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论秩序和基本尊严

A Treatise of Orders and Plain Dignities

Loyseau 卢瓦瑟

Edited by HOWELL A. LLOYD

中国政法大学出版社

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Introduction

Loyseau's life

Charles Loyseau's paternal grandfather was a husbandman of Nogent-le-Roi in the Eure valley, some thirteen kilometres south-west of Dreux. To the north of Dreux, in the same valley, lies Anet with the remains of its château which Diane de Poitiers, mistress of King Henry II, made into one of the masterpieces of French Renaissance architecture. The patronage wielded by *La Grande Sénéschalle* was instrumental in shaping the career of Loyseau's father, Regnauld. Trained as an advocate, he became Diane's regular legal representative when his predecessor in that role, the distinguished lawyer Christofle de Thou, was appointed through the same patroness's good offices to a senior judgeship in the Paris *parlement*. Regnauld Loyseau himself built a successful practice at the Paris bar, and it was probably in the capital that his son Charles was born in 1564. Diane de Poitiers stood godmother to him (*Offices* III.iii.45). Eclipsed in influence at court since Henry II's death in 1559, she was to die in 1567; but protégés of hers remained conspicuously in place. And with his father's own contacts to help him on his way, a brilliant future for the young Loyseau may well have been anticipated.

Such expectations were not entirely fulfilled. Doubtless Loyseau received the university education and qualifications in civil and in canon law which, as he states (*Orders* 8.15), were necessary for all aspiring advocates, hard though the statement is to reconcile with his later remarks on the minimum age for admission into the profession (*Orders* 8.44), and those remarks in turn with his own experience. While he hints that he was educated in Paris (*Offices* II.vii.15), the civil law was not taught there; his knowledge of it, evidently profound,

seems to have been gained in part at Toulouse (*Orders* 11.15). At all events, he became an advocate at Paris at the age of twenty. Yet the time was not propitious. In a France rent since before Loyseau's birth by civil war, the year 1584 saw the revival of the noble-led Catholic League as well as the formation, in Paris, of a radical group known as the Sixteen and involving a number of advocates, attorneys and magistrates of the sovereign courts. Both movements aimed, *inter alia*, to exclude from the royal succession the Bourbon and Huguenot Henry of Navarre, heir presumptive through the death of Henry II's youngest legitimate son and the childlessness of the latter's brother, Henry III. In his writings Loyseau was to devote considerable space to unravelling the law governing succession to the throne (for example, *Orders* 7. 68–75). But for the time being the political and professional environment in Paris was scarcely congenial for a young advocate of a conservative cast of mind. Within four years he decided to withdraw in order to devote himself to study.

In 1593, however, Loyseau was appointed to the office of *lieutenant particulier*, or deputy to the presiding judge, in the presidial court at Sens, a town still resistant to the authority of the new king Henry IV. What role, if any, he played in bringing the town to terms is uncertain, though expedients to which Henry resorted for the purpose were not unknown to him (*Orders* 11.17). Whilst at Sens he began to publish technical treatises on the question of landed securities: an urgent question, as he declared, owing to the straits to which the civil wars had reduced so many French families, and owing to the 'confused' condition of 'our customary laws' to which 'Roman law must be linked' so as to supplement 'usage with reason' (*Garantie des rentes*, preface. 9; *Déguerpissement*, I.i.9, preface. 1). He also married. His wife, Louise Tourtier, was the daughter of a master of requests in the royal household of Navarre and treasurer to the dowager duchess de Longueville, Louise's mother being from one of the leading families of Châteaudun. It was through de Longueville patronage that Loyseau gained in 1600 the office of *bailli*, or chief magistrate, in the county of Dunois. For the rest, his marriage yielded six children. His eldest son was to follow him into the legal profession; his elder daughter married an advocate and, upon being widowed, became a nun. His other four children all entered the church, three of them taking religious vows. Such commitment on the part of his family suggests that the prominence of religious and

ecclesiastical considerations in Loyseau's own writings sprang as much from conviction as from convention.

