

## Jean Bodin on Sovereignty

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POLITICAL THEORY IS AN AMPHIBIOUS BEAST with one foot in the changing stream of history and another on the enduring ground of human nature and the human condition. Jean Bodin's theory of absolute and undivided sovereignty was a product of time and place. His *Six livres de la République* (1576) was written four years after the Saint Bartholomew's Day Massacre, during which thousands of prominent Huguenots were killed by the Catholic League a few days after the marriage of Margaret of Valois to Henri of Navarre, a Protestant who later converted to Catholicism when he ascended the French throne as Henri IV in 1589. Protestant thinkers, such as François Hotman, who published *Franco-Gallia* in 1573, argued that French kings were initially chosen by the people and could be deposed by the people.<sup>1</sup> Bodin's doctrine of absolute sovereignty was, as Julian Franklin has argued, a product of the Saint Bartholomew's Day Massacre and the Huguenot Monarchomach theories, to which Bodin was opposed.<sup>2</sup> Sovereign power, Bodin hoped, could police and moderate the religious conflict between the Huguenots and the Catholic League that cost so many lives in his day. Bodin was a "*politique*," a partisan of neither the Huguenots nor the Catholic League, who had the reputation of caring more for civil peace than doctrinal truth. However, Bodin's *Six livres de la République* was not merely a *livre de circon-*

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<sup>1</sup> François Hotman, *Franco-gallia*, Latin text by Ralph Giesey, trans. J. H. M. Salmon (Cambridge: Cambridge University Press, 1972), 173, 179, 205, 221, 235, 307, 401–3.

<sup>2</sup> Julian H. Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973), vii, 41. The French word *Monarchomaque* derives from the Greek *monarchos*, "monarch," and *makhomai*, "to fight," hence an opponent of monarchy. The Huguenots presented themselves as opponents of absolute monarchy, but royalists maintained that the term connoted tyrannicide.



stance<sup>3</sup> but a major work of political theory concerned with enduring questions of the relations between religion and politics, of the conflict between patrician and plebeian orders, of the forms of government, and of the distinction between sovereignty and government.

I argue that Bodin, the theorist of absolute sovereignty, was not as hostile to liberal or democratic theories as is often assumed. John Locke recommended Bodin to his students at Christ Church, Oxford.<sup>4</sup> Bodin, as we shall see, insisted that monarchs could not tax their subjects without their consent, a doctrine central to Locke and later to Rousseau and to the American and French revolutionaries. Bodin's distinction between sovereignty and government, which I shall shortly analyze, anticipated liberal doctrines of the separation of powers and the subordination of the executive to the legislative branch of government, as well as Rousseau's doctrine of the distinction between a sovereign legislative and an aristocratic executive subordinate to the sovereign people. Further, I shall show that Bodin's subordination of church to state served the goal of religious toleration and that the subordination of church to state was espoused by champions of religious toleration, such as Hobbes, Mandeville, Voltaire, Diderot, Hume, and John Stuart Mill, and thus was a genuine liberal alternative to Locke's and Jefferson's doctrine of the separation of church and state. I also wish to show that although Bodin was a monarchist, he wrote positively about republics and indeed could be said to have inspired some of the neo-Roman republicanism that flourished around the time of the American and French revolutions.

### MONARCHIC REPUBLICS

John Adams, who wrote widely and more intelligently about republicanism than any other author but who was reputed by his opponents to be a monarchist, declared to Mercy Otis Warren in 1807: "There is not a more unintelligible word in the English language than republicanism."<sup>5</sup> There is similar ambiguity in the French word *république*. Jean Bodin's *Les Six livres de la République* (1576) is usually translated as *The Six Books of the Commonwealth*.<sup>6</sup> Since Bodin was a monarchist, his term *république* refers to states generally rather than democracies or aristocracies specifically—or, more accurately, states other than despotisms and tyrannies, where the private interest of the ruler or ruling class takes precedence over the common interest. In this respect, Bodin followed the practice of Roman emperors, from Augustus to Hadrian and Valens,

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<sup>3</sup> I do not mean to suggest that Franklin's historical approach to the understanding of Bodin's theory of sovereignty attempts to reduce the theory to the historical circumstances from which it arose but rather to question his view (*Jean Bodin*, 107) that Bodin's legacy appealed solely to royal absolutists and that "the history of Bodin's theory of absolutism is a rather dreary tale." I shall indicate that Locke and Montesquieu found Bodin's views on the sanctity of private property congenial, and Locke and Rousseau subscribed to Bodin's view that taxation requires popular consent, a view that Franklin found consistent with Bodin's theory of absolute sovereignty and which I think to be an interesting tension or inconsistency in his theory of sovereignty.

