

## Introduction.

This thesis aims for the most part to give an updated analysis of the reception of Bodin's theory of sovereignty into English political thought before the personal rule of Charles I. The relevance of such a study for modern constitutionalism is in the delineation, both of Bodin's original concept, and of the versions of this concept adopted in England long before the time of Blackstone. While it is to be hoped that this elucidation will aid in the understanding of sovereignty today, care must be taken to recognise the limits of such studies. The elements of parliamentary sovereignty which present writers discuss include many which came into being centuries after Bodin's time, so that what we can expect to see in this early period is only a barebones theory of sovereignty.<sup>1</sup> But it is also a minimalist statement of the architecture of the modern State in that it expresses a legal view of political supremacy.

This thesis can be divided into two parts. The first part is the discussion of the original theory of Bodin and of the intellectual context in which it was formulated; Bodin's potential audience and his main influences among Europe's Humanist elite. The second part is the account of how his theory fared in England over a 52 year period. But whereas the first part occupies only the first Chapter, the second part fills the rest of the present work. This second part is dependent on an appreciation of the constitutionalist and Aristotelian position portrayed in the first part, but more even than that, it is dependent on an ideological identification of the major protagonists who were influenced by Bodin's theory or shared his overall perspective, so that the English writings on sovereignty are understood more holistically.

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<sup>1</sup> A good example can be found in the case of Rousseau's account of the prior sovereignty of the entire people. This difficult concept is well elucidated by F. H. Hinsley, using the ideas of the early sovereignty theorists, including Thomas Hobbes. F. H. Hinsley, *Sovereignty* (Cambridge, 1986), 2nd ed., pp. 152-154.

The subject of this thesis is the rise of a particular type of absolutist thought associated with English writings about politics and the State, which originated in the sovereignty theory of Jean Bodin. The focus is on the early period of English theorising about the State, which preceded the *locus classicus* of Thomas Hobbes's *Leviathan* (1651), and by limiting the study to the period before 1628 any entanglement with Hobbes studies can be avoided. In surveying the political writings of the period I shall demonstrate that the Bodinean concept of sovereignty was used by the English to advance their understanding of their own constitution. Also, by scrutinising this early period it is possible to study arguments which raged at the beginning of the modern era; indeed the rise of this variety of State-centred constitutionalism itself marks the transition to the modern, politically speaking, and the beginning of the modern State.

This topic - the rise, in the form of sovereignty, of absolutist constitutional thought in England - is worthy of study for two broad reasons, of which the latter is every bit as compelling as the former. First, English ideas of sovereignty is an established field of study which has exercised some of the greatest political scientists of this century - Barker, McIlwain, Laski, Friedrich, Skinner, and Strauss, have all taken an interest in it. Second, the concept of legal absolutism is a problematic one when designing or comparing national constitutions or determining the precise legal status of institutions ordained by written Constitutions. The concept of sovereignty is particularly problematic where it conflicts with federalism.<sup>2</sup> The absolute aspect of the State which is implicit in theories of sovereignty is of interest to political scientists because the State remains central to politics, not merely because there is an impressive body of secondary literature. Studying sovereignty involves questions first asked in the West by ancient Greeks. What part of the State contains the sovereign or ruling power? How autonomous can a territory be and still not be sovereign? Questions like these compel scholars to re-examine the concept of the State, and the role of legal absolutism, in the morphology and functional characteristics of contemporary polities.

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<sup>2</sup> For an example of the application of sovereignty to federal theory see Tod Moore and Graham Maddox, "Rights, Jurisdiction and Responsible Government - The Spectre of Capital Television", *Journal of Commonwealth and Comparative Politics*, XXXIII, 3 (1995), p. 406, *et passim*. In this paper we argue that the Westminster doctrine of parliamentary sovereignty places limits on the interpretation of the Australian federal Constitution by the judiciary.

It is not my intention to address these philosophical questions, but we must acknowledge their presence, persistence, and even at times their urgency. Rather, I shall be dealing with the understanding, in theoretical terms, of the constitutional basis of the modern State. The present-day dominance of the State in political science discourse at the professional level, which has been clearly observable since at least the early Twentieth century, reflects a greater “realism” today than there was in the time of the early sovereignty theorists, writing in Northern Europe in the late Sixteenth century. This present-day dominance can, for example, be seen in the contents of the larger political science journals and at the larger national or international political science conferences; national studies of politics and public policy predominate (especially relating to the OECD countries), with political theory and international relations ranking third and second respectively. The present and continuing relevance of sovereignty, while it may be disputed among a minority of academic writers on constitutional and political subjects, requires us regularly to update the state of knowledge concerning both the theory of sovereignty today, and the origins of sovereignty in Western thought. For those who mostly study Westminster-based constitutional polities this need extends to the origins of sovereignty in English thought and the effects of the idea of sovereignty upon the evolving idea of parliamentarism. It is for this reason that the present study, which deals to a certain extent with the latter topic, has relevance to students of parliamentary democracy as well as to students of the history of political and constitutional ideas.