In the decade which he spent at Châteaudun Loyseau's duties left him, by his own account, 'few enough hours of respite' for scholarly pursuits (*Orders*, dedicatory epistle). Even so, they brought him face to face with the inadequacy and corruption of local judicial administration which Parisian jurists had long since denounced. In 1603 he produced a polemical *Discourse on the Abuse of Village Justices* who, learned only in the ways of chicanery, 'proceed not by reason and justice but by a pure usurpation' (*Discourse* 2). Provoked by them and by what he saw as other dangerous deviations in contemporary French mores from the dictates of 'reason', he found respite enough to write the three substantial treatises upon which his reputation as a political thinker rests. His *Treatise on Seigneuries*, of which the tract against 'village justices' was planned as the tenth chapter, had appeared by 1608, to be followed by his *Five Books on the Law of Offices* which was licensed in 1609 and, in 1610, by his treatise *Of Orders and Plain Dignities*. From the rapidity with which they pursued one another into print, as well as from his prefatory remarks and numerous cross-references, it is evident that their author was engaged upon all three at approximately the same time and conceived of them as intimately related works. All three attracted interest and were soon re-issued, not only severally, but also in collected form: at least nine editions of Loyseau's collected works, always including the three major treatises, were published by the end of the seventeenth century. His opinions, especially on the law governing appointment to offices, continued to be regarded as authoritative throughout the eighteenth century. Philosophers such as Montesquieu evidently knew his work well; and twentieth-century scholars have described him as 'by far the ablest jurist of the period ... superior even to Bodin' (Church, 1941, p. 315; cf. Gilmore, 1941, p. 122).

In 1610, owing possibly to a conflict between his judicial responsibilities and de Longueville interests, Loyseau left his post at Châteaudun and returned to Paris, ostensibly to resume his career at the bar. Despite the reputation which by then he had gained as an academic lawyer, his name figures infrequently as an advocate in the registers of the *parlement*. Perhaps Loyseau, like his predecessor Charles Du Moulin, widely acknowledged as the greatest jurist of mid sixteenth-century France, was an ineffectual pleader. Perhaps his practice was

that of a consultant advocate which rarely involved appearance in court and yet commanded, as in ancient Rome, both influence and prestige (*Orders* 8.17, 28–9). Certainly his professional associates thought highly enough of him to elect him, in 1620, *bâtonnier*, or president, of the order of St Nicolas, the confraternity to which advocates and attorneys of the Paris bar belonged. But the likelihood is strong that Loyseau in his maturity chose by and large to live in the manner of a gentleman, accepting occasional consultancy fees as honoraria and otherwise following the 'very useful' English example of subsisting on the rents of his considerable accumulation of properties in Paris and the environs of Dreux (cf. *Orders* 5.108, 116; 8.28). He was the head of a family which in two generations had risen via noble patronage, office and the law, a family destined formally to attain in the next generation noble status in its own right (cf. *Orders*, 5.40, 44; *Offices* 1.ix.32). Whether or not content with that, he died in 1627, after a fit of apoplexy.

Loyseau's purpose and method

The position which Loyseau elaborated in his three major treatises was, up to a point, a *thèse de circonstance*, prompted by what he regarded as the dangerous condition of key elements in French public affairs. In *Seigneuries*, the problem was abuse and corruption in the exercise of judicial authority at the local level, a matter of which he had first-hand experience. In *Offices* it was the avidity with which Frenchmen sought public offices and, above all, treated them as vendible and heritable – a practice institutionalised in 1604 (edict of the *paulette*) by a government concerned at once to reduce the great nobility's power of patronage over the magistracy and to tap into sources of revenue other than the over-taxed rural commoners. As a jurist, Loyseau believed that the reason of the law must be brought to bear upon both these problems and even adjusted, in moderation, to accommodate their effects (*Offices*, preface). Yet both problems were phenomena manifesting the 'confusion and disorder which today pervert the eutaxy and good arrangement of this state' (*Orders*, dedicatory epistle). How to refurbish order in society at large was thus the subject of Loyseau's third treatise, somewhat less technical and more discursive than the other two, but no less political in its

thrust. Its significance can be understood only by examining it in relation to its companion works.

