The court of Madrid and the courts of the viceroys

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The unity of the Monarchy

Between autumn 1598 until well into 1599, funeral rites in honour of Philip II were held in every corner of his dominions. The news of the king’s death spread westwards as it was dispatched by couriers and messengers across continents and oceans. As the news was received, individuals demonstrated that they were all part of the same whole; they were all subjects of the same sovereign and united by the same grief. Just like Castile, Naples, Catalonia or Portugal, all Spanish America went into mourning. The viceroys of Peru and New Mexico both issued official proclamations that, everywhere, “the outward manifestations [of mourning] customary in such cases should be made.” They were expressing that they belonged to a single body politic, a mystic republic held together by royalty. This organic nature made the whole something more than a composite monarchy made up of independent kingdoms and states, since the public ceremonies in each place commemorated three different levels of identity and belonging: city, kingdom and Monarchy, passing from the microcosm to the macrocosm and viceversa.\(^1\)

\(^1\) This paper forms part of the research project funded by the Spanish Ministry of Education “La decadencia de España y la vida italiana en el siglo XVII (1621–1665),” HUM. 2006-11587, coord. Manuel Rivero. Abbreviations: AGS, Archivo General de Simancas; AHN, Archivo Histórico Nacional, Madrid; ASMi. Archivio di Stato, Milan; BL. British Library, Add. Additional; BNE. Biblioteca Nacional de España, Madrid; Cs., Consejos; E., Estado; Leg. Legajo; RAH. Real Academia de la Historia.

\(^2\) Hilda Raquel Zapico, “El poder monárquico y la imagen de la Monarquía en el Buenos Aires de fines del siglo XVI,” in XIII Coloquio de Historia canario-americana / VIII Congreso internacional de Historia de América 1998 (Las Palmas, 2000), 1107–1122. As a counterpoint, the description of the funeral rites in the Americas can be compared with the one written by Ottavio Caputi, charged, on the express orders of viceroy Olivares, with organizing the funeral rites in Naples, see Ottavio Caputi, intro. La pompa funerale fatta in Napoli nell’esecuzione del Catholico Re Filippo II di Austria.
The catafalques and commemorative monuments raised between 1598 and 1599 took as their model those that were erected when Charles V died. In 1559 a catafalque was raised in the transept of the church of San Francisco de los Naturales in Mexico. Designed by the humanist, Cervantes de Salazar (author of Túmulo imperial de la ciudad de México, published in Mexico in 1560), it was decorated with mythological scenes which emphasized the sovereign’s virtues (prudence, justice and fortitude), with paintings and bas-reliefs alluding to the conquest (Ferdinand the Catholic receiving the papal bulls from the pope himself, scenes showing the exploits of Hernán Cortés and his audience with the emperor), and evocations of the Aztec past, to represent the continuity of the present with the past and the future. Such images normalized the representation of the kingdom of New Spain at the heart of the Monarchy. At the same time, the viceregal courts, during both the funeral rites and the celebrations of the new sovereign’s coronation, took on the distinctive character of a true royal court, a mirror or reflected image of the seat of the king’s power as his subjects visualized it. The king and his court were reproduced through their alter ego and alter domus.3

Nothing in the commemorative representations or funeral rites set Mexico and Lima apart from other courts; there was no suggestion that they were in any way subordinate to a capital. The courts of the viceroys had existed before the court in Madrid, and the fact that we have no date or record of the moment when the city of Madrid was officially regarded as the capital is an indication that there was no consciousness of the Monarchy having any geopolitical centre. It was not yet possible to conceive of a centre and periphery in territorial terms, precisely because it was the viceroyalty that enabled a diversified centre to exist. The Spanish Monarchy had no capital, nor, until well into the seventeenth century, was there any awareness that the only court that existed was in Madrid.4 This transformation and its significance is what we shall now concentrate on.

(Naples, 1599), 1–8. In the ceremonial, the motto Non sufficit orbis would occupy a central and visible place, p.14.


Viceroy: “officer” or “royal person”?  