The characteristically modern political concept of sovereignty which was elucidated by Jean Bodin, notably in his *Six Books* of 1576, and has enabled theorists ever since to speak in much more complex and sophisticated ways about the State and cognate concepts relating to the legal, constitutional, philosophical and political claims of the State, circulated fairly widely in England. The value of the term “sovereignty”, found in a recognition of the utility of the secular State as a separate and unique entity endowed with absolute legal power but constitutionally limited, was appreciated by some English writers. Bodin’s excellent adaptation of emerging theories of the State to suit the legal and international requirements of resurgent Western nations was, however, part of broader movements and intellectual currents. The idea of constitutional absolutism found in *Politique* (largely Aristotelian) theories generally also influenced English writers, and it is sometimes difficult to say, in the absence of citations, whether a notion of sovereignty came from Bodin, or from other *Politique* writers of less stature in the history of ideas. The

direct influence of Bodin, while significant, is not as great as one or two writers (Mosse and McIlwain for instance) have suggested.

Although Bodin and other *Politique* writers were used in later periods, the first fifty years is the most interesting, because it was then that the word “sovereignty” entered the English political and constitutional lexicon. The effect that Bodin’s view of the State, and the *Politique* view generally, had on the development of English thought before the Petition of Right has special significance for two reasons. In the first place, the highly adaptable and portable nature of the theory of sovereignty, and its utility, is shown by the variety of uses to which it was put at the hands of writers from divergent schools of political theory or ideology<sup>3</sup>. Different intentions among the English writers yield different interpretations, and from studying these we know that much conceptual change was taking place before the time leading up to the Civil War. Secondly, the theory of sovereignty needed to be adapted to a parliamentary system by those writers concerned to advance the parliamentary cause, leading to the first appearance of well formulated theories of parliamentary supremacy, which was done by equating sovereignty with the superior constitutional status of the monarch-in-parliament.

Whereas Bodin’s theory was written in a monarchic context (as in France, Spain, and among the Italians) its generality permitted the English to adapt it to reflect the distinction between “royal monarchy” in France and elsewhere, and the English “royal and politic monarchy” of Fortescue and Smith. This allowed the development at an early stage (before the Thirty Years War) of an English notion of sovereignty in which politics is an autonomous and important aspect of life; legislative powers are central, and legislation takes the form of positive law arising from deliberative processes. The constitutionalist emphasis of Bodin and the *Politiques* was echoed in some English political thought, which developed in a constitutionalist direction, while others upheld the Jacobean use of the royal prerogative.

The inspiration for this thesis came from two works - George Mosse’s 1948 paper on the use of Bodin’s ideas in England, and J. H. M. Salmon’s groundbreaking *French*

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<sup>3</sup> “The Sixteenth Century was in many ways the seed time of modern ideology ... Ideologists showed their virtuosity not by devising new formulas but by adapting and re-arranging old ones. Yet for all this, the implications of political (if not social) radicalism were profound.” Donald Kelley, *The Beginning of Ideology* (Cambridge, 1983), p.307.

*Religious Wars*.<sup>4</sup> Considering the evidence gathered by Mosse and Salmon, a *prima facie* case for Bodin's influence existed. This case is put clearly by Charles McIlwain, in his book *The Growth of Political Thought in the West*, who argues that "it may well be doubted whether the views of any other theorist had such an influence on the political ideas of thoughtful and moderate men between 1576 and 1640, as those of Jean Bodin".<sup>5</sup> This thesis, therefore, does not seek to prove that Bodin was influential *per se* but that his theory of sovereignty was used in certain ways, and that it eventually helped to establish a certain kind of constitution in England before the Civil War. It is a claim, in short, that the role of Bodin's idea of sovereignty in the coming of age of the English constitution is very great indeed. It is the nature of these cases of "influence" upon "thoughtful and moderate" writers of the early period which this thesis aims to encompass, with a view to understanding the reasons for the (variable) appeal of the theory of sovereignty in the period often regarded as the Northern Renaissance. In that respect, the focus of the present study is similar to Quentin Skinner's work<sup>6</sup> on the term "state", except that the study of "sovereignty" in English occupies a time frame a good deal further into the late renaissance than does a study of "state" and its cognates in Western political discourse generally. This then is a study of texts of the mature renaissance, all of them building on those many early to mid renaissance texts which Skinner calls the "foundations" of modern Western political philosophy. This is a renaissance study, and therefore there is likely to emerge at every moment in certain texts some prefigurement of the orthodox modern position, for we are dealing here with the very roots of modernity.