All three treatises bore upon the well-being of the state which, in Loyseau's view, was indissociable from the values and behaviour of those who affected to possess and to exercise public power. In developing that view he built upon the insights of Jean Bodin. During the civil wars of Loyseau's youth, Bodin had arrived at a new concept of the state as the locus of public power at its supreme level: the level of sovereignty which was at once indivisible and a property of the state itself, unifying its otherwise disparate members. Yet, as Loyseau perceived all too plainly, to an alarming degree in the France of his day public power lay diffused and patrimonially in the hands of landed lords and venal office-holders. The task which he set himself was therefore to focus upon the actual mechanisms of public power and to show how and why control of these could and should rest ultimately with the sovereign prince. In undertaking that task he necessarily covered ground a great deal of which was already well trodden. Even so, it was the richness of his exposition as well as its expertise that ensured the abiding influence of his thesis: a thesis geared firmly to practical issues, structured with tolerable clarity, and blending a wide range of literary, historical and legal materials within a persuasive philosophical matrix.

For each of his three treatises Loyseau adopted broadly the same structure. Each proceeds from the general to the particular, beginning with an overall appraisal of its subject and then considering in turn a series of instances arranged, by and large, in descending order of importance, with ample interludes along the way for discussion of technical issues. Thus, *Seigneuries* begins with 'lordships in general' (chapter i) and proceeds via 'sovereign lordships' (ii) and 'intermediate lordships' (vii) to 'petty lordships and simple justices' (x), ending with 'justices appertaining to towns' (xvi). The five books of *Offices* are each arranged internally along much the same lines; and the pattern, though complicated by the attention paid to ancient Rome, is maintained in the treatise of *Orders*.

As an advocate Loyseau was accustomed to support his arguments with 'proofs', and he supplies these generously in the form of quotations and citations from supposedly authoritative sources. His deployment of his materials varies in accordance with the different subjects

of his three treatises. Owing not least to the prominence of the Roman dimension in *Orders*, writers from classical antiquity account for 30 per cent of the author's citations from identified sources in that work; in *Seigneuries*, by contrast, the proportion of such citations falls to below 10 per cent. Cicero predictably takes pride of place, cited in *Orders* on no fewer than thirty-eight occasions and emulated even in Loyseau's habit of decorating his prose with superfluous scraps of Greek. This apart, the breadth of his acquaintance with classical literature is at first sight impressive and, coupled with his devotion to argument from etymology, suggests an immersion on his part in humanist scholarship as well as in works well established in the medieval canon. Yet the appearance may be deceptive: Loyseau's material, much of it the standard fare of contemporary learned discourse, seems in places to have been acquired at second hand, perhaps from one or other of the numerous compendia available to him. And, while his reading is studiously comparative and verbally sensitive, it is also indiscriminate. In search of historical information he turns far less often to Tacitus, whose reputation for discernment and 'prudence' was rising steadily in his lifetime, than to Livy or Suetonius, both of whom he quarries for anecdotes and does not hesitate to paraphrase or distort for his own purposes (for example *Orders* 2.6, 10.16). The fictions (as we now recognise them) of the alleged contributors to the *Historia Augusta* – 'Capitolinus', 'Lampridius', 'Spartianus', 'Vopiscus' – readily seduce him. Compilers of miscellanea such as Aulus Gellius and the latter's modern Italian imitators, Alessandri and Paolo Manuzio, bring welcome grist to his mill. Capable of appreciating the quality of Carlo Sigonio's researches into Roman institutions, Loyseau when it suits his purpose is equally capable of brushing aside debates over such striking issues as the authenticity of the Donation of Constantine, long since exposed as a forgery by that pioneer of critical humanist scholarship, Lorenzo Valla (*Orders* 2.62; 3.30).