<sup>4</sup> W. H. Greenleaf, *Order, Empiricism and Politics: Two Traditions of English Political Thought* (London: Oxford University Press, 1964), 125.

<sup>5</sup> Adams cited in David Wootton, *Republicanism, Liberty, and Commercial Society, 1649–1776* (Stanford: Stanford University Press, 1993), 1.

<sup>6</sup> Richard Knolles's 1606 translation was entitled *The six bookes of a common-weale*. The translations by M. J. Tooley, *Six Books of the Commonwealth* (Oxford: Blackwell, 1955), and by Julian H. Franklin, *On Sovereignty: Four Chapters from "The Six Books of the Commonwealth"* (Cambridge: Cambridge University Press, 1992), are abridged versions of Bodin's text. I shall be quoting from Jean Bodin, *Les six livres de la République* (Paris: Fayard, 1986) but will provide, after the volume and page numbers of the Fayard edition of Bodin, the book and chapter numbers (in roman numerals) for those with access to the Knolles, Tooley, or Franklin translations.

who referred to common concerns of the Roman Empire as *rei publicae*.<sup>7</sup> In the century after Bodin, Hobbes used the term “commonwealth” to refer to the body politic, not specifically to refer to the republican regimes of the Rump Parliament, the Barebone’s Parliament, and the Protectorate of the English Civil War. Bodin, like Hobbes, is usually understood as a theorist of absolute monarchy. However, he thought a royal (as opposed to a despotic) monarchy consults the Paris and provincial *parlements* and the Estates General with respect to legislation and taxation; “the most divine, most excellent, and the state form most proper to royalty is governed partly aristocratically and partly democratically.”<sup>8</sup>

As Rousseau was later to do, Bodin distinguished between sovereignty and government (the institutions through which the sovereign rules). This distinction was partly a result of his insistence that sovereign authority must be undivided: ultimate authority either rests in the people in a democracy, a minority of the people in an aristocracy, or one man in a monarchy. Bodin’s central idea is that sovereignty must be absolute, perpetual, and undivided. He recognized that his rejection of mixed sovereignty ran counter to the political theory of Aristotle and Polybius and apparently contrary to Greek and Roman political practice. Because of the different functions of the councils, senates, popular assemblies, magistracies, and popular courts, the Greeks and Romans understood “the characteristic feature of a republic to be composed of both aristocratic lordship and a popular state. I reply that there is indeed some semblance of reality in this attribution but nevertheless in effect it was a true popular state.”<sup>9</sup> In the same way as his theory limits the Paris Parlement and the English Parliament to merely an advisory role in relation to royal law or the king’s command, the Roman Senate, according to Bodin, had a purely consultative role, although he knew that the historical record did not fully accord with his theory. The *comitia centuriata* and then the *comitia tribunita* gave the law to Rome, or had the right of command, which is the mark of sovereignty. Julian Franklin wrote: “In the classical period of the Roman Republic the people, in *comitia centuriata*, could not act upon a legislative proposal without the Senate’s approval. Bodin is aware of this, and even approves of it as a check on the license of the people, while yet maintaining that the Roman Republic was a pure democracy.”<sup>10</sup> Bodin’s central principle of undivided sovereignty was not consistently sustained throughout *Six livres*; sovereignty in Rome was divided between the patrician Senate and the popular assemblies. Moreover, Bodin was quite aware that the weighted voting of the *comitia centuriata* actually left the power of legislation in the hands of the patricians and knights and excluded the vast majority of citizens. Indeed, Bodin admired the Roman Republic precisely because it was aristocratically governed by its Senate, which had the power to dispense finances, authorize religious practices,

<sup>7</sup> P. A. Brunt and J. M. Moore, eds., *Res Gestae Divi Augusti: The Achievements of the Divine Augustus* (London: Oxford University Press, 1967); Mary T. Boatwright, *Hadrian and the Cities of the Roman Empire* (Princeton, NJ: Princeton University Press, 2000), 74–75; Arnold Hugh Martin Jones, *The Later Roman Empire, 284–602* (Norman: University of Oklahoma Press, 1964), 815–16.

<sup>8</sup> Bodin, *Six livres*, 6:254 (VI:vi).

<sup>9</sup> *Ibid.*, 2:27 (II:i). Franklin noted that Bodin could have derived his view that Rome was a purely popular state from a close reading of Polybius (*Jean Bodin*, 33).

