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Michel de L'Hospital: Between *Scientia Juris* and *Ars Politica*

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Abstract

Michel de L'Hospital's reformative action developed in the sixties of the sixteenth century. After the death of Henry II, the unlucky dynastic succession and the religious strife between Protestants and Catholics divided the Country and threatened the unity of the French "mystical body". New strategies were necessary to overcome legal, political and religious problems. Michel de L'Hospital, a jurist aware of French modern values, became one of the most courageous interpreter of a new cultural and political trend.

Keywords

Monarchy, judges, law, reform, commerce

Contents: 1. The unity of French "mystical body". 2. L'Hospital's career. 3. The Chancellor: "bouche du Roi" 4. Judges must be under the King's authority. 5. Peace and tolerance: the therapy against the State's disorder. 6. Against religious strife to reassert royal authority. 7. Law changes in accordance with times and circumstances. 8. The economic consequences of the institutional crisis. 9. The creation of the consular jurisdiction. 10. Michel de L'Hospital's rise and fall

1. The unity of French "mystical body"

Michel de L'Hospital's reformative action developed in the sixties of the sixteenth century. After the death of Henry II, the unlucky dynastic succession and the religious conflicts between Protestants and Catholics divided the Country and threatened the unity of its "mystical body"¹. New strategies were necessary to overcome legal, political and religious problems. In order to guarantee the unity of the State, it was essential to strengthen the central power against all forms of particularism.

The "Lutheran contagion"² caused the disruption in the Country. Fortunately, the effects were mitigated by the French idea of the King. Around 1300 he became the head of a new power, more independent from the Empire and the Church³. Myths and

¹ Vittorio De Caprariis wrote: "la sola via di salvezza per il paese consisteva nel ricomporre un corpo sociale in dissoluzione, nel ridare unità alla nazione sconvolta dalla lotta delle parti, nel ritorno alla teoria ed alla pratica del *corps mystique*". De Caprariis, V., *Propaganda e pensiero politico in Francia durante le guerre di religione, I (1559-1572)*, Napoli, 1959, p. 191. About the theory of the "mystical body" and the interpretation of the sovereignty as a dogma we refer to the authoritative studies of Bloch, M., *Les Rois thaumaturges: étude sur le caractère surnaturel attribué à la puissance royale particulièrement en France et en Angleterre*, Strasbourg, 1924; Kantorowicz, E., *The King's two bodies. A study in mediaeval Political Theology*, Princeton, 1957, Tenenti, A., *Stato, un'idea, una logica. Dal comune italiano all'assolutismo francese*, Bologna, 1987, pp. 299-318 and Brenot, A. M., "Le Corps pour Royaume. Un langage politique de la fin du XVI^e siècle et début du XVII^e", in *Histoire, économie & société*, 1991, v. 10-4, pp. 441-466.

² Lecler, J., *Storia della tolleranza nel secolo della Riforma*, Brescia, 1967.

³ In order to outline a reading key of the sovereignty, not in the metahistorical perspective, but as a parable of the historical development of a "conservative principle", of balancing, of a plural order and of mutual bond between governors and governed, see the efficacy reconstruction by Quaglioni D., *La sovranità*, Bari, 2004.

legends about the sacredness of the King's person played a central role. Thanks to his thaumaturgical and magical powers, he was considered halfway between humanity and deity. This idea was strongly affected by the transposition of divine characters on the King's person⁴. Legal literature celebrated the Monarch's mythical and symbolic figure: image of God and direct interpreter of His *Voluntas*.

At the beginning of the modern age, French society showed an extraordinary capacity to renew itself. Jurists played a key role, outlining new reference values and contributed to realize a State, worthy of imposing upon its subjects. Their effort was fundamental to overcome the crisis of religious universalism and the breakdown of the internal balances of each territorial state⁵. They were inspired by a new idea of man and, at the same time, by a renewed institutional context; but they acted under an unchanged normative system. In other words, at the beginning of the sixteenth century, the system of *ius commune* remained alive but a new way of thinking questioned the pillars of traditional legal system⁶.

In France, legal science grew thanks to the useful osmosis between the renewed literary-philosophical culture and the legal science: a synergy directed to the renewal of the legal system at the dawn of Modern Age⁷.

Jurists became the real protagonists of an evolutionary process capable of linking Middle and Modern Age. They promoted a secular and independent sovereignty. Around the fifteenth century, they elaborated a new methodology of study: even the legal subject needed a multifaceted approach. Legal science couldn't remain only in the rooms of *sapientes*. Its extraordinary vitality was a direct consequence of jurist's activity. Theoretically, they laid the basis for a new legal knowledge; politically, they promoted a new institutional order. So the modern *scientia juris* became a decisive *instrumentum regni*. Through mutual exchanges, a virtuous circle was activated between legal thinking and political action.

New legal instruments were developed to support the State: a "monster" incomparable with political institutions known during Middle Age⁸. Jurists must be prepared in order to fulfil new tasks. They received their "specialized training in the schools of law", but they were also "frequently educated in the entire body of Renaissance learning and thus tended to treat constitutional problems in terms of criteria broader than strictly

⁴ These characters were originally attributed to the emperors of the post-classical phase. Luongo, D., *Consensus Gentium. Criteri di legittimazione dell'ordine giuridico moderno*, I, Napoli, 2007, p. 3.

⁵ Fundamental is the reconstruction by Quaglioni, D., *I limiti della sovranità. Il pensiero politico di Jean Bodin nella cultura politica e giuridica dell'età moderna*, Padova, 1992, pp. 21 ss. Referring to Bodinian thought, the historian shows the need of "un opportuno correttivo alle sempre risorgenti postulazioni di continuità nell'interpretazione del pensiero politico del Rinascimento". Quaglioni pointed out "il rapporto largamente ambiguo che i teorici cinquecenteschi conservano con l'universo dottrinale ereditato da una plurisecolare esperienza". *Ibid.*, p. 21.

⁶ Birocchi argued: "già da tempo era in atto un processo che, quanto mai frastagliato e mosso e in accelerazione proprio all'inizio del secolo, metteva in discussione i fondamenti del modo di pensare, dei modelli di riferimento, e appunto del sistema giuridico tradizionale". Birocchi, I., *Alla ricerca dell'ordine. Fonti e cultura giuridica nell'età moderna*, Torino, 2002, p. 1.

⁷ Rossi, G., *Incunaboli della modernità. Scienza giuridica e cultura umanistica in André Tiraqueau (1488-1558)*, Torino, 2007, p. XIII.

⁸ *Ibid.*, p. XIV.

legal concepts”⁹. They enriched their works with philosophical rather than religious or literary ideas.

According to a critical point of view, dichotomy between the French and the Italian legal culture must be rejected¹⁰. The conception of a deep gap between the followers of the Bartolist tradition and the contemporary French jurists is false¹¹.

It’s a Manichean point of view that omits the deep contamination between the two juridical trends. They were consequences of the medieval values’ crisis, induced both by the Protestant reform and by geographic and scientific discoveries. The effect was the collapse of the traditional world based on the ontological and Aristotelian-Thomistic approach.

As a consequence, two guidelines were developed. The followers of the Italic Bartolist tradition tried to ensure a new vitality to Roman law. Thanks to a social and political condition, different from the Italian one, French jurists became the protagonists of the new world. They proved to be aware of the epochal turning point: history, philology and, more generally, literary studies helped them.

Humanist *pansofia*¹² concretized a new methodological and scientific legal approach with a constant attention to the reality. So historical and philological studies were not the result of a scholarly but sterile approach, but the outcome of a new awareness. In order to elaborate new hermeneutical categories and new legal tools, it was necessary to distinguish the past from the present.

2. L’Hospital’s career

Thanks to his cultural horizons, Michel de L’Hospital was the promoter of a legal research, constantly linked with policy and governance. His *scientia juris* was based on modern values and his political action aimed at consolidating the foundations of royal sovereignty.

He was a jurist, a statesman, a literary man¹³. He was exalted as a man rich of skills and virtues, able to overcome all kinds of conflicts¹⁴; he was considered “émule

⁹ Church, W. F., *Constitutional thought in sixteenth century France. A study in the evolution of ideas*, [1 ed. Harvard University Press 1941], New York, 1979, p. 7.

¹⁰ Against the traditional dichotomy *mos gallicus* and *mos italicus*, see Maffei, D., *Gli inizi dell’umanesimo giuridico*, Milano, 1956, pp. 165-176.

¹¹ Rossi, *Incunaboli*, p. XIV. In the sixteenth century, the vitality of *ius commune* showed the extraordinary talent of medieval jurists to renew “il diritto dalla mera dimensione di *ars*” to *scientia* “capace, nel contempo, di scrutare la *Ratio Dei* e di farsi artefice di un patrimonio dottrinale posto a disposizione della prassi. But French legal science tended towards theoretical level: it was the turning point. *Ibid.*, pp. XIV ss.

¹² The Humanistic *pansofia* was not the “mescolanza confusa tra discipline diverse”, but the “approfondimento di una disciplina alla luce e con il soccorso di altre discipline al fine di rendere più corretto l’approccio metodologico e garantirsi una fondazione indiscutibilmente scientifica”. Grossi, P., *L’Europa del diritto*, Roma, 2007, p. 20.

¹³ Petris, L., *La plume et la tribune. Michel de L’Hospital et ses discours (1559-1562)*, Genève, 2002, p. XIII.

¹⁴ Duféy, P.J.S., “Essai sur la vie et les ouvrages de Michel L’Hospital”, *Oeuvres complètes*, [Paris 1824-1826], Genève 1968, I, p. 59.

d'Horace", unable to submit his knowledge to the logics of power. Michel de L'Hospital was appreciated for the effort with which he defended the "sanctuary of justice" and for the indifference to the personal enrichment¹⁵. For this reason, Michel de L'Hospital is remembered as one of the greatest prodigies of his epoch, so rich for extraordinary events¹⁶.

These opinions seem hagiographic and celebratory, completely unsuitable to explain the complexity of his juridical idea. Loris Petris' opinion was more meditated. Michel de L'Hospital is a "prism": every age revealed an aspect to admire or one to criticize¹⁷. It's clear that his works can't be explained with one interpretative scheme but multiple keys are possible. His thought developed throughout his career.

Differently from Regnier de La Planche, De Caprariis argued that the evolution of Michel de L'Hospital's thinking is not the consequence of a dissimulation, showing, little by little, a project planned from the beginning; it was the result of a mission developed, sometimes following the events, sometimes anticipating them¹⁸.

In 1560 he was appointed Chancellor and promoted a reform plan inspired by French humanism. In order to innovate managing public power and administration of justice, he became the promoter of a new legal, political, religious and social action.

The reform strengthened the monarchy, as a synthesis of the social body and interpreter of its unity¹⁹. The King and the legists had to issue new rules appropriate for the subjects "comme le soulier au pied"²⁰. It was necessary to abolish all the "free zones"²¹ where state power could not interfere. In order to restore the unity of the *corpus mysticum*, the action aimed at recomposing the damaged social body²².

François Hotman, Jean Coras and other jurists of the sixteenth century praised the Chancellor as the highest reformer of the French institutions²³. The prestigious title of "Solon of France"²⁴ shows their great appreciation.

¹⁵ *Ibid.*, p. 60.

¹⁶ Petris, L., *La plume et la tribune. Michel de L'Hospital et ses discours (1559-1562)*, Genève, 2002, p. XIII.

¹⁷ Petris, *La plume*, p. XIII. Loris Petris argues that the different interpretations about L'Hospital's ideas showed that "le présent se (re)construit en (dé)construisant le passé". Contemporaries considered him the "homme providentiel". According to someone, he put on "les masques d'un athée, d'un crypto-protestant, du père des Politiques, d'un proto-philosophe, d'un penseur libéral, d'un apôtre de la liberté de conscience ou encore d'un rationaliste chrétien". *Ibid.*, p. XIII. Crouzet, D., *La Sagesse et le malheur. Michel de L'Hospital, chancelier de France*, Paris, 1998, pp. 9-20.