In these and other respects Loyseau is typical of the educated readership of his day: omnivorous, enthused by rhetoric, fascinated by antiquity and critical only in spasms. Yet he also exhibits a sense of history. The space which he devotes in *Orders* to Roman institutions may suggest an intention on his part to present these simply as a model for the French society of his own day. This is not so: he warns explicitly of the dangers of anachronism, stressing that 'it is

an abuse always to think of relating the ways of Rome to our own' (*Orders* 6.12). True, he finds much to be learned from the classical experience, and precedents – even origins – for French institutions are often discoverable in those of the ancient world. But French institutions have their own peculiar origins as well and, in common with those of Rome, have changed and evolved through time. Consciousness of chronological change, sometimes but by no means always in terms of decline from a pristine condition, is central to Loyseau's approach. To argue merely for a re-adoption of the 'ways of Rome' would be absurd. Rather, what Rome offers is a well-documented case-study in how institutions made by men and therefore imperfect and impermanent are none the less informed to some degree, and certainly ought to be informed, by an 'order', a divinely appointed system of values and behaviour, which is of universal application. In so far as French arrangements of his day exemplify order in their turn, they are sound and the well-being of the state is assured. In so far as they do not – and from the 'abuses' of seigneurial justices, the 'cacoethes' (*Offices* III.i.9) of office-seekers, the 'vainglorious' ambitions of the would-be upwardly mobile, it is evident that disorder is widespread – Loyseau's task is to show how they may be corrected. In this he shares the ethical purpose of 'exemplar' historians of the Renaissance world, and makes some use of the materials with which they and their contemporaries provided him.

Even so, Loyseau's main sources in all three of his treatises are legal materials. References to Roman law, canon law and French law in the shape of customs and royal ordinances account for 37 per cent of his citations in *Orders*, and almost 63 per cent in *Seigneuries*. In the latter work, dealing with an institution unknown to ancient Rome, citations from French law amount to 31 per cent of the whole; in *Orders* their contribution declines to below 5 per cent. Dependence upon commentators, and especially upon medieval commentators, is relatively rare; all in all, the jurist's principal reliance is directly upon statements in the *Corpus iuris civilis*. Those statements, so many of them uttered by the ancient jurisconsults who, like him, 'applied themselves to philosophising ... on the law' (*Orders* 8.23), are treated as axiomatic. While Loyseau again warns of the folly of approaching the citizens of the ancient world 'as if their laws and customs bound us in France' (*Orders* 10.41), he himself thinks of the laws handed down to him and his contemporaries from the Roman

Republic and the western and eastern empires as an integrated collection, amounting to 'our law' (for example, *Orders* 2.25) and pregnant with ethical guidance. In general, his use of legal materials is markedly more scrupulous than is his handling of literary texts; his quotations and references reach a relatively high standard of accuracy, though there are signs that – as he occasionally admits (*Orders* 1.55) – he is working at least in part from memory. Yet even this high-minded legal devotee is capable of arbitrarily distorting his authorities. An outstanding instance occurs in the course of his central argument for the monarch's exclusive power to confer ennoblement. Ostensibly quoting from the *Digest*, Loyseau silently substitutes the phrase *princeps verbis* ('the prince by his words') for *suffragio populus* ('the people by its vote'), and thereby dramatically alters the meaning of the passage. Neither contemporary editions of the *Digest* nor the *glossa ordinaria* (standard gloss) printed in those editions afford any justification for such a substitution. According to the gloss at this juncture, several commentators have noted how at the time of the law in question 'the people had the power of making laws', and that 'today so much is done by the prince' (ed. Paris 1576, I, col. 82, *s.l.* 'i'). But the observation figures only in the context of a discussion as to whether custom overrides law, and it furnishes no warrant for Loyseau's tampering with his source (*Orders* 4.41).

