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CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

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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HISTORY OF POLITICAL THOUGHT

LOYSEAU
A Treatise of Orders and Plain Dignities

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This is the first English edition of a treatise which influenced French thinkers from its publication in 1610 until the end of the *ancien régime*. Charles Loyseau's *Treatise of Orders and Plain Dignities* is the third of three major works in which he set out to harmonise with law his fellow citizens' values and behaviour in the crucial sphere of possession and exercise of public power. In attempting this he developed a thesis, calculated to justify the monarch's overriding role, which illuminates contemporary perceptions of the nature of the state.

Howell A. Lloyd's introduction outlines Loyseau's political thesis on the basis of all three of the author's treatises, and examines in relation to the *Treatise of Orders* Loyseau's use of literary, historical and legal materials within the philosophical framework that governed his approach. This edition thus not only makes available an important text, but also casts light upon the intellectual milieu of those who administered early-modern France.

剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

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CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

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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 Sénéchal* 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 Christophe 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*, 1.1.9, 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 Seignuries*, 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-