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Articles

# The majesty of commerce. Between royal supreme dominion and commercial law in the Spanish Indies (1674-1693)

## La majestad del comercio. Entre el dominio supremo regio y el derecho mercantil en las Indias españolas (1674-1693)

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**Abstract.** This article analyses how, through trade, the “supreme power” of the Hispanic monarchy was refuted by natural law and the law of nations at the end of the 17th century in the kingdoms of the Indies. This work explains –from the court system approach– the reasons that provoked the turning point of a disintegration of the domestic economic system (*oeconomia*), based on the grand governments of the viceroys in Spanish America, to give way to another model of political economy, more secularised and centralised (*Consulado de Comerciantes de Lima*), in which freedom of trade and the defence of individual property led to the reconfiguration of the political and economic space of America. Finally, it will be concluded that the American consulates of commerce encouraged the end of the “absolute power” of the viceroys, while promoting commercial development and the defence of the law of nations, anticipating the reforms of the Enlightenment.

**Keywords:** Consulate; viceroy; supreme power; commerce law.

**Resumen.** Este artículo analiza cómo, a través del comercio, el “poder supremo” de la monarquía Hispánica fue refutado por el derecho natural y de gentes a finales del siglo xvii en los reinos de Indias. Este trabajo explica –desde el sistema cortesano– las razones que provocaron el punto de inflexión de una desintegración

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del sistema económico doméstico (*oeconomía*), basado en los grandes gobiernos de los virreyes en la América española, para dar paso a otro modelo de economía política, más secularizado y centralizado (Consulado de Comerciantes de Lima), en el que la libertad de comercio y la defensa de la propiedad individual condujeron a la reconfiguración del espacio político y económico de América. Por último, se concluirá que los consulados de comercio americanos fomentaron el fin del “poder absoluto” de los virreyes, al tiempo que promovieron el desarrollo comercial y la defensa del derecho de gentes, anticipándose a las reformas de la Ilustración.

Palabras clave: Consulado; virrey; suprema potestad; derecho comercial.

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## INTRODUCTION

The Spanish American viceregal trade and its conformation into a global economy has received much attention in contemporary historiography, focusing on the most striking aspects such as the exploitation and transfer of gold, silver, slaves and spices (Chaunu & Chaunu, 1955-1960; Suárez, 2019). There are excellent works on the mining processes in New Spain and Peru, the establishment and consolidation of a money market and guilds that comprised the viceregal economy (Lacueva, 2010). Many of these investigations have had a fully institutional focus, without delving into the links that mercantile groups such as the Consulate maintained with the Castilian political elites (Rodríguez, 1960), their interference in the Indian political system and how they transformed the structures of government (Suárez, 2021). More recent literature has delved into the mechanisms that American merchants and financiers used to attain governmental and social positions similar to those of the viceregal elites, as well as the international political repercussions and the connection that Creole commercial representatives had at the Court of Madrid (Escamilla, 2011; Suárez, 2001). However, no attention has been paid to the changes prompted by the courtly interests of these factions and their repercussions on the government of the American kingdoms.

To this end, I will employ an interdisciplinary approach combining the study of the power relations –inherent in the court system– between the Council of the Indies, the viceroy and the Consulate, as well as an analysis of legal-political thought and how this was used by the merchants as a political tool to defend their interests. Accordingly, the sources used in this study correspond to the development of the subject matter. The main sources that have been preserved and which offer insights into this process are the consultations and requests submitted by the merchant’s guild, in addition to the correspondence exchanged between local traders, the communications delivered by their representative in the Court of Madrid and the replies given by the monarch through the Supreme Council of the Indies, which are archived in the General Archive of the Indies. As a result, we will attain a comprehensive overview of the emergence of this paradigm shift.

Economic stimulus in the Indies developed through credit, thanks to the economic solvency of bankers, private individuals and commercial courts (TePaske & Klein, 1982), allowing the formation of notable trading companies, the accumulation of new capital and the development of business activity. The Consulate acted as the Crown's bank, granting its members social and political privileges, monopolising mercantile traffic and governmental decisions with a view to defending their interests. By the end of the 17th century, the Consulate of Lima had become an organism of royal counter-power, interfering as arbitrators and mediators in decisive political matters for the monarchy. This was the case with the collapse of the regime of fleets and galleons, the impetus behind the dismissal of viceroy Castellar in 1678. It then enacted its patronage and influence to promote and maintain in the viceregal government his successor, the archbishop of Lima, don Melchor de Liñán y Cisneros, who was more open to the merchants' interests.<sup>1</sup> This political influence directly affected the economic sphere, thanks to the intermediation of don Diego de Villatoro, representative of the Consulate of Lima at the Court of Madrid –legal administrator, *procurador general*–, who became one of the Crown's biggest moneylenders (Sanz, 2009). However, the broad powers that the merchants obtained were not enough to safeguard their patrimony against the claims of Charles II, incited by the Marianist faction (Mariana of Austria) after his return to the Court in 1679, who tried to seize the private properties of the Consulate given the pressing needs of the monarchy to guarantee the “common good”.

At the end of the seventeenth century, the confrontation between the Consulate and the viceregal and Castilian elites initiated the destruction of the foundations of the courtly political paradigm in favour of the rights of property and people, albeit under a markedly Catholic character, subsequently consolidated by the Enlightenment and the European liberal revolutions. Far from theories that explain the political development towards the constitution of the nation from an exclusively economic perspective, this article unravels the turning point of this problematic, having as its centre the study of power relations and the debate on regal political theory and natural law (Grafe, 2012). The *Consulado de Comerciantes de Lima* was the body that acted as a counterweight to the viceregal “absolute” system, centred on the government of don Baltasar de la Cueva, VII Count of Castellar (1674-1678). This dispute will shed light on how the philosophical thinking of the time was inserted into political events, opening up the channels of commerce and broadening the concept of the “common good”, which led to a redefinition of the role of the monarch in the kingdoms, as well as the service that vassals rendered to him.

This struggle arose at a time when the monarchy was seeking a new basis for political justification in the aftermath of the Thirty Years' War –Westphalia, 1648. Far from producing an international economic decline, this change manifested itself as a crisis of identity (Klein & Serrano, 2019). The new reality made the defence of Catholicism meaningless and, as such, the structure of government established during the reign of Philip II no longer responded to the new political criteria. The Crown needed to re-articulate its governmental and economic relations with America (Martínez & Hortal, 2015). This rupture signified a collapse of the viceregal political system which, in the kingdom of Peru, was driven by the influence of the Consulate of merchants in Lima as the driving force that stimulated a reconfiguration of the territories. This transformation was so far-reaching that it affected both the majestic and governmental nature of the viceroys and

<sup>1</sup> Archivo General de Indias [AGI], Lima, 427. The Consulate of Lima offered 100 000 pesos to the Crown to extend the government of the interim archbishop-viceroy Cisneros, as he indicated on 25 April 1680 to the president of the Council of the Indies, Juan Francisco de la Cerda, 8th Duke of Medinaceli.

the monarch's power and sovereignty to impose new taxes and attack the individual properties of merchants. The result was the decline of the domestic economic system and the loss of the viceroy's power as the father of the family (a consequence of the collapse of the court system and of the royal households that politically and socially linked the kingdoms), which in turn allowed for the new ideals and political-philosophical justifications of the economic ethos that the Consulate used to defend itself and grow trade.