Trained as a lawyer, Loyseau had nevertheless received an earlier training in philosophy, in common with all university students of his day for whom passage through the arts faculty was a necessary preliminary to entry into the higher faculties of medicine, law and theology. And while law provided so much of the matter for his thesis, it was from philosophy that he derived its form. *Pace* the neoplatonic elements that figure in his exposition of 'order' and elsewhere too (*Orders*, preface. 8; *Offices* I.vii.1–2, II.i.20, etc.), the framework as well as key elements of his arguments are at bottom Aristotelian. 'Jurisconsults', he declares, 'are not tied down by the rules and formalities of dialectic' (*Offices* I.i. 98); yet Loyseau's thesis is in fact constructed on the basis of formal rules. These are the rules not so much of rigorous scholastic logic with the syllogism as its centrepiece, as of humanist logic developed for purposes of practical argument and grounded upon principles which Aristotle, Cicero and the sixth-century scholar Boethius in turn had adumbrated in their discussions of 'topics'. Much simplified, the requisite procedure is first to estab-

lish the 'category' into which a given subject must fall and then to arrive, via successive stages of 'division', at its 'genus', its 'species', and ultimately its 'definition'. For purposes of 'division' the analysis depends upon 'differentiae'. These serve to identify the characteristics of a subject and to distinguish it from other subjects, for instance of the same genus. Thus, while man belongs to the genus 'animal', he is also rational – the differentia which renders him distinct from other animals and indicates his species. As we shall see, in Loyseau's thesis the key differentia is 'public power'. By proceeding in this way he brought coherence to his treatment of otherwise discrete subjects, and rendered his thesis as a whole persuasive to the minds of his similarly-schooled contemporaries.

Loyseau's thesis

The subjects with which Loyseau proposed to deal were lordship, office and order. His method required him to begin by placing each of them in its appropriate category. According to Aristotle there are ten of these of which only one, the category of 'substance', consists of members (such as a man, or a piece of land) that can exist independently. A member of any of the other categories – for instance, those of 'quantity', or of 'quality' or of 'position' – can exist not by itself, but only as an 'accident' in a subject which belongs to the category of 'substance'. By Loyseau's account, lordship and order both fall into the category of 'quality', and so neither 'can exist apart'. He therefore holds order to be predicable of individual persons, and lordship of particular heritages. Office, however, poses a difficulty: it seems in France to be transferable from person to person and so, apparently, can 'exist apart' from the individual officer. Office has therefore to be treated as a 'separable accident' predicable primarily of individuals and secondarily of the species to which they belong (*Offices* I.i.106; III.iv.15, ix.2; *Seigneuries* iv.4). The difficulty of categorising office in contemporary France greatly complicates Loyseau's treatment of that subject (cf. *Orders* I.10, and below, p. xxi–xxii).

The 'genus' of lordship, office and order alike is 'dignity', as distinct from the genus of 'condition'. A man's condition 'restricts' his 'pure freedom', as when he is a minor. Dignity 'raises' him 'above freedom', making him 'more worthy' of respect by reason of the 'honourable quality' that it attaches to his name (*Offices* I.i.100–1).

The genus is divided in turn, by the differentia of 'public power'. 'Plain dignities' are qualities 'solely by honour' and lack the 'effect' of 'true orders, offices or lordships' (*Orders* 10.1). Public power attaches to the latter three, each of which is nevertheless differentiated from the rest and constitutes a 'species'. So Loyseau arrives at his preliminary 'definition' in respect of each. Lordship is 'dignity, with power in property'; office is 'dignity, with public function'; and order is 'dignity, with aptitude for public power' (*Orders* 1.6).