¹⁸ De Caprariis, *Propaganda*, p. 168.

¹⁹ *Ibid.*, p. 174.

²⁰ "Il faut toujours considérer que la loy soit proportionnée aux personnes, comme le soulier au pied", de L'Hospital, M., "Harangue de Michel de L'Hospital, Chancelier de France à l'Assemblée des États-Généraux, assemblés a Saint Germain en Laye, le 26 Aout 1561", *Oeuvres complètes*, Duféy, P. J. S. ed., [Paris 1824-1826], Genève 1968, I, pp. 431 ss. This quote is on p. 451.

²¹ Matteucci, N., "Le origini del costituzionalismo moderno", *Storia delle idee politiche, economica e sociali*, Firpo L. ed., IV, 1, Torino, 1987, p. 568.

²² De Caprariis, *Propaganda*, p. 191.

²³ Kan, J. van, *Les Efforts de codification en France. Etude historique et psychologique*, Paris, 1929, p. 54. Piano Mortari, V., *Diritto romano e diritto nazionale in Francia*, Milano, 1962, p. 98.

²⁴ Hotman, F., *Antitribonian ou discours d'un grand et renommé jureconsulte de nostre temps, sur l'estude des loix*, Paris, 1603, p. 153. Hotman wrote that his book was written "par l'avis de feu Monsieur de L'Hospital".

His government program was audacious in the goals to achieve but prudent in the methods. Michel de L'Hospital was born in France, where he lived until he was eighteen. Then he arrived in Italy, settling in Milan, Padua and Bologna. Soon he became *doctor utriusque iuris*²⁵. Through his travels and his experiences, he realized that only legal studies were fundamental to allow anyone to defend himself from the abuses²⁶. *Scientia juris* was celebrated for its pragmatic purposes: it was necessary to control human behaviour.

Because of his father's choices, the life of the future Chancellor of France wasn't easy. Jean de L'Hospital was the doctor of Chiara Gonzaga, Countess of Montpensier and mother of Charles of Bourbon, future Constable under Francis I²⁷. Jean was appreciated not only for his professional skills but also for his political abilities: he became the most important Constable's confidant. Problems arrived when the Constable began to lose King's favour. In 1523 the secret negotiations with Carlo V, against Luisa di Savoia's hereditary claims, were discovered and the Constable was exiled. Jean de L'Hos-

²⁵ Several books dealt with Michel de L'Hospital's political thought. Taillandier, A. H., *Nouvelles recherches historiques sur la vie et les ouvrages du Chancelier de L'Hospital*, Paris, 1861; Dupré-Lasale, É., *Michel de L'Hospital avant son élévation au poste de Chancelier de France (1505-1558)*, Paris, 1875; Heritier, J., *Michel de L'Hospital*, Paris, 1943; Buisson, A., *Michel de L'Hospital*, Paris, 1950, pp. 81-141; Keohane, N. O., *Philosophy and the State in France. The Renaissance to the Enlightenment*, Princeton, 1980, pp. 61-6; Repetti, R., *L'educazione di un "re fanciullo": Michel de L'Hospital e la consacrazione di Francesco II (1559)*, Genova, 1990, pp. 23 ss.; Seong Hak Kim, M., *Michel de L'Hospital: the vision of a reformist chancellor during the French Religious wars*, Kirksville, 1997; Petris, *La plume*, pp. 3-70; and *De Michel de L'Hospital à l'édit de Nantes. Politique et religion face aux Églises*, ed. by Wanegffelen, T., Clermont- Ferrand, 2002; Rousselet-Pimont, A., *Le Chancelier et la loi au XVI siècle. D'après l'oeuvre d'Antoine Duprat de Guillam Poyet et de Michel de L'Hospital*, Paris, 2005.

²⁶ In Michel de L'Hospital's opinion, legal studies were fundamental in lawyers and politicians' training. The quote, which fully meets L'Hospital's thought, is taken from "Traité de la réformation de la justice", *Oeuvres inédites*, tome I, Paris 1825, [ristampa Ginevra, 1968], p. 325. Sylvia Neely has serious doubts about the paternity of the work. Neely, S., "Michel de L'Hospital and the Traité de la Réformation de la Justice: a case of misattribution", *French historical studies*, vol. 14, n. 3, Spring 1986, pp. 339 – 366. In Neely's opinion, the *Traité*, "is a rambling discourse on the place of justice in society. Addressed to the King, it urges him to improve the French system of justice, corrupted by venality of office, and proposes specific steps to eliminate venality". In 1825 Duféy discovered two manuscript copies in the Bibliothèque royale, but only one of them had the title on the spine: "Reformation de la Justice fait par Mr le Chancelier L'Hospital". His name doesn't appear inside the volume. Duféy acknowledged that neither manuscript was the original, that both were seventeenth-century copies. They had both originally been in the collection assembled in the seventeenth century by Chancellor Séguier. His grandson left the collection to the monks of Saint Germain des Près and it came into the possession of the Bibliothèque Nationale during the Revolution. *Ibid.*, p. 344. According to Duféy, the Chancellor Séguier inherited the pieces of L'Hospital's manuscript from his father, who was L'Hospital's friend. De Réfuge, a colleague of Chancellor Séguier's son in the Parliament of Paris, then brought the fragments together and made some additions, which consisted only in the decisions of the Estates of Blois and several other documents which belong to the same era. *Ibid.*, p. 351. Duféy explained anachronistic references to events following L'Hospital's death, as the consequence of de Réfuges' interpolation. de Réfuges was the author of the seventh part of the work too. According to Neely, Duféy makes some mistakes: Michel de L'Hospital had been a friend of Chancellor Séguier's grandfather, not of his father; the interpolations, related to Michel de L'Hospital' post mortem events, were more numerous than those found by Duféy. See *Ibidem*. The "Catalogue général des manuscrits français", published in 1898, lists both copies as the work of [Eustache?] De Reffuges. *Ibid.*, p. 345. Sylvia Neely shows that much of *Traité's* history is incompatible with the life of both of them. She supposes that the *Traité* is attributable to Bernard La Roche Flavin: the proofs were the numerous biographical references in the work. [*Ibid.*, p. 353 ss.]

²⁷ Taillandier, *Nouvelles*, pp. 2-4.

pital followed him and abandoned France and his five children²⁸. Because of these events, even Michel, at the age of eighteen, was arrested. The memory of those years is written in his will²⁹.

After those *tristissima tempora*, he started the *italica peregrinatio*: a very important step for the intellectual training of the future Chancellor³⁰. The young Michel spent six years in Padua. Then he studied in Toulouse. At the University of Padua, the cradle of the legal knowledge, Michel met several young French scholars. Thanks to him, some of them became eminent officials: Émile Perrot³¹, Barthélemy Faye³², Arnould Du Ferrier³³, Jacques Du Faur³⁴. During the same years, Michel met also famous writers³⁵ such as Lazzaro Bonamico³⁶, Benedetto Lampridio³⁷ and Pierre Bunel³⁸.

During his training, the future Chancellor of France developed his political talents: he was elected twice as Councillor of the Burgundian nation³⁹ and later judge of

²⁸ Michel de L'Hospital criticized his father's choices: "mon père, pour ne rien dire de ses autres vertus, était constant dans ses affections, ferme dans ses volontés, prêt à exposer sa vie pour rester fidèle au parti qu'il avait une fois embrassé. Tels furent ses sentiments dès son enfance; il les conserva pendant sa jeunesse et jusqu'à ses derniers jours. Pauvre, il méprisa les richesses et préféra toujours l'honnête à l'utile. Tout d'un coup, une chute terrible, la ruine d'une puissante maison, vint l'accabler (car souvent la ruine d'un seul en fait crouler bien d'autres); sans raisonner, en proie à une erreur fatale, il suivit une cause que détestaient les dieux, comme le prouva le sinistre résultat". *Ibid.*, p. 4.

²⁹ "Ego, qui Tholosae, tunc eram studiorum causa, octodecim annorum, per suspicionem abreptus, et publicis carceribus inclusus sum, donec ex commentario manu regia subscripto, cum nihil in me compertum esset, dimitterer". Michel de L'Hospital's will is kept in BNF, Coll. Dupuy, 491, *Lettres, harangues et autres mémoires de Monsieur le Chancelier Michel de L'Hospital*, cc. 38r-40r. It was published in *Oeuvres complètes de Michel de L'Hospital*, Duféy, P. J. S. ed., Paris 1824-5, II, pp. 499 ss. The quotation is on pp. 503-4.

³⁰ First, he arrived in Milan. The arrival of the French troops forced the young Michel to escape "habitu vestituque servi mulionarii". Then, he arrived in the "antiquum legum studiorum domicilium" of Padua. *Ibid.*, p. 504.

³¹ In 1528 he began his legal training in Padua. Then he was appointed as a member of the Parliament. Taillandier, *Nouvelles*, p. 5; Petris, *La plume*, p. 5.

³² He was member of the Parliament from 1542 to 1570. About his relationship with Michel de L'Hospital see Dupré-Lasale, *Michel*, p. 54; Taillandier, *Nouvelles*, p. 5; Petris, *La plume*, p. 6.

³³ He was Counselor in the Parliament of Toulouse (1544-1560), later he became Counselor (1552) and President of one of the Parliament of Paris' *enquêtes* (1555). In 1562 he was appointed ambassador in the Council of Trento. His career ended as State Counselor (1577-1579). Taillandier, *Nouvelles*, p. 5; Petris, *La plume*, p. 5.

³⁴ He was General Vicar of the Archbishop of Toulouse, later he became Counselor in the Toulouse Parliament. In 1546 he became President of one of the five *Chambres des enquêtes*. In 1558 he became *maître des requêtes* and in 1564 member of the *Conseil privé*. Taillandier, *Nouvelles*, p. 5; Repetti, *L'educazione*, pp. 33-4; Petris, *La plume*, p. 6.

³⁵ In Padua, Michel de L'Hospital "se livra à l'étude avec une infatigable activité. Avidement d'instruction, il y consacrait tous les instants". Duféy, "Essai sur la vie et les ouvrages de Michel L'Hospital", p. 65.

³⁶ Since 1530 he taught Ancient Literature in Padua. He became Bembo's friend and became supporter of the superiority of the Latin language. DBI, *ad vocem*.

³⁷ He was born in Cremona; he taught in Rome, Padua and Mantua, where Francesco Gonzaga was his student. About his relationship, with Michel de L'Hospital, see Dupré-Lasale, *Michel*, pp. 51-2; Repetti, *L'educazione*, pp. 30-1; Petris, *La plume*, p. 5.

³⁸ He was born in Toulouse, later he arrived in Venice and then in Padua. After his death, his letters were collected by Jacques Du Faur and published in 1551 by Charles Estienne. Most of them were addressed to Émile Perrot. Taillandier, *Nouvelles*, p. 6.

³⁹ Michel de L'Hospital was a traitor's son and so he can't be considered Frenchman. Dupré-Lasale, *Michel*, p. 51;

the opposition *pro ultramontanis*. Then he achieved the title of doctor *utriusque iuris* and became *lector meridianus* of civil law⁴⁰. Those years were happy for him⁴¹.

In 1533 Michel de L'Hospital went first to Bologna, where his father worked for the Emperor Charles V⁴², and later, to Rome where he became Auditor of the Sacred Rota⁴³. Thanks to the friendship with Cardinal Gabriel de Grammont⁴⁴, an important member of the pro-French party in the Roman Curia, the young doctor returned to France. In Paris, Michel practiced the forensic profession: he knew the practical side of legal science.