Before looking more closely at the Bodinean account of sovereignty one needs to sketch the main contribution of recent scholarship to our understanding of the term which is

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4 George Mosse, "The Influence of Jean Bodin's *Republique* on English Political Thought", *Medievalia et Humanistica*, IV (1948), pp.73-83 ; J.H.M. Salmon, *The French Religious Wars in English Political Thought* (Oxford,1959). In the first paragraph of the Introduction to Salmon's 1987 anthology, *Renaissance and Revolt* (Cambridge, 1987), he states that his original intention to do a study of the influence of Bodin on English political thought was expanded into what became his classic *French Religious Wars*. In attempting to turn the spotlight back on this original idea, I can only hope at least to partly fulfil the intention to provide such a study, at least for the early years.

5 Charles.H. McIlwain, *The Growth of Political Thought in the West*, (New York,1932) p.388. The available evidence does not *fully* support McIlwain's assessment, although the gist of his argument is correct.

6 Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge,1978), Vol. II, pp. 349ff.

the subject of this thesis, and upon which I adopt, it is to be hoped, a middle position. In briefly reviewing the literature on sovereignty I will be primarily asking; what do modern writers mean by the term and why is it of continuing importance?

The term has remained in use in political discourse for centuries and is still being debated by political scientists today, and the following quotation from Friedrich Kratochwil draws attention to the “resilience” of the concept:

“Sovereignty” and “the state” have had their ups and downs in political analysis. Having been declared fuzzy, unscientific, meaningless, obsolete, or all of the above, they have a tendency to reassert themselves again and again in political discourse and in political practices. This resilience ... forces analysts to bring these concepts “back in” as the public debate refuses to dispense with them.<sup>7</sup>

Sovereignty did not go away merely because it lost respectability in one or two fields of academic discourse, and it is a little presumptuous to talk of bringing the concept “back”. At the same time it is appropriate to note that Kratochwil is aware of a toughness inherent in the theory which gives it an enduring relevance. This idea of bringing sovereignty back in is not a warrant to ignore previous criticism, either, especially when that criticism is based on a misrecognition of the complex nature of such an essentially contestable concept. To understand this complex nature we need to see how sovereignty has fared in various schools of political and constitutional theory that have tackled the issue since the turn of the century. But to do this we need to know in turn what was done with sovereignty by Blackstone and his successors such as Austin, Maitland and Dicey, in their studies of British constitutional law and philosophy. This presupposes about two centuries of debate and high drama to determine the location of sovereignty in the legislative arm of the constitution, which needs to be assumed when studying recent writings on the Westminster form of parliamentary sovereignty, and its many offshoots around the world.

The position of Blackstone *et al.* is that the monarch-in-parliament is legally absolute, and that Parliament may even determine the constitution without legal impediment. It implies that there is one and only one organ in the body politic which is

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<sup>7</sup> Friedrich Kratochwil, “Sovereignty as Dominium”, Gene M. Lyons & Michael Mastanduno (eds), *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore, 1995), p.21.

above the law, and further, that the Acts of that body are beyond the reach of Courts or the Royal Prerogative (or the Executive). Albert Venn Dicey begins the main discussion in his *Law of the Constitution* by vowing:

to explain the nature of Parliamentary sovereignty and to show its existence as a legal fact, fully recognised by the law of England; ... to prove that none of the alleged legal limitations on the sovereignty of Parliament have any existence; ...[and show] that Parliament is, under the British constitution, an absolutely sovereign legislature.

Dicey goes on to define “Parliamentary sovereignty” as the doctrine:

that Parliament ... has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.<sup>8</sup>

Dicey’s theory recognises at the outset the constitutional and pragmatic context of any strictly legal understanding of sovereignty, and this sort of bracketing of the absoluteness of the State, which contradicts the view of Dicey as an unmodified absolutist, does much to commend the theory. Dicey’s is also a theory of rule in which the indivisible aspect of sovereignty is coupled with the “rule of law”, and Dicey shows how technical limits arising from parliamentary democracy lead to a number of all-important constitutional conventions. Dicey is quoted by R. F. V. Heuston on this point:

When the purported sovereign is anyone but a single actual person, the designation of him must include the statement of rules for the ascertainment of his will, and these rules, since their observance is a condition of the validity of his legislation, are Rules of Law logically prior to him.<sup>9</sup>

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<sup>8</sup> A. V. Dicey, *Introduction to the study of the Law of the Constitution* (London, 1945), pp.39-40.

<sup>9</sup> R. F. V. Heuston, “Sovereignty”, A. G. Guest (ed), *Oxford Essays in Jurisprudence* (Oxford, 1961), p.203.