<sup>10</sup> Julian Franklin, “Jean Bodin and the End of Medieval Constitutionalism,” in *Jean Bodin: Verhandlungen der internationalen Bodin Tagung in München*, ed. Horst Denzer (Munich: C. H. Beck, 1973), 164. However, Franklin pointed out that in Bodin’s time the status of the Roman Senate’s authority to initiate legislation before the third century BC was uncertain, and thus Bodin had grounds for thinking that popular sovereignty existed in republican Rome as well as in Athens (*Jean Bodin*, 33). Nevertheless, Bodin sometimes asserted that the Roman Senate shared sovereignty with the popular assemblies and sometimes asserted that only the popular assemblies had sovereign legislative power.

appoint provincial governors, and award honors, which are “the great points of sovereignty [*majesté*].”<sup>11</sup> Whereas the Roman Republic had an aristocratic government (until the time of the Gracchi) to balance popular sovereignty, Athens, after Pericles’s abolition of its aristocratic Areopagus, had both democratic sovereignty and democratic government.<sup>12</sup> The later Roman Republic, like Periclean Athens, represented a shift from the sovereignty of the *populus* to that of the *plebs*, “that is, the lowest throngs,” and thus passed from “democracy through ochlocracy and to the dregs of the population.”<sup>13</sup> Although Bodin was horrified by the prospect of dethroning a sovereign, as his contemporaries, the Huguenot Monarchomachs (such as François Hotman, Hubert Languet, and Philippe de Mornay), advocated for tyrannies, he applauded the dethroning of Nero because the sovereignty rested with the people and Senate.<sup>14</sup> Thus, his doctrine of absolute and undivided sovereignty did not preclude recognizing that sovereignty in Rome was divided between an aristocratic Senate and popular assemblies.

Bodin’s theory of sovereignty responded to a number of pressing problems of his time and place besides the moderation of religious conflict between the Huguenots and the Catholic League. Bodin was also concerned to establish the independence of sovereign states from claims of overlordship by the Holy Roman Empire and the papacy. Kenneth McRae has suggested that Bodin was “more a precursor than a protagonist of nationalism and of the nation-state.”<sup>15</sup> Chapter 9 of book 1 of *Six livres* examines in detail the claim of the papal jurists that many European kingdoms are fiefs of the Vatican, and the claim of Pope Gelasius that the spiritual authority of the church is superior to the secular authority of the state. Bodin’s theory of sovereignty broke with the medieval view that kings ruled under law—that is, were subject to divine and natural law (the latter being the immemorial law that existed time out of mind, the law of the land or custom).<sup>16</sup> According to the medieval view, monarchs subject to law were kings; those not subject to law were tyrants. Bodin deferred to the tradition in that he wrote that kings were subject to divine and natural law, but according to Bodin, it was a matter for God and the king’s conscience—not for the king’s subjects—to interpret and enforce divine and natural law. Law, for Bodin as later for Hobbes, was sovereign command, and new regulations were essential in an expanding commercial economy when France was extending its jurisdiction over Brittany, Burgundy, Provence, Navarre, Franche-Comté, Artois, various independent territories, and those claimed by the Holy Roman Emperor. There was a need for common currency, weights, and measures, although local customs, independent towns, provincial governors, and *parlements* contested the right of the French Crown to make uniform laws. Bodin insisted that kings do not discover law but make the law and give it to their subjects. Local customs are only binding subject to the will of the sovereign. Bodin presented the relation of law to custom as follows:

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<sup>11</sup> Bodin, *Six livres*, 3:36–37 (III:i).

<sup>12</sup> Jean Bodin, *Method for the Easy Comprehension of History*, trans. Beatrice Reynolds (1565; New York: Columbia University Press, 1945), 185, 193.

<sup>13</sup> *Ibid.*, 179, 184.

<sup>14</sup> Bodin, *Six livres*, 2:73 (II:v).

<sup>15</sup> M. K. McRae, “Bodin’s Sense of Nationality,” in *Actes du Colloque interdisciplinaire d’Angers, 24 au 27 mai 1984* (Angers: Presses de l’Université d’Angers, 1985), 155.

<sup>16</sup> Fritz Kern, *Kingship and Law in the Middle Ages*, trans. S. B. Chrimes (Oxford: Blackwell, 1968); Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983); Franklin, “Jean Bodin and the End of Medieval Constitutionalism”; and Ralph E. Giesey, “Medieval Jurisprudence in Bodin’s Concept of Sovereignty,” in Denzer, *Jean Bodin: Verhandlungen der internationalen Bodin Tagung in München*, 151–86.