In Paris many career opportunities were offered to him, but the venality of public charges was a great obstacle⁴⁵. The fame of excellent lawyer was not enough to embark on a ministerial career. Money was needed and it was the most important problem for the future Chancellor.

The encounter with Jean Morin, “lieutenant criminel du Châtelet”, was a lucky event. In 1537, in fact, the young jurist married his daughter, Marie; so he received the charge of “conseiller clerc” in the Parliament of Paris. It was the first step of his *cursus honorum*. Shortly, he received many assignments⁴⁶ and established relationships with authoritative jurists. He became a good friend of François Olivier, the first president of

⁴⁰ *Ibid.*, p. 29.

⁴¹ “O temps fortuné, où je vivais jeune, libre d'affaires, sous un ciel pur, entouré d'objets d'études, et conversant avec les grands hommes de l'antiquité, qui pour m'instruire, paraissaient sortir de leurs tombeaux” Taillandier, *Nouvelles*, p. 7.

⁴² “Bononiam et Romam à patre sum evocatus, quo se Carolus imperator contulerat sumendi diadematis regii causa; cujus in comitatu pater erat post ducis Borbonii mortem”. L'Hospital (de), M., Testamentum, *Oeuvres complètes*, II, pp. 504-505.

⁴³ “Mihi Romae relatus et donatus honoris causa fuerat unus in duodecim iudicibus locus, quos auditores rotae nominant”. *Ibid.*, p. 505. Dupré-Lasale excluded that this public charge was attributed to the young L'Hospital. According to Taillandier, it was impossible “qu'il se soit attribué cette dignité dans son testament si elle ne lui avait pas appartenu réellement”. Taillandier, *Nouvelles*, p. 7. Repetti argued: “non è possibile che quel giovane laureato padovano fosse stato proposto come membro dei dodici prelati che costituiscono la Sacra Rota Romana”; probably his appointment was “un incarico di collaborazione presso lo studio di qualche Uditore come avveniva spesso per i giovani laureati iniziati all'avvocatura”. Repetti, *L'educazione*, pp. 31-32.

⁴⁴ He was bishop in Tarbes, later archbishop in Bordeaux and Toulouse. He died on 26, March 1534. A. H. Taillandier, *Nouvelles*, p. 326. About his relationship with L'Hospital, see Duféy, “Essai sur la vie et les ouvrages de Michel L'Hospital”, pp. 66-7.

⁴⁵ Fundamental is the work of Mousnier, R., *La Vénalité des offices sous Henri IV et Louis XIII*, Paris, 1971. The venality of public charges frustrated L'Hospital's ambition. He overcame the obstacle thanks to his lucky marriage. In Neely's opinion, this event confirms the impossibility to recognize the paternity of the “Traité de la réformation de la Justice”. Michel de L'Hospital had benefited from the system so he couldn't criticize it. Neely, *Michel*, p. 345. In the *Traité*, that system is considered at the basis of the progressive disruption and general decay of French society. It caused “barbarie et ignorance, la plus grossière qui faut jamais en ce royaume”. In other words, “la vénalité des choses qui sont deus au mérite faict désespérer les gens de bien et les sçavans de parvenir aux honneurs”. “Traité de la réformation de la Justice”, *Oeuvres inédites*, II, p. 121. The introduction of the system had caused the “trafic des choses les plus sacrées”, allowing each judge “de vendre en destail ce que l'on a achepté en gros” *Traité*, in *Oeuvres inédites*, I, p. 265.

⁴⁶ In 1541, L'Hospital showed his ability in the trial against the Admiral Philippe de Chabot de Brion. See Repetti, *L'educazione*, p. 35. Six years later, he was appointed ambassador in the Council of Trento, celebrated in Bologna for eight sessions until September 1549. This was the occasion to know important Italian humanists attending the prestigious Achille Bocchi's Academy. Petris, *La plume*, p. 10.

the Parliament of Paris, who became in 1545 the new Chancellor of France⁴⁷. The close relationship with François Olivier led him to understand the internal dynamics of French courts.

In those years he worked very hard. He was also an envoy of *Grands jours*: in 1540 in Moulins, two years later in Riom, and in 1546 and 1547 in Tours. *Les Grands Jours* were extraordinary inquiring commissions appointed by the King and composed of members of the Parliaments. During the periods of judicial holiday, they travelled throughout the country to control the work of local authorities punishing those who were guilty of abuses⁴⁸. Through a well-organized network, monarchy could control peripheral structures. Thanks to his appointment, Michel de L'Hospital understood the dynamic forces of public powers: the weak link of a chain he tried to reform.

3. The Chancellor: “bouche du Roi”

During his career, L'Hospital realized the importance of a good legal training. Legal science wasn't a technical artifice: it represented the main scientific tool to reform the state avoiding radical changes⁴⁹. The Italian training was fundamental for his career: the Justinian studies were enriched by the medieval constitutionalism and were reinterpreted by the new humanistic sensibility⁵⁰. In 1551, thanks to Margaret of France, he became Chancellor of the Berry Duchy⁵¹. He reformed the University of Bourges in order to “fortifier les études du droit” and to develop the “progrès de la jurisprudence”⁵². François Duaren⁵³, the young Hugues Doneau⁵⁴, Jacques Cujas⁵⁵ and, after

⁴⁷ Michaud, H., *La grande chancellerie et les écritures royales au seizième siècle (1515-1589)*, Paris, 1967, pp. 26-8.

⁴⁸ From the sixteenth century, the importance of “les Grands Jours” grew. Local magistrates were subjected to severe controls and new provisions were issued to avoid abuses. Doucet, R., *Les Institutions de la France au XVIe siècle*, Paris, 1948, I, pp. 217-20; Mousnier, R., *Les Institutions de la France sous la monarchie absolue*, Paris, 1974-1980, II, pp. 474-483 ; Rousselet-Pimont, *Le Chancelier*, pp. 460-463.

⁴⁹ Piano Mortari, V., “Il pensiero politico dei giuristi del Rinascimento”, *Storia delle idee politiche economiche e sociali*, IV, Torino, 1987, p. 435.

⁵⁰ Important friends were Jacques du Faur, his colleague at the University of Padua; André Tiraqueau, important jurist (see G. Rossi's accurate monographic work, *Incunaboli*), Adrien Du Drac, member of the Parliament of Paris, to whom L'Hospital devoted the *Adrianum Dracum Epistole* (see M. de L'Hospital, *Oeuvres*, III, pp. 28-33) and Cardinal Jean du Bellay, whose nephew Joachim du Bellay was the founder of *Pléiade* with Pierre Ronsard. See D. Hartley, *A critical edition of the circumstantial verses of Joachim Du Bellay*, Paris, 2000. Michel defended Ronsard's poem against conservatives' criticism. Their friendship showed the Chancellor's literary sensibility and the affinity of their political ideas. The poet, “convinto assertore dell'errore dei Riformati”, criticized Catholic clergy's abuses and “richiamava la necessità di una riforma pacifica all'interno della Chiesa, che escludesse il ricorso alle armi. (Repetti, R., *L'educazione*, pp. 98-9).

⁵¹ About the Duchess of Berry, “reine des lettres françaises”, see Buisson, *Michel*, pp. 82-3.

⁵² Taillandier, *Nouvelles*, p. 19.

⁵³ Michel de L'Hospital appointed François Duaren as Dean of the University of Bourges. Duaren's career was marked by frequent quarrels with his colleague François Bauduin, who arrived to Bourges in 1548. The animosity among their students ended on March 6, 1554, in a violent clash, and a german student of Duaren was killed. Dupré-Lasale, *Michel*, p. 196.

⁵⁴ Doneau was protected by Duaren. They were against Cujas' appointment. Petris, *La plume*, p. 12.

⁵⁵ Jacques Cujas's teaching in Bourges began in September 1555. The hostility between Duaren and Cujas became so strong that two years later Cujas decided to move to Valence. He came back to the Bourges University in 1559. He stayed there until 1566. Petris, *La plume*, pp. 12-13.

some years, François Hotman⁵⁶ were appointed professors at the University of Bourges. It was a clear choice in favour of new teaching methods. It was necessary to study the custom rather than the gloss, and the *mos gallicus* rather than the *mos italicus*.

In the same years, he worked in the Parliament too⁵⁷. In October 1553, after the resignation from the “Grand chamber” of Parliament⁵⁸, he became “maître des requêtes”. This appointment brought many duties and many privileges⁵⁹.

In February 1555, Michel de L'Hospital became the first supernumerary president of the “Chambre des comptes”⁶⁰. His new office was fundamental for French economic, financial and judicial organization.

Conflicts of jurisdiction between that Court and the Parliament of Paris were frequent. To regulate them, Michel de L'Hospital established a special commission composed of members of both Courts⁶¹. Finally, on December 27, 1556, the perfect equality⁶² between the two courts was stated. The “Chambre des comptes” became the supreme court about financial matters⁶³. In 1554, the edict of the semesters, inspired by L'Hospital, divided the Parliament and the “Chambre des comptes” into two sections: each one had to work for only one semester⁶⁴.

The reform was the first step towards the restraint of parliamentary powers. It introduced a temporary limit for the judicial office and broke the clientele between magistrates and “pladiers”. In a letter addressed to his friend François Olivier, L'Hospital explained his plan to give new strength and vigour to the justice⁶⁵. The reactions against the reform were strong⁶⁶.

Indifferent to criticism, L'Hospital showed the need to limit autarchy and corruption in the sovereign Courts. Their action destabilized Central government and broke the harmony between the orders of the State. The effect was the general weakening of the monarchy. Consequently, the primary goal of the government was the strengthening of the central authority. Subjects had to obey Sovereign's rules. King's duty was to lead

⁵⁶ He was called after, in 1566. Petris, *La plume*, p. 12. The close relationship between Michel de L'Hospital and François Hotman is clear: Hotman wrote his Antribonianus, “par l'avis de Michel de L'Hospital”. Birocchi, *Alla ricerca*, p. 40.

⁵⁷ Taillandier, *Nouvelles*, pp. 18-9.

⁵⁸ Repetti, *L'educazione*, p. 40.

⁵⁹ In 1553 they became twenty four. Repetti, *L'educazione*, p. 40. Buisson, *Michel*, p. 84

⁶⁰ The public charge of supernumerary president was created for L'Hospital to enable him to exercise it in both semesters. Buisson, *Michel*, pp. 84-85; Petris, *La plume*, p. 14.

⁶¹ Repetti, *L'educazione*, p. 42.

⁶² Petris, *La plume*, p. 12.

⁶³ Buisson, *Michel*, p. 85.

⁶⁴ It was “un'operazione di semplificazione istituzionale” to define with “maggior chiarezza l'esercizio delle rispettive funzioni”. Repetti, *L'educazione*, pp. 41-42.

⁶⁵ L'Hospital's wrote to his friend about a “projet par le quel on voulait rendre à la justice le lustre et l'éclat qui doivent toujours l'accompagner”. Taillandier, *Nouvelles*, p. 25.

⁶⁶ “La perte d'un gain aussi odieux a irrité tous les esprits, et me rend l'objet de la calomnie la plus noire. Les honnêtes gens même se laissent entraîner, et leur voix, pour m'accabler, se joint aux cris de quelques hommes déshonorés, que désespères l'impossibilité où ils sont actuellement de continuer le trafic infâme qu'ils faisaient de la justice. Mes moeurs et toute ma conduit n'ont pu parler assez haut en ma faveur, pour repousser leurs lâches traits”. Taillandier, *Nouvelles*, p. 25.

people without tyrannical oppression; subjects had to obey without losing respect for themselves.⁶⁷

In 1560, Michel de L'Hospital became Chancellor of France⁶⁸. He played a leading role in the State⁶⁹. The Chancellor was the only “bouche du Roi”: he drafted the ordinances, controlled their execution, directed the administration of justice, managed the finances, the police, the commerce and everything about the order of the State. He attended the “Conseil du Roi” and chaired it in his absence⁷⁰. The Chancellor detained the royal seals too: he was the guarantor of the continuity of the State⁷¹.

