and in 1789 to confirm Ferdinand as the heir and to repeal the Salic laws banning women from inheriting the throne.¹¹¹ These sessions accomplished nothing of substance beyond clarifying the succession, and the Bourbon monarchs had no interest in letting them do more—the Cortes of 1760 lasted only five days, reflecting its singular purpose. The Cortes had even less of a role to play in eighteenth-century Spain than did the Estates in France.

Under the Bourbons in both Spain and France, the Estates and Cortes were institutions that theoretically facilitated the communication between the monarchs and their subjects, but in practice this negotiation was limited to the quantity of the tax assessment in the French *pais d'états*. In this regard, the Spanish Bourbons had fewer institutional limits than their French counterparts as the regional Cortes were nearly all abolished by Philip V during the War of Succession.¹¹² This increased the importance of local municipal officials who became the key figures in negotiations with the king as the intermediate institutions no longer existed. In both Spain and France, kings preferred to deal with their subjects more directly through particularistic negotiation rather than through the traditional “representational” assemblies that had governed

¹¹¹ The Salic laws were first introduced to Spain by Philip V. Lynch, 106-107, 377.

¹¹² Navarra was the exception to this rule as it kept its Cortes and the privilege to prevent additional taxation, among other *fueros*. This exception did significantly reduce the Navarese tax burden; see Grafe, 153.

negotiations in the seventeenth and eighteenth centuries. This marks an important shift toward more direct—and possibly more personal—rule by the Bourbon kings. By reducing the Estates and the Cortes to irrelevance, subjects had to turn to other channels to communicate their concerns to the king. Direct appeals to the king and his ministers became increasingly important because there were fewer alternatives.

IV. Conclusions

The similarities and differences between Spain and France do not map neatly on to a one-dimensional continuum of “more centralized” versus “less centralized.” Instead, they suggest the significant degree to which early modern monarchs had to balance competing concerns even while they enjoyed significant legal freedom. Negotiation between monarchs and subjects should not be viewed as a zero-sum game. Subjects were invested in the success of their ruler for the maintenance of order and peace and monarchs depended upon the support of their subjects. The Bourbon kings in Spain and France attempted to protect their interests and to preserve the alliance that linked the privileged elite to the monarchy. How this looked and functioned differed significantly between the monarchies and continued to change during the seventeenth and eighteenth centuries. The changes were not identical, however, as both monarchies were limited by the traditions and institutional expectations of their subjects. Thus Philip V could secretly sell offices to pay for the War of Succession while his grandfather employed new forms of direct taxation to accomplish the same goal at the same time. In neither case should one assume that these systems guaranteed or averted the French Revolution. Instead, they reveal how rulers and subjects in different places had varying preferences and expectations for how such increasingly costly conflicts would be financed. In both cases, the Bourbon kings ruled through creative

engagement with the institutions and customs that legitimized their rule to persuade their elite subjects to finance the growing expenses of government.

This comparison also highlights the centrality of privilege to the rule of the Bourbons in Spain and France. The desire to reform the systems of taxation and venality were driven by fiscal concerns, but they could not be extracted from the complex network of privileges that bound subject to monarch. Reform of either system required adjustments in the meaning of various privileges and their exercise. In the Spanish case, Philip V's reforms in the Crown of Aragon freed the Spanish Bourbon's from many of the institutional limits on royal action and provided them with the ability to protect privileges as they had already implemented a functional fiscal system that endured for a century. While the attempt to impose a direct tax system in the mid-eighteenth century in Spain ultimately failed, this did not cause serious financial problems for the Crown. Meanwhile, in France there were more tax reforms and adjustments to the system of venality throughout the eighteenth century. In both cases the French monarchs demonstrated a willingness to redefine the role of privilege, but this long-term challenge to how the privileged elite believed they should be treated by the Crown strained the social alliance that had linked their interests to those of the monarchy. While this was not the immediate cause of the French Revolution, which came about because of the financial collapse of the monarchy, the leading role of nobles and clergy in the subsequent Estates-General and National Assembly suggests that the traditional role of privilege in French society had shifted in dramatic ways.¹¹³ This was not a necessary development of absolutism, however, as the Spanish Bourbon's demonstrate. Early modern rulers had a variety of paths of reform available that they followed with surprisingly varied results.