#### THE CONSULATE OF LIMA IN THE VICEREGAL POLITICAL COLLAPSE (1662-1681)

In 1647, Juan de Solórzano Pereira published one of the works that influenced the government of the Indies until practically the independence of the nineteenth century. The *Política Indiana* came to light in the midst of the political upheavals and convulsions that plagued the monarchy from Mexico to Sicily, including the crisis of the Thirty Years' War. In this treatise, the jurist offered a solution to the American viceregal court government, in which he directly pointed out two key aspects for the resilience of the Hispanic monarchy. Firstly, he denounced the powerful authority that the viceroys had attained, blocking the king's communication with the kingdoms. The second aspect he highlighted was the new financial demands that the Crown could not neglect. Trade, as well as the other factors that made it flourish, were more assiduously promoted and protected through the *Consulado de Comerciantes* (Merchants' Consulate). Juan de Solórzano drew Philip IV's attention to the fact that merchants should not only be "helped, protected and favoured, and enjoy many privileges and immunities", since the business they conducted filled the coffers of the Royal Treasury, but that "one cannot live or travel without them in any part of the world".<sup>2</sup>

The Hispanic monarchy relied repeatedly on the courts of American merchants, as exemplified by the court of Lima from its consolidation in 1613. The Consulate provided sufficient liquidity and merchandise to activate mining production and domestic trade, controlling most of the transactions in the viceroyalty and the transit of goods to and from the *Carrera de Indias*. This court was a corporation that resembled the constitutions of New Spain (1592) (Valle, 2002), Seville (1543) and Burgos (1494), with the aim of resolving conflicts between merchants, monopolising mercantile justice under private jurisdiction, only in concordance with "the Royal Council and Royal Audiencias and Chancelleries, Court and Court Mayors", thus displacing the viceroy (Hevia Bolaños, 1619, book 2, chap. 15, f. 466).<sup>3</sup>

As Indian mining and commercial activity expanded, the need to rely on this guild grew exponentially, as the viceregal system failed to provide a solution to fiscal problems (Suárez, 2015). It was an arduous task for viceroys to balance the greatest possible amount of resources to the Peninsula—as was their duty—with the increased investment in defence and strengthening of the South Sea coasts (Bradley, 1992), where 43% of the budget of the Caja Real de Lima (Royal Treasury of Lima) was earmarked for these purposes in the 1690s. Revenues fell sharply due to internal investment and the difficulty of finding new silver seams, leading to a deficit in the accounts of the Royal Treasury between 1667 and 1678 (see Figure 1). This difficulty worsened from 1664

<sup>2</sup> Juan de Solórzano Pereira, *Política Indiana* (Madrid, 1647), lib. VI, cap. XIV, f. 1007. R/34077, Biblioteca Nacional de España (BNE). The viceroy Baltasar de la Cueva, 7th Count of Castellar, indicated that "The main thing in the affairs of this Kingdom consists of the administration of the Royal Treasury". Lima, 74. AGI.

<sup>3</sup> Superior Gobierno, GO-BI, caja 134, doc. 54, Jurisdictional competence of the Consulate (1699), f. 2; GO-RE 1, leg. 3, cuaderno 22. Archivo General de la Nación del Perú (AGN-PE). On the private competences in relation to the mayors of crime of the Royal Court (1707).

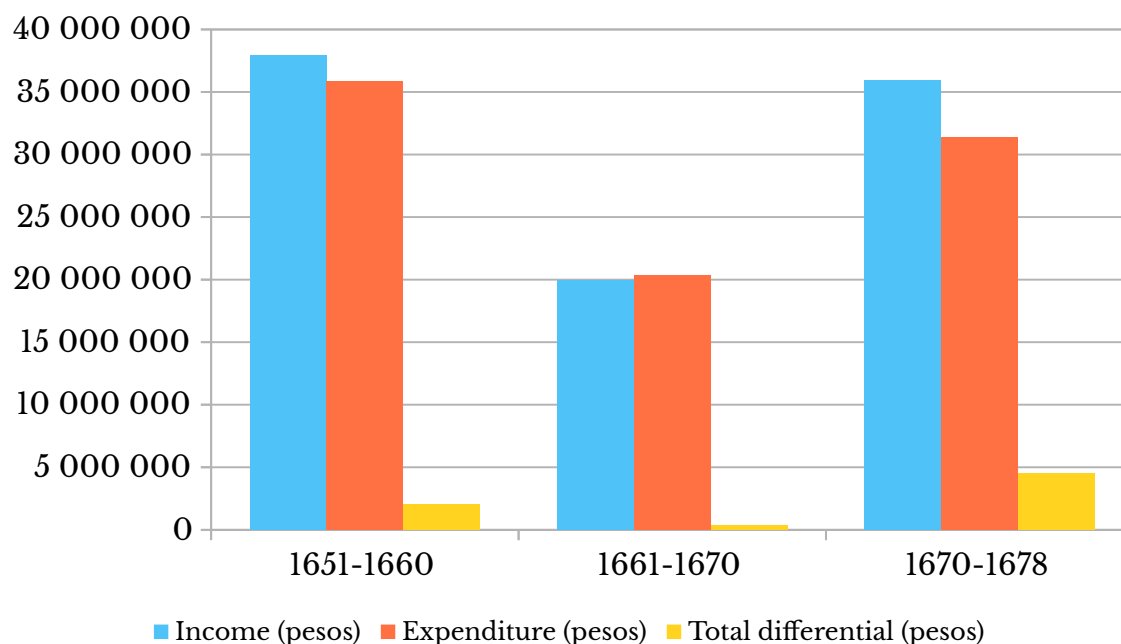
Table 1. Collections of the Royal Treasuries (Peru)

Decade	Income (pesos)	Expenditure (pesos)	Total differential (pesos)
1651-1660	37 909 779	35 887 468	2 022 311
1661-1670	19 935 576	20 325 261	389 685
1670-1680	35 891 911	31 363 245	4 528 666

Source: Adrien (2011, pp. 84 y 95).

onwards, when revenue from the royal (mining) coffers plummeted, damaging the viceroyalty's self-funding. The inevitable consequence was to resort to the funds and collaboration of the merchants' court to support the kingdom. The Council of the Indies focused on improving tax collection and administration, a novel policy in a monarchy that was governed by domestic economic criteria (Crespo, 2011) (see table 1).

Figure 1. Balance in the collection of the royal treasuries (Peru)

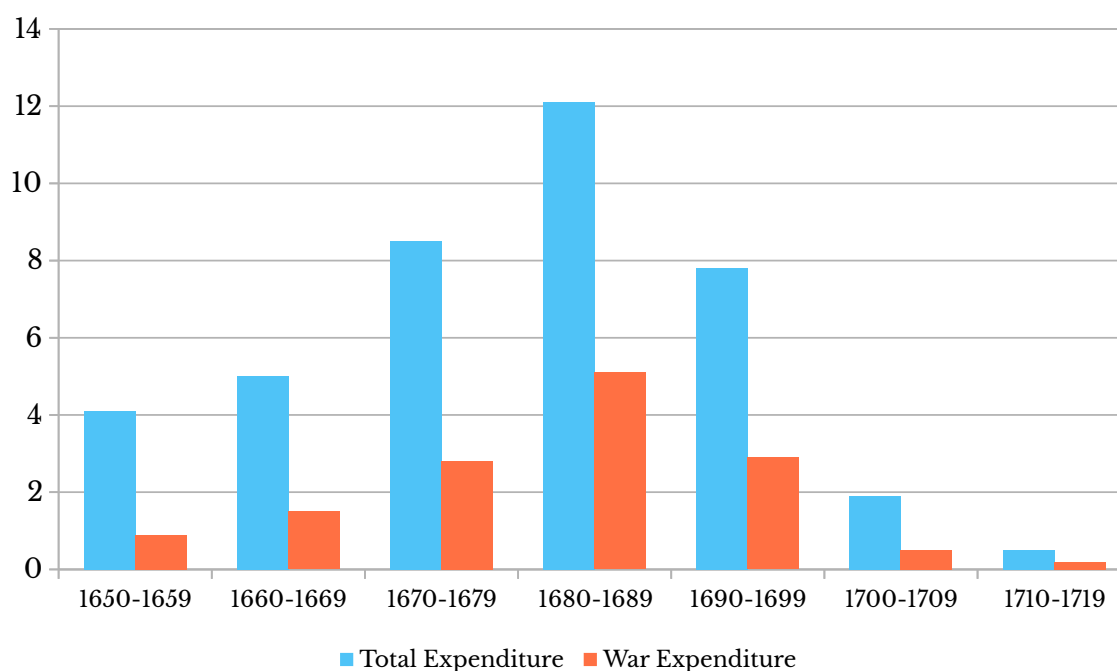


Note: For the income of the Caja Real de Lima, the branches consulted were: commerce and production, indigenous tribute, bureaucratic, mining, tobacco, ecclesiastical, loans, miscellaneous and remittances. For expenses, the following values were used: remittances to Spain, defense, Huancavelica, loans, administrative, miscellaneous.

Source: Andrien (2011, pp. 84, 95).

Control over the administration of the Royal Treasury was the battlefield on which the greatest clashes were fought between two irreconcilable organs of power, both in terms of what they represented in royal terms and the activities they carried out. The governmental mentality of viceroy

Figure 2. Expenditure of the Royal Treasury of Lima (1650-1720) Millions of pesos



Source: TePaske and Klein (1982).