L'Hospital promoted a new figure of King: the only supreme holder of the power to make laws and, through them, to create a new legal order. L'Hospital's speech was clear: King must legislate and judges must execute laws⁷². Therefore, only the King could interpret laws attributing the exact meaning to them⁷³.

The Chancellor's struggle against any form of medieval particularism led France to further tensions. Religious conflicts needed reconciling strategies⁷⁴.

After the death of Henry II⁷⁵, Catherine de' Medici's policy was inspired by prudence: the spread of Calvinism undermined the ancient brocard “une foy, une loi, un roi”. That principle was the pillar of the French constitutional structure. The conflict, ended in the conspiracy of the huguenot aristocrats at Amboise in 1560⁷⁶, undermined it. New strategies had to prevent the spiral of violence⁷⁷.

⁶⁷ De Caprariis, *Propaganda*, p. 197.

⁶⁸ Repetti, *L'educazione*, p. 48. He was appointed on June 2, 1560. Michaud, *La Grande*, p. 27.

⁶⁹ See the work of A. Rousselet-Pimont, *Le Chancelier*.

⁷⁰ Buisson, *Michel*, p. 88. According to A. H. Taillandier, *Nouvelles*, p. 36, the Chancellor had the same functions of a “premier ministre”.

⁷¹ Without the *sceau*, “les lettres royaux ne pouvaient être remises ou expédiées à leurs destinataires”. It was the mark “irrécusable de leur origine et signe certain de leur authenticité”. Michaud, *La Grande*, pp. 312 ss.

⁷² This is the shared idea of Hanley, S., *The lit de justice of the Kings of France: constitutional ideology in legend, ritual and discourse*, Princeton, 1983. Instead, according to W. F. Church, L'Hospital thought that the King was still a judge. Church, *Constitutional*, p. 207 ss. Sylvia Neely pointed out that Farr Church's interpretation was based on the *Traité de la réformation de la justice* “But without the *Traité*, the major support for his interpretation disappears, and one can assert unequivocally that L'Hospital saw the King primarily as a legislator whose activity was separate from the judicial power of the Parlements”. Neely, *Michel*, p. 361.

⁷³ “En ceste monarchie, l'interprétation appartient au roy qui a fait les loix et non a aultre”. L'Hospital (de), M., “Discour de janvier 1566”, Rousselet-Pimont, *Le Chancelier*, p. 237.

⁷⁴ Turchetti, M. *Concordia o tolleranza? Francois Bauduin (1520-1573) e i 'Moyenneurs'*, Geneve 1984, p. 397. About *réformation* and *renovation*, see Rousselet-Pimont, *Le Chancelier*, pp. 180 ss.

⁷⁵ After Henry II's death, Calvinist claims grew stronger. Matteucci, *Le origini*, p. 574.

⁷⁶ Amboise's conspiracy was only an episode of the conflict. However, “la logica della lotta politica risulta spesso diversa dalla dinamica delle forze religiose”. The disruption was strong: “i papisti si scontrava[no] con i fermi difensori della libertà gallicane, mentre le rivendicazioni costituzionali ugonotte non coincidevano con gli obiettivi della politica calvinista, perché le prime [erano] dettate dalla preoccupazione mondana per la cosa pubblica, mentre la seconda mirava, al massimo, alla tolleranza, dato che come ammoniva Calvino, il vero cristiano deve sempre l'obbedienza al suo principe, anche se tiranno”. Matteucci, *Le origini*, pp. 574-575.

⁷⁷ Michaud, *La Grande*, p. 27.

Michel de L'Hospital was the most qualified person to save the State from the disruption. His speeches in favour of peace and tolerance were known⁷⁸. In the sermon written to celebrate the ordination of Francis II, his thought was expressed with the idea of peace⁷⁹. He was aware that factions and conflicts were the great enemies of the State.

In December 1560, after Francis II's death, the famous speech to the General States in Orleans showed his political point of view⁸⁰. In order to avoid the civil war, the Holy Council⁸¹ and the General States were necessary⁸². These choices showed L'Hospital will: he rejected unilateral and unshared solutions. The final goal was the unity of the State. Tolerance became his political tool: it was a point of arrival, not a starting point.

At the opening of the General States in Orleans, the Chancellor showed his awareness: two religions couldn't live together. It was necessary to restore the ancient brocard *une foy, une loi, un roi*.

But, some years later, at Poissy, he argued that French problems could not be overcome by suppressing political opponent but by promoting the ideal of tolerance.

The idea of the religious and political unity, so strongly celebrated at Orleans, gradually left the place to that of tolerance. The coexistence of different religions, firstly considered a threat, was the solution to a political problem⁸³. Free from any religious attribute, tolerance didn't support the idea of a secular State. It was only a political solution to a political problem: the only one that could allow the survival of the kingdom⁸⁴.

4. Judges must be under the King's authority

⁷⁸ For Michel de L'Hospital, tolerance became necessary in everyday life: his wife and his daughter were Protestant. *Ibid.*, p. 27.

⁷⁹ "Nec tam fortis amet dici quàm iustus, et armis parta per humanas fugiat cognomina caedeis. Observet promissa, fidemque immobilis hosti: nec pacem in bello, neque bellum in pace requirat". L'Hospital (de), M., "De Sacra Francisci II Galliarum regis initiatione, regnique ipsius administrandi providentia sermo", Repetti, *L'educazione*, pp. 188-190.

⁸⁰ "Or les estats qui sont assemblez en ce lieu, ont été délibérez par le feu roy à Fontainebleau, avecques son conseil, où étoient plusieurs grands seigneurs et genz de son conseil, pour trouver moyen d'apaiser les séditions qui estoient en ce royaume, à cause des malcontents et de la religion [...] Toute sédition est mauvaise et pernicieuse ès Royaumes et Républiques, encore qu'elle est bonne et honneste cause; car il vault mieulx à celuy qui est autheur de sédition de souffrir toutes pertes et injures, qu'estre cause d'ung si grand mal, que d'amener guerres civiles en son pays". L'Hospital (de), M., "Harangue a l'ouverture de la session des États Généraux assemblés a Orléans le 13 Décembre 1560", *Œuvres complètes*, I, pp. 386-387.

⁸¹ Lecler, J., *Toleration and the Reformation*, II, New York-London, 1960, p. 56. "A ce est besoin oster la cause du mal, et y donner quelque bon ordre par un saint concile". L'Hospital (de), "Harangue a l'ouverture de la session des États Généraux assemblés a Orléans le 13 Décembre 1560", p. 399.

⁸² "Il est sans doubte que le peuple reçoit grand bien desdicts estats; car il a cet heur d'approcher de la personne de son roy, de luy faire ses plaintes, luy présenter ses requestes et obtenir les remèdes et provisions nécessaires". *Ibid.*, pp. 379-80.

⁸³ De Caprariis, *Propaganda*, pp. 175-177.

⁸⁴ *Ibid.*, p. 177.

In the sixties of the sixteenth century, the brilliant intellectuals understood that was necessary to put an end to centrifugal trends: the aim was to guarantee peace, strengthening, both practically and ideologically, the Monarchy⁸⁵.

The great autonomy of the Parliaments was the proof of the persistent particularism. The project of centralization was undermined by the tension between the highest powers, one held by the King, the other by the Supreme Courts⁸⁶.

From this point of view, the gap between the idea of tolerance, promoted in religious field, and the harsh words addressed to the Parliament of Paris, is too deep. But, both the inflexible severity towards the Sovereign courts and the religious tolerance⁸⁷ had the same purpose: the goal was the peace in a new centralized State.

The first chance came from the edict of Romorantin. It distinguished political from religious affairs and attributed the cognizance of heretical crimes to ecclesiastical judges. The opposition of the supreme judges was great, but Michel de L'Hospital⁸⁸ defended it.

In Fontainebleau, on August 21, 1560, the Chancellor compared French condition to a dangerous illness⁸⁹. The bond of obedience between French subjects and their King was broken. L'Hospital called the General States of Orleans: people approval was needed⁹⁰.

At the opening of the States, he outlined a clear distinction between the tasks of the General States and those of the Parliament⁹¹. He argued that Sovereigns Known many complaints: some of them concerned universal and general problems; some others private affairs, which are held by a certain number of the judges established by the king, who are called Parliament. Instead, General States are the public and general hearing⁹².

⁸⁵ *Ibid.*, p. 185.

⁸⁶ *Ibid.*, p. 185.

⁸⁷ Michaud, *La grande*, p. 27.

⁸⁸ L'Hospital (de), M., "Remonstrances de Monsieur le Chancelier L'Hospital au Parlement, touchant l'estat du Royaume, distribution de la justice, et union entre les officiers d'icelle", *Oeuvres complètes*, I, pp. 315-6.

⁸⁹ "L'on voyt les estats troublés et corrompuz, la religion divisée en opinions, la noblesse malcontente, la peuple appovri et grandement refroydi du zelle et bonne volonté qu'ils souloit porter à son prince et ses ministres". *Ibid.*, p. 319.

⁹⁰ Jouanna, A., *La France du XVIe siècle. 1483-1598*, Paris, 1996, p. 68.

⁹¹ At the opening of the States, L'Hospital argued: "Et n'est aultre chose tenir les estats, qui communiquer par le roy avec subjects, de ses plus grands affaires, prendre leur adviz et conseil, ouyr aussi leur plaintes et doléances, et leur pourvoir, ainsi que de raison. Cecy estoit anciennement appelé tenir le parlement, et lucore a retenu le nom en Angleteree et Escosse". L'Hospital (de), "Harangue a l'ouverture de la session des États Généraux assemblés à Orléans le 13 Décembre 1560", *Oeuvres complètes*, I, pp. 376-7.

⁹² " Les roys connoissent tant de plaintes générales, qui concernoient l'universel, que des privées et des particulières, qui sont teneues par certain nombre des juges establis par le roy, qu'on dict parlement: les audiences publiques et générales, que le roy s'est réservées, ont priz le nom d'estats". *Ibid.*, p. 379.

The convening of the General States⁹³ had become an important *instrumentum regni*, even if it didn't bind King's will⁹⁴. The principle expressed by Aristotle in his *Politica* was fully shared: everything was good and useful to the King to order, so it was useful to the subject to obey⁹⁵.

The principle, linked to the relationships between the King and his subjects, was at the basis of an ideal condition of peace and prosperity⁹⁶.

France suffered a dangerous illness⁹⁷: L'Hospital expresses this idea on August 21, 1560, at the Assemblée de Fontainebleau. A new centralization process was needed⁹⁸.

According to these ideas, L'Hospital reformed justice and finance management with the famous ordinance of Orleans. He abolished "prévotés" e "vignéries", in all towns where a "bailliage" or a "sénéchaussé" was operating. Drastic rules were issued to limit clerical economic power. Deeper innovation was involved in tax matters: any exemption could only be admitted with the Third State's consent⁹⁹.

The article 39 was fundamental: it determined the abolition of the venality of judicial offices and the restoration of the electoral system to appoint the judges of the Parliaments¹⁰⁰.

The new electoral system was coherent to the Chancellor's project. The abolition of the venality of judicial offices allowed the appointments of qualified lawyers and the new electoral system gave only King the power to choose

⁹³ At Orléans there were 107 deputies of the nobility, 127 of the clergy, 221 of the Third State. Petris, *La plume*, p. 24. "The most widely accepted definitions of the Estates General was that given by Chancellor L'Hospital in the opening session of the Estates of Orléans. [...] He elaborated carefully not only upon the nature of the Estates but also their purpose and functions. [...] the part of the deputies in that procedure took the form of counsel enlightening the ruler concerning the conditions of the land and their petition for redress. The King, as a true paternal ruler, weighed the counsel, and by exercising that authority which he alone possessed, answered the petitions according to the dictates of his conscience". Church, *Constitutional*, p. 37.