¹¹³ On the fiscal origins of the French Revolution, see Doyle, *Origins of the French Revolution*, 3rd ed. (New York: Oxford University Press, 1999).

Chapter Six: Conclusions

The legacy of Philip V's reforms and governing practices remained important topics in the political discussions taking place in eighteenth-century Spain. When Charles III of Spain called the Cortes of Castile into session in 1760 to confirm his son, Charles Anthony, as the heir to the throne, the delegates of the four capitals of the Crown of Aragon used this meeting to suggest an alternative to the structure of the political union in the *Memorial de Greuges*, or the Petition of Grievances.¹ This document reveals the terms in which contemporary critics of the *Nueva Planta* expressed their opposition and their suggestions for an improved royal government. On both accounts, the Petition reveals continued regional variation and the preference for particularism in Bourbon Spain.

The delegates who presented the Petition explained that Philip V had a noble goal when he attempted to create “equality and uniformity between the parts which would result in the great benefit of the body of the monarchy.”² The *Nueva Planta* fell short of this goal, however, as the officials who oversaw the creation of the new government “did not have enough time, nor did they have the experimental understanding that was required to judge which innovations were useful and which had to be abandoned as dangerous to the public and to royal authority.”³ Without sufficient time or a working knowledge of the government that they were reforming, these ministers were unable to implement a smooth transition to the new government. Hasty

¹ For a transcript of the memorial, see *Memorial de greuges de 1760, projecte de constitució de l'estat català de 1883, memorial de greuges de 1885, missatge a la reina regent de 1888, bases de manresa de 1892* (Barcelona: Generalitat de Catalunya, 1990), 1-19.

² *Ibid.*, 3.

³ *Ibid.*

action and ignorance of local expectations increased the difficulty of implementing these reforms.

The *Nueva Planta*'s failure to promote equality could be seen in the evident inequality in the distribution of royal and ecclesiastic offices. On the local level, the selection of municipal officials by lot from among the citizens had been replaced by royal appointment.⁴ The presence of many foreigners from Castile in the administration of the Crown of Aragon was damaging because they did not understand the laws and customs of those they governed. Philip V opened all offices to all of his subjects to create "a perfect equality in the distribution of the charges and awards" among his subjects without regard to nationality.⁵ In addition to the many positions in the Crown of Aragon held by Castilians, most positions at the court, in Castile, and throughout the New World also remained in Castilian hands.⁶ The residents of the Crown of Aragon's inability to acquire offices was a mark of disgrace which cut them off from social and political advancement. Instead of increasing equality among his subjects, the *Nueva Planta* had led to greater inequality through the near exclusion of the Aragonese, Catalans, Mallorcans, and Valencians from royal office.

The delegates of the Crown of Aragon did not attribute this failure to a deficiency in Castilian law. Instead, they emphasized that the laws of Castile "are very just and very useful *for*

⁴ *Ibid.*, 4.

⁵ *Ibid.*, 7.

⁶ Of the nineteen diocese in the Crown of Aragon, three were held by Catalans, two by Aragonese, and one each by a Valencian and a Mallorcan. Similarly, of one-hundred positions between the Audiencias and Chancillerias of Castile and the Consejo de Navarra, two positions were held by Aragonese and one by a Valencian, while out of the fifty-five positions in the Audiencias of the Crown of Aragon, only twenty were held by local citizens. The latter statistic was particularly galling as Philip V ordered that half of these positions should be held by locals. Finally, among the seventy-nine ministers in the Consejos in Madrid, only four were from the Crown of Aragon. *Ibid.*, 8.

the kingdoms in its Crown.”⁷ These virtues were not transferable to other kingdoms according to the Petition, and the laws of Castile were demonstrably ill-suited to the needs of the Aragonese, Catalans, Valencians, and Mallorcans:

...just as the human body is not one and perfect but its parts, while distinct and dissimilar, obey the head or the soul that resides in it, so also is the unity and perfection of the body of the monarchy but its parts or provinces, while they have different civic laws, obey and are subjects of Your Majesty. Your royal will, Lord, is a supreme universal law that unites all and obligates them to sacrifice their properties and lives in the defense of Your Majesty and of the common good. The difference of the government and of the civil laws of the kingdoms of Spain are not opposed in the apex to the sovereignty of Your Majesty, nor to the union of your vassals, nor to the true policy... prudence and the same natural reason dictate that as the provinces have different climates and different types of people, their laws must be different so that all can be well ordered and the body of this monarchy happy.⁸

The differing character of the people and environment of the kingdoms of Spain required laws tailored to their peculiar needs. Any attempt to impose a single legal code, no matter how good it was, would cause problems. The delegates from the Crown of Aragon used the traditional image of the body politic to explain these differences and justify the need for several legal codes all under the single absolute authority of the king. Rather than presenting a challenge to his authority, they framed the multiplicity of Spanish legal systems as a strength that emphasized the preeminence of the king’s will as the only supreme law that could unite his kingdoms.

The delegates defended this vision of a political body composed of different kingdoms by noting how commonplace this arrangement was: “Perhaps the monarchies of France, Austria, and others are left alone as perfect because the provinces that compose them have different laws?” Within Spain the value of legal variation had been demonstrated as well. The delegates noted “the prudent diversity” in civic laws and in the many legal differences that continued to distinguish the four kingdoms of the Crown of Aragon. They invoked the precedent of James I of

⁷ *Ibid.*, 6. Emphasis added.

⁸ *Ibid.*, 6.

Aragon, who, after conquering Valencia and Mallorca, “did not give them the laws of Aragon, nor of Catalonia, but instead gave them other special laws that were well-suited to make them happy.”⁹ James also prevented Catalans from holding offices in Valencia, reserving those positions for local subjects.¹⁰ Because of James’ “generosity” toward those he conquered, his son, Peter III, was able to conquer Sicily and Naples due to the “prodigious generosity with which his faithful vassals spilled their blood.” Similarly, when the Crowns of Castile and Aragon were united in the marriage of Ferdinand and Isabel, they “did not think of altering the ancient laws with which they had governed and maintained their flourishing kingdoms in the Crown of Aragon.”¹¹ The genius of this system, according to the delegates, was that it recognized that each province was uniquely different and convinced that its institutions were better than those of everyone else. Each kingdom would accept its own laws, while rejecting the laws that were best suited to its neighbor. This system also avoided the inequality between the kingdoms as each had access to enough offices for the kingdom. The success of the Spanish composite monarchy was unsurprising, as “those great kings and their wise advisors, knowing that following natural law, fathers with families must govern their own houses and citizens [must govern] their cities, they understood as a consequence of this [natural] law that it was very just and very beneficial that each kingdom govern its own citizens, subordinate to the supreme will of their sovereigns.”¹²

According to the delegates, the distinctive natures of these kingdoms had to be respected for the

⁹ *Ibid.*, 6-7.

¹⁰ *Ibid.*, 10.

¹¹ *Ibid.*, 7.

¹² *Ibid.*, 10.

good of the kingdoms and of the king.¹³ When Philip V implemented his reforms, he did so with the laudable aim of improving the equality of his kingdoms. His reforms' failure had now shown that legal uniformity among the kingdoms of Spain promoted Castilian dominance in all of his kingdoms and threatened the happiness of both subjects and monarch.

The delegates from the Crown of Aragon did not expect a revocation of the *Nueva Planta* despite their rosy reading of the history of the Spanish composite monarchy and condemnation of the failure of Philip's reforms. Instead, the delegates addressed specific problems with practical solutions. Rather than calling for the reinstatement of the Council of the Crown of Aragon, they asked that the kingdoms of the Crown of Aragon receive equivalent representation in the Council of Castile—specifically, they requested six seats for the Aragonese kingdoms, which corresponded to the number of seats reserved for the other kingdoms in Castile. This would be more consistent with Castilian practices. The delegates also asked that Corregidores and municipal officials be chosen from among the local population.¹⁴ The delegates also encouraged the king to appoint local bishops. They noted that this was important for the spiritual good of his subjects and that it would be more consistent with established practice in Castile and throughout Christendom following the Council of Trent. Appointing bishops who could speak Catalan in Catalonia, Valencia, and Mallorca was important as “laborers” in these kingdoms did not understand Castilian. For practical reasons the appointment of bishops who spoke the vernacular was common in the New World, and the delegates believed that the same principles applied to