Custom takes its force little by little, and by long years and the common consent of all or of most people: but law comes suddenly and takes its vigor from those who have the power to command everyone. Custom enters softly, quietly, and without force; law is commanded and proclaimed by power, often against the will of subjects: for this reason Dio Chrysostom compares custom to a king and law to a tyrant. Moreover, law can break customs, and if custom should derogate the law, the magistrate and those charged with upholding the laws always can have the laws enforced when it seems good to do so. Custom carries neither rewards [*loyer*] nor penalties; law always involves rewards or penalties . . . and, to cut the matter short, custom only has force by the sufferance and pleasure of the sovereign prince, who can convert a custom into law by his validation [*qui peut faire un loy, y adjoustant son emologation*].<sup>17</sup>

Bodin elaborated his theory of sovereignty in the context of an expanding commercial economy and a centralizing state wracked by religious conflict. With large parts of what is now France either independent or subject to pope or emperor, the plethora of local customs and jurisdictions were inconsistent with the uniformity of law or royal command.

### STATE SOVEREIGNTY AND RELIGIOUS TOLERATION

Those of us schooled in the rectitude of the doctrine of the separation of church and state, elaborated by Locke and Jefferson, might think it odd that Bodin's recipe for religious toleration and peace, the tranquility born of order,<sup>18</sup> was for the Crown to be supreme over religious matters. Yet Bodin's solution of the subordination of churches to the state was espoused by many Enlightenment thinkers who were strong advocates of religious toleration. Bernard Mandeville wrote: "A good Government in all Countries pays a deference to the national Church, and no Liberty of Conscience ought to interfere with her just Rights." Mandeville added that "the greatest argument for Tolleration is, that differences in Opinion can do no hurt, if all Clergy-men are kept in awe, and no more independent of the State than the Laity; whereas the calamities that attend Persecution are endless."<sup>19</sup> Voltaire, the archetypical champion of religious toleration, wrote: "Reason informs us that the prince must be absolute master over all ecclesiastical policy [*Police*], without any restrictions whatsoever."<sup>20</sup> Denis Diderot asserted that "it is good that in churches submission to God and to society are preached in equal measure."<sup>21</sup> As Anthony Strugnell writes, "Diderot strongly advocates state intervention and control . . . in ecclesiastical affairs. The Church he sees as the greatest danger to the sovereignty of the nation, a view common to all the *philosophes*. . . . The state, in Diderot's opinion, must exercise its right of control over every aspect of the Church's doctrinal teaching and activities."<sup>22</sup> David Hume and John Stuart Mill, two British votaries of religious toleration, advocated the state establishment of religion to transform religious zealots into leisured civil servants and thus abate religious enthusi-

<sup>17</sup> Bodin, *Six livres*, 1:307–8 (I:x).

<sup>18</sup> See W. H. Greenleaf, "Bodin and the Idea of Order," in Denzer, *Jean Bodin: Verhandlungen der internationalen Bodin Tagung in München*, 23–38; and Greenleaf, *Order, Experience and Politics*, 126–27.

<sup>19</sup> Bernard Mandeville, *Free Thoughts on Religion, the Church and National Happiness* (London: J. Brotherton, 1723), 241, 244.

<sup>20</sup> Voltaire, *La voix du sage et du peuple* (Amsterdam, 1750), 8.

<sup>21</sup> Denis Diderot, *Political Writings*, ed. John Hope Mason and Robert Wokler (Cambridge: Cambridge University Press, 1992), 115.

<sup>22</sup> Anthony Strugnell, *Diderot's Politics: A Study of the Evolution of Diderot's Thought after the Encyclopedia* (The Hague: Martin Nijhoff, 1973), 224.



asm.<sup>23</sup> Although Hobbes, like Bodin, thought religious strife would best be mitigated by the sovereign's control of religious observance,<sup>24</sup> he particularly praised Cromwell's imposition of the independence of religious congregations from the state: "And so we are reduced to the Independency of the Primitive Christians to follow Paul, or Cephas, or Apollos, every man as he liketh best: Which, if it be without contention . . . is perhaps the best: First, because there ought to be no Power over the Consciences of men, but of the Word it selfe . . . : and secondly, because it is unreasonable in them, who teach there is such danger in every little Errour, to require a man endued with Reason of his own, to follow the Reason of any other man, or of the most voices of many other men."<sup>25</sup>