⁹⁴ Rousselet-Pimont, *Le Chancelier*, pp. 84 ss. To understand the evolution from L'Hospital to Bodin, see Quaglioni, *I limiti*, 104-5.

⁹⁵ "Tout ainsi qu'il est bon et utile au seigneur de commander, ainsi est au serf obéyr". The quotation is from Aristotle, *Politics*, 1252a. L'Hospital (de), "Harangue a l'ouverture de la session des États Généraux assemblés a Orléans le 13 Décembre 1560", *Oeuvres complètes*, I, p. 377. During the XIV century the usefulness of Aristotelian reading was evident: "sa Politique inspire directement la législation royale", see Krynen, J., *Idéal du prince et pouvoir royal en France à la fin du Moyen Age (1380-1440)*, Paris 1981, p. 42.

⁹⁶ "En effet, sur les plaintes et doléances des états réunis en 1560 que sont prises les célèbres ordonnances d'Orléans et de Roussillon". Rousselet-Pimont, *Le Chancelier*, p. 106.

⁹⁷ L'Hospital argued : "la religion est divisé en opinions, la noblesse malcontente, le peuple appauvri et grandement refroidy du zelle et bonne volonté qu'ils souloit porter à son prince et à ses ministres". These quotations are taken from a report, which describes the Assemblée de Fontainebleau's works. L'Hospital, *Oeuvres complètes*, I, pp. 338- 342.

⁹⁸ In August 1563 the Ordonnance of Roussillon was a pillar in the "processo di costruzione dello Stato moderno attraverso la parallela formazione di una coscienza nazionale". The provision promoted the use of the French language and introduced new dating mechanisms: the beginning of the year was fixed on January 1. Repetti, *L'educazione*, p. 56

⁹⁹ Doucet, R., *Les institutions de la France au XVIe siècle*, Paris 1948, I, pp. 323 ss.

¹⁰⁰ Taillandier, *Nouvelles*, pp. 61-62.

The reform was a great attack to judges' autarchy. They forgot they work by King's appointment and felt autonomous. In November 1561, the Chancellor argued that the Supreme Court often went beyond its power: instead of judging, it aimed for a political role. Parliament's freedom to deliberate was unacceptable: often it decided against the King's will.¹⁰¹ It should be clear that the task of the Parliament was to judge private disputes, to administer justice among subjects. The task of the judges ended on a private level, limited to times and people. It had nothing in common with the general prudence necessary to make laws¹⁰².

In *primis*, it was necessary to reject the interference of judges in legislative field: this sphere was only a prerogative of the King and his *Conseil privé*. Secondly, the freedom of Parliaments needed a drastic cut. The cognizance of the two powers had been clearly defined: law must be upon judges, not judges upon law¹⁰³.

Two years later, la "déclaration de la majorité de Charles IX", on August 17, 1563, showed the King's supremacy¹⁰⁴. This event was the ritualized dramatization of the separation between king and Parliament in order to show the submission of the courts to the royal power. Even the choice to pronounce the words to the provincial Parliament of Rouen, rather than in Paris, shown L'Hospital's will: it was necessary to undermine the pretensions of the Parliament of Paris to be the unique supreme court of the royal justice.

A few months later, on November 12, 1563, Michel de L'Hospital pronounced one of his most firm *harangue* addressed to the Parliament of Paris. The Chancellor reproached the members of the Court: Supreme judges pursued their own interests; their behaviour was an obstacle to French prosperity. It caused seditions and religious conflicts¹⁰⁵. Their activity, though directly descending from the royal power, damaged the integrity of the State¹⁰⁶. Nothing was more regal than the administration of justice: judges practiced *non hominis iudicium sed Dei*¹⁰⁷. They judged in the name of the King and in the name of God.

¹⁰¹ L'Hospital, M., "Harangue de Monsieur le Chancelier L'Hospital a l'ouverture du parlement, le 12 novembre 1561", *Oeuvres complètes*, II, pp. 13-4.

¹⁰² It should be clear: "l'estat du parlement est de juger les différends des subjectz et leur administrer la justice. Les deux principales parties d'ung royaume sont que les ungs le conservent avecque les armes et forces; les autres jugent les différentz des subjectz, comme cest court, qui en a l'auctorité presque par tout le royaume; ceulx du conseil privé manient les affaires de l'estat par loyx politiques et autres moyens. Autre prudence est nécessaire à faire les loyx, que à juger les différentz. Celuy qui juge les procez et circonscript de personnes et de temps, et ne doit excéder cest raison". *Ibid.*, p. 12

¹⁰³ "La loy soit sur les judges, non pas les judges sur la loy". L'Hospital (de), M., "Lit de justice tenue par le roy Charles IX, en sa Court de Parlement de Bordeaux, le 12 avril 1564, avant Pasques, ensemble la harangue qu'y prononça le Chancelier L'Hospital", *Oeuvres complètes*, II, p. 108.

¹⁰⁴ L'Hospital (de), M., "Harangue au Parlement de Rouen, Déclaration de la majorité de Charles IX, 17 Août 1563", *Oeuvres complètes*, II, p. 53 ss.

¹⁰⁵ Petris, *La plume*, pp. 19-20.

¹⁰⁶ BNF, "Harangue de Michel de L'Hospital Chancelier faite à la Cour le XII Novembre", Fr. 23237, ff. 190r-197r.

¹⁰⁷ "Et pensez que vous qui l'avez du Roy *non hominis iudicium sed Dei exercetis*, comme il est escrit en vostre tableau, qui n'est a dire seulement que ainsi que Dieu a toute puissance sur les hommes, les hommes ayent puissance sur ceux de leur ressort; Mais aussi pour enseigner les hommes iuges d'imiter Dieu et iuger comme luy sans passion, faueur ou acception de persone, et penser qu'ils exercent le iugement da Roi non le leur". *Ibid.*, f. 190v.

5. Peace and tolerance: the therapy against the State's disorder

French political situation was characterized by extreme precariousness: wars and persecutions caused a dangerous illness¹⁰⁸. The Chancellor's imperative was to subject the State to law and justice. According to this program, Michel de L'Hospital expressed the need to pursue the peace as the essential condition for the State's prosperity.

Peace wasn't the most important spiritual goal, but the most effective *instrumentum regni*. It must be conquered fighting against traditional powers through the general renewal of the State.

On August 21, 1560, the new Chancellor of France called the Assemblée de Fontainebleau to deliberate on the means to overcome the troubles which had divided the Kingdom¹⁰⁹. Against the opinion of someone who believed that religion was to be defended with arms, L'Hospital opposed a new point of view: General States and Councils were needed to solve all political and religious troubles peacefully¹¹⁰.

On September 7, 1560, the new political line was announced to the Parliament. L'Hospital revealed his idea: the power held by the judges of the Supreme Court was an obstacle to the creation of the new political order. Their resistance frustrated any hope of pacification. L'Hospital criticized the judges' behaviour. They supported their powerful friends' affairs forgetting those of their King, causing social and religious conflicts¹¹¹.

The horizon of L'Hospital's plan was, at one time, political, religious and judicial¹¹². The trust in the King's power was the only mean to carry out the public good¹¹³.

Peace was necessary. It seemed a 'revolutionary' idea in France, divided between Catholics and Protestants. In Chancellor's opinion, history showed that the use of weapons was always useless and even harmful. The diseases of the spirit were not cured as those of the body. It was necessary to make use of persuasion, prayer, and peace¹¹⁴.

¹⁰⁸ Frequent was the image of the French State as a sick body, suffering from a *dangereus maladie*, whose "cause et racine" were unknown. Indeed, if "la source et racine de tant de calamitez se pouvoit découvrir, le remède seroit aisé". See L'Hospital (de), M. *Oeuvres complètes*, I, p. 339. The reference is related to the metaphor, still common in the late Middle Ages' political thought, of the State-Corpus in which the head was the King and the subjects were the limbs. In L'Hospital's opinion that reference had a further meaning: the need to bring the State under the King's authority. The synod, made up of Kings and subjects, must be restored. It was necessary to ensure the survival of the *corpus mysticum Reipublicae*. Kantorowicz, *The King's*, p. 17.

¹⁰⁹ L'Hospital (de), M., "Assemblée de Fontainebleau. Notice préliminaire", *Oeuvres complètes*, I, p. 335. L'Hospital argued that it was necessary "prendre de justes mesures pour soulager le peuple et pour ramener la noblesse à son devoir".

¹¹⁰ *Ibid.*, p. 335.

¹¹¹ *Ibid.*, p. 353.

¹¹² "Pensiero politico e pensiero religioso non si possono separare troppo schematicamente in questo periodo per la profonda connessione che sussiste nella stessa organizzazione della società fra istituti statali ed ecclesiastici, soprattutto nella Francia gallicana". Vivanti, "Assolutismo e tolleranza nel pensiero politico francese del Cinque e Seicento", p. 31.

¹¹³ L'Hospital (de), M., "Harangue au Parlement de Paris", *Oeuvres complètes*, I, p. 353.

¹¹⁴ "Considérant que ce trouble de religion n'est seulement en son royaume, mais chez ses voisins, en la Germanie, Angleterre, Escosse et autres pays, où il a fallu, pour y obvier, prendre les armes, et

Diagnosis and therapy were clearly advanced. Only a long-term strategy could act on French subjects. *Medio tempore*, L'Hospital suggested tolerant attitudes. The ambitious political program was based on this fundamental idea, developed along his career.

At the dawn of the political rise, his theory was marked by strong optimism. Then he became more realistic: this is the proof of the progressive development of his thinking. French political crisis needed tolerance: a political solution to a political problem¹¹⁵.

6. Against religious strife to reassert royal authority

The reaction of Catholics was strong: tolerance seemed an unjustifiable favour towards Protestants. Against this opinion, L'Hospital argued that the strategy of pacification didn't mean that everyone could live as its own way, but that everyone should contain himself to preserve the Kingdom. No freedom was granted to introduce a new sect¹¹⁶.

It was necessary to distinguish between moderate methods and radical goals. No freedom of conscience was granted to the new cult. At the opening of the General States in Orleans, the Chancellor used the famous Pauline quotation to show that God is the father of peace, not of war¹¹⁷.

No one could argue that war was justified by God¹¹⁸. The evangelical refusal of war can't be misunderstood. The Chancellor was not the philosophic advocate of religious toleration¹¹⁹.

venir à la main, chose très-dangereuse, ains qu'on voyt par l'ysseu, a recouru aux remèdes des anciens. Les malladies de l'esperit ne se guarissent comme celles du corps [...]. L'opinion se mue par oraisons à Dieu, parole et raison persuadée”L'Hospital (de), M., “Remonstrances de Monsieur le Chancelier L'Hospital au Parlement, touchant l'estat du Royaume, distribution de la justice, et union entre les officiers d'icelle”, *Oeuvres complètes*, I, p. 325.

¹¹⁵ De Caprariis, *Propaganda*, p. 177.

¹¹⁶ It didn't mean “laisse vivre chascung à sa façon et appétit, qui n'est l'intention du roy et de l'assemblée; mais, au contraire, que, cependant, chascung se contienne en la manière gardée jusques icy, en ce royaume. N'a esté donné liberté d'introduyre nouvelle secte, né impunité d'icelle”. L'Hospital (de), M., Harangue au Parlement de Paris le 7 septembre 1560, *Oeuvres complètes*, I, p. 352.