There are at least two inferences which can be drawn from this statement. The first is that the orthodox school which Dicey symbolizes does believe in limits of a legally oriented nature, including the possibility of a subtending mass of such “Rules of Law” capable of being declared in the law courts. The second and more important point is that the “validity” of legislation can also be questioned on deeper matters of legitimacy, for instance by relating the process by which a Parliament is elected to philosophical questions about democracy and representation. Because the body or organ which bears the sovereignty uses the fiction of virtual representation to enforce its right to legislate, which is itself based on contractarian ideas even older than sovereignty, there are political as well as legal limits to prevent the arbitrary use of the legally absolute power of the State. Austin’s inclusion of “the electors” in his more positivist model of the sovereign is thus able to be encompassed in Dicey’s more obviously Blackstonian view, which does not concede, on the surface, any share to the people.<sup>10</sup> If we make allowance for the tension between Blackstone and Bentham on the vexed question of legal fictions (and its effects on Austin), then the Nineteenth century produced a positivist and moderate orthodoxy on the idea of sovereignty.<sup>11</sup>

This orthodox positivist view has been echoed by writers in the Twentieth century and is by no means dead. Ernest Barker and Charles H. McIlwain both provide satisfying insights into the workings of sovereignty, and the latter also defends the continuing use of the term in constitutional discourse. Barker places the quality of sovereignty in an entity he calls “the constitution”, then adopts the dualist position, positing a further “law- and rule-making body” which possesses *de facto* sovereignty. Avowedly parliamentarist, Barker’s theory leaves ample room for the operation of unfettered public opinion whilst refusing to concede outright popular sovereignty of the type found in the United States Constitution. His conclusion is as follows:

If we say that public opinion, and the nation which forms that opinion, is sovereign, we tie ourselves to an undefined and unlimited sovereign, which can do what it will and will do what it can. The pure legal sovereignty of a law-making body which confines itself to adjusting legal issues, by legal methods, in legal subjection to the

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<sup>10</sup> Geoffrey Marshall, *Constitutional Theory* (Oxford, 1971), p.39.

<sup>11</sup> Heuston, “Sovereignty”, Guest (ed), *Oxford Essays*, pp.198-202.

constitution, and also, at the same time, in some degree of practical subjection to the trend of national opinion - such sovereignty, so confined, is a definite and limited thing.<sup>12</sup>

Barker is thus linking sovereignty as institutional supremacy with some notion of representation. In his *Reflections on Government* he makes the point explicitly in relation to parliamentary democracy, where it is “the King-in-Parliament” which is sovereign, and this sovereign organ must encompass both public accountability in the exercise of its mandate, and respect for the advice of the executive government.<sup>13</sup> The law-making body is therefore limited (politically and administratively) yet legally supreme. Such a theory can be properly termed constitutionalist because it goes beyond the narrowly absolutist legal logic of sovereignty to the extent of recognising the politically critical notion of “national opinion”. Yet these limits are not fatal to the State, providing public opinion remains linked to the constitution by means of a doctrine of representation, because within the proper channels power still flows directly from the fountainhead of a sovereign law making power. In the system under which Barker himself lived and wrote, the legislature and the Crown were fused only to a finite extent, to ensure “responsibility”, and constitutional conventions regulated the coexistence of monarchy and ruling assembly. The existence today of various constitutional conventions, both in Britain and in the Commonwealth generally, is not nearly so clear as it was in Barker’s time, yet the pragmatic approach to “opinion” as a grounding point of the constitution is as relevant now as ever.

Another writer with a legal approach to sovereignty, and a strongly legal approach at that, is McIlwain, who agrees that in every body politic there must be a “highest constituted authority”, but that this “authority” is in a contractual relationship with society which ensures that it “must exist by law”.<sup>14</sup> At the same time, McIlwain acknowledges the absolute side of the theory:

... in any society which has advanced to the political stage, the highest organ is the

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<sup>12</sup> Ernest Barker, *Principles of Social and Political Theory* (Oxford, 1953), pp.59-69.

<sup>13</sup> Ernest Barker, *Reflections on Government* (London, 1942), pp.46-47.

<sup>14</sup> Charles H. McIlwain, *Constitutionalism and the Changing World* (Cambridge, 1969), p.28.

true sovereign and the only one, because it is the highest body legally able to make rules for the subjects, and itself free of the law.<sup>15</sup>

As in the case of Barker, McIlwain points out that beyond the legally supreme authority of the State there exists another kind of authority vested ultimately in the people. From a strictly legal point of view there is in a State some “organ” which is sovereign in virtue of its being “uncontrolled by law”, but political control is quite another thing.<sup>16</sup> The two main difficulties with this legal approach of Barker and McIlwain are that the dual nature of legal and political authority runs foul of the principle that all powers are united in one sovereign, and secondly, that they do not explore the concept of representation which they have unearthed by relating public opinion to legislative activity and administrative omniscience.