Castellar (1674-1678) was determined by the economic idea of government, i. e. that order and “the good of the republic” were concentrated in his person as the living image of the king and arbiter of justice. His governmental ideology consisted of safeguarding political structures, mediating between parties, sending as much money as possible to Spain and defending the kingdoms he was in charge of, regardless of maintaining a positive or balanced balance of payments. The domestic economy based its political criteria on Aristotelian theories, in which the monarch governed his kingdoms as a father governs his house.<sup>4</sup> Personal relationships created dependence of vassals on their lord, and the lord executed justice through liberality. Thus, the dynastic patrimony, i. e. the congregation of all the kingdoms and territories of the monarchy, was governed in the same way, both for its maintenance and defence (see Figure 2). In a monarchy in which its moral-Catholic commitment legitimised its political (religious) ends, the best economy was war, the only possible (economic) victory being the exhaustion of the enemy (Finley, 1970). The financing of this economic system was based on debt, so that if the bankers could not be paid due to lack of funds, bankruptcy was declared, as happened nine times during the Habsburg dynasty (Rivero, 2000). It was from the post-Westphalian period (1648) onwards that the moral obstacle of religious confession was removed and monarchies were governed by the laws of the market. Just at that time maintaining a positive balance of payments as “state policy” began to be a point of in-

<sup>4</sup> Aristotle (1920, book. 1, chap. 6, [1344b, 20-25]).

terest. As a result, government interests and organisation began to have pre-capitalist pretensions and, as such, led to a legal, territorial and administrative reorganisation in the Indies (Delgado, 2007).

This was the policy that the Catholic monarchy attempted to implement on the arrival of don Juan de Austria, half-brother and prime minister of Charles II between 1677 and 1679. The appointment of Baltasar de la Cueva (1674) took place under the regency of Queen Mariana of Austria, the king's mother, as befitting the model of domestic economy (personalisation of power) and rise of the court system (Mitchell, 2019, pp. 141-169). The authority, prerogatives and decorations with which viceroy Castellar was invested made him the last representative of the "absolute viceroys", and defender of Marianist policy (Vargas, 1971; Nieto, 1990, p. 420).<sup>5</sup> The authority he wielded allowed him to regain control of the treasury that the viceroys had ceded to the merchants in order to recover the political role of the father of the family. Added to this was the contempt that the viceroyal authorities showed for the merchants, with the viceroy Duke of Palata (1681-1689) accusing them of "neither measuring nor trying to unite the universal importance of the monarchy, because they only have their heart in their treasure" (Hanke, 1978-1980). The merchants were conceived as usurping agents of order, converted into "a sort of parastatal organism" (Suárez, 2009), given that through their economic strength –rooted in the pursuit of personal enrichment– they achieved great social prestige, displacing military merits as guarantors of majesty's honour. The freedom of trade and the increase in the flow of money became "the true offensive and defensive weapons with which armies and kingdoms are sustained",<sup>6</sup> as Juan de Velveder pointed out in 1625, transforming luxury and vice into the new sources of virtue, and vanity and pride into the ministers of industry (Mandeville, 1714/1970). This trend could already be observed towards the end of the seventeenth century when different treatises on political economics emerged that sought to disassociate economics from the practice and ethics transmitted by the Catholic identity of the Hispanic monarchy, as was the case with Juan Cano with his work *Reforma moral, política y cristiana del comercio (Moral, political and Christian reform of commerce)* (1675).

However, towards the close of the 17th century, the Consulate began employing freedom of trade as a political instrument, departing from its original status as a moral ideal. This approach was prompted by the merging of ethics and legality, a consequence of the increasingly waning and secularised nature of the Christian republic. This secularisation led to prioritising the Holy See's interests over those of the Crown, as religion was increasingly employed for political motives (Nieto, 1997, p. 79; Hunter, 2015). This process involved secularising the perception of profit, mirroring the practices of protestant monarchies during the 18<sup>th</sup> century (Shovlin, 2006; Berg, 2005), which introduced series of reforms that administratively reconfigured America (Bertrand & Moutoukias, 2018). These new ideals appeared at the end of the dynasty of the House of Austria in what has been called the period of the "radical Enlightenment", which led to the depersonalisation of the concept of sovereignty and became fully established during the 18th century (Israel, 2002; Eulau, 1942). Nevertheless, European monarchies still had not made a clear distinction between foreign and domestic policy. Consequently, there was no well-defined international or global economic system governed by specific moral criteria that dictated the concept of commercial freedom (Hirschman, 1977; Callières, 1716, vol. 1, chap. 1, p. 9).

<sup>5</sup> Escribanía, 536A, f. 183r; Lima, 11. AGI.

<sup>6</sup> Lima, 143. AGI.

Although the condition of royal majesty substantiated in the *oeconomy* was ethically irreconcilable with trade, the Crown always relied on the Consulate to finance the military fronts in Europe and America. Since 1624, when the Count Duke of Olivares founded the Union of Arms –a fiscal and military project to form an army of 140 000 men to meet the defences of the monarchy, with New Spain contributing 250 000 ducats and Peru 350 000– the Consulate maintained close ties with the Crown because of the need for both to be strengthened. On numerous occasions the Consulate offered its economic services in the form of “voluntary donations” in exchange for legal and social concessions and privileges. The shortcomings of the tax system led to closer collaboration between the two, as occurred in 1660, when the system for financing the tax on damages –intended for the defence of fleets– was reformed as a result of the Crown’s inability to manage it, reaching a deficit of 200 000 pesos.<sup>7</sup> This entailed the transfer of the royal monopoly of trade routes to American merchants, with merchants financing these contracts in exchange for a contribution of 790 000 ducats (1 086 250 pesos de a ocho) for the defence of the *armada*, with the Consulate of Lima contributing a total of 350 000 ducats (44.3 per cent).

This meant that the Crown lost the power to manage the treasury, allowing the merchant guild to manage government affairs. In return, the merchants had to fulfill obligations such as the payment of damages incurred in the North Sea during every fourth *armada* for a total of 80 000 pesos between 1662 and 1664, plus a further 20 000 pesos for the Southern Armada; the administration for the collection of duties for *almojarifazgos* (upon annual payment of 148 000 pesos), *alcabalas* (210 000 pesos) and *Unión de Armas* (350 000) was ceded.<sup>8</sup> These charges increased when the fleets did not leave, which led to an accumulation of interest, as occurred in 1676, with losses of 540 000 pesos due to not being able to collect the *almojarifazgos* and *alcabalas* duties, which were paid by the merchant guild.<sup>9</sup> Between 1662 and 1681 the contributions of the Consulate of Lima amounted to a total of 10 027 841 pesos and four reales, reaching a total of 11 010 841 pesos in 1725, which made them the Crown’s main bank in Spanish America (see Figure 3). To all this must be added a further 3 830 059 pesos for the formation of the ten military companies it had formed to deal with the entry of pirates into the South Sea decades earlier.

These obligatory economic contributions were used by the Consulate to obtain tax and social privileges. Among them, the University of Merchants acquired exclusive jurisdiction in the collection of *alcabalas*; they opened alternative trade routes; they obtained the right to bear arms; they introduced goods freely, and they appointed private commissioners to collect taxes and silver duties in El Callao and Panama, etc.<sup>10</sup> To this end, they paid out 127 000 pesos over ten

<sup>7</sup> Consulados, L. 7. *Libro de Juntas y Acuerdos del Consulado de Cargadores a Indias* (1664-1669). AGI.

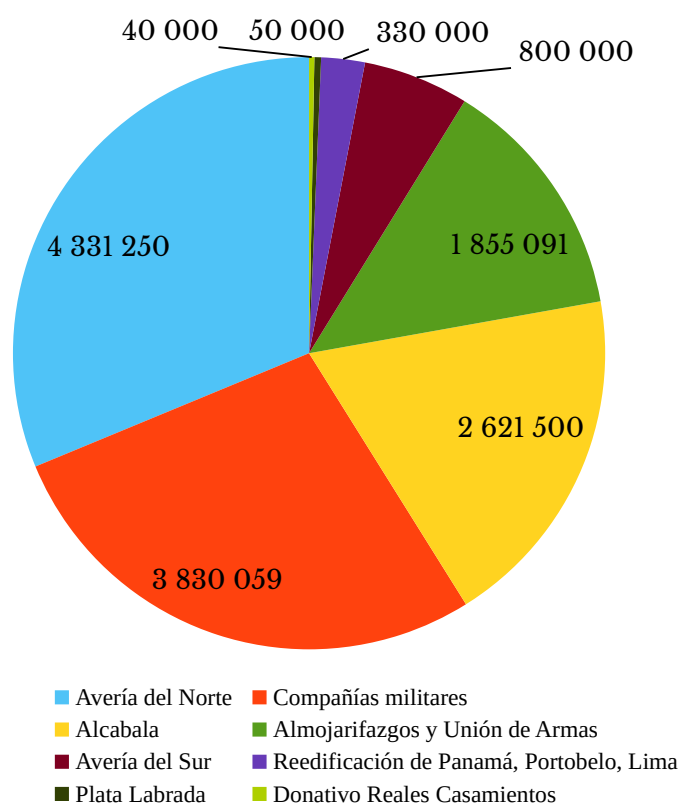
<sup>8</sup> Ms. 2941, ff. 10v-11r. BNE. Distribution made to the trades in 1660. The payment of the *Unión de Armas* was established by the Count Duke of Olivares and although it was a claim for collection, it was never paid in full. The transfer of control of collection to the Consulate was temporary, not definitive. On the other hand, the contributions for the seating of *asientos* were abundant, but in many cases they were not given as credits. The credit practices in the royal treasury of Lima had other mechanisms, and the tax collection contracts (*asientos*) negotiated with the viceregal authorities and the Consulate of Lima for the collection of the *alcabala* and *almojarifazgo* were different from those used in Castile. See Andrien (2011, p. 58).