¹¹⁷ “Si c'est religion chrestienne, ceulx qui la veulent planter avec armes, espées et pistolets, sont bien contre leur profession, qui est de souffrir la force, non la faire. Et en ce que dit Chrysostome, que sommes différens des gentils, qui usent de forces et contraincte, les chrestiens de parolles et persuasions”, in L'Hospital, M. (de), “Harangue prononcée à l'ouverture de la session des États Généraux assemblés a Orléans le 13 Décembre 1560”, *Oeuvres complètes*, I, p. 395.

¹¹⁸ “Nostre religion n'a prins son commencement par armes, n'est retenue et conservée par armes”. *Ibid.*, p. 395. L'Hospital continued: “Ceste excuse vouldroit peult-estre contre l'estranger, non contre le roy leur souverain seigneur: car il n'est loisible au subject de se défendre contre le prince, contre ses magistrats, non plus qu'au fils contre son père, soit à tort, soit à droict, soit que le prince et magistrat soit mauvais et discole, ou soit qu'il soit bon. [...] Ainsi ont fait les bons chrestiens qui ont vaincu par patience, ont prié Dieu pour les emperours et juges qui les persécutoient”. *Ibid.*, p. 395.

¹¹⁹ J. H. Salmon in the preface of Seong-Hak Kim, M., *Michel de L'Hospital, The vision of a reformist Chancellor during the French religious wars*, Kirksville, 1997, p. IX.

At the beginning of his career, the religious unity of France seemed necessary, because peace among people of different faith was impossible. L'Hospital argued that religion is the main link among humans. The profession of the same faith was the pillar of community¹²⁰.

The ancient brocard: *une foy, une loy, un roi*¹²¹ was fundamental for French constitutional structure. In order to avoid all tyrannical degenerations, L'Hospital called France to unity¹²².

It was necessary to bring France back to the ancient religious unity. The imperative *une foy* was a legal rule more than a religious commandment¹²³. L'Hospital's speeches were not the anachronistic affirmation of religious freedom. They revealed a political idea. It's clear that the refusal of religious persecution is a new factor in a society that rarely conceived the political struggle without violence¹²⁴. In the Chancellor's opinion, peace was the most effective instrument to fight against State disorder.

The priority of the political problem, rather than the religious one, obliged to act¹²⁵.

In those years, the Chancellor's diagnosis was clear: religious pluralism undermined the unity of the State¹²⁶. In Orleans, the Chancellor hoped to realize *une foy, une loi, un roi* but, after the failure of the colloquy of Poissy¹²⁷, his hope disappeared. The

¹²⁰ “Tellement que la conjunction de religion passe celle qui est à cause du pays; par contraire, la division de religion est plus grande et lointaine que nulle aultre. C'est ce qui sépare le père du fils, le frère du frère, le mary de la femme. *Non veni pacem mittere, sed gladium*. C'est ce qui eslongne le subject de porter obéyssance à son roy, et qui engendre les ribellions”. L'Hospital (de), M., “Harangue prononcée a l'ouverture de la session des États Généraux assemblés a Orléans le 13 Décembre 1560”, *Oeuvres complètes*, I, p. 397.

¹²¹ *Ibid.*, p. 398.

¹²² “Cependant ne remuons rien légèrement, ne mectons la guerre à nostre royaume par sédition, ne brouillons et confondons toutes choses. [...] Le bonne vie, comme dict le proverbe, persuade plus que l'oraison; le cousteau vault peu contre l'esprit, si ce n'est à perdre l'ame ensemble avec le corps”. *Ibid.*, pp. 399-400.

¹²³ “Prions Dieu incessamment pour eulx, et faisons tout ce que possible nous sera, tant qu'il y ait espérance de les réduire et convertir; la douceur profictera plus que la rigueur. Ostons ces mots diaboliques, noms de parts, factions et seditions, luthériens, huguenots, papistes: ne changeons le nom de chrestien”. *Ibid.*, p. 399.

¹²⁴ In this way see Vivanti, *Assolutismo*, p. 31.

¹²⁵ For the Chancellor, “il n'est pas ici question *de constituenda religione, sed de constituenda republica*”. The use of the Latin term *republica* has a particular meaning. According to Vivanti, it “denota la difficoltà a concepire astrattamente il potere fuori dagli schemi della cultura classica e a distinguere la forza e gli interessi di un individuo sia pur superiore, il re, da quelli di un'entità ancora confusa e limitata da tradizioni e privilegi contrastanti”. In the second half of the sixteenth century, L'Hospital is one who used the modern word “State” frequently. Vivanti, *Assolutismo*, p. 16. Lyman Roelker, N., *One King, one Faith. The Parlement of Paris and the Religious Reformations of the Sixteenth Century*, Berkeley and Los Angeles, 1996, pp. 301 ss.

¹²⁶ “La division des langues ne faict la séparation des royaumes, mais celle de la religion et des loyx, qui d'ung royaume en faict deux”. Michel de L'Hospital, “Harangue prononcée à l'ouverture de la session des États Généraux assemblés a Orléans le 13 Décembre 1560”, *Oeuvres complètes*, I, p. 398.

¹²⁷ In September 1561, the Catholic delegation, led by the Cardinal of Lorraine, and the Huguenot one, led by Théodore de Bèze, met before the Court. The theme of Christ's presence in the host showed the gap between them. Turchetti, *Concordia*, p. 233 ss. For Vivanti “non si deve pensare che dopo Poissy sia venuto meno ogni ideale unitario e irenico [...] Se mai viene sempre più accentuata la priorità del problema politico di questo contrasto al fine di salvaguardare la pace civile del regno”. Vivanti, *Assolutismo*, p. 32.

collapse of his project led him to redefine his thinking. A new strategy was needed: tolerance towards Protestants was necessary¹²⁸.

In June 1561¹²⁹ the Chancellor still aimed at a holy and universal Council to end the tension¹³⁰. In L'Hospital's opinion, religious conflicts were a cancer: silently, they devoured the structures of the State. A deep-rooted disease was difficult to treat¹³¹: those words were addressed to the members of the Parliament. Christian judges, considered the most important magistrates of the world, must search the medicinal to treat the disease. Instead of taking for medicine, they did not defend the Kingdom forgetting their mission¹³².

Using weapons to fight against the enemy wasn't the winning strategy. The *Corpus Reipublicae* required order: each part had to exercise its function. Violence was a losing strategy. The Holy Council was the only way to find a solution¹³³, in order to avoid the dangerous disruption coming from religious conflicts.

7. Law changes in accordance with times and circumstances

The solution¹³⁴ needed long time. The survival of the state was at risk. France was to be considered a single body and the King, the head, was the only guarantor of its integrity. That was at the basis of the bond of obedience between King and subject.

Medio tempore the Chancellor's appeal was addressed to judges. He showed them the need to trust in the King's law, the only one to be severe or mild, in accordance with times and circumstances¹³⁵.

The King could reduce or increase the punishments. Only the King had the skills to understand the general conditions and issue adequate laws. The metaphor expressed

¹²⁸ The traditional hagiographic interpretation of the Chancellor as the prophet of the freedom of conscience was strongly criticized by De Caprariis, *Propaganda*.

¹²⁹ L'Hospital (de), M., "Harangue", *Oeuvres complètes*, I, p. 420.

¹³⁰ It was the "vray remède duquel les anciens, prudens et saiges, ont usé pour mectre fin aux hérésies, lesquelz nous debvons imiter". *Ibid.*, p. 422.

¹³¹ *Inveteratus morbus non facillè curatur*. *Ibid.*, p. 422.

¹³² "Au lieu de le prendre pour médecine, nous n'avons voulu nous défendre, mais assaillir, sans penser que Dieu le nous envoyoit pour nous amender et réformer". *Ibid.*, p. 423.

¹³³ *Ibid.*, p. 423

¹³⁴ For Mario Turchetti, the Chancellor supported the Queen's policy. His political thought was expressed by the statement: *Dedi operam quod potui ut nova repudiarem, vetera corrigerem*. Turchetti, *Concordia*, p. 229.

¹³⁵ "Scait bien que aucungz diront, et a ja esté entendu des parolles veneues, non-seulement du peuple ignorant, mais des bien saiges, comment on change ainsi les édictz. Quand ilz considèreront que les édictz sont faitz sur choses incertaines, journellement ilz ne trouveront estrange que l'on les change selon le temps, à l'exemple du gouverneur d'un navire, lequel calle la voile et la tourne çà et là, selon que le vent est: aussy les loyx humaines et politiques ne peulvent tousjours demeurer en ung estat; mais les fault changer quelquesfois, selon que le peuple est: la comparaison du peuple et de la mer, est propre pour l'incostance de l'ung et de l'autre; quelquesfois la loy sévère est bonne, quelquesfois la douce, et quelquesfois la médiocre". L'Hospital (de), M., "Harangue", *Oeuvres complètes*, I, p. 425. For Crouzet, "la politique se fait, avec Michel de L'Hospital, histoire, elle est l'art de gérer rationnellement la temporalité, et, par la même, elle est changeante". Crouzet, *La sagesse*, p. 409.

by the Chancellor was clear: the Sovereign, like a good sailor, could carry the ship even in the stormy sea¹³⁶.

Even the mild law could be the right answer to political needs. The real office of king and governors is to look at the condition of the State, tightening or softening penalties¹³⁷.

Of course, other structures had to be Sovereign's feet and hands. The governors baillifs and senechaulx of the places were the feet and hands of the King¹³⁸. So, the Chancellor's idea was on balance between the universal idea of justice and the contingent reality. The King was the fulcrum on which all structures turned¹³⁹. "Les gouverneurs, baillifs et sénéchaulx" had only to execute royal orders. Law showed its political effectiveness through its flexibility: it guaranteed the strict adherence between law and its spirit¹⁴⁰.

On June 18, 1561, L'Hospital pronounced a famous speech about French religious politics and Parliament's requests. They were two faces of the same coin. In religious politics no law was good in itself: only the King could issue the appropriate rules. Political laws were not universal and infallible: they changed according to circumstances¹⁴¹.

Only the King could judge a law: judges were not allowed. As a consequence, judges' behaviour against the Edict of Romorantin¹⁴² was deplorable. They were troubled because of the jurisdictional conflicts¹⁴³, so they delayed the "enregistrement" of the edict arguing that it abolished old privileges and reduced their cognizance.

According to L'Hospital's opinion, civil courts had to focus their activity putting down the rebellions: this was the heart of the problem. On July 5, 1560, the Chancellor forced the Parliament to do the "enregistrement". Even in that occasion, judges opposed their refusal, expressing a strong reaction against the edict¹⁴⁴. The "enregistrement" took place, only provisionally, on July 16, 1560¹⁴⁵.

¹³⁶ L'Hospital, "Harangue", *Oeuvres complètes*, I, p. 424.

¹³⁷ "Le vray office d'un roy et des gouverneurs est de regarder le temps, aigrir ou adoucir les loys" *Ibid.*, p. 426.

¹³⁸ "Les roys ont les mains longues, qui s'entend par les gouverneurs, baillifs et sénéchaulx des lieux, qui sont les pieds et les mains des roys". *Ibid.*, p. 425.

¹³⁹ For Loris Petris, "Le corollaire de cette nécessaire efficacité est le souci d'adéquation de la loi à la *condicio temporum*, point cardinal, avec la critique philologique, de la mise en question du mos italicus par les tenants du mos gallicus. La loi n'est pas un ordre immuable: son degré d'efficacité réside en majeure partie dans une partie d'adéquation de l'idéal absolu à l'histoire toujours relative". Petris, *La plume*, p. 299.

¹⁴⁰ *Ibid.*, p. 300.

¹⁴¹ *Ibid.*, p. 426.