According to a firmly-held tradition, shortly after Philip II had taken possession of his kingdoms, he decided to break with the prevailing diversified centre by concentrating prerogatives in a single seat for the court, which meant permanently fixing his and its residence in one place. This involved a radical reorganization of power, which had a marked effect on the very concept of a viceroy and his functions. Charles V employed pure viceroys, with long mandates, undefined in nature and not limited in time. The reason was that he never stayed in one place for very long; the viceroy was an exceptional figure who ruled during the king’s absence, occupying a position that he automatically abandoned when the sovereign returned. The king was supposed to live among his subjects and it was inconceivable that he should not do so; unless, of course, he was a bad governor (hence the irony expressed by prince don Carlos when he gave a book containing blank pages the title of *Philip II’s Travels*, thereby showing his father to be a poor governor). The Prudent King, however, was neither as radical as he might appear, from his regulation making Madrid the centre of the Monarchy – the city seems to have been viewed as the court of Castile rather than as the court of all the territories – nor was he perceived as such by his contemporaries. The changes were gradual and silent, and went almost unnoticed, as is clear from the fact that it is impossible to pinpoint the precise moment, the exact date when Madrid was declared the court of the Monarchy.\(^5\)

The resolutions issued on March 10, 1555 by the emperor in Brussels, which limited the mandate of the viceroys of the Indies to three years, anticipated an idea worked on later by his son and given shape during the regency of Joanna of Austria (1554–1559) when she limited the mandates of those of Italy and the crown of Aragon.\(^6\) Limiting the mandate was regarded as a problem to do with the permanent absence of the king, since it implied that the alter egos were not conceived of as temporary substitutes for the royal person but as his delegates with limited attributes, or, as Juan de Vega feared, governors more akin to *corregidores* [mayors appointed by the king] than to kings.

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Reorganizing the Councils of the Indies and Aragon and creating the Council of Italy were part of a general intention to concentrate the capacity for intervention on the new court, to make it the only source of favours, a place where all the networks of patronage and clientelism would converge and through which the effective government of the Monarchy would be exercised. Fixing the residence of the court of the king, who did not travel except on rare occasions (and never outside the Iberian peninsula), was bound to give a new reading to the authority of the viceroy by restoring to the monarch attributes that those acting in his place had traditionally enjoyed, since the king would no longer go out to the kingdoms to exercise his prerogatives in person. When, in 1558, Philip II introduced the innovation of appointing viceroyos for only three years, the proposal to limit viceregal autonomy was precisely in order to give some content to a superior court. The wording of the regulation does not state this explicitly, but it was clarified later, in 1574, when the viceroyos of Italy experienced difficulties in reconciling their own courts with the king’s. In a letter to the governor of Milan, the nature of the alter ego was confirmed: they were vicars of the king in the exercise of royal authority, his doubles, or “other self,” although this did not prevent Philip II from wanting to be informed about everything they did or to approve the decisions they took, particularly with regard to appointments. As time went by, some treatise writers saw this decision to supervise and keep a close eye on matters as a distinctive mark of “restricted otherness in viceregal authority.” Pietro Corseto pointed it out by underlining the fact that the king authorized the person of the viceroy in public affairs by conferring potestad ordinaria [ordinary authority] on him, but without transferring potestad absoluta [absolute authority] to him, since this was inalienable to the person of the king. A clear difference was established, in this way, between the sovereign and his “double.” The king recognized no person superior to him in the temporal world and was also above the law, whereas the viceroy had to account for his actions and faculties, abiding by the legal system in force at the time. As a consequence, the viceroy became an instrument of royal authority, not a parallel one (as had been the case in the time of the emperor).

8 Letter written in his own hand by Philip II to the governor of Milan, Madrid, May 10, 1574, BL, Add, 28398, 15.
9 Pietro Corseto, Instruccin para el príncipe Filiberto para el gobierno de Sicilia, ca.1621, BNE, MS. 9412.
However, the modifications carried out in government were not very far-reaching. It was neither easy, nor did it seem desirable, to go beyond overseeing the way the viceroys governed by submitting them to a regime of vigilance and total subordination. A generic mandate could be established but not exhaustive supervision nor, as Juan de Vega had already remarked, was it possible to transform them into corregidores. The debate surrounding the foreign viceroy in Aragon may be illustrative of the limits of the subordination of the viceroy, since in that kingdom the local fueros did not allow the king’s officers to be foreigners. Every post, from the most exalted to the humblest, from the governor to the palace gate-keeper, was reserved for natives of Aragon. Having a viceroy fulfil the role of head of government was an innovation that had not really been accepted and, to avoid friction with the native population, Charles V had done his best to appoint viceroys from the territory in question. In a kingdom dominated by small groups and factions, the notion that the absence of the king was transient meant that the viceroy was limited by the provisional nature of his mandate, whilst the sovereign’s frequent visits to the territory restricted the possibility of his viceroy governing solely for the benefit of members of his family and circle of friends. In 1554, the appointment of don Diego Hurtado de Mendoza to occupy the position, demonstrated the sovereign’s concern to introduce changes in the viceregal regime. His intention was not to subject the kingdom to a foreign power. The monarch’s idea was that it was more effective to put someone neutral in place, given that his absence was likely to be permanent.\(^\text{10}\)