I mention these later thinkers not to suggest that Bodin shared their views on religion but simply to indicate that religious toleration and state sovereignty over religious observance are not incompatible. Bodin thought all religions useful to buttress social stability, to limit tyranny, and to shape *mœurs*, and favored extending toleration to all beliefs except atheism and witchcraft. Bodin's *Colloquium heptaplomeres* (1593), published three years before his death, is a civil discussion among a Catholic, some Protestants, a Jew, a Muslim, a deist, and a philosophical skeptic in which the non-Christians are not decisively refuted by the Christian thinkers, or the Protestants by the Catholic. In *Six livres*, Bodin asserted that there is only one true religion but that using force to bring people to it is counterproductive, and he praised the king of Turkey for guarding his religion zealously but allowing adherents of Judaism, Catholicism, and Eastern Orthodoxy to practice freely.<sup>26</sup> He also praised the Roman Republic, "the most flourishing and best-ordered state of any," which was attributable in part to the fact that "no god was ever received in Rome without the Senate's warrant."<sup>27</sup> If Rousseau followed Bodin in distinguishing sovereignty from government, he might also be said to have followed him (in *The Social Contract*, 4:8) with respect to support for a civil religion that preaches the merits of God and an afterlife and that excludes the intolerant, those who hold that only one church provides salvation and believe it right to compel unbelievers into the "true church."<sup>28</sup> Bodin thought a civil religion essential to prevent immorality, which breeds tyranny, and also to delegitimize justifications of rebellion against tyrannical and impious kings by Huguenots and the Catholic League.

### STATE SOVEREIGNTY, PRIVATE PROPERTY, AND TAXATION

In his *Methodus ad facilem historiariam cognitiones* (1565) and *Six livres* (1576), Bodin cited Seneca to the effect that sovereign power is limited by the private property of subjects: "Ad reges potestas omnium pertinet, ad singulos proprietas" (To the kings, power over all things belongs; to individual citizens, property) and "Omnia Rex imperio possidet, singuli dominio" (A king

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<sup>23</sup> David Hume, *The History of England* (London: William Pickering, 1826), 4:27; John Stuart Mill, *Collected Works*, ed. J. M. Robson (Toronto: University of Toronto Press, 1982), 6:85–86.

<sup>24</sup> Germano Bellusi, "L'absolutisme politique et la tolerance religieuse dans l'oeuvre de Jean Bodin et de Thomas Hobbes," in *Actes du Colloque interdisciplinaire d'Angers*, 43–47. Bellusi asserted that Hobbes wished to impose doctrinal and ritual uniformity on the nation, whereas the following quotation indicates that Hobbes thought that independence of religious congregations was the best solution to the problem of church and state.

<sup>25</sup> Thomas Hobbes, *Leviathan*, ed. C. B. Macpherson (New York: Penguin, 1984), chap. 47, 711.

<sup>26</sup> Bodin, *Six livres*, 4:206–7 (IV:vii).

<sup>27</sup> *Ibid.*, 3:37 (III:i).

<sup>28</sup> Jean-Jacques Rousseau, *Oeuvres complètes*, ed. Bernard Gagnebin and Marcel Raymond (Paris: Gallimard Pléiade, 1964), 3:468–69.

possesses all within his power; an individual has dominion over his property).<sup>29</sup> Whereas despots and tyrants take the goods of others, a king “cannot take or give the goods of another without the consent of the owner [*seigneur*].”<sup>30</sup> Thus, unlike Hobbes, who thought the right to private property excluded fellow subjects but not the sovereign from the property, Bodin precluded confiscation or taxation without the consent of the proprietor. Montesquieu praised Bodin for this view in *L’esprit des lois* (5:16). Bodin thought the French Crown could subsist on its royal domains, with supplementary income from colonies, customs, tolls, gifts, and, last of all and least desirable, its levying of imposts on subjects, but the last only when clearly necessary to the state’s welfare and preferably with the consent of the *parlements* and *estats*.<sup>31</sup>

Bodin’s insistence that sovereigns should not tax subjects without their consent may be a medieval residue to his theory<sup>32</sup> and is inconsistent with his theory of absolute sovereignty. Julian Franklin holds that Bodin’s insistence on popular consent to new taxation is not inconsistent with his theory of absolute monarchy but is “purely fiscal” and raised no constitutional challenges to royal absolutism, and that Bodin’s action, as deputy in the Estates General at Blois, in blocking royal proposals for raising taxes “was devoid of constitutional intentions.”<sup>33</sup> However, Franklin’s interpretation is difficult to square with Bodin’s claim that he risked his life at Blois by his opposition to the Crown and, replying to a Genevan critic, that he could not be more public-spirited “than what I have dared to write—that even kings are not allowed to levy taxes without the fullest consent of the citizens.”<sup>34</sup> Moreover, as J. H. M. Salmon stated: “it is a very strange conception of sovereignty which is not financed.”<sup>35</sup> In Bodin’s theory, the *parlements* and *estats* are purely advisory bodies, but he never explained how the power to withhold taxes is not a component of sovereign power.