The broadly “pro-sovereignty” stance of Barker and McIlwain contrasts with the position of pluralist theorists of the period following World War I, such as Harold Laski and John Neville Figgis. The latter regarded the idea of sovereignty as an insufferable assault upon the individual:

The theory of government which is at the root of all the trouble is briefly this. All and every right is the creation of the one and indivisible sovereign; whether the sovereign be a monarch or an assembly is not material. ... In every state there must be some power entirely above the law, because it can alter the law....The doctrine of sovereignty is, in fact, a deduction partly from the universality of law in a stable commonwealth, and partly from the abstract notion of unity ...<sup>17</sup>

The strong assumption here is that such power must be unlimited, by constitutional law as well as by positive law, yet Dicey was strongly constitutionalist as we have just seen. This refusal to accept that Blackstone *et al.* were essentially constitutional liberals has not

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<sup>15</sup> McIlwain, *Constitutionalism and the Changing World*, p.31.

<sup>16</sup> *Ibid.* p.38.

<sup>17</sup> J. N. Figgis, “The Great Leviathan”, Paul Q. Hirst, *The Pluralist Theory of the State - Selected Writings of C.D.H. Cole, J.N. Figgis, and H.J. Laski* (London, 1993), p.125.

prevented Figgis from producing a very thoughtful account of the idea of sovereignty which emerges in the course of his polemic against the State:

The doctrine of a single uniform all-absorbing power has been carried to a height further than even Louis XIV could have dreamed ... . This doctrine has found in England classical expression in the writings of John Austin, which do little more than formulate the Roman theory of sovereignty, and is imbued with the same notion of the entire distinction between public and private, which forbids any right classification of social institutions.<sup>18</sup>

The “Roman theory of sovereignty” which Figgis is talking about here is a combination of two short *maxims* of the Roman Law. These *maxims* are *quod principi placuit legis habet vigorem* and *princeps legibus solutus est*, or “what the prince has decided has the force of law” and “the prince is beyond the law” respectively.<sup>19</sup> Figgis may be right to argue that the Roman law, which is indeed based on a public-private distinction, makes it difficult to understand corporations and the like, but, as mere elements in a web of legal doctrines (partly preserved in later *maxims*), statements about the absolute nature of the *princeps* remain constrained by a Roman form of the Rule of Law. Like the Roman Tribune’s right to interpose and halt the administration of laws, there was more to the Roman political system than merely the command of individuals, and this is a view of supreme power in which it supplements the law but does not replace it. A more general application of this would see the sovereign merely interceding to maintain the overarching structure of the constitution at times when the law itself fails, which is to separate the legislative function off to one side. Yet taking two short lines of Ulpian away from their context and juxtaposing them may never have been an issue the Romans themselves had any interest in. Quoting them is characteristic of the late medieval and renaissance worlds, not the classical world.<sup>20</sup> It is characteristic of a “juristic conception of politics”, rather than a political conception of law and politics, and therefore is best applied to constitutional discourse.<sup>21</sup>

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<sup>18</sup> J. N. Figgis, “The Great Leviathan”, pp.122-123. For another example of the Roman formula being redeployed, see my remarks on McIlwain above, (n.11)

<sup>19</sup> This is a personification of rule, where we read of *princeps/principi* - the prince, or symbols such as the Sword and the Crown.

<sup>20</sup> F. H. Hinsley, *Sovereignty* (Cambridge,1986), p.75.

<sup>21</sup> J. N. Figgis, *Studies of Political Thought From Gerson to Grotius 1414-1625*, (Cambridge,1931), p. 1.

These two maxims taken out of their legal context subjugate law to an external supreme authority, but it takes another step to make this authority a political concern.

By the 1930s Marxism was beginning to square up to sovereignty, with a reconstructed Laski joining forces with writers such as G. D. H. Cole, Stephen Spender, and C. E. M. Joad, and this output of literature continued through the 1940s. In 1948 Joad refers to a “Marxist view of sovereignty”, beginning with the statement that the “doctrine of sovereignty is ... largely obsolete”, he argues that historical materialism allows one to equate “sovereignty” with class control via the “ownership of the means of production”.<sup>22</sup> In one fell swoop Joad has removed from consideration all of the subtle legal and philosophical history associated with sovereignty, regarding such “bourgeois mystification” as a barrier to the true recognition of power relations in modern industrial society. And yet the principal non-deterministic element in Marxian rhetoric is the belief in revolution, and this presupposes the existence of the State, as the object of revolution, and its continuation after the revolution as a “dictatorship of the proletariat” until the delayed emergence of “true” socialism, and its final “withering away”.

The Cold War created the need for a concentrated defence of Western liberal democratic values based on the American model. Carl J. Friedrich’s blending of McIlwain and an American type of pluralism results in yet another account of the meaning and place of sovereignty. American constitutionalism looms large in such writers, with a belief that “the Constitution is a document capable of rational analysis and interpretation”, and yet in Friedrich this belief coexists with a keen admiration of Cicero and Aristotle. Friedrich is very relaxed about what he perceives as “a certain re-emergence” of the term, but that is because he envisages a highly circumscribed role for leading institutions owing to his strict adherence to a secular version of the Augustinian idea of the venal State, and his belief in a separation of powers doctrine based on Montesquieu.<sup>23</sup> Democracy is held up as an ideal whose “drive is in the direction of an ultimate constitutional world order transcending nation, state and sovereignty”, although Transatlantic liberalism informs his idea of “democracy”.<sup>24</sup>

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p.11:

<sup>22</sup> C. E. M. Joad, *Guide to the Philosophy of Morals and Politics* (London, 1948), p.562.