The 'power in property' that characterises lordship is, on the face of it, absurd. How can lords, who are 'private persons', have been allowed 'to filch the property of justice' and so 'to establish officers and public persons' empowered even to condemn men to death (*Offices* v.i.40)? Loyseau attacks the question by refining the terms of his preliminary definition. Both the term *propriété* and the term *seigneurie* have more than one meaning. The former can signify a relation or right, and an object or thing. Likewise, the latter can signify '*in abstracto* every right of property, or proprietary power, that one has in some thing', and '*in concreto* a seigneurial land' or fief (*Seigneuries* i.24). The definition applies to lordship *in abstracto*. By 'division' this 'has two species, namely public and private'. Private lordship is simply 'the right that every individual has in his thing'; it applies 'only to lands' and not to persons, for in France there is no longer 'any kind of slavery' (*Seigneuries* i.26, 28, 84). Public lordship applies to persons; it 'is called public because it concerns and signifies public command or power'. But of public lordship there are 'two degrees'. The one, 'which we call sovereignty', remains 'inseparably with the state'. For the other 'we have had to coin a special word, and to call it suzerainty' (*Seigneuries* i.27, 82). It is this latter degree of public lordship that Loyseau finds 'absurd'; and yet, the facts of its historical emergence and present existence are inescapable. The second public degree of lordship *in abstracto* attaches inexorably to seigneurial land, just as its first degree – sovereignty – 'is attached to the state'. And 'sovereignty is the form which gives being to the state', just as 'the fief is the matter and justice is the form which animates and gives being to the body of the lordship' (*Seigneuries* ii.6–7, iv.18).

Is the French kingdom, then, no more and no less than a feudal lordship writ large? Loyseau argues emphatically that this is not so, for two main reasons. First, sovereignty encompasses only public and

not private lordship; unlike a possessor of the latter in relation to his fief, the sovereign prince has no proprietary right in the land of the realm (*Seigneuries* ii.53; *Offices* II.ii.30 *et seq.*). By the same token, he has no right to his subjects' goods and therefore cannot tax them without their consent, except in cases of 'extreme necessity' – though he may deal with them as with 'a sick person whom one purges against his will' (*Seigneuries* iii.47). What the sovereign prince does have is public power to the fullest degree – an 'absolute' power, 'perfect and whole in all respects', for 'the crown cannot be unless its circle is entire' (*Seigneuries* ii.8). The components of that power, as Loyseau schedules them, are strongly reminiscent of the 'marks of sovereignty' already described by Bodin (Bodin, 1992, pp. xvi, 46–88). Baldly stated, they consist of 'making laws, creating officers, deciding peace and war, exercising final judgement without appeal, and coining money' (*Seigneuries* iii.5). That power, as with Bodin, is none the less circumscribed by divine law, 'the rules of natural justice', and the 'fundamental laws of the state' (*Seigneuries* ii.9). Secondly, as Loyseau's definitions indicate, the kingdom differs from lordships in that the latter involve only 'power in property'. The limitation is strict. The 'power' of lordship encompasses no more than that of justice. Further, lords who have justice 'in property' do not have its exercise, for 'public function' appertains specifically to officers and not to them (*Seigneuries* iv.7–8). In this vital respect the position of the sovereign prince is altogether distinct from theirs. For kings 'perform the principal exercise of their power themselves and in person' (*Offices* II.ii.29).

In France, however, the king is far from alone in exercising public power. The realm is filled with officers who, moreover, handle their offices patrimonially. Loyseau therefore takes it upon himself to examine how far this may lawfully be done. In dealing with lordships he has stressed the importance of land to which public power can attach. A lordship combines both matter and form. But when he turns to offices he finds that in their case this is generally not so. While office 'seems to be in the category of substance', it is essentially 'incorporeal' (*Orders* I.10, cf. *Offices* III.v.75). Some offices are associated with fiefs; others are 'domanial offices' and thus have a sort of material nature in terms of domanial rights. It is therefore admissible that such offices as these be heritable, vendible, and otherwise transmissible from one party to another (*Offices* II.ii, iii). But most offices