Like Locke, Bodin did not distinguish between an individual’s own consent to taxation and the consent of a majority of elected representatives. Rousseau cited Bodin, not Locke, when he insisted in his *Discourse on Political Economy* that “the consent of the people or its representatives [*représentans*]” is essential to raise taxes, denouncing the *imposteurs* who levy new taxes on the poor.<sup>36</sup> As distinct from Bodin, Locke, and Rousseau, Hobbes thought an absolute right to private property was incompatible with sovereignty; without the sovereign power to tax subjects, revolution will be the consequence. While Hobbes’s theory of sovereignty has greater internal consistency than Bodin’s, at least with respect to the issue of sovereignty, property, and taxation, the latter’s theory was espoused by constitutional monarchists and republicans from his day to ours.

<sup>29</sup> Bodin, *Method*, 205; Bodin, *Six livres*, 1:223 (I:viii).

<sup>30</sup> Bodin, *Six livres*, 1:223 (I:viii); see also 1:221, 2:35, 43 (II.ii); Bodin, *Method*, 205, 213.

<sup>31</sup> Bodin, *Six livres*, 6:36–37, 67 (VI.ii).

<sup>32</sup> Giesey, “Medieval Jurisprudence in Bodin’s Concept of Sovereignty,” 171; Franklin, introduction to *On Sovereignty*, xxi. On the other hand, Locke’s doctrine of consent to taxation is not usually considered a medieval holdover; contemporary cynics might consider Locke’s doctrine of individual consent to taxation to constitute a justification for tax evasion. See Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (Lanham, MD: Madison Books, 1999), 285.

<sup>33</sup> Franklin, *Jean Bodin*, 88–91.

<sup>34</sup> *Ibid.*, 102. Bodin’s actions as deputy in the Estates General are discussed in Franklin, introduction to *On Sovereignty*, x–xi; and Tooley, introduction to *Six Books*, xii–xiii.

<sup>35</sup> J. H. M. Salmon, “Bodin and the Monarchomachs,” in Denzer, *Jean Bodin: Verhandlungen der internationalen Bodin Tagung in München*, 363, 365, and discussion on 476.

<sup>36</sup> Rousseau, *Oeuvres complètes*, 3:270, 278.

Taxation without the consent of the taxpayer, or the representatives of taxpayers, is theft and may justify violent resistance to the sovereign,<sup>37</sup> which for Bodin is the very thing he sought to avoid.

### BODIN ON ANCIENT REPUBLICS

Although Bodin thought the historical record established the superiority of monarchical sovereigns to aristocratic or popular sovereignty,<sup>38</sup> he spoke warmly of the Roman Republic and referred to Julius Caesar as a “tyrant” and a “dictator.”<sup>39</sup> Bodin favored monarchy over aristocracy and democracy because he believed that monarchs could best limit class conflict between rich and poor, as well as religious conflicts, such as that between the Huguenots and the Catholic League. The ancient republics were less shattered by religious strife than states of the sixteenth century, but they were more wracked by class conflict. Following Aristotle, Bodin thought that the conflict between the many and the few, or between democrats and aristocrats, was fundamentally a struggle between rich and poor. A mixed constitution was the rule of the rich over the poor and the rule of the poor over the rich—that is, inherently unstable and apt to tilt to oppressive oligarchies or, more likely, mob rule followed by tyranny. Bodin thought “a licentious anarchy is worse than the most powerful tyranny in the world.”<sup>40</sup> The Aristotelian mixed constitution is to be distinguished from Lockean, Montesquieuan, or Madisonian division of powers, which was intended not to mix rich and poor in government, but to place separate functions of government in different members of the propertied class and to exclude the poor from government. From the sixteenth to the eighteenth century, a deafening silence prevailed with respect to Aristotle’s view of the collective prudence and integrity of the many poor—the basis of Aristotle’s commendation of a mixed constitution in which the rich serve in individual magistracies and the poor dominate popular assemblies and courts—and a version of mob psychology put in its place. Bodin would have approved Madison’s dictum, in *Federalist* 55: “Had every Athenian citizen been a Socrates; every Athenian assembly would still have been a mob.” Bodin wrote that “wisdom for ruling is the natural capacity of very few. What stupider than the plebs? What more immoderate? When they have been stirred up against good people, what more hysterical? Rightly Livy said, ‘The nature of the multitude is such that it either serves meekly or rules insolently.’”<sup>41</sup>