<sup>23</sup> Carl J. Friedrich, *Man and His Government* (New York, 1963), pp.96,554-555.

<sup>24</sup> *Ibid.*, pp.560-561.

In the post-1989 world there no longer appears to be a need automatically to defend the liberal democratic shibboleths of “Western democracy” against the common enemy. Now we are seeing a re-emergence of constitutional debates on the very foundations of States. The prospect of European union is exercising many minds, and because of this concern with the foundational principles of constitutions there is a move towards reaffirming the importance of sovereignty. Recently Ulrich Preuss stated that the development of a “monistic sovereign state power” has been “the great achievement of modern constitutionalism”.<sup>25</sup> Before looking further at the resurgence of sovereignty in political science discourse in recent years, however, we need to note that the positivist account of sovereignty is not as simple as it is sometimes made to appear.<sup>26</sup>

From the foregoing account of the orthodox theory of parliamentary sovereignty it is possible to say two things. First, the idea that a legislative power exists which is above law and unique in its power is found in all of the orthodox writings, where it is usually associated with the idea of constitutionalism. Secondly, these orthodox writers adopt a positivist position on law, such that it is possible for a single institution not merely to declare the law, but to manufacture it on a large scale whilst simultaneously reconciling the demands of voters and taxpayers and the realities of public administration. There is, in short, more to sovereignty than simple legal formulae and *maxims* suggest. The complexity of the State requires adaptive approaches, and this is especially true in the field of international relations.

The most recent account of sovereignty from the international relations point of view is by Jens Bartelson; his book *A Genealogy of Sovereignty* was published in 1995. From Bartelson’s international relations perspective, the necessary epistemological basis for a theory of sovereignty is no longer present, and therefore it is not possible any longer to conceive of “sovereignty” at all. Bartelson makes the point that Bodin’s epistemology rests upon ideas of a divinely ordered and divinely rational cosmos, ideas which for Bartelson represent “disturbing traces of a different age”.<sup>27</sup> Bartelson does not

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<sup>25</sup> Ulrich Preuss, “The Political Meaning of Constitutionalism”, Richard Bellamy (ed.), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Aldershot, 1996), p. 13.

<sup>26</sup> For a recent attack on the notion of sovereignty see Neil MacCormick, “Beyond the Sovereign State”, *The Modern Law Review*, LVI, 1 (1993), pp. 1-18.

<sup>27</sup> Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge, 1995), p. 141.

acknowledge that his own theories themselves posit an underlying order or patterning of human associations which makes it possible to talk sensibly about the relations between and among the various global actors. As we shall see in Chapter 1, there are several aspects of Bodin which are extremely dated, such as his belief in magic, but as far as his idea of sovereignty is concerned, it is based on no more *a priori* reasoning than one would find in any contemporary account of constitutions. Yet it is not surprising that criticism of the idea of sovereignty is often found in studies of international relations, in which only the autonomy of the State as an external actor is at question, not the legal primacy of the State internally. This is not to ignore such criticisms however, although some might argue that the external integrity of a State is largely a reflection of its internal unity.

From the constitutionalist perspective the recent work of Giovanni Sartori points to a continuing role for the positivist account of sovereignty found first in Bodin's writings. Sartori recognises that "present-day democracies have settled for governing under the form of law", which he further defines as "translating policy decisions into law-like commands".<sup>28</sup> John Dearlove also argues in favour of the constitutionalist approach and of "bringing the constitution back in", and claims that it is necessary to have an approach "which sees politics as an organized activity in which state institutions are crucial in their own right and in their capacity to constrain and shape behaviour".<sup>29</sup> Preuss combines this institutionalism with a form of constitutionalism in which the "conceptual and normative foundation" of sovereignty is to be found in "the conception of a political authority with which rulers were entrusted and hence did not possess in their own right". This condition corresponds to "a reliable institutional structure of government in which the governed are recognised as the ultimate source of political authority".<sup>30</sup> As we shall see when looking at Bodin's account of sovereignty in Chapter 1, this idea of rooting the authority of the State in the people or body politic, and even a basic form of social contract, are present from the outset in the concept of sovereignty. One of the aims of this thesis is to look at this idea of

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28 Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structure, Incentives and Outcomes* (London, 1994), p. 161.

29 John Dearlove, "Bringing the Constitution Back In: Political Science and the State", *Political Studies*, XXXVII (1989), p. 528.

30 Ulrich Preuss, "The Political Meaning of Constitutionalism", p. 24.

contract in the early writings, and also the idea that the authority conferred by the theory is a portable or transferable thing.