<sup>9</sup> Memorial on the state of trade business delivered to the Duke of Medinaceli, and letters addressed to the Count of Medellín. Ms. 7652, ff. 54r-v. BNE.

<sup>10</sup> The Consulate asked Charles II that it was not of his royal service to oppose the freedom of commerce and the good course of the seats and administrations that the Consulate was in charge of, requesting the monarch to prevent the presidents of Panama from forcing the commissioners and deputies of Lima’s commerce in Panama to contribute with donations. Lima, 286. AGI.



Figure 3. Contributions of the Consulate of Lima, 1662-1681 (pesos)



Source: Prepared by the author based on files relating to donations by the Commerce and Consulate of Lima, and incidences of the entries that the Consulate administers (1677-1693); Dionisio de Alsedo y Herrera, *Memorial informativo del Tribunal del Consulado de la Ciudad de los Reyes* (1725). Theoretical total figures of the Consulate's contributions. Lima, 286. AGI.

years, bringing in another 538 000 pesos and loans of 150 000 pesos a year to the Royal Treasury (Suárez, 2001, p. 312). The economic strength was accompanied by social strength, in which the Consulate improved its standing in public festivities, placing itself behind the secular Cabildo and ahead of the University of San Marcos. It acquired the title of “señoría” as well as its prior and consuls achieving the status of royal ministers. Its members won several orders of knighthood at the end of the 17th century –seventeen of Santiago, four of Calatrava and another four of Alcántara– (Caracuel, 1966; Andújar, 2018), as well as several government offices, which allowed them to be incorporated as a de facto social group among the viceregal civilian elite. Its consolidation allowed the court to remain based in the Royal Palace where the viceroy stayed, unlike in Spain, where it was located in the fish markets. In addition, some merchants joined the domestic service of the viceroys, as was the case of Fernando Pérez de Ugía as lieutenant of the Company of the Gentlemen of Spears and arquebuses in the guard of viceroy-archbishop Cisneros.<sup>11</sup>

<sup>11</sup> Lima, 287. AGI.

This represented a level of influence which could not be rivaled, given that the viceroy was in charge of administering the government of Peru with “absolute power”. Although Castellar’s reception in the City of Kings –Ciudad de los Reyes– in 1674 was splendid on the part of the merchants’ guild, who placed a triumphal arch and a paving with silver ingots in the street of the merchants as had never been seen before, this was not received by the viceroy as a sign of praise and goodwill, but as evidence of ostentation that exceeded his decorum. From the moment of his arrival, Castellar tried to monopolise economic governance and recover the powers of the treasury that had been accumulated by the merchants, in order to present himself as *primus inter pares*. First, he tried to close the accounts of the kingdom’s royal coffers by sending in *visitadores* (inspecting judges), which had not been done since 1660 and, in many cases, had not been done for half a century. Secondly, he vigorously opposed the interests of the Consulate (Suárez, 2021), which led to conflict between the two and the subsequent dismissal of the viceroy. The direct consequence was the collapse of viceregal authority in the Indies, which marked a turning point in domestic government and a new phase in political economy, fostering individual autonomy, free trade, the law of nations and private property as elements of a new reality that was about to come into being.

This confrontation represented a turning point in relations that had been a counterbalance of power and collaboration between the viceroy and the Consulate for decades (Hausberger & Ibarra, 2003). With the arrival of a new faction at the Court of Madrid, led by don Juan José of Austria, a new political and administrative organisation of the kingdoms was implemented, which reduced the figure of the viceroy to an administrative entity, limiting his role as the living image of the king. These reforms led to an overhaul of the viceregal households as the epicentres of the domestic economic system in America (a clientelist and patronage policy conducted from the viceroy’s household), as they did not coincide with the interests and political justification promoted by the Spanish monarchy at the end of the 17th century (Jiménez, 2024). It was the power struggle that the Consulate maintained against the viceregal system and the royal authorities –the Council of the Indies– that led the Crown to not only accept these legal-commercial precepts, but also to rethink the sovereignty of royal majesty in the Indies.

#### COURTLY UPHEAVAL: THE *AUCTORITAS REGIA* IN QUESTION

The fall of the viceregal power of Castellar in 1678 was a combination of several factors, but at least two of them were decisive. Firstly, the arrival of a new political faction at the Madrid Court in February 1677, led by don Juan de Austria, who had a new political vision to exalt the monarchy, and secondly, the pressure exerted by the Consulate of Lima, who were the means by which the prime minister used to undo the viceroys’ excessive autonomy. This was demonstrated by the Consulate of Lima, for whom Castellar “used a policy ignored by many and abhorred by all, which consisted of making his rulings absolute”.<sup>12</sup> With the collapse of the Marianist faction at the Court, along with the prime minister Fernando de Valenzuela, the prominence of the Lima Consulate was strengthened by the procurator general at the Court of Madrid, Diego de Villatoro, Marquis del Castillo, who helped this guild to become one of the most powerful organisations

<sup>12</sup> Lima, 287. AGI. The interference of Viceroy Castellar in trade and the autonomy achieved by the Consulate can be seen in the letter addressed to the Infante Don Juan de Austria on August 31, 1678, where he indicated that: “because he has never looked after the convenience of commerce, nor has he sought to do it, but rather to do it as much harm as possible”, [“porque nunca ha mirado las conveniencias del Comercio, ni las ha procurado antes si, hacerle cuanto daño le ha sido posible”].

in the monarchy. With great experience in commercial affairs as senior accountant of the Treasury Council between 1653 and 1693, the memorials submitted by the merchants of Lima to the Council of the Indies passed through his hands, making him one of the most important men in the service of the Crown.<sup>13</sup> His courtly training brought him close to the government elites from his adolescence, gaining the favour of the governor of the Treasury Council, don Carlos Ramírez de Arellano and the president of the Council of the Indies (1671-1679), don Pedro de Portocarrero y Aragón, VII Count of Medellín, linking him directly to Spanish America and Philippines.<sup>14</sup>

Villatoro won the favour of Charles II as reflected in a letter addressed to the Consulate on 23 June 1688, where he expressed his satisfaction with his representative in Madrid as guarantor of the interests of the Crown. This prompted a further donation of 400 000 pesos by the merchants' guild for the services of the *armadas* in 1689, strengthening this union. The patronage enjoyed by Villatoro during Castellar's government (1674-1678) enabled him to process the memorials and petitions of the merchants' court directly to Charles II, and not through the Council of the Indies, as required by law, thus preventing the Council's public prosecutor from filing lawsuits – obligations – against the Consulate, damaging the interests of the merchants. The repeated pleas sent through Villatoro about the damage and pressure caused by Castellar to the merchants were approved at the end of the viceroy's government, specifically on 28<sup>th</sup> February 1678. By royal decree, viceroys were forbidden to grant offices, *corregimientos*, *encomiendas*, or *alcaldías mayores*, and the monarch concentrated them in their place (Storrs, 2006).<sup>15</sup> This meant putting an end to the domestic economy of the viceroys in America, as well as erasing any hint of majesty in their offices, turning them into ordinary agents in the service of the monarchy. At the same time, this order was accompanied by another substantial one that alluded to the political change that was taking place in which any payments and taxes to which Castellar had obliged the Lima Consulate were to be refused.<sup>16</sup>

The pressure exerted by the viceroy on the Consulate was becoming catastrophic for the interests of the monarchy, recognising that the viceregal policy employed until then had no place in this new form of royal management and financing. Baltasar de la Cueva wanted to reduce the presence of the Consulate in the political context of Peru. To this end, the viceroy forced the Consulate to contribute to the expenses of the galleons that transported him from Panama to El Callao on his way to Lima in 1674, which was an attack on the guild's decorum. He also forced them to deposit the 683 582 pesos that had accumulated as a result of the delay of the *armadas* of 1670, 1673 and 1676, despite the fact that Charles II excused the merchants' court of detaining these *armadas*, justified by the danger of the English enemy on the South Sea coasts. On the other hand, the Crown dismissed Castellar's intention to interfere in what each individual traded by inspecting the silver registers that were being kept in Tierra Firme through the *Junta de Hacienda* (treasury), as the fiscal of the Council of the Indies was doing; or by obliging them to maintain a fixed flow through the *asiento de averías*. Finally, it was resolved that the Consulate should be relieved of "any duty" that had been deducted from it. To seal this agreement, the trade union asked the monarch

<sup>13</sup> Indiferente, 134, N.28. AGI.