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<sup>37</sup> In Hobbes’s time, the reluctance of inland counties to pay “ship money” to outfit the Royal Navy was a major cause of the English Civil War. The American colonies, the richest and least taxed part of the British Empire, were reluctant to be taxed after (not before) the British had defeated their Spanish and French imperial rivals for hegemony of North America. The slogan “no taxation without representation” probably would not have been acceptable to the colonies if American representatives were a minority in a British parliament. Taxation, consent, and representation were also major factors in the French Revolution. Article 14 of the *Declaration of the Rights of Man and of the Citizen* states: “All citizens have the right, by themselves or through their representatives, to have demonstrated to them the necessity of public taxes, to consent to them freely,” and to assess the use made of them and the means of collection. Whereas individual consent, for Bodin and Locke, probably referred to the *seigneurs* in the Estates General and the lords in the House of Lords, individual consent in the French Revolution may have been intended to include the direct participation of the Montagnards in deliberating about the justice of taxation. In my view, the conjunction of taxation and consent should be abandoned, since most people are reluctant to pay taxes and find reasons to avoid paying taxes if they can. Or, since consent to taxation is a fixed feature of our political culture, we should understand consent, as Adam Smith did, to be “but a very figurative metaphoricall consent which is given here.” See Adam Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael, and P. G. Stein (Oxford: Clarendon, 1978), 324.

<sup>38</sup> Bodin, *Six livres*, 4:18 (IV:i), 6:180–81 (VI:iv); Bodin, *Method*, 252–53, 270–71.

<sup>39</sup> Bodin, *Six livres*, 2:82–83 (II:v).

<sup>40</sup> *Ibid.*, preface, 1:14.

<sup>41</sup> Bodin, *Method*, 269.



Although a monarchist, Bodin anticipated the enthusiasm for the Roman Republic that flowered in the eighteenth century and came to wormy fruition with Robespierre and then rotted when the First Consul became the French emperor. *Six livres* begins with a statement of the importance of raising children with good *moeurs*. The ancients excelled at this practice: the Spartans raised their children to be courageous; the Romans, to be just. Bodin wrote that “the Roman Republic flourished in justice, and surpassed that of Sparta, because not only did the Romans have magnanimity, but also true justice was like a subject to which they addressed all their action.”<sup>42</sup> The Roman Republic, “which was the most illustrious of any state,” as manifested in the extent of its empire,<sup>43</sup> was fostered by the father’s power of life and death over his children. “Now paternal power having been little by little weakened with the decline of the Roman Empire, soon afterward ancient virtue and all the splendor of their Republic also vanished, and in place of piety and good morals [*moeurs*], a million vices and misfortunes followed from it.”<sup>44</sup>

Although Bodin wrote that the Roman Senate had less authority than the privy councils of European monarchies, he was clear that the Roman Republic was great because of its Senate, and its decline began at the time of the Gracchi, when “the dregs of the population,” “the plebs, that is, the lowest throngs, were enabled to order what should be law.”<sup>45</sup> After Pericles abolished the aristocratic Areopagus, the Athenians were even more democratic: the plebs held legislative power, magistracies were chosen by lot, payment for public office was instituted, and “what was even worse,” there was voting by a show of hands.<sup>46</sup> Although Bodin usually referred to Rome as a popular or democratic state, even under its kings, he sometimes referred to the Roman Republic, prior to its licentious descent into “the anarchy of its turbulent plebs,” as an oligarchy.<sup>47</sup> Bodin’s view was that Rome was exemplary because it combined popular sovereignty with aristocratic government,<sup>48</sup> which was Rousseau’s ideal, whereas Athens had democratic sovereignty and democratic government, which Rousseau thought fit only for gods. Sometimes Bodin attributed Rome’s flowering and good order to the sovereign powers of the Roman Senate<sup>49</sup> and sometimes to its aristocratic censors.<sup>50</sup> He thought large aristocratic republics more stable than small democratic republics,<sup>51</sup> a view Hume and the Federalists were later to espouse.