Both parts of the present work concentrate on the core concept of sovereignty, which is its legal monopoly, involving powers to make and break laws and a responsibility to rule by means of laws. Bodin himself was a lawyer, and the enduring feature of his work is that he approaches rule in abstract terms. As Glenn Burgess points out, “the concept of sovereignty was developed ... to provide an analytical concept that could be used in the analysis of all legal-constitutional systems”.<sup>31</sup> It was as a result of this “search for what underlay the diversity of laws and institutions” that sovereignty emerged as “an analytic characteristic of all stable polities” and also part of a vocabulary of politics based on “a terminology applicable across national boundaries”. It was more of an “intellectual technique” than a “political disposition”.<sup>32</sup> Having seen in outline the core meaning of sovereignty where various recent accounts overlap, it is now possible to see how Bodin’s writings tackle these themes, and to study the original English uses of the term (and cognate terms) with this core meaning in mind. Knowing the things about sovereignty which contemporary writers find problematic also prepares us for this task, and foreshadows the debates of this initial period of the English theorizing of the State. The most interesting feature of the English reception of the theory is that it placed the English constitution under the harsh glare of analytic reasoning, exposing the contradictions of the English system of powers shared between the monarch and parliament. The Chapters after Chapter 1 examine many writers who applied sovereignty to different parts of the existing constitution, and reveal the emergence of strong differences of opinion on the sovereignty (or otherwise) of parliament.

The origin and nature of Bodin’s original concept, and the state of English political thought before the concept emerged, are two obvious starting points for a study on the influence of the concept in England. The first Chapter addresses one of these starting points, and the second Chapter addresses the other. First, an outline of the theory of sovereignty elucidated by Jean Bodin in the *Six Bookes of the Commonwealth* (hereafter *Six Books*) in 1576 (1606 in English) needs to be provided, so that it is reasonably clear what

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<sup>31</sup> Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought 1603-1642* (London, 1992), p. 123.

<sup>32</sup> *Ibid.*

we are dealing with as “sovereignty”. Second, a short account of the state of English political thought leading up to 1576 is essential, in order to place the reception and early development of sovereignty into some kind of meaningful intellectual context. In particular, attention has to be given to the then current understanding of the English constitution and system of law.

The initial period, after the publication of the *Six Books* in 1576 and the visit of Bodin to England in 1581-82, is not marked by very many English writings on sovereignty. This is not at all surprising, since 1576 to 1588 is the period when Elizabethan politics was uncharacteristically unified, owing to the common engagement of the Puritans and Anglicans in defence of the Protestant regime against Philip II. Only later could a challenge to the legitimacy of the English State, such as Parsons’ *Conference* or Raleigh’s *Prerogative of Parliaments*, induce the English to philosophize about politics. The third Chapter is primarily concerned to establish the extent and timing of the widespread availability of Bodin’s revolutionary new theory in England, which, it is clear, was in the late 1580s, after the Frankfurt Latin edition of the *Six Books* in 1586. The huge popularity of Pierre de La Primaudaye’s *French Academy*, written by a Huguenot in the year following the debut of the *Six Books* and containing the theory of sovereignty, is enough to justify the attention this text receives. Another text briefly examined is the 1598 translation of Le Roy’s *Aristotle*, a favourite of the Politiques, who were decidedly Aristotelian; though not a sovereignty text as such it was read in the original as early as 1577 at Cambridge. The argument of this Chapter is that no well-read English person in the period after the late 1580s could not have had some knowledge of Bodin’s idea, although such people may never have known whose idea it originally was.

The breakthrough of at least having the sovereignty idea “in the air” in the years immediately before the political changes of 1593 is underscored by the evidence found in the reliably sourced writings of Richard Hooker. Because there is no doubt that Hooker is the greatest English political thinker in the period 1576-1628, his thought is provided with a Chapter of its own. What is revealed in studying Hooker’s theory of the State and of law is that he has taken Politique ideas back to their Aristotelian source, and set forth not only a theory of sovereignty, but also a theory of the cosmos. The Chapter looks at his idea of unchanging cosmic laws, and his parallel idea of human positive law that is made at will in accordance with a constitution. Also considered in this part of the present thesis is the view

of human agency which Hooker provides, and the radical implications of this view, especially in combination with his other theories.

After the philosophical intensity of Hooker, the fifth Chapter studies the role of sovereignty in polemical works, including three dealing with the uncertain succession in the event of Elizabeth's death, and two texts and one speech by James I. Owing to the polemical nature of these works, this Chapter engages much more fully in the ideological politics of the period, and the effect of ideology on theories of sovereignty. In particular, the Jesuit resistance tract of Robert Parsons is discussed, in part because it introduces ideas about popular sovereignty into English discourse which are incompatible with Bodin's sovereignty theory. The second reason for looking closely at the arguments in this fascinating text is that it adapts the ideas of Bodin and the Protestant resistance theorists to both English circumstances, and Jesuit political objectives. Of the other two, the lawyer John Hayward's 1603 volume is closest to Bodin, and deserves scrutiny for that reason, partly, but also because, it adopts a rarely encountered position in favour of purely monarchic sovereignty.