¹⁴² Thanks to the edict issued on May 7, 1560, L'Hospital didn't allow the Spanish inquisition in France. The Chancellor attributed all the crimes of heresy to ecclesiastical tribunals. Ruffini, F. *La libertà religiosa. Storia dell'idea*, Torino 1901, p. 360. L'Hospital realized the separation between spiritual and secular jurisdiction, reserving to the second the cognizance about seditions and rebellions. The activity carried out by the Parliament of Paris was drastically reduced. Seong Hak Kim, M., *Michel*, p. 54.

¹⁴³ *Ibid.*, p. 55-56.

¹⁴⁴ *Ibid.*, p. 56.

¹⁴⁵ On August 7, 1560, the Chancellor confirmed the Parliaments' cognizance about illicit assemblies. *Ibid.*, p. 56.

The event showed the gap between the Chancellor's program and the Parliament's ideas. Supreme judges revealed the arrogance of their power. Their resistances were more dangerous because of the weakness of the Kingdom, governed by the Child king.

Since the early months of 1561, Michel de L'Hospital developed the idea of tolerance to overcome the crisis. This was an important change. In Orleans the Chancellor had defended the religious unity, but now he was aware that shared solutions were needed.

According to these purposes, on January 31, the Chancellor called the General States and, on February 22, he issued two "lettres patentes": they ordered to the Parliaments the release of those who were imprisoned because of their cult. They must live according to Catholic precepts.

Supported by the Queen Mother and the King, the Chancellor became the promoter of the new political program: rebellions and seditions must be prevented¹⁴⁶.

In Spring, when the conflict became stronger, a new political action was needed. Tolerance towards Protestants, hadn't any spiritual quality: that attitude was only the obvious result of a political calculation. But the Chancellor's open-minded positions created strong concerns¹⁴⁷.

On April 19, 1561, an ordinance banned the use of the words "Huguenot" and "Papist": that terminology caused political and religious reactions. The provision ordered to punish seditions, rebellions and any other forbidden action. Protestants, who lived honestly should not be persecuted¹⁴⁸.

Those provisions were strongly criticized by Catholics, who were the real holders of the power in the Parliament¹⁴⁹. To avoid their reactions, the Chancellor sent the edict directly to the "baillis et sénéchaux": they had to execute it as State's law¹⁵⁰. This was the proof of L'Hospital's growing dissatisfaction against the Parliaments and showed his effort to achieve pacification.

In order to avoid the "enregistrement", he argued that the edict, in accordance with the General States' statements, did not require any further deliberation by the Par-

¹⁴⁶ *Ibid.*, p. 66. On April 19, 1561, the King issued a new ordinance. He banned the use of the words "Papist" and "Huguenot", whose discriminatory connotation could have disastrous effects. *Ibid.*, p. 67.

¹⁴⁷ On April 17, 1561, the Chancellor declared his approval to Protestants who lived "catholiquement et sans scandale". Those who had left the Country *religionis causa* could come back. *Ibid.*, p.67.

¹⁴⁸ L'Hospital (de), M., *Oeuvres complètes*, I, p. 413 ss.

¹⁴⁹ On May 11, 1561 the Parliament of Paris stated: "encores que toutes seditions, emotions se doivent cohiber et rigoureusement punir, toutesfois semble par ces mots que l'on voulut approuver la diversité de religion en ce royaume, ce qui n'a jamais esté fait depuis le roy Clovis premier jusqu'au au jourd'huy, car combien que l'on trouve par les Histoires et Annales que les empereurs et les rois, mesme les papes soient tombés en quelques erreurs et soient séparés de l'union de l'Eglise catholique apostolique et romaine jusques a avoir esté declares heretiques et schismatiques, toutesfois par la grace de Dieu ne se trouvera aucuns rois de France estre tombés en cet inconvenient". ANF, *Remonstrances faites au roy par la cour de Parlement sur les lettres patentes concernant les seditions du 11 mai 1561*, U 768, fol. 195 r-v.

¹⁵⁰ L'Hospital (de), M., "Harangue", *Oeuvres complètes*, I, p. 414.

liament. Against his position, French judges argued that without that formalism, the edicts were to be considered as never emanated¹⁵¹. In their opinion, the General States' legislative authority couldn't reduce the prerogatives of the ancient Court of justice¹⁵².

After these reactions, the Chancellor showed his political ability remembering that the judges' task was not only to judge, but to advise the King whenever he required.¹⁵³ These words showed the need of a shared policy.

On July 29, 1561, the Queen Mother brought the Parliament, two days later, to do a provisional "enregistrement". It sounded like a defeat for the Court rather than a victory. The conflict had shown the gap between the different positions. The Chancellor, who was at the beginning of his career the prophet of the religious unity of France, had become the great apostle of tolerance.

8. The economic consequences of the institutional crisis

The idea of religious tolerance and the struggle against the Parliament's autarchy were fundamental goals in the Chancellor's policy¹⁵⁴. They were at the basis of the reform even in judicial field.

The autarchy of judges seemed particularly dangerous. It created deleterious effects in economic field. The link between judicial and economic crisis was a pillar of L'Hospital's thinking: the bad administration of justice caused the unfortunate condition of French economy.

The link, between the paralysis of judicial and economic system, was historically proved. The venality of public charges had caused two great consequences. First of all, the purchase of offices had caused the lack of investments in trading. Secondly, the owners of the offices used their powers to earn the maximum profit with deplorable consequences.

Therefore, the speed of business relations couldn't be comparable with the lengths and the formalisms of traditional justice. It seemed absolutely uneconomical to engage in long processes with uncertain outcomes. In this field, radical changes were needed.

The first attempt took place in August 1560, just a few months after L'Hospital's rise to the Chancellery. An ordinance of Francis II introduced the system of forced arbitration about commercial disputes¹⁵⁵. The provision allowed merchants to decide them:

¹⁵¹ For the Parliaments, "sans cette formalité, ces édits doivent être considérés comme non avenus". *Ibid.*, p. 414.

¹⁵² The clash became so violent that Parliaments asked the Chancellor to resign. Seong Hak Kim, *Michel*, p. 66.

¹⁵³ The judges "sont conseillers, non-seulement pour juger les procez, mais aussy pour les plus grandz affaires et de son estat, quand il luy plaist les en requérir". L'Hospital, "Harangue", *Oeuvres complètes*, I, p. 419.

¹⁵⁴ Buisson argued that L'Hospital's action was characterized by the "acharnement" against nobility and magistrates. Buisson, *Michel*, *passim*.

¹⁵⁵ Matsumoto, E., *La juridiction consulaire dans la justice de l'Ancien Régime. Rivalités et conflits avec le autres juridictions*, Paris, 2002, p. 19. Buisson, *Michel*, pp. 111-112.

the arbitrators had the power to impose their judgments on the parties. Instead, ordinary judges had only the power to choose arbitrators when the parties didn't agree on their appointment. This kind of justice was appropriate for merchants: they acted by good faith without observing legal artifices¹⁵⁶.

The reform did not give the awaited effects. Historians agree with the causes of the failure: the lack of expert arbitrators and the cognizance of ordinary Courts in the second grade¹⁵⁷.

In December 1560, merchants showed their dissatisfaction during the General States in Orleans, pressing for the creation of a special commercial Court to judge without lawyer, after a simple process ending with an enforceable sentence¹⁵⁸.

Three years later, in November 1563¹⁵⁹, the edict signed by Charles IX, responded to those instances. This new edict marked the birth of a new institution and realized L'Hospital's political and economic project.

Still today the edict is considered the fundamental act on which French commercial courts are founded¹⁶⁰. It created the court of the consular judges, composed of one judge and four consuls. They decided the disputes between merchants about business and trade. In order to guarantee the continuity of judges' functions and their yearly replacement, judges called a meeting of sixty merchants three days before the end of their appointment. Among them, only thirty must choose the new consuls¹⁶¹.

The cognizance of the new Court was only for Paris and regarded disputes about business, such as insurance, associations and companies.

Acceleration, gratuity, absence of formalism were key points of the reform: a quick justice was necessary for trade. The Chancellor outlined the close relationship between public welfare and good administration of commercial justice¹⁶².

Between August and September 1560, those ideas were at the basis of the Chancellor's speech at the Assemblée de Fontainebleau¹⁶³. Merchants were allowed to judge their disputes because of their specific skill¹⁶⁴.

¹⁵⁶ Ithurbide, R., *Histoire critique des tribunaux de commerce*, Paris, 1970, p. 19.

¹⁵⁷ About the dilatory use of the appeals see Buisson, *Michel*, p. 114. Ithurbide, *Histoire*, p. 19.

¹⁵⁸ They must judge "à la simple audition des parties, sans intervention d'avocats ou procureurs, après l'avis d'autres notables marchands, si la matière le requiert. Et seront les sentences exécutoires, nonobstant appel". Archives de Paris, *Copie de plusieurs remontrances faites au Roy et aux États-Généraux en l'année 1560*, D1B6-I.

¹⁵⁹ Ithurbide, *Histoire*, pp. 27-32.

¹⁶⁰ *Ibid.*, pp. 20 ss. The main difference between the edict of 1563 and its precedents was that "la juridiction des marchands était antérieurement un point secondaire dans les règlements des foires et des Bourses de commerce". Hilaire, J., "Perspectives historiques de l'élection des juges consulaires", *L'élection des juges. Étude historique française et contemporaine*, (Krynen J. ed), Paris, 1999, p. 139. Krynen celebrates the edict as "la charte de toutes les juridictions consulaires jusqu'à la Révolution".

¹⁶¹ Ithurbide, *Histoire*, p. 21.

¹⁶² *Ibid.*, p. 27.

¹⁶³ Petris, *La plume*, pp. 19-20.

¹⁶⁴ "En leurs affaires un grand Barthole serait plus embarrassé qu'eux" Buisson, *Michel*, p. 113.

Strong was the reaction of ordinary judges, but criticisms were the proofs of the success of the reform. In a short time, others edicts followed: new commercial courts were established in many French towns. According to the privileges' order¹⁶⁵, the Chancellor created new courts in each town after the direct negotiation with them. In this way, the link between new courts and sovereign power was clear.

9. The creation of the consular jurisdiction

The introduction of the consular judges created deep dissatisfaction in ordinary justice. Judges understood the meaning of that reform, which limited their prestige. So they delayed the "enregistrement" of the edict until 18 January 1564¹⁶⁶. It was the proof of their disagreement¹⁶⁷.

After the "enregistrement" by the Parliament of Paris¹⁶⁸, the new court began their activity in Paris. Later the edict was approved by other French Parliaments and by lower jurisdictions, such as the Châtelet de Paris¹⁶⁹. Through them, the edict became law in force in other towns too, but with a different effectiveness, depending on their contents¹⁷⁰.

The "enregistrement principal" was the most important. Delaying it, the judges blocked the reform. In spite of the "lettres de jussion" sent by the King to repeat its order and speed up the procedure¹⁷¹, the edict was approved after three months. Differently from the first draft, the Parliament of Paris stated that consular judges had to swear before its members¹⁷².

Conflicts between traditional justice and new courts became frequent. Even inferior Courts, such as the *Prévôt des Marchands*, were afraid of the dangerous encroachment¹⁷³. Conflicts paralyzed the commercial courts¹⁷⁴. The most important conflicts took place between the Parliament and the consular judges about the appeals against the consular judgments.

¹⁶⁵ Olivier-Martin, F., *Histoire du droit français des origines à la Révolution*, Paris, 1988, pp. 269-27; Olivier-Martin, F., *Les lois du roi*, réimpression Paris, 1997, pp. 106-110. The content of the edicts was the same for all towns.

¹⁶⁶ On February 7, 1563 "juges consuls" met in Paris at the Abbaye Saint-Magloire, in Rue Saint Denise. Ithurbide, *Histoire*, p. 35.

¹⁶⁷ About the "enregistrement" see Bugnyon, P., *Legum abrogatarum et inusitatarum in omnibus Curii, Terris, Iurisdictionibus et Dominiis Regni Franciae Tractatus*, Bruxellis, 1702, p. 5

¹⁶⁸ About the "enregistrement", Olivier-Martin, *Les lois*, pp. 250-324.