<sup>14</sup> Filipinas, 5, N.567; Filipinas, 28, N.99. AGI.

<sup>15</sup> Indiferente, 786. AGI.

<sup>16</sup> Ms.7652, núm. 33, f. 34r. BNE. On 1st February, a commission, authority and power of attorney was granted to settle the debts of the Royal Treasury, as well as the lawsuits pending in the courts of all the provinces of Peru, Lima, 77, N.43, f. 256r. AGI.

to send to each viceroy of Peru, the presidents of Tierra Firme, as well as to any other minister, the impossibility of proceeding “against the said trade or continuing the said lawsuits or disturbing them in any way, and to suspend all the orders that had been made concerning trade”.<sup>17</sup>

The arrival of the new political faction made itself felt as from 1678 the prerogatives of the mercantile guild were extended. A total of nineteen clauses increased the control and presence of the Consulate at the Madrid Court, as well as relieving the trade of certain obligations imposed by Castellar. By the royal decree of 4<sup>th</sup> June 1678, the 6 000-peso tax that merchants had to pay for ship licences was suspended, as well as exempting them from the payment and demands imposed by the fiscal of the Council of the Indies, don Pedro Fernández Miñano. This was the moment of maximum splendour of the merchants’ guild, which demanded the “liberation of trade in the broadest form of everything contained in the aforementioned lawsuits, decrees and orders issued”, without the interposition of the public prosecutor. This meant that neither the commissioners nor the Consulate could be called on to account for the expenses (*repartamientos*) being incurred, in addition to vetoing the intervention of any councillor of the Indies or the *Junta de Hacienda* (presided over by the viceroy), thus giving the merchants’ guild absolute private power. This led to a confrontation between the public prosecutors and ministers of the Council of the Indies and the merchants, who the Consulate of Lima considered they (the public prosecutors and ministers) should advocate for in order to promote the kingdoms of the House of Austria. In their eagerness to defend their rights, the merchants harshly criticised the officials of the Council of the Indies, as they challenged and opposed all commercial cases, violated their privileges and immunities, discredited their pre-eminence, and contradicted all common commercial law.<sup>18</sup>

The situation reached such an extreme that the merchants requested through Villatoro by “express capitulation” that no writs or orders could be issued by the Royal Council of the Indies against trade, especially if these obliged them to pay new debts not previously agreed upon with the monarch. They were given exclusive jurisdiction over all matters, both civil and criminal, with the commissioner appointed by the Consulate in Madrid (after the delegation of power) having jurisdiction in the first instance. In the same way, they were able to appoint an agent and lawyer of their choosing, putting them on a par with the privileges enjoyed by the Consulate of Seville, without the need to respond to future lawsuits with prior notification from the Consulate.<sup>19</sup> This was a revolution in its entirety. An American body rejected the intermediation of the highest court as a means of control and governance in America, doing so directly with the monarch or with the prime minister, which made them “untouchable” in the words of viceroy Palata.<sup>20</sup> The Consulate defended the concessions by declaring them non-negotiable, because “the surrender of the trade routes to the Consulate are absolute”,<sup>21</sup> since the decisions or agreements of the monarch could not be negotiated or disobeyed. Thus, the “University of Merchants” showed its loyalty to the royal authority, since it not only benefited from its claims but further enhanced its autonomy, showing that royal and commercial power could not survive separately. In addition, the *Comercio de Lima*

<sup>17</sup> BNE, Ms.7652, núm. 33, f. 37r. [“contra el dicho Comercio ni continúe las dichas demandas ni les inquiete con ocasión de ellas en manera alguna y se suspendan todos los Autos que se hubieren hecho tratando a el Comercio con la suavidad y blandura que V. M. a encargado.”].

<sup>18</sup> Ms.2941, núm. 38. BNE. Papel informativo sobre las materias pendientes en el Tribunal del Consulado de la Universidad de Mercaderes del Reino del Perú, por el Procurador General Diego de Villatoro, ff. 45r-v.

<sup>19</sup> Ms.7652, núm. 35, f. 43v. BNE.

<sup>20</sup> Ms.7652, núm. 35, f. 42v. BNE. Lima, 286. AGI.

<sup>21</sup> Ms.7652, f. 89r. BNE. [“las Capitulaciones de los asientos del Consulado son Absolutas”].

was empowered to appoint a conservator judge and selected Juan del Corral Paniagua, brother of the chief accountant (Schäfer, 2003).<sup>22</sup> A relevant judge with exclusive jurisdiction in Castile was what the Consulate needed, inhibiting “all the Councils, courts and Justices”. To all this, the court arrogated to itself the power to name his successor, as “the person who would have our powers in the *Villa de Madrid*”.

With this measure, the Consulate was able to appropriate the choice of this conservative judge for future litigation, incorporating a lawyer “within the Council to defend him”, as the Seville commerce had in don Antonio Ronquillo, raising the status of his lawyer to that of a judge in Seville. Diego de Villatoro justified the choice of this judge on the grounds that Juan del Corral’s qualifications were “the highest in the Council with regards to letters and finesse”.<sup>23</sup> After his promotion to Treasury Councillor, Villatoro found a new lawyer of “sufficient letters” for the office in don Pedro Londáiz, a specialist in litigation over entailed estates. The Consulate placed its trust in this lawyer, as he was familiar with royal law, while also a defender of the rights of the merchants.<sup>24</sup> He was joined by Juan Pérez de Alleso, another judge of great prestige and intelligence, with whom the Consulate built its court faction in Madrid.

#### THE SHIFT TOWARDS A POLITICAL ECONOMY IN THE HABSBURG COURT

The prerogatives granted to merchants encouraged trade, as “hope facilitates the courage to obtain”,<sup>25</sup> as well as causing the weakening of viceregal power (1678), dealing a hard blow to the domestic economic regime in the viceroyalty. The Council of the Indies sought to implement a policy to recover powers (centralisation of decision making) that had been delegated to the viceroys, as the transfer of power was the emblem of the clientelist system (domestic economy), which was beginning to show its first signs of crisis. This collapse was accompanied by an economic transformation provoked by the *Junta de Comercio* (1679) and the fiscal reforms of the 1680s, regulating competition, money supply and fiscal stabilisation, factors that encouraged advanced commercial and financial development (Sanz, 2018). As a result, the mercantile guild in Peru was the only body that remained comparable in sovereignty and majesty and was seen as the natural substitute for the magnanimity of the viceroys. From then on, the Consulate was not only the guarantor of the “common good” of the kingdom thanks to its work in the field of finance, but its royalty was determined by the fact that it was the only corporation capable of “creating something out of nothing” (through credit), a power that only monarchs monopolised, likening them to God and, therefore, architects of political and economic patronage (Continisio & Mozzarelli, 1995).

The transition of the Catholic monarch’s new interests encouraged political economic ambitions, making trade one of its main objectives (Yun, 2012). Thus, the orientation of officials (bureaucratic viceroys) and territorial jurisdictions was determined by and for commercial development, starting with a balance of payments, in order to compete commercially, making merchants and mercantile corporations the new epicentre of power in the Indies (Hont, 2005). The Catholic monarchs, by establishing an economy governed by credit –a monetary supplement and innovation– to support the common good, not only allowed the Consulate to “create something

<sup>22</sup> Indiferente, 881. AGI.

<sup>23</sup> Ms. 7652, núm. 35, f. 44v. [“las más elevadas del Consejo en la justificación en las letras y en la fineza”]; Ms. 18172, f. 153v. BNE.