Bodin also thought that there was much greater opportunity to develop virtue in republics than in monarchies, where the opportunities for acquiring honor and glory are curtailed by kings: “It is why the Republic of Rome had more great generals, wise senators, eloquent orators, and knowledgeable juriconsults than other barbarian, Greek, or Latin states (*Républiques*).”<sup>52</sup> Republican Romans were model imperialists; they “filled the earth with their colonies, with an

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<sup>42</sup> Bodin, *Six livres*, 1:37 (I:i).

<sup>43</sup> *Ibid.*, 1:43 (I:ii).

<sup>44</sup> *Ibid.*, 1:70 (I:iv).

<sup>45</sup> Bodin, *Method*, 179, 184.

<sup>46</sup> *Ibid.*, 193.

<sup>47</sup> *Ibid.*, 237; for his view that the people had sovereign power under the early kings, see 191.

<sup>48</sup> Bodin, *Six livres*, 2:121 (II:v).

<sup>49</sup> *Ibid.*, 3:36–37 (III:i), 4:136 (IV:iv), 178 (IV:vi).

<sup>50</sup> *Ibid.*, 4:142 (IV:v).

<sup>51</sup> *Ibid.*, 4:39, 49–51 (IV:i).

<sup>52</sup> *Ibid.*, 5:101 (V:iv).

immortal glory for their justice, wisdom, and power.”<sup>53</sup> The imperial republic was a model for monarchists as well as republicans, for expanding nation-states and for the prospect of overseas colonies. Bodin also provided sage counsel to would-be imperialists: fear kept the Romans virtuous, but the defeat of its enemy Carthage spelled the end of Roman virtue.<sup>54</sup>

### **BODIN’S SOVEREIGNTY THEN AND NOW**

Bodin’s theory of sovereignty was more prescriptive than descriptive, more an ideal that an independent Crown could rein in the religious wars and impose a centralized order on feudal magnates and provincial jurisdictions and customs than an actual depiction of the fragmented powers and authorities in sixteenth-century France. Henri IV, the former Huguenot who thought Paris well worth a mass at the end of the century, and Louis XIII, with his able minister Cardinal Richelieu’s policy of state centralism, brought France closer to a state of undivided sovereignty in the following century. The Treaty of Westphalia (1648), following the Thirty Years’ War within the Holy Roman Empire, instituted the principle of state sovereignty, establishing the religion of the ruler as the national religion of the sovereign state. If Bodin’s sovereignty was a defense against feudal anarchy and religious strife, might we say that if the Westphalian doctrine of state sovereignty creates anarchy in a globalized economy, it might be preferable to internationalize Bodin’s doctrine of sovereignty? If no national bank or regulatory agency can set fiscal, monetary, trade, and investment policy, and environmental hazards are not merely national in scope, bankers’ investments in perhaps incomprehensible derivatives and capitalists’ outsourcing of jobs and pollutants can put the world at great risk. The United Nations does not even have the policing power to regulate conflict that sixteenth-century French kings had, nor can it make effective the decisions of the World Court, World Bank, or World Trade Organization. Perhaps the members of the G20, the successor to the G7 (the leading trading nations), can cobble together some banking, trade, and investment regulations that can be enforced by mandatory sanctions imposed on violating nations. That is, the Westphalian doctrine of state sovereignty may be as much a barrier to international security as were the Huguenot nobility and the Catholic League to the security of sixteenth-century France, enabling the capitalist corporations to be as lawless as *les Grands* of the sixteenth century. Or conversely, perhaps our knowledge of Bourbon despotism makes the prospect of a world state unattractive, and sixteenth-century feudal anarchy and twenty-first-century capitalist anarchy bearable by contrast. A

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<sup>53</sup> *Ibid.*, 6:49 (VI:ii).

<sup>54</sup> *Ibid.*, 5:140–41 (V:v). From Bodin’s view of the disastrous victory of the Romans over their imperial rival Carthage, we might take the lesson that all imperialist victories are defeats: the British victory over the Spanish and French in America led to the American Revolution; the American victory over the British owed much to the French army and navy, the expenditures of which were a major cause of the French Revolution; and in our day, the victory of the American-backed Afghans over the Russians in Afghanistan has been seen by Chalmers Johnson, in *Nemesis: The Last Days of the American Republic* (New York: Henry Holt, 2006), and Sheldon Wolin, in *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism* (Princeton, NJ: Princeton University Press, 2008), to mark the beginning of the end of the American empire.