His intention was not to alter the delicate checks and balances which kept the kingdoms in equilibrium; the new viceroy of Aragon had to come from outside the place he was going to govern and be free of ties of any kind binding him to those he administered. This purpose is patently clear in prince Philip’s instruction to Hurtado de Mendoza; the factional conflicts are described in the text as being at the heart of the kingdom’s problems, and it is tacitly understood that only somebody from outside and impartial will be able to resolve them. In Aragon, however, a figure of this kind had never been called upon before and, since Hurtado de Mendoza was not a person of royal blood, the Aragonese soon interpreted this as meaning that without family connections and with limited

\(^{10}\) Luis González Antón, “La Monarquía y el reino de Aragón en el siglo XVI: Consideraciones en torno al pleito del virrey extranjero,” Príncipe de Viana, Annex no. 2 (1986), 251–268.
authority, the viceroys were not royal persons, but only officers acting on the king’s orders. For this reason, the viceroy ought to be a native of the kingdom, not a foreigner. There were interpreters of civil law, such as Antonio Labata or the public prosecutor, Pérez de Nueros, who strove to prove that the viceroy was not an officer, because, among other things, he was not subject to any ordinance, but a royal person, as the king could appoint him without reference to what was stated in the _fueros_ on the subject of offices in the administration and government.\textsuperscript{11}

Hurtado de Mendoza went on to preside over the Council of Italy in 1558 and his successors did not have to face the problem of nationality or origins. Between 1566 and 1575, an Aragonese viceroy of royal blood, Hernando de Aragón, archbishop of Saragossa, combined in his person both the wishes of the king and the regulations enshrined in the _fueros_.\textsuperscript{12} Nevertheless, the question remained latent, resurfacing in 1590 when viceroy Artal of Alagón, the count of Sástago, tried to prevent his successor, the marquis of Almenara, from taking office on the grounds that it infringed the _fueros_. Sástago was unable to delay the moment when he had to step down from office and, in May, Almenara took possession. Shortly after, the disturbances known as the Revolt of Aragon began and the issue of his appointment was regarded as one of the prime causes triggering the conflict.\textsuperscript{13}

Almenara’s powers made him subordinate to the king’s court, yet, paradoxically, he also owed his authority to the strengthening of the figure of the viceroy, detached from the local powers, which qualified him to set up a bona fide viceregal court in Saragossa that was not incompatible with the king’s court in Madrid. In fact, after annexing Portugal in 1580, Philip II had given the final impetus to a model of territorial government whose two fundamental pillars were to be the councils of the court of Madrid and the viceroys.\textsuperscript{14} Subsequently, under Philip III and Philip IV, this model was expressed in apparently contradictory terms in the instructions to viceroys:

\begin{itemize}
  \item \textsuperscript{11} Ibidem.
  \item \textsuperscript{12} Gregorio Colás Latorre, “El virrey de Aragón,” in Gregorio Colás, Jesús Criado and Isidoro Miguel (eds.), _Don Hernando de Aragón, Arzobispo de Zaragoza y virrey de Aragón_ (Zaragoza, 1998), 11–73, for his authority, see 55–56.
  \item \textsuperscript{13} González Antón, “Monarquía y el reino de Aragón”, 251–268.
  \item \textsuperscript{14} On this matter, the undated, anonymous defence of the viceregal government for Portugal, kept in manuscript form in BNE, MS. 904, pp. 268–270, is of the greatest interest.
\end{itemize}
THE COURT OF MADRID AND THE COURTS OF THE VICEROYS

The power to exercise this position and office is very wide-ranging and free because, in public, it is well that, since you have to be there in my place, you should have all the authority that is necessary for it. But notwithstanding that power, I hereby declare to you that my intention is that you keep to and comply with all the abovementioned things completely.15

CONSOLIDATION AND DEVELOPMENT OF THE COURTS OF THE VICEROYS

There is no doubt that in the final decades of the sixteenth century the courts of the viceroys grew in splendour and pomp. Their presence grew not only at a symbolic level but also as centres of power, as evidenced by the growth in personnel to serve the viceroys. This impetus was obvious in the 1590s in Naples, where the viceroys created forty-two new offices in their household and court between 1585 and 1595 (exactly twice as many as those created from the beginning of the reign).16 The Neapolitan court was recapturing its character as a political centre. If we look closely at a nearby case, namely Sicily, we notice a parallel development of viceregal power, apparent in the increasing expenditure of the court in Palermo to meet the obligations of the viceroy’s household and court.17 This trend can be discerned even in the most modest vicerealties, such as Majorca, where the viceroy, Ferrán Sanoguera, requested funds from the king in 1597 to pay for a personal guard, deemed necessary to preserve his dignity.18