¹³ The delegates went on to emphasize the benefits of a composite monarchy for royal authority, explaining that “the citizens of one [kingdom] do not order those of another, only the king commands everyone, and everyone obeys him with singular pleasure and with the most devoted and constant fidelity.” *Ibid.*, 11.

¹⁴ *Ibid.*, 13-15. The delegates noted that “an ignorant or greedy mayor is capable of ruining a village” through the abuse of his powers.

the Crown of Aragon.¹⁵ Finally, they asked that the king appoint local judges as they would understand local legal practice and customs better than foreign appointees. This was especially important because of the preservation of Aragonese, Catalan, and Mallorcan civil laws.¹⁶

All of these requests shared the goal of facilitating each kingdom's ability to have a greater role in its government so that they could be better subjects. This would be more just and would restore the subjects of the Crown of Aragon to the king's good grace—the delegates repeatedly mentioned that they felt like foreigners cut off from the king's favor and the honor that they deserved. Their exclusion from royal favor reduced their support for the king—from whom they felt estranged. The delegates recognized that these reforms might appear to limit the king's authority, but they countered with the unlikely image of a locked room: "One does not lose the liberty of entering and exiting a room... if one retains the key to open it whenever and however one chooses. The sovereign just will of Your Majesty is the only key that opens the door to award those who are worthy and closes it to those who are not. It is the law that admits those and excludes the others."¹⁷ The king alone could give privilege to the worthy, and the delegates urged him to recognize the worthiness of the residents of the Crown of Aragon by appointing them to royal offices. Rather than challenging royal authority, they implored the king to use his authority to strengthen the bonds between subject and monarchy in their kingdoms. Philip V, Charles' father, had begun the new government in the Crown of Aragon and now Charles had the divinely appointed destiny "to perfect it" and restore equality to all of his subjects.¹⁸

¹⁵ *Ibid.*, 14-17.

¹⁶ *Ibid.*, 17-18.

¹⁷ *Ibid.*, 18.

¹⁸ *Ibid.*, 19.

The most striking aspect of the Petition of Grievances is how it linked the diversity of the king's subjects and kingdoms with the sovereignty of the king's will. By respecting the variety of laws and customs that his subjects had developed through their distinctive histories and in response to their unique circumstances, he could promote their well-being and protect his own authority from encroachment from his citizens. The creation of a barrier preventing the citizens of one region from governing those of another meant that the only force that united the kingdoms of Spain was the monarch. While many historians and political theorists, including Tilly and Weber, have considered this the mark of a weak political union or an undeveloped state, the delegates from the Crown of Aragon believed it heightened the king's authority by elevating him above all of his subjects in a unique and compelling way. A composite monarchy was stronger than a unified one, and centralization could actually prove to be a weakness. While the reforms proposed by these delegates were largely ignored, they demonstrate an important line of political thought in eighteenth century Spain that made sense of Spanish political developments through the language of bodies and assumptions of the distinctiveness nature of each of the several kingdoms of Spain. The Petition's discussion did not include language of centralization or devolution, but instead focused on practical suggestions to improve both the equality of the kingdoms of Spain and their subjects and the supreme authority of the king.

The Petition of Grievances also reflects the continued divisions between the kingdoms of Spain following the *Nueva Planta* reforms. As this dissertation has argued, the lack of legal uniformity in Bourbon Spain did not diminish royal authority, but could promote it by allowing the king to find a practical balance between the needs of the monarchy and those of his subjects. By pursuing particularist policies throughout the Crown of Aragon, the king could address local concerns without implementing wide-reaching reform that would inevitably create as many

difficulties as it solved. This dramatically non-ideological approach to governing conforms to Philip V's lack of interest in political theory. Instead, he focused on finding practical ways to achieve the common good rather than implementing some ideal form of absolutism. His tutelage under the anti-absolutist archbishop of Cambrai, Fénelon, may have cultivated this outlook, although more research should be done on this topic.¹⁹ Given his relative silence on the theory of governing, Philip's political actions remain our best source for understanding his view of royal authority. These indicate a strong preference for legal variation and privilege over any aspirations for a centralized and uniform state.