<sup>24</sup> Antonio de León Pinelo, *Epítome de la biblioteca oriental y occidental, náutica y geográfica*. (Madrid, 1738), I, 819.

<sup>25</sup> Lima, 287. AGI. [“la esperanza facilita el ánimo para conseguir”].

out of nothing” (Schumpeter, 1944), but also made the Crown a “temporary subject” of the merchants’ court, under the commitment and obligation to repay the loans offered. At the same time, the detriment of religious designs as a guide and destiny of the monarchy produced a breakdown in the domestic economy, establishing that the best economy was the efficient collection of revenues, based on a political economic model that was still not very developed. Therefore, the *common good* was not only based on the legal protection offered by the father of the family, but also on the reorganisation of the royal accounts and coffers. It was at this time that the court system (*oconomia*) began to be recomposed, readjusting the number and expenses of the entourages of the royal houses,<sup>26</sup> the territorial councils and the viceregal retinues to the economic needs (Jiménez, 2019), as well as implying a change in the conception of sovereignty (Bartelson, 1995).

Internal reforms led to a territorial-fiscal rearticulation with increasingly smaller jurisdictions, in order to better control political and fiscal matters, as evidenced by the division of the kingdom of Peru after the creation of a new viceroyalty in New Granada (1717-1723). At the same time, the Crown encouraged the search for revenue streams, favouring the Consulate and eliminating trade barriers in order to create a favourable and secure environment for investment and exchange. This was the case in 1682, when merchants were exempted from the obligation imposed on them by the Council of the Indies to pay the *almojarifazgo* on cocoa entering Tierra Firme. This political shift can also be seen in the letter sent by the Consulate of Lima to Charles II on 25 January 1682, thanking him for appointing the Duke of Palata as Castellar’s successor, since Palata’s inclination was to unite “the greater utility of the Royal Treasury with the convenience of trade”, identifying “the good of the public cause” with the patronage of the merchants’ guild, in order to increase the Crown’s coffers (see diagram 1).<sup>27</sup>

In this sense, early capitalism in the Indies was a system that encouraged royal sovereignty to accumulate private capital and promote mercantile freedom, allowing capital to reinforce royal dominance. Commercial societies –such as the Consulate– exercised this coalition between commerce and sovereignty to perfection, empowering them as an element of counter-power to the viceregal authorities. In fact, one of the greatest threats to the development of capital is the sovereignty exercised against it (Shovlin, 2021, p. 229). The royal authorities and, in particular the monarch, on numerous occasions, given the emergency and necessity of the monarchy, blocked commercial activities and seized the wealth of merchants in the name of the *common good* and in defence of his vassals. However, the momentary benefits to the monarchy of this act did not outweigh the risks and losses that this caused to trade, as a peaceful and secure policy that encouraged investment was necessary for commercial development. Indeed, economic needs prompted a conflict between royal authority and the rights of merchants, in which the domestic system remained the political paradigm. Charles II argued that on the basis of his *supreme dominion* he could seize merchants’ property to meet financial emergencies. This provoked a legal and philosophical legal struggle that laid the foundations for the development of a “commercial spirit” within the Hispanic monarchy, in which the American administrative system evolved from a seigniorial to a colonial (pre-capitalist) regime.

<sup>26</sup> Administrativa, 929 y 939. Archivo General de Palacio (AGP).

<sup>27</sup> Lima, 286. AGI. [“la maior Utilidad de la Real hacienda, con la combeniencia del Comercio”].

THE MAJESTY OF COMMERCE VERSUS THE *SUPREME DOMINION* OF ROYALTY

In 1693, Diego de Villatoro handed the president of the Council of the Indies, don Fernando de Aragón y Moncada, VIII Duke of Montalto, an informative paper (*papel informativo*) in which he explained the state, causes and pending matters in the Court of merchants. In it he made a staunch defence of the rights of the Consulate, stating with great authority that they were not prepared to contract new trade agreements while subject to monarchy's economic urgencies, as freedom of trade could not fall under any agreement or capitulation since it would mean "dissolving the sacred bonds of the oath" sealed under royal promise. This meant that they were not required to fulfill further obligations except for the contribution levied from their agreements (Moreyra, 1956).<sup>28</sup> The matter came to such a head that Villatoro severely criticised Charles II's intentions to appropriate the private wealth of the merchants. The merchants dismissed the *supreme dominion* that the monarch had to seize the goods of his vassals, among others, the confiscation he made of the galleons on their arrival in Seville. The Crown's aim was to compensate for the expenses incurred by the European wars after the Peace of Nijmegen and to consummate the Peace of Messina (1678). However, the Consulate would not accept any pact, reproaching that not even by "right of war" would such conduct be allowed as it was unrelated to the *supreme protection* of vassals, as well as entailing the damage and limitation of the royal power.<sup>29</sup> For Villatoro, the protection and increase of trade was governed exclusively by the freedom and defence of private property, as these assets "are the property of their vassals".<sup>30</sup> The king was obliged to increase and protect this property, since majesty entailed a commitment to the jurisdiction and protection of vassals, which is why the royal office was instituted. The Consulate took Charles II's engagement as permission to put into practice this royal law:

by virtue of his supreme dominion and royalty, he has the right to occupy the goods of vassals; which in no Catholic monarchy is granted to sovereigns, generally and absolutely, [...] his Majesty cannot utilize his greatness to occupy them, nor reduce by force of the Supreme Dominion that of the Vassals to cede wealth to the Royal treasury, because with this maxim, only practised in nations opposed to the opinion of reason, or by unjust and tyrannical kings, it would destroy the same political society.<sup>31</sup>

For the merchants, the private property of the vassals was an inalienable right associated with the "law of nations" and revealed as a natural right, guaranteeing them freedom of trade. This defence was based on the theories of the philosopher Samuel Pufendorf who, in his work *De iure naturae et Gentium* (1672), carried out a thorough revision on the natural law treatises of Hobbes and Grotius. We do not know if any of his works reached Lima during this period (Toribio, 1904), although his representative in Madrid, Diego de Villatoro, may have been aware of them, as he was

<sup>28</sup> Indiferente, 582, L. 5, f. 258r. AGI. ["disolver los sagrados vínculos del juramento"]; R/19602, José de Veitia y Linaje, *Norte de la Contratación de las Indias Occidentales* (Sevilla, 1672, lib. 1, cap. xx).

<sup>29</sup> Ms. 2941, núm. 59, ff. 63r-v. BNE.

<sup>30</sup> Ms. 2941, núm. 57-59-60, ff. 61v-64r. BNE. ["son Patrimonio propio de sus vasallos"].

<sup>31</sup> Ms. 2941, núm. 62, ff. 65r-66r. BNE. ["en virtud del supremo Dominio y regalía, que tiene para ocupar los bienes, de los vasallos; la cual en ninguna Monarquía Católica se concede a los soberanos, general y absolutamente, [...] no puede su Magestad salva su grandeza ocuparle, ni reducir en fuerza del Supremo Dominio a caudal del erario Real el de los Vasallos, porque con esta máxima, solo practicada en Naciones opuestas al dictamen de la razón, o por Reyes injustos y tiranos, se destruyera la misma sociedad Política"].

the one who formulated these treatises for Charles II. However, it is more likely that its sources came from the Sevillian Dominican, Fray Bartolomé de las Casas (1571), in one of his most important works, *Regia potestate o derecho de autodeterminación*, as well as the writings of the prominent Jesuit doctors Francisco Suárez, José de Acosta, Pedro de Ribadeneira and Juan de Mariana. These scholars exerted a profound influence on European thought on the constitutionalism of political power, the promotion of innate rights and the subordination of rulers to the law (Prieto & Cendejas, 2023, pp. 1-60). In it he demonstrates how from “the origin of rational nature all human beings were born free” (natural law), which is why he united rationality with freedom, and this with the law of nations, which is nothing more than natural law applied to kingdoms (Casas, 1571/1969, pp. 16-20). Likewise, he indicated that “neither kings nor emperors have any power over the estates of citizens, nor over the possession of their territories, provinces or lands of the kingdom, nor over the useful or direct dominion of the inhabitants”, clarifying that although jurisdiction belongs to the king, this does not make him the owner of the thing, because the ownership of something “refers to the free disposition” of things (Casas, 1571/1969, Q. III, p. 26).