lack the nature in question – and yet, the edict of the *paulette* seems to make 'the offices of France quasi-hereditary'. In Loyseau's view, that edict can give 'no assurance whatsoever to the particular acquirers' of those offices. By the fundamental laws of the realm, no king may prejudice his successors' rights, nor deprive the state of its essential property (*Offices* II.viii.8–11). From 'considerations of natural equity' rather than 'the principles and ratiocinations of the law', he contrives to unearth some incidental safeguards for investors in offices and their dependants. Even so, nothing can alter the fact that 'the function and the power' of office as well as its 'title and honour' remain, once bestowed and for the time of tenure, 'inherent to the person' of the officer himself (*Offices* III.ix.3, 45; x.16). To deal otherwise with offices, to treat them and thereby justice itself as vendible and heritable commodities, is 'a kind of madness', a symptom of the corruption of the times and profoundly dangerous (*Offices* III.i.9–11). Yet, given that the madness exists, Loyseau proposes remedies to control it. One is simply that the king take into his own hands the 'entire disposition' of offices of military command and the major judicial offices of the sovereign courts (*Offices* IV.iii.75; iv.61; vii.29, 58–63). The other is a pioneering analysis of four successive stages in the making of an officer – 'resignation', 'provision', 'reception' and 'installation' – such that the role of the 'sovereign prince' is fully acknowledged as 'sole collator' of public power which remains the property of the state itself (*Offices* I.ii–v). Of all the parts of Loyseau's thesis, this analysis was viewed as especially authoritative throughout the remainder of the *ancien régime*.

But that thesis involves far more than an exposition of procedural technicalities. It bears upon the nature of monarchy and of the society which the king controls. The king is not only sovereign lord, nor merely collator of offices to others. He is himself officer *par excellence*. The 'public function' or power which characterises offices is divisible in three: 'government, justice and finance'. And within the kingdom, the king alone has 'all these three functions conjoined in his person, and this in all sovereignty' (*Offices* I.i.120). Now in the Aristotelian metaphysical system 'function' is linked with the concepts of 'actuality' and of capacity, or 'potential'. Himself actual officer, the king is the source of the 'mystic energy and signal power' whereby the potential of becoming officers is actualised in those within his realm who have the capacity of functioning as such (*Offices* V.i.32). This is where

order, defined as 'dignity, with aptitude for public power', comes into play. Of course, the doctrine that society consisted of three orders – *oratores* (those who pray), *bellatores* (those who fight) and *laborantes* (those who work) – was nothing new. Stated early in the eleventh century by Bishop Adalbero of Laon, widely canvassed and greatly elaborated throughout the Middle Ages and Renaissance, its origins were far older. Its serviceability as an ideology is obvious enough to monarchs engaged upon enlarging their power as well as to élites who enabled them to rule whilst simultaneously consolidating their own positions. The very idea of the monarch's combining the three functions in his person is traceable to the Carolingian era and beyond; and images of the king as 'ordained distributor' of virtues via the élites to his people at large occur strikingly in French Renaissance iconography. But Loyseau's distinctive contribution was to take this doctrine and apply it to underpin his systematic analysis of the proper deployment of public power in the dominant institutions of the realm.

His version of the doctrine may be examined in the translation that follows. After his opening review of 'order in general' followed by the touchstone of the 'Roman orders', he begins in the case of France with the clergy, ranked first among the three estates and the prime example of a clearly ordered social group despite certain historic disputes amongst them over precedence. For Loyseau's thesis the utility of ecclesiastical institutions with their reinforced hierarchical structure in the age of the Counter-Reformation is abundantly plain. Yet the church and its affairs lie outside that thesis's scope: in France 'religion has been quite separated from the state' (3.4). What matters, for the thesis, is the relation between order and public power. On this Loyseau reveals his position at an early stage: 'it is ordinarily necessary to have order before being an officer' (1.33). Central as the distinction is to his thesis, he finds its implications hard to sustain in dealing with the third estate. The inconveniences of history and of current arrangements compel him to recognise the existence of that alleged order which is 'not properly an order' at all (8.1). He has therefore to relax the terms of his analysis to the extent of allowing that order, like office a distinct 'species' of 'dignity', may signify 'a condition or occupation' even though these appertain strictly to a separate 'genus' (8.1; cf. above, p. xix). Even so, the disorder of the third estate is extreme, owing not least to venality of offices which has converted into public functions a range of activities that ought