¹⁶⁹ *Ibid.*, pp. 254-255.

¹⁷⁰ The edict of Paris was homologated twice in Rouen. Matsumoto, *La juridiction*, pp. 43-4.

¹⁷¹ *Registres des délibération du bureau de la ville de Paris*, (Tuetey, A., ed.), V, (1558-1567), Paris 1892, p. 321.

¹⁷² Supreme judges expressed their will "ut hi qui in Iudices mercatorum assumuntur, iusiurandum prestant, quod prestari solet ab his, a quorum sententiis ad curiam appellatur". Ithurbide, *Histoire*, p. 32.

¹⁷³ An "officier municipal" presided over the merchants' assembly. *Ibid.*, p. 33.

¹⁷⁴ The first conflict of jurisdiction between the *Châtelet* and the *Prévôt de Paris* developed in the first month of their activity. But two "lettres patentes" confirmed the consular jurisdiction. Deniere, M. G., *Jurisdiction consulaire de Paris 1563-1792. Sa création, ses luttes, son administration intérieure, ses usages et ses mœurs*. Paris, 1872, pp. 8-10.

On April 28, 1565 the King issued the “Déclaration et interprétation du Roi sur l’édit de l’élection d’un juge et quatre consuls en sa ville de Paris”¹⁷⁵. It was the authentic interpretation of the edict issued two years before. Ordinary judges hindered the consular jurisdiction by interpreting the edict of 1563 according to their convenience¹⁷⁶. To overcome the obstacles, the sovereign invited judges to obey King’s rules. The statement was clear: ordinary judges allowed appeals against merchant’s judgments and forbade the execution of them to the officers. Their behaviour was not only contrary to King’s will; it was an obstacle to good commercial relationships. The protests and requests from merchants prompted the king to review the law¹⁷⁷.

The Declaration of 1565¹⁷⁸ had the same content of the edict issued in 1563 and confirmed that all disputes among merchants about their business must be judged by the new Courts. Even the contracts, sealed by the Châtelet de Paris, must be submitted to the consular jurisdiction.

New justice was the opposite of the traditional one, which was administered considering people’s qualities¹⁷⁹. The edict limited the sergeants’ power: they were obliged to support consular judges under the pain of losing their office.

Finally, the ordinance of Moulins of 1566, an important reorganization of the administration of the Kingdom, limits the political role of the Parliaments. Its article 72 established the appointment of temporary judges on police’s matter. They were elected for six months¹⁸⁰. This kind of justice was coherent with the commercial one.

A partial reversal of trend took place in 1579, after the sunset of the Chancellor. The ordinance of Blois’s articles 239 and 240 introduced the difference between provincial capitals and other towns. They abolished the consular jurisdictions in small towns where commercial processes were submitted to ordinary judges. They had to judge the merchants’ disputes summarily, banning long trials. Therefore, under penalty of concussion, judges had to charge the parties with the same expenses which they would have paid to the Consuls¹⁸¹.

Some historians argued that it was the consequence of the hostility towards new Courts; others considered it the result of their failure in small towns¹⁸². Anyway, thanks to his reform, Michel de L’Hospital was celebrated in 1790, during the *Assemblée Na-*

¹⁷⁵ The “Déclaration et interprétation du Roy, en date du 28 avril 1565, sur l’édit de l’élection d’un juge et quatre consuls en sa ville de Paris » is published in Ithurbide, *Histoire*, pp. 35-39. On July, 19, 1565 it was approved with the “enregistrement” of the Parliament of Paris.

¹⁷⁶ Ordinary judges “empeschent le cours de ladite Jurisdiction, sous couleur que le Pouvoir que nous avons attribué ausdits Juges et consuls, n’est si amplement et particulièrement déclaré par ledit Edict, qu’il est requis. Et le contenu en iceluy est par eux respectivement interprété et restraint à leur avantage. *Ibid.*, p. 36.

¹⁷⁷ *Ibid.*, p. 36.

¹⁷⁸ On October 27, 1565 and on July 20, 1565, two important “lettres patentes” were issued to explain the first *Déclaration*. Matsumoto, *La juridiction*, p. 58.

¹⁷⁹ During the XVIII century, the reformers “prendono spesso a modello proprio i tribunali commerciali, perché individuano nella giustizia delle pratiche, governata dai laici una via d’uscita all’opprimente monopolio dei togati”. Cerutti, S., *Giustizia sommaria. Pratiche e ideali di giustizia in una società d’Ancien Régime (Torino XVIII secolo)*, Milano, 2003, p. 30.

¹⁸⁰ Bugnyon, *Legum*, p. 71.

¹⁸¹ Matsumoto, E., *La juridiction*, p. 78.

¹⁸² *Ibid.* p. 78.

tional: the Chancellor's merit was great. Consular jurisdiction represented a new Kind of justice with three advantages: speed, economy and simplicity¹⁸³.

10. Michel de L'Hospital's rise and fall

In February 1566, the famous ordinance of Moulins reassumed L'Hospital's political and juridical ideas. The aim was to keep every element of society in its place and in its natural state, but with an absolutist imprint¹⁸⁴.

The notaries' assembly was met to discuss about the problems that the Chancellor, Catherine de' Medici and Charles IX, had found out during their travel in France.¹⁸⁵ Michel de L'Hospital celebrated the beginning of the works with an important speech against the bad administration of justice¹⁸⁶.

The Chancellor promoted a new ordinance to limit the power held by members of Parliaments. The purpose was clear: judges should not be irremovable, but only elected for one or several years, on condition that they were judged capable of well exercising their office¹⁸⁷. It was a clear attempt to reduce autarchy in the judicial Court, in order to create a more centralized State.

According to this purpose, the article 2 obliged Parliaments, even after a first refusal, to approve the "enregistrement" of edicts and royal orders. The Chancellor's idea was clear: French mystical body could survive only if each structure had performed its function. Judges had to desist from the ambition of a political rule and were called to be honest: their corruption was a real danger for the State.

To give new credibility to justice, new measures about private-law were issued: donations and contracts were regulated in order to affirm the importance of the centralized power.

The statehood of procedures and the reserve of the king's legislative function¹⁸⁸ were the pillars of the new legal order. The ordinance of Moulins included the best dispositions that could ensure the independence of the magistrates and obtain guarantees of their capacity¹⁸⁹.

¹⁸³ "Les consuls ont été par le Chancelier de L'Hospital. Il faut y regarder à deux fois, non seulement pour proscrire, mais pour faire le moindre changement à une institution dont le Chancelier de L'Hospital est l'auteur. Cette institution, que l'opinion publique a approuvée, a été maintenue dans toute sa pureté pendant deux cents ans. Elle présente trois avantages sensibles: une justice prompte, pas dispendieuse, éclairée et susceptible de toutes les mesures qui peuvent conduire à un jugement équitable, et on oserait attaquer une semblable institution". Buisson, *Michel*, p. 116.

¹⁸⁴ Matteucci, *Le origini*, p. 576.

¹⁸⁵ The travel began on March 13, 1564 and lasted about two years. Dewerpe, A. and Normand, D., *Un tour de France royal: le voyage de Charles IX (1564-1566)*, Paris, 1894.

¹⁸⁶ Taillandier, *Nouvelles*, p. 172.

¹⁸⁷ *Ibid.*

¹⁸⁸ Quaglioni, *I limiti*, p. 78.

¹⁸⁹ Taillandier, *Nouvelles*, pp. 176-177. The ordinance was "une des tentatives les plus hardies de L'Hospital pour la bonne administration de la justice". *Ibid.*, p. 178.

The reaction of the Parliament of Paris proved the audacity of Moulin's provisions: judges gave their "enregistrement" only after great remarks. In February 1566, during the Assembly, the Cardinal of Lorraine, who had been a Chancellor's protector, asked the abolition of the Amboise's edict.

Those measures had been issued on March 19, 1563, to pacify Catholics and Huguenots, but were considered unsatisfactory by both of them¹⁹⁰. The Chancellor defended them because they were conformed to the pacific edicts¹⁹¹. The dialogue between the parties was necessary. The Chancellor called for a conference to solve the conflicts: the enemy should not be fought with arms and violence¹⁹². Even this statement wasn't the anachronistic explanation of the idea of religious tolerance¹⁹³: this was a political not a religious problem¹⁹⁴.

The heretic wasn't a criminal: this idea was a strangeness in a society that rarely conceived the same political struggle without the recourse of violence¹⁹⁵. Michel de L'Hospital had been the promoter of the idea of pacification to unify the State. Catherine de' Medici had shared that hope. After the failure of the Colloquy of Possy, only tolerance seemed possible to achieve the goal¹⁹⁶.

In France the crisis caused by political problems was heavy and the King Charles IX could only partially mitigate the influence of the Guisa's family. In September 1567, the spread of a civil war frustrated the Chancellor's project. It was the sign of an inexorable decline. Even the Peace of Longjumeau, signed on March 23, 1568, between the Sovereign and Condé, wasn't enough to give credibility to L'Hospital's program¹⁹⁷. The lack of Court's support¹⁹⁸ was lethal to the Chancellor's policy. It was arrived the time of the retreat from Court's life¹⁹⁹. His hope was still one: only peace and unity could save France and avoid its extreme ruin²⁰⁰.

¹⁹⁰ Vivanti, C., *Lotta politica e pace religiosa in Francia tra Cinque e Seicento*, Torino, 1963, p. 315.

¹⁹¹ Taillandier, *Nouvelles*, p. 183.

¹⁹² "Une conférence seroit plus nécessaire que d'y venir par les violences, lesquelles nous avons veu n'avoir de rien servy pour contraindre les hommes à croire contre leur conscience". About the debate between the Chancellor and the Cardinal of Lorraine "Propos fauchaux tenus au conseil entre le cardinal de Lorraine et le chancelier de L'Hospital", BNF, Fr. 3951 cc. 100v. ss.

¹⁹³ L'Hospital argued that "Il n'est pas ici question *de constituenda religione, sed de constituenda republica*; mesme l'ecommunié ne cesse d'estre citoyen". Vivanti, C., "Il pensiero politico francese del Cinque e Seicento", *Storia delle idee politiche, economiche e sociali*, IV, Torino 1987, p. 32.

¹⁹⁴ It wasn't a problem *de constituenda religione, sed de constituenda republica* de L'Hospital, M., "Harangue", *Oeuvres complètes*, I, p. 452.

¹⁹⁵ Vivanti, *Il pensiero*, p. 31.

¹⁹⁶ In September 1561, after the failure of the Colloquy of Poissy, French politics changed. In March 1562, new civil disorders were caused by the massacre of Vassy, conceived by Francis Duke of Guisa, murdered by a Huguenot gentleman on March 19, 1563. The Amboise's edict confirmed the French Court's project to achieve peace and unity.

¹⁹⁷ Vivanti, *Il pensiero*, p. 34.

¹⁹⁸ A strong hostility against the Chancellor came from the suspicion of his co-responsibility in the so-called "affaire de Meaux". In September 1567, the risk of Charles IX kidnapping by Protestants had raised concern. Repetti, *L'educazione*, pp. 63-4.

¹⁹⁹ "Cum summo et inenarrabili dolore, L'Hospital decided to come back in villam meam cum uxore, filia, parvisque nepotibus". L'Hospital spent his last years away from the Court in Vignay's Castle. He moved to Vignay at the end of June 1568. He brought the seals of his appointment with him. In

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September 1568, Charles IX withdrew them. On February 6, 1573 his official resignation took place. He died a few weeks later. Michaud, H., *La grand*, pp. 27-8.

²⁰⁰ L'Hospital (de), M., "Testamentum", *Oeuvres complètes*, II, p. 509.

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