Bartolomé de las Casas, in clear agreement with the defence applied decades later by the Lima merchants, argued that: “kings, emperors, all other sovereigns and other lords inferior to them, do not have direct or even useful dominion over private property, but are protectors and defenders with supreme jurisdiction” (Casas, 1571/1969, pp. 23-27).<sup>32</sup> Thus, the authority of the sovereign was only established to protect the common good of the vassals, encouraging the idea that “la société politique est une personne morale” (Vattel, 1773, t. I, lib. I, chap. IV, f. 59). This unfolded a debate on the essence and limits of royal sovereignty, as subjects were not subject to the power of the king, but “are under the power of the law” (Casas, 1571/1969, Q. V, p. 39).

The merchants claimed the general “will” of trade as an exercise of freedom and the only way for the utility and support of the realm, reflecting the interest of the common good. Following Pufendorf’s criteria, one “cannot be charged with not having given what exceeds one’s capacities, and by them one can neither prevent oneself nor realise [since] there is no obligation of the impossible” (Pufendorf, 1672/2002, chap. I, [23.vi], p. 25). The Consulate ratified the thinking of the Saxon philosopher, because “with the works that in serving H. M. he voluntarily ‘donations’ borders on the extreme of what is possible”,<sup>33</sup> due to the extraordinary payments that he was charged by the viceroy Castellar and the public prosecutor of the Council of the Indies. This was the reason why the merchants demanded direct dealings with Charles II, demanding respect for the pre-established agreements. To all this, the king added a clause prohibiting all viceroys from intervening in matters determined by the *Junta General de Hacienda*, not even through consultative vote with the *oidores*. This mainly affected the negotiations of entries from 1660 onwards, because according to contract law “whoever is earlier in time, is preferential in law” (Pufendorf, 1672/2002, chap. IX, point 19, p. 71).

The emergence of early capitalism and other commercial organisations that acted as a medium between capital and royal sovereignty required the removal of barriers in trade in order to develop commerce. Once property rights had been defended against the Crown, the next step for merchants was to have Castellar, who had so painstakingly interfered in the Consulate’s duties, removed from office. The disagreements with the viceroy were further fuelled between 1677 and

<sup>32</sup> This is justified by the Dominican friar and theologian Francisco de Vitoria (1537-1538/2021, part. II, Q. I, p. 96), founder of the School of Salamanca and of International Law and the Law of Nations, when he indicates that the emperor in the world does not have dominion of property but only of jurisdiction.

<sup>33</sup> Lima, 287. AGI. [“con las obras que en servir a S. M. voluntariamente [donativos] raya el extremo de lo posible”].



1678, when he ordered the collection of various “duties” demanded from the merchants. In several episodes the viceroy manifested his “absolute power”, among others, by preventing the merchants from attending the celebration of Easter Week in 1678 until they had made the payments they owed. It was at this time that Villatoro and his commissioners at the Court protested against the impunities that Castellar was committing in order to extend the concessions of the royal decree of 1678.

Payments demanded both by the viceroy and by the governors and presidents of the *Audiencias* (especially those of Tierra Firme, don Alonso Mercado y Villacorta, one of the “greatest enemies of this court and of commerce”) were suspended (Suárez, 2012).<sup>34</sup> Despite the complaints and orders issued by Charles II, the viceroy, in his furious determination to show his power over the Consulate, forced the payment of the 77 560 pesos of *almojarifazgos*, *alcabalas* and *Unión de Armas*, as well as the military expenses and security of the viceroyalty, with the help of the *Caja Real de Lima*.

This nearly led to a collapse in trade and a breakdown between the Lima merchants and the Crown (see diagram 1). Tensions increased when Castellar opened up illicit trade routes for his own benefit, trading in cargoes from Asia. According to the Consulate, he had sent at least two ships to Acapulco with silver and some 3 000 000 in *azogues*, evading the corresponding entry and exit duties. He also sold licences at exorbitant prices for all kinds of goods and bastions necessary for the defences in the main ports of the kingdom, such as El Callao and Valdivia, where he had settled his servants. The Consulate of Lima reported that the viceroy had not sent any relief to the mines of Huancavelica to pay the debts of the *mitayos* (indigenous labourers and miners), who were already heavily in debt.<sup>35</sup> However, Castellar defended himself against such accusations, stating that he had sent more than 3 500 *quintals* worth 221 592 pesos for the salaries and mercury,<sup>36</sup> recovered the ruined and indebted mines of Huancavelica; eliminated the illicit trade in mercury and rescued financial networks, paid all mineral deliveries on time, sending a total remittance of 1 439 350 *patacones* and reducing the debt to 241 032 pesos (Lohmann, 1949, p. 383).

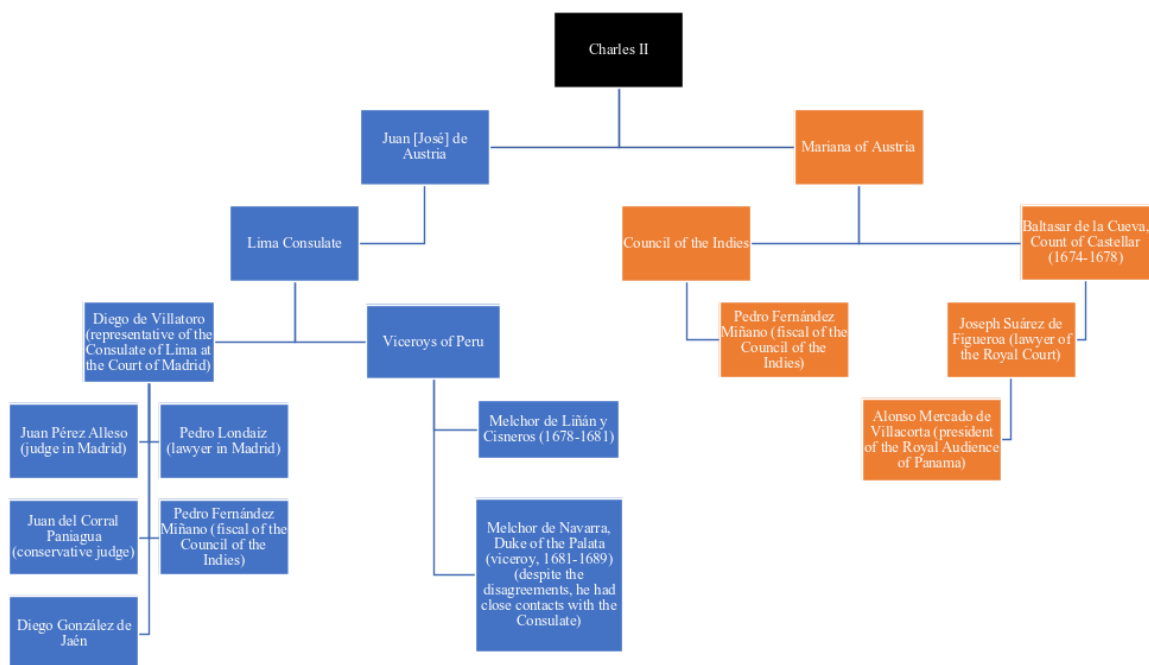
Baltasar tried to correct the imbalances caused in the uncontrolled and indebted administration of the treasury, where a strong merchants’ guild was based, which had spread its agents and commissioners in the viceroyalty throughout the century, fighting for the commercial monopoly by expanding credit. Moreover, Castellar wanted to recover the prerogatives that he was entitled to as “Prince of Peru”, even though legally the viceroy could not “arbitrarily take away an acquired right” (Avendaño, 1668/2001, tit. III, chap. XVI, p. 479). However, pressure from the Consulate and the arrival of the new faction led by don Juan de Austria consolidated the fall of Castellar, which led to a transfiguration of the viceroy’s majesty. After Baltasar’s dismissal and the arrival of the interim viceroy Cisneros, the latter protected the interests of the merchants more vigorously, coinciding in turn with those of the infante don Juan to reform the viceroyalty of Peru. Thus, after the General Board of Trade, held on 25 April 1680, the Consulate offered a donation of 100 000 pesos at the Portobello fair in two payments: 30 000 pesos in the first *armada* and 70 000 pesos in the next, so that Cisneros would continue at the head of the viceroyalty, since the archbishop-viceroy had not experienced “the harassment, scorn and violence” of the previous government. However, the Council of the Indies denied the request, because if it accepted, it would cede royal

<sup>34</sup> Lima, 287. AGI.

<sup>35</sup> Lima, 284. AGI.

<sup>36</sup> Lima, 76. AGI.

Diagram 1. Organisation of the Court factions of the Consulate of Lima and the viceroy Count of Castellar (1674-1678)



Source: Prepared by the author.

power by virtue of the economic power of the merchants.<sup>37</sup> The Consulate not only laid the foundations for a reconfiguration of the court system and power in the Indies, but also removed the various obstacles that prevented the emergence of a precapitalist commercial spirit, dominated by a change in government administration: from domestic courts to mercantile courts.