The development of the figure of the viceroy as the political hub of a large number of states within the Monarchy is only explicable if we look at the role of the Castilian high nobility in government; this role emerges after their function as representatives in the Cortes disappears

15 Instruction to the duke of Alba, viceroy of Naples, Madrid, September 4, 1622, AHN, E., Leg. 2010. We can follow a model drawn up on the death of Philip II, in which the instructions to the viceroys are worded according to a set pattern, in a document from the Council of Italy’s secretariat in Milan that used the same draft to word the instructions to the governor issued on November 21, 1610, those of April 1, 1643, March 30, 1645, February 18, 1662, and January 16, 1686, AHN, E., Leg. 1936.
18 Josep Juan Vidal, Els virreys de Mallorca (Palma, 2002).
and they merge into a symbiotic relationship with royalty. It was a link that went beyond mutual dependence, since the members of the Spanish high nobility eventually accepted their function as partners with the prince in the tasks of government. Quite obviously, harmonious integration had existed since time immemorial (after all, the nobility had its roots in royalty, as it was the Crown that bestowed the rank). But whereas other members of the nobility, in Catalonia, Aragon, Portugal, and so on occupied the first estate within their respective kingdoms, the Castilian nobility extended its power across national borders. It abandoned its position as the first estate of Castile to rise to an even higher level, occupying the highest seats of power and wielding that power in place of the king. At the end of the sixteenth century and the beginning of the seventeenth, the Castilian nobles occupied, as of right, the captaincies general, embassies and vicerealties, because only they represented the king, whether as executors of his monopolies or as negotiators in his name with other princes or parliaments, that is, with the kingdoms. This characteristic was reinforced because the very position of viceroy implied a way of belonging to royalty, of entering the sovereign’s “family,” expressed in the formula “our cousin, viceroy and captain general”; this is one reason why visitors in Italy were never allowed to touch the person of the viceroy or his household. We observe this contiguity between king and viceroy in their households, which were associated both symbolically and physically.

This symbiotic relationship was such that it permitted all the wealth of the Castilian high nobility to be placed at the disposal of the Crown so that their monopoly of the most important posts constituted, in fact, a safeguard; in the absence of a well-organized bureaucracy, they provided the structure for government, supplied through their client

21 The viceroy of Sicily, Philibert of Savoy, died a victim of the plague in Palermo in 1624. Philip IV maintained and paid the expenses of his household for at least the next two decades: “Copia de la cláusula y legado de gajes que el serenísimo príncipe Filiberto, que sea en gloria, dejó a todos sus criados en el testamento debajo de cuya disposición dejó en Palermo a 4 de agosto de 1624,” AHN, E. Leg., 2125.
network, their stock of prestige, their honour and their goods. In other words, their personal credit constituted a reserve for the royal service to draw on. On this specific point, for example, the laws of the Indies included some directives relating to the organization of the viceroy’s household which, in themselves, demonstrate the way in which the household of the alter ego dovetailed with the sovereign’s, fulfilling the functions of an alter domus: “The viceroy should endeavour to use and have in their households the sons and grandsons of discoverers, peacemakers and settlers and other distinguished people, that they might learn urbanity and have a good education.”

An institutional perspective makes it difficult to see this function. If we analysed the government as if it were a modern state, we might well be led to believe that the nobility were kept from power. Nothing could be further from the truth, as Domínguez Ortiz pointed out many years ago. And this is evident if we examine the reflections upon the nature of viceregal power made by eminent members of this estate. From Juan de Vega’s letter, written in 1558, to Olivares’ memoranda, the aristocrat-viceroy always responded on the assumption that they belonged to a domestic order, one of familiarity with the king, and were, therefore, immune to having their function controlled externally by the law courts and royal officers. They never admitted to being subject to higher administrative powers. Federico Chabod made this point when he saw that the underlying philosophy of viceregal government made it impossible to invest the figure of the viceroy with a bureaucratic conception of his office; the viceroy was inspired by a chivalric ethic and understood his function as deriving from the personal bond that tied him to the king.