To understand the significance of Philip's reforms and his other political actions requires an understanding of the Habsburg practices of governing the composite monarchy of Spain in the late seventeenth century. The institutional arrangement of the Habsburg composite monarchy enabled the king's subjects to play competing authorities against one another to accomplish their goals. While it had traditionally depended upon the representative assemblies of the Cortes, under Charles II these were avoided in favor of direct particularist negotiation. This new arrangement should not be read as a clear sign of royal incompetence, however, as it proved very effective at mobilizing men and resources during Charles frequent wars. In moments when the Habsburgs could ignore the traditional limits on their authority, such as following the revolts of Catalonia and Messina and their subsequent reconquest, Philip VI and Charles II demonstrated their willingness to assert royal supremacy while also preserving many of their subjects' privileges. In the case of Catalonia, the composite monarchy survived intact following the revolt,

¹⁹ On Philip V's political philosophy and his relationship with Fénelon, see Kamen, *Philip V of Spain* (New Haven: Yale University Press, 2001), 220-225. His lack of ideology may be part of the reason that Philip backed off from the initial decree of the *Nueva Planta* so readily.

which suggests a conviction that the Catalan privileges ultimately served the interests of both monarch and subjects.

Philip V adopted a different course of action when he reconquered the Crown Aragon following its support of the Archduke Charles in the War of Spanish Succession. While many of the king's advisors suggested preserving the privileges of these kingdoms as Philip IV had in the 1650s, Philip's initial decree of the *Nueva Planta* proclaimed a radical new relationship between the king and his subjects, who would all be ruled by "the same law." One month later, however, he began to retract this vision of a united Spain under a universal law by restoring many of the privileges of those who had remained loyal to Philip during the War of Succession. As the war progressed and new questions about the government of the Crown of Aragon arose, Philip chose to preserve a growing number of these kingdoms' privileges as well, including their civil laws. The resulting institutional arrangement of Spain preserved the outline of the Habsburg composite monarchy with many privileges dependent upon membership in kingdoms, towns, guilds, families, and the like. Nevertheless, the Crown of Aragon's privileges were no longer grounded in medieval precedent, but instead on fidelity to the living Bourbon monarch who restored them to his faithful subjects. This shift more closely linked the exercise of privilege with obedience to, and the good will of, the king.

Philip and his ministers strayed further from uniformity and centralization in the years following the War of Succession. In his surprising break from the *Nueva Planta*, Philip continued to prefer specific practical solutions to sweeping reform, even when this led to legal and administrative inconsistency throughout his kingdoms. When faced with questions concerning the creation of a universal interest rate on *censo* debt throughout his kingdoms, he left rates higher in the Crown of Aragon than in Castile. He apparently made this choice because

the change would cause too many problems because of the different set of contracts that would be changed there, where many more contracts fell under the broad category of *censo*, complicating any attempt at broad reform. Similarly, when the Captain General of Catalonia usurped power assigned to the Real Acuerdo by the *Nueva Planta*, Philip affirmed the change and opposed “innovation” in administrative practice, which required innovation in the official legal authority of these officials. Custom trumped law in Philip’s decision as he cared more about what worked than what was technically correct according to his own proclamations. Finally, the preservation of Aragonese, Catalan, and Mallorcan civil law resulted in these kingdoms having a deductive criminal law based absolute rules that it attempted to apply to particular circumstances, while at the same time having an inductive civil law based on contradictory customs and practices. These two fundamentally opposed legal traditions now existed within the same jurisdiction, creating a less coherent legal arrangement than the composite monarchy in which they existed next to each other in distinct kingdoms. In each of these cases, Philip V chose to affirm the practical solutions of his ministers and the entrenched interests of the local elite. Particularism, not a grand vision of universal monarchy, defined Philip’s approach to settling disputes concerning the implementation of his early reforms.