#### CONCLUSIONS: THE MORAL ORIGINS OF EARLY CAPITALISM IN SPANISH AMERICA

With the cessation of Castellar in July 1678, the Consulate achieved the highest degree of status, preeminence and political consolidation. Everything seemed to indicate that the court barriers that hindered trade had vanished, which would soon allow commercial development, as the Royal Court of Lima denounced through its lawyer, don Joseph Suarez de Figueroa, who argued that the Consulate should be reformed because it had “abrogated more jurisdiction than the other courts to the detriment of ordinary justice”.<sup>38</sup> However, certain contradictions arose within this institution that prevented the promotion of the commercial freedom they had championed in defence of their rights against the supreme dominion of the monarchy. The Universidad de Mercaderes de Lima, as a body within the courtly political system (a governmental and social paradigm) continued to govern itself according to its interests, increasing its prerogatives and licences through service to

<sup>37</sup> Lima, 427. AGI.

<sup>38</sup> Lima, 286. AGI. [“abrogado más jurisdicción que los demás tribunales en perjuicio de la justicia ordinaria”].

the monarch.<sup>39</sup> The Consulate struggled to increase its profits and acquire greater economic power but it always maintained a view to monopolising transoceanic trade, as reflected in the closure of the Potosí mint after the Lima mint was reopened in 1684.<sup>40</sup> As such, it was far from applying freedom of trade as a principle of its policy, so we may wonder what these precepts meant for the merchant guild.

The Consulate of Lima championed the defence of commercial freedom, using the law of nations as a strategy and political tool rather than as a moral idea or management practice, although with criteria inscribed in the legal and moral unity that underlay the decadent idea of the *Res Publica Christiana Universalis* (Rivero, 2018). These criteria authorized it to act as a counterweight to the orders and impositions of the viceroy, who sought to recover the revenue powers that the Crown was ceding in favour of commerce. This was a political confrontation between two bodies of power (the viceroy and the consulate) which used two irreconcilable ideological strategies or instruments to achieve their objectives. While the former was based on the ethics that underpinned domestic economy, the latter was based on the morality of the common good enshrined by the law of nations. Therefore, the defence of free trade and the private property of merchants was a political weapon used by this guild, rather than a means to facilitate and enhance natural transactions between different commercial bodies, otherwise the Consulate's transoceanic monopolistic defence would not be understood. Thus *economy* was conceived and defined as a *science d'acquérir des biens*, and economic policy in the hands of the sovereign and his ministers, as *un art, non pas une science*. The Frenchman Antoine de Montchrestien in his *Traicté d'Economique Politique* (1615) defined the main fundamentals of economics, in which he defended manufacturing, navigation and trade as the sources of wealth, where the best administration of justice and fortune was work and industry. On the other hand, he pointed out that trade should be controlled by the king, who imbued the economy with morals (*oeconomia patronal*).<sup>41</sup>

During the 18th century, political-economic policy, far from being an exact science applied to mercantile practices, constituted theoretical knowledge that allowed mediation between the monarch and the bodies of power in Spanish America, at a time when trade emerged as one of the main sources for acquiring and constituting autonomy (power). Indeed, it was the means by which the Consulate of Lima could claim protection from the monarch, cease and punish enemies positioned against the merchants (Castellar) as well as influence what the "common good" and the government of the kingdom should be. The Consulate became the "necessary justification" that don Juan de Austria needed to implement his political ideology, reducing the power of the viceroys and their secretariats in order to revert the Councils into organs of direct communication with the kingdoms. On the other hand, trade equated with the law of nations –or practice between equals– was opening up cracks that allowed new practices to be incorporated into the Court system. Buying and selling began to serve as the main source of royal honour and dignity, exalting merchants as the new noble elite by gaining access to the elite ranks of merit, reputation and authority.<sup>42</sup> Royal privileges were gradually dissolved in the common law or law of nations that materialised mercantile transfers, as it distributed justice through accumulated wealth, resulting in trade being an activity between equals and with similar conditions, which would cause the sovereign's mediating

<sup>39</sup> Panamá, 240, L. 22, ff. 165r-167v. AGI.

<sup>40</sup> Lima, 78. AGI.

<sup>41</sup> Antoine de Montchrestien, *Traicté de l'oeconomie politique: l'économie politique patronale* (Paris, 1615), ff. 98-99. Bibliothèque Nationale de France [BnF],

<sup>42</sup> Lima, 78, f. 139 y ff. 218-219. AGI.

role to diminish well into the 18th century. Commercial freedom transformed avarice and ambition into the new foundations of virtue, since it gave rise to contracts and rights that contributed to and enriched the Royal Treasury, maintaining the “usefulness” of the monarchy, since “the best income of an empire [is] to base its patronage on the opulence of its vassals”.<sup>43</sup> Similarly, negotiation and navigation became the two new courtly pillars, both of which were revived through work and sacrifice (*ferendum et sperandum*).

This idea of government was printed in the work *Norte de la Contratación de las Indias Occidentales* (1671), by the treasurer and official judge of the *Casa de la Contratación* in Seville, José de Veitia y Linaje. Its purpose was to promote mercantile transactions, indicating that the trend towards mercantile development was the best defence for the Indies. The same position was taken by the secretary of the Council of the Indies, Gerónimo de Uztariz (1724), who warned Philip V that the development of trade and the *armada* were the two measures that could awaken the monarchy from its economic lethargy (Crespo, 2024). While these economic theories were not only a recipe book for good governance, they were also used as political means, stimulating changes in the organisational and representative constitution of royal power and majesty. The viceroy Duke de la Palata, Castellar’s successor, despite his disparities, declared that commerce was the “soul of the Republic” (Hanke, 1978-1980, vi, p. 261), which favoured the Consulate’s pretensions, since its inclination was to combine the improvement of the Royal Treasury with the greatest profit from commerce, despite the fact that the office of viceroy “disunites these attempts”.<sup>44</sup>

The political logic of the domestic economy and the court structure was affected by the actions of the Consulate, as the defence of the law of nations and the private property of merchants was linked to trade as a means of safeguarding the needs of the monarchy. The decline of the viceroy’s image as a paternal figure in the kingdom, embodying the roles of both the upholder of justice and intermediary between rulers and subjects, coincided with the recovery of powers which had been delegated by the Council to the *alter ego*. These developments resulted in the effective consolidation of decision-making power in Madrid and the active engagement of other political bodies –such as the Consulate– in the direct governance of the Americas. Thus, the shaping of a pre-capitalist system was based on the fact that sovereignty was induced to increase the accumulation of private capital and the defence of merchants’ privileges, which directly reduced and limited the power and aims of royal sovereignty (Shovlin, 2021, p. 274). This turning point was manifested in 1678, when at the same time that Viceroy Castellar was dismissed, future American viceroys were forbidden from granting graces and mercies. Likewise, by the royal decree of 28<sup>th</sup> February of the same year, the Consulate’s obligations to deposit payments in the kingdom’s coffers were abolished (Vicente & Lenci, 1998, I, p. 65), granting it exclusive justice over its mercantile affairs, preventing the intervention of the Council of the Indies.

This reform entailed a fracture in the viceregal domestic court-based administration that went as far as the transfiguration of viceroys’ grandeur. The decline of the viceroy’s power as the father of the family and his courtly house as the epicentre of power and justice led to the detriment of the practice of the “philosophy of princes” (De Smet, 2013), which gave rise to a feeling of abandonment of India vassals –revolt of Mexico, 1692. The viceroys were reduced to the level of ordinary officials, their former majesty subjected to the level of a tax collecting and military bureaucrat. Their royal role would change, from monarch to monarch, with their courtly

<sup>43</sup> Lima, 287, AGI. [“la mejor renta de un imperio [es] fundar el patrocinio en la opulencia de los vasallos”].

<sup>44</sup> Lima, 286. AGI.

entourages being reduced to fit the new political-economic agenda that was being expanded during the Bourbon century. This was a consequence of the struggles that originated from the Court of Lima and Madrid, which gave prompted the restructuring of America in response to the new interests of the Catholic monarchs.

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#### Archives

- AGI Archivo General de Indias, Sevilla, Spain.
- AGP Archivo General de Palacio, Madrid, Spain.
- AGN-PE Archivo General de la Nación del Perú, Lima, Peru.
- BNE Biblioteca Nacional de España, Madrid, Spain.
- BnF Bibliothèque Nationale de France, Paris, France.