22 Philip II, in Madrid, April 9, 1591, in Recopilación de las Leyes de Indias mandadas recopilar por la Magestad del Rey nuestro señor Don Carlos II (Madrid, 1841), lib. 3, título 3, no. 31.
23 Antonio Domínguez Ortiz, Las clases privilegiadas del Antiguo Régimen, 3rd ed. (Madrid, 1985), 140–43.
24 His indictment of lawyers and their jurisdictionalist claims is well known: “They are base and ambitious, and they have been ill-bred and do not know what it means to be King, nor where the Greatness nor the Authority of the King resides, nor the provinces of the World and the qualities of the People, nor Chivalry nor Honour, nor the Grandeur and Estates of those of us who deserve to be Viceroyes, nor what these should be like, nor the captain general and other ministers of this quality,” J. de Vega to Philip II, June 8, 1558, BNE, MS. 10300, fol. 53.
This is the reason why, both in *Advertimientos del doctor Fortunato*, written at the end of Alba de Liste’s viceroyalty in Sicily, as well as in the report written by Olivares when his mandate on that same island came to an end, the position of the viceroy as the apex of all life in the kingdom was underlined, since this was what made it possible for the king not to be absent.26

**Lawyers and viceroys**

Linked to the problem of redefining the office of viceroy was the issue of the inexorable rise of the lawyers and the development of the machinery of royal councils in Madrid. Philip II’s plans for reform came together in the creation of a blueprint that would be reproduced in similar terms throughout his possessions, and whose most refined form was the viceroyalty in the Indies. The viceroys of Peru and New Spain embodied all the sovereign’s functions at the highest levels: military ones as captains general, judicial ones as presidents of the assize court, and ecclesiastical ones as vice-patrons of the church in the Indies. The governor-presidents of the assize courts who exercised similar functions in Chile, New Granada, Guatemala, Terra Firma, and so on were in their turn “their viceroys.” Lalinde emphasized the fact that from the king and his councils right down to the last viceroy with his assize court, the entire government of the Monarchy was organized along binary lines; he termed this a “viceregal-senatorial regime,” and its special feature in each of the kingdoms was to act as a check and keep a careful eye on the viceroys.27 He cited the case of Catalonia, whose assize judges were appointed directly by the king with the aim of counteracting the power of the viceroy and limiting his autonomy. This interpretation appears to be confirmed by the serious conflicts that arose in 1599 and 1626 between the viceroys and their officers on the one hand and the judges of the assize court on the other. At the same time, this schema was imposed in the rest of the Crown of Aragon’s domains, so that it is reasonable to conclude that correcting the law courts was the prerogative of the king: they were directly accountable to him. As has been observed, this model was valid outside Catalonia and

26 “Relación del Conde de Olivares sobre el gobierno de Sicilia,” 1596, RAH, MS. 9/3947, fol. 54.
Aragon, and was applied universally from what can be deduced from the texts of Italian jurists, such as Carlo Tapia, or experts in institutions in the Indies, like Solórzano.  

It is very common to confuse the voice and stance of the assize courts with “central government”; the fact remains, though, that they only ever showed one very limited aspect of royal authority. In the sixteenth century, the concept of tyranny shifted away from the ruler who merely followed his own whim – while holding the common good in contempt – towards the king who ignored the laws and ruled without counsel. The act of providing advice had been transformed into a legal ruling and entailed compliance with the law. The effect of the legal arguments supporting judicial reviews was to underline what was forbidden to the “idiots,” those untutored in the law who would fall into despotism if they took decisions without knowledge of the law. Around the year 1600, lawyers acquired a visibility in public previously enjoyed only when carrying out their functions in the courts; this can be deduced from many testimonies, such as the letter written by the Council of Italy to the viceroy of Sicily, the duke of Maqueda, reminding him that, according to the “pragmatic sanction of judges’ gowns of 1599,” they should “wear their official dress” to all public ceremonies and not only when going to court. Wherever they happened to be, they were always judges, the living embodiment of the Law.

Furthermore, the magistrates, together with the Castilian nobility and the military, constituted an inherently itinerant social group, firstly, because their careers ordinarily took them to all the courts the length and breadth of the kingdom, and, secondly, because the court of Madrid was the pinnacle of their professional lives. There was a constant stream of judges passing through the councils, courts and assizes, on visits both private and general, making enquiries, compiling reports, carrying out investigations and so forth. In 1606, the learned Ochoa de Luyando, with abundant experience of the courts of the Indies, was commissioned to

make a visit of inspection to the courts in Sicily; in 1607, the Castilian, Felipe de Haro, was sent to visit Milan; Beltrán de Guevara was sent to Naples, also in 1607; in 1610, Giacomo Maynoldi, from Milan, was dispatched to Valencia to carry out an inspection (there had been a similar visit to officers who had not submitted accounts in 1599, and another general visit in 1606). The Aragonese lawyer, Clavero, visited Catalonia between 1603 and 1605; the Catalanian, Monserrat Rosselló visited Sardinia in 1601, as did Cristóbal Monterde in 1604, Miquel Major in 1606, and Joan Estalrich went to the kingdom of Majorca in 1614, and so on.31 Lawyers trained in Bologna, who completed their cursus honorum in the Milanese magistracy, ended their days as presidents of the assize court in Charcas, in Peru.32 The various local judiciaries, apart from being subject to constant vigilance, also enjoyed a high degree of intercommunication, enabling the transfer of procedures and a tendency towards standardization of practices, illustrated by the attempt to create a Sicilian Consiglio Collaterale in 1612, or the reform of the Sardinian assizes in 1606 which separated civil from criminal action.33