If Philip rejected the Habsburg precedent of the composite monarchy and only inconsistently followed Castilian models, perhaps he instead followed the example of his relatives in France. While many historians have argued that he did precisely that, this thesis is ultimately unconvincing because of the significant differences in the Bourbon monarchies’ governing practices that persisted during the eighteenth century. While rulers on both sides of the Pyrenees depended upon the support of their privileged subjects and faced significant fiscal needs, the War of Spanish Succession provided Philip V with an opportunity to redefine his relationship with his

subjects all at once—an opportunity that did not come to the French monarchs. This change allowed the Bourbons in Spain to affirm privileges throughout the eighteenth century as they had found a sufficient balance between royal needs and the willingness of Spaniards to support the monarchy through taxation and the purchase of offices. In France, the Bourbons continually adjusted the privileges of their subjects—and the costs of enjoying these privileges—which eventually undercut the privileged elite’s support for a monarchy that appeared to threaten their status rather than defend it. While both dynasties avoided traditional representational assemblies, the Spanish Bourbons proved more responsive to the interests of their privileged elite. The French king’s ability to impose direct taxation on the nobility and to demand new funds from venal office holders reflects the power of the monarchy, but the need for these measures reflected its inability to find alternative sources of income and ultimately weakened the social foundation of the monarchy. The Spanish Bourbon’s ability to avoid this trajectory proved to be a source of strength and stability as it successfully maintained its role as the defender of the society based on privilege in Spain. The tremendous innovations of the initial *Nueva Planta* decree gave Philip V and his successors considerable flexibility to restore or promote privileges, even if this came at the expense of uniformity and centralization. Avoiding the creation of the “state-like” institutions necessary for the assessment and collection of direct taxes on all royal subjects proved to be a source of stability that helped the Spanish monarchy to avoid an event like the French Revolution.

Naturally, it would be ridiculous to assume that Philip V acted to avoid the French Revolution. What can be concluded from his governing practices, however, is the open and contingent nature of institutional development and the Spanish Bourbon’s flexibility in responding to challenges as they arose. Philip certainly would not have chosen the War of

Spanish Succession if he had the ability to choose a secure and uncontested ascension instead, but it provided the context in which he was able to alter the relationship between the Crown of Castile and the Crown of Aragon in a significant way with long-reaching consequences that provided certain advantages to him and his successors. When he did this, he was not pursuing a more “absolutist” monarchy or a more centralized and uniform state, but instead sought practical solutions to the problems at hand. This involved creative engagement with the traditional institutions of the monarchy and the customs of his subjects that yielded surprising and unpredictable results.

These conclusions demonstrate the danger of attempting to create totalizing theories to make sense of the past; all too often these theories take the present as the “natural” goal of the past. As the present is a moving target continually in flux, such theories require frequent reinterpretation to identify the new agents of “progress” who attempted to create the present world. Rather than teaching us about the past and tempering our judgment of the present, such theories only reveal to future generations our own inability to understand any alternative to our own lived experience.²⁰ The example of Bourbon Spain demonstrates that early modern monarchies could relate to their subjects in a number of ways that do not easily fit into categories such as “centralized” or “decentralized.” Instead, the Bourbon monarchy created a new configuration of privilege that strengthened the local elite, the monarchy, and the role of privilege in defining Spanish society. This set of governing practices followed a distinctly different path of development than that pursued by the Bourbons in France and demonstrates that while the eighteenth century was a period of significant institutional innovation throughout Europe, there was no single obvious model for an early modern monarch to follow. Each ruler had to choose

²⁰ See Herbert Butterfield, *The Whig Interpretation of History* (New York: Norton, 1965), *passim*.

how to respond to her circumstances without a clear path of development and her choices created a variety of distinctive institutions mediating the ever-changing relationship between ruler and ruled. With sensitivity to these variations, it is possible to see alternatives to the unnecessary dichotomy between centralization and devolution that is transcended by particularism as it was practiced by the Bourbons in eighteenth century Spain.

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