33 The reform of the assize court of Sardinia was recorded by Francisco Vico, Historia General de la isla y Reino de Cerdeña, ed. Francesco Manconi (Cagliari, 2004), 1: 190–191; for the Sicilian Collaterale, Sciuti Russi, Astrea in Sicilia, 128–136; for the assize court of Valencia and its reforms of 1604 and 1607, Canet Aparisi, Magistratura valenciana, 207; for Catalonia, see Pere Molas Ribalta, Catalunya i la Casa D’Àustria (Barcelona, 1996), 95–126; for the assize courts in the Indies, see Ernst Schäfer, El Consejo Real y Supremo de las Indias (Salamanca, 2003), 2: 65–143.
The result of all this was that the lawyers, together with the Castilian nobles, formed a social group able to visualize the Spanish Monarchy as a political and jurisdictional unit, not as a composite of free-standing states with no connections between them. The practice of judges being co-opted onto the councils of Madrid (which began to be common from 1595 onwards, and general from 1600) demonstrates this fact. The attendance of co-opted judges and councillors at council meetings arose from the practice of calling in members of a council working in another area to ask for their opinion as legal experts. Jurisprudence and legal practice made it possible to discuss matters of law or government which went beyond the scope of the laws of each individual kingdom, with the Italian, Castilian, Portuguese and Aragonese magistrates exchanging knowledge and experience or finding common ground in law.\footnote{Pietro Giannone, 	extit{Opere postume}, 2 vols. (Italy, 1821), 2: 219–227.}

The unitary vision that the lawyers displayed implied a perception of the king’s council that was not tied to a single place; when the judges of the Mexico assizes introduced themselves in public, they stated after their name that they were “from the Council of His Majesty in New Spain,” a similar affirmation to the one made by the judges of the 	extit{Consiglio Collaterale} in Naples or those of the assize court in Catalonia. They situated themselves in an intermediate position between the king and the kingdom: before the king, they were the voice of the kingdom; before the kingdom, the voice of the king and before everyone, they represented the Law.\footnote{Horst Pietschmann, “Los principios rectores de la organización estatal en las Indias,” in Antonio Annino, Luis Castro Leiva and François-Xavier Guerra (eds.), 	extit{De los imperios a las naciones: Iberoamérica} (Zaragoza, 1994).}

Helmut Koenigsberger, one of the best known experts on government practice in the Monarchy, pointed out that the main causes of conflict in the seventeenth century centred on the defence of the Law and the dispensation of justice, matters in which the different legal bodies, competing among themselves, claimed roles which the others either did not recognize or did so only grudgingly.\footnote{Helmut Koenigsberger, “Dominium regale or dominium politicum et regale: Monarchies and Parliaments in Early Modern Europe,” in 	extit{Politicians and virtuosi: Essays in Early Modern History}, (London, 1986), 1–26.} Following this explanation of the situation, we can regard the incidents between viceroys, standing committees of representatives, assize courts, chapter houses, town halls, and bishoprics as conflicts born of emulation or rivalry rather than as a manifestation of a king-kingdom, centre-periphery dialectical relationship.
Conflicts over jurisdiction were endemic and choral in nature. They appeared and disappeared, the main figures changed, sometimes involving civil and inquisitorial courts, at other times viceroys and assizes, or viceroys and bishops, and so on. It was a question of jurisdictional spaces that ebbed and flowed like a magma of states in unstable equilibrium, continually negotiating their scope and their boundaries. These conflicts cannot be read simply as a tug-of-war with opponents pulling in their own direction. When the Sardinian parliament requested and obtained the limitation of causes that were open to appeal to the assize court in 1603, it did not argue its case on the basis of a king-kingdom opposition, but as a question of jurisdiction. So, when one jurisdictional conflict was resolved, another one was triggered because the resolution of one problem nearly always sparked off another. When the count of Fuentes, the governor of Milan, resolved the jurisdictional conflicts with the archbishopric at the beginning of the seventeenth century, he set in train a difficult, problematic relationship with the Milanese senate.

The immaterial court

In the shrewd analysis of the society of New Spain with which he prefaced his magnificent biography of Sor Juana Inés de la Cruz, Octavio Paz defined the singularity of Mexico at the time of the viceroys in terms of the non-correspondence of its history with European modernity. He made the point that “the Modern Age is distinguished by two features that we do not find in New Spain (…) The first is the growth of the centralized state (…) The second is equality before the law.” In his view, what took place there was an inverted modernity, which was neither re-feudalization nor a return to medievalism, but the compartmentalization of power, the fragmenting of public space into isolated segments, producing “an intricate mosaic of influences, powers and jurisdictions.” He observed that there was no State, only states, and pointed to this unusual origin as the reason for Mexico’s unhappy history.


38 Giannini, “Politica spagnola e giurisdizione eclesiástica”, 211–223.

39 Octavio Paz, Sor Juana Inés de la Cruz o las trampas de la fe (Barcelona, 1982), 23–41.
The Mexican Nobel Laureate attributed this singularity to distance, to the need to establish checks and balances. A distant king needs to fetter the authorities to prevent them from taking control of the territory and what better way of doing this than by playing them off against each other. Nevertheless, Paz himself was inconsistent when he compared the court of the viceroy with Louis XIV’s. It seemed as if he was able to reconcile the existence of the court with the power wielded by the chapter houses, town halls, assizes, archbishoprics, and so on, only as a place indifferent to politics, alien to administration and innocent of the real world. In his description, it was a meeting place for high society, detached from the real world, immersed in pomp, luxury and festivities.\(^{40}\)

Well acquainted with the work of Norbert Elias, Paz was unable to get around the fact that the court was the centre of absolutist power and his arguments tend to be a little confused when he tries to reconcile that central role with the fragmentation of power. Naturally, in the few lines in which the writer attempted to describe the political life of the viceroyalty, the difficulties of fitting historiographic concepts and schemas to the reality of the situation are obvious. He resolved the dilemma by thinking that the concepts and schemas were the fruit of analysing the history of Europe, and convinced himself that it was for this reason that the history of New Spain was so abnormal. Instead of checking whether the method was sufficient to explain reality, he saw reality as an anomaly because it did not match what he considered to be the correct version, the norm of modernity. He was unaware that Spanish America was no different from Europe, for which he cannot be reproached, since knowledge of and interest in the viceroyalties of Europe were scanty in the extreme when he wrote his work. Italian and Spanish historiographies have filled this void in the last twenty years with the result that, today, we are in a position to undertake comparative studies and set out the main features of a model of the Spanish viceroyalty in the sixteenth and seventeenth centuries.

In the second half of the twentieth century, histories of institutions sustained an interpretation that paid privileged attention to the bureaucracy and origins of the modern state. In line with this type of analysis, it was taken for granted that the power of the viceroyos waned to the benefit of the court in Madrid. From 1561, central power was strengthened as a result of fixing a permanent seat of government, and the power relations within the vast Catholic Monarchy became an interplay of opposing forces, of the centre versus the periphery, a

\(^{40}\) *Ibidem*, 43–44.
state of tension between centrifugal and centripetal impulses. This reading of the situation saw administrative renewal at the level of the state cancelling out particularisms, developing anti-noble and anti-constitutional policies (in other words, contrary to the representative assemblies of the Estates and the laws emanating from them), in favour of absolutism. A well-known series of studies on the kingdom of Naples has pointed out that the build-up of power at the centre converted the potestas viceregia into something residual, the resultant stripping away of authority being linked to the expulsion of the Neapolitan aristocracy from high office. The judicial institutions, that is, the Neapolitan high courts, the Collaterale, the Sommaria, the Vicaría, and the provincial assizes wielded power because they were state institutions.

But when the social and political processes are scrutinized more closely, these analytical schemas do not work. Earlier we described how, at the end of the sixteenth century, the concept and practice of government was consolidated as a duality between gubernaculum and jurisdictio, making the paired viceroy-judiciary model universal and that this relationship was more complex than the one expressed as a system of mutual surveillance. In “uni reddatur,” maxim 57 of the Empresas morales y políticas para un príncipe Cristiano [Moral and Political Maxims for a Christian Prince], Saavedra Fajardo emphasized that “the government of the Monarchy of Spain [is] founded on such sound judgement that the kingdoms and provinces that Nature separated have been brought together by prudence. Everyone has their respective Council in Madrid: one each for Castile, Aragon, Portugal, Italy, the Indies and Flanders.” But he also advised, “The king of Spain does not rule in Italy as a foreign prince, but as an Italian prince.” The point he was making was that thanks to the viceroys, Italy was governed in Italy and from Italy.

41 The three most important law courts in the kingdom of Naples were the Consiglio Collaterale (the political council presided over by the viceroy), the Sommaria (the court of auditors, also called the court of Capuana because it was situated in Castel Capuano), and the Vicaría (the Great Court, or supreme court of justice which, because it was originally located in the part of town called the Vicaria Vecchia, was commonly referred to as the Vicaria). Finally, the kingdom was divided into twelve provinces, in each of which the corresponding assize court exercised maximum jurisdiction.
44 Ibidem, s.v. maxim 95, 637.
Saavedra was not proposing a game of riddles. In the seventeenth century, the power of the viceroys was anything but residual. In protocol, the style of address for a viceroy was equivalent to that for a prince, because a viceroy with plenipotentiary status was the king. In Noticia general de el Estado de Milán, su gobierno y forma año 1645, it says: “only two bodies represent the king in this State, the governor in the natural form and the Senate in the mystic.”45 The quotation in itself is quite enlightening. In Covarrubias’s dictionary, natural is defined as “Everything that is according to the nature of each one” where ‘nature’ is a condition, whereas mystic means “much the same as figurative: that which gives shape to matter.” (In the Vocabulario de las dos lenguas, toscana y castellana by Cristóbal de las Casas, místico [mystic] is translated into Italian by figurativo [figurative]). Mystic representation is none other than that manifested by the rege-patria identity, embodying the defence of the Law and its observance;46 a natural representation which, coming directly from God, subjects the population to the obedience of his person.

Both these representations of the sovereign, the natural and the mystic, neither transmit a distant central power nor are they extensions of it. We find ourselves, in fact, in a Monarchy with a diversified court, where the king is absent, but at the same time, present on account of the duality of his nature. To understand this, the Neapolitan jurist, Pietro Giannone, set out very briefly what the Spanish system was like, in order to make a comparison with the absolutist regimes after the War of Spanish Succession of 1701–1714. The most significant factor was the existence of a virtual court, so that a Neapolitan could live in and experience Madrid as if he were in Naples, because the important thing was the access to the king that his subjects could enjoy at all times. The territorial councils “si reputavano fondati come in proprio territorio” [were established as if they were in their own country], for “tali consigli eretti in Ispagna, alla quale furono incorporati i regni nuovamente acquistati, si reputavano stabili come in proprio territorio e per conseguenza potevano vicendevolmente comunicarsi gl’interventi e mescolarsi insieme” [these councils, set up in Spain, created as new territories were incorporated, were established in the same way as in their own countries and therefore were able to communicate with each other about their work and mix together]. This

46 The obligatory reference here is Ernst H. Kantorowicz, Los dos cuerpos del rey: Un estudio de teología política medieval (Madrid, 1985), 248–259.
order did not proceed solely from the will of the king; the councils were
not passive subjects because, apart from their consultative function, they
possessed jurisdiction and they exercised it.\footnote{Pietro Giannone, Breve relazione dei Consigli e dicasteri della città di Viena, in Opere postume, 2: 219–227.} This analysis coincided
almost word for word with a legal ruling that the Council of Aragon
sent to the Count-Duke of Olivares, explaining to him the nature of the
territorial councils: “the court is a patria common to all, where everybody
is considered for the business of the provinces as if they were actually in
those provinces, and as if the court were part of each province in any
matters which concern the natives of those provinces.”\footnote{(n.d. ?1630), AHN, Cs., Lib. 1991, fols. 368r–369v.} In this way, the
kingdoms were permanently in the presence of the king and he could
attend to them in person, for the magistrates kept the patria alive in the
royal retinue. Conversely, the viceroys with their courts kept the presence
of the natural lord alive among his subjects. The relationship between
the court in Madrid and the courts of the viceroys was based on this
dual interplay. This relationship, however, gradually became unbalanced
because of the changes wrought during Philip III’s reign. The duke of
Lerma set in motion changes that delegated greater executive power to the
viceroys at the same time as the law courts became more autonomous. It
is not beyond the bounds of possibility – it is a working hypothesis that
we are exploring in current research – that the revolts of 1640 were not
the result of a reaction against centralization, but quite the reverse; they
were a reaction to an imbalance in which the courts of the viceroys were
gradually cutting their ties with the court of the king. In the strictest sense,
they were revolts of loyalty, at least in Italy. The popular cry: “long live
the king, death to bad government” called, precisely, for the restoration
of the figure of the king as father and protector, one that had become
increasingly remote and mediated by local elites.\footnote{Manuel Rivero, “Viva Rè di Spagna e muora mal governo: Discursos sobre la
legitimidad y el ejercicio tiránico del gobierno durante la rebelión siciliana de 1647,” in Guido Capelli and Antonio Gómez Ramos, Tirania: Aproximaciones a una figura del poder (Madrid, 2008), 187–214.}