Chapter 6 deals with the confusion of Edward Forset, which is more interesting for what it reveals about the ambiguity of the parliamentary system than for any original contribution, and the insights he unexpectedly comes up with easily merit his inclusion. When the reader gets used to the strained use of analogies, Forset reveals splendidly the confusions which instantly arise when the spotlight of sovereignty is applied to a constitution based on poorly articulated dual institutions of Crown and parliament. The remainder of this Chapter considers the rival theory of civic republicanism among the Court writers of the 1580s and 1590s. The problem is that as well as sovereignty, which has an Aristotelian pedigree, the renaissance Humanist tradition also rediscovered republicanism, with its Ciceronian pedigree.<sup>33</sup> To the extent that the former is based on the cession of popular authority in establishing a constitution, and the latter is based on the continuance of popular sovereignty and closely parallels Protestant resistance theory on this point, the role of republican ideas in England in this period needs to be explored. This section of the Chapter mainly aims to show that the republican idea was indeed introduced into England

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<sup>33</sup> Three works on the republicans of the Italian renaissance which have been published in the past two decades, after Pocock's *Machiavellian Moment*, are: Viroli, *From Politics to Reason of State*, Donaldson, *Machiavelli and Mystery of State*, and Bock, Skinner & Viroli (eds), *Machiavelli and Republicanism*. The current constitutional debate in Australia pivots around this issue.

by Protestant Humanists at this time, and could even occur side by side with sovereignty, but that for reasons which were partly historical, it died down at the same time that the idea of sovereignty was gaining ground. The other reason for looking at republicanism is that the Dutch United Provinces is often regarded (wrongly, it can be argued) as having had a republican constitution, and in the period of this study, the Dutch example was an obvious model for England, especially for those of a Puritan cast of mind.

Given this uncertainty about whether the ultimate source of positive law is the Crown or parliament, we would expect to find a theory of parliamentary supremacy using Bodin's logic of sovereignty. The final Chapter takes up the notion of parliamentary sovereignty, and demonstrates the use of this logic in Walter Raleigh's political ideas. These ideas were written in the Tower, after an active military, parliamentary, and administrative career, and they were cut short by James's savage reaction to the events in Prague in 1618 which set off the Thirty Years War. By contrast to Raleigh's uncanny advocacy of a sovereign parliament annexed to a fictive Crown, Francis Bacon adhered to a monarchist theory in which sovereignty played no part. For Bacon, the constitutionalism implicit in Bodin's theory would have stood in the way, for he supported a view of the Crown which was based on *The Prince*, in which unrestrained power would augment his vision of science. This is a dark ending, but it comes as the culmination of the discussion of the legal and political problems exposed in the parliamentary fight for survival which climaxed in the Petition of Right of 1628, and which was followed by the personal rule of Charles and, eventually, ship money and the Civil War. Raleigh's *Prerogative of Parliaments* especially demonstrates that the dispute about whether to locate sovereignty in or out of parliament is based on acceptance of the Bodinean logic that sovereignty is one and indivisible, and in the final analysis the Civil War had as much to do with sovereignty as with the use of the ship money fleet or the existence of Bishops.

When Conal Condren says "will all the radicals please lie down, we can't see the Seventeenth Century", he is expressing a sense of desperation that from the general point of view it seems as if early modern English political thought is far too much a focus for studies on proto-liberalism and (perhaps) proto-socialism, and that this leaves no room for an account of "mainstream" political theories. It remains true that relatively few studies examine theorists in the early decades of the century, especially those who had views on a strong and centralized State which may seem, to a modern eye, to be conservative. Of course, such ideas may not be at all conservative when looked at in context, and this is

what I take to be Condren's point.<sup>34</sup> Although the time frame of this Thesis is slightly earlier than Condren's time frame it shares the spirit of his study, in that the theory of sovereignty is so much more subtle and pervasive than the theories of the "radicals", and certainly no less important. The utility of the core concept and its portability, which have helped it to survive from 1576 to the present day, justify our returning to the English reception of the theory of sovereignty and, in the first instance, to the theory of Jean Bodin.

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<sup>34</sup> Conal Condren, *The Language of Politics in Seventeenth-Century England* (Basingstoke, 1994), p.140.

# Chapter I.

## Bodin's Theory of Sovereignty.

Bodin's logical formulation of a unitary and indivisible power to command, and his application of this logic to all States regardless of their outward constitutional form, is the first appearance of the theory of sovereignty. The extensive influence and intellectual respectability of Bodin's ideas, which circulated widely in Europe after 1576 (and even more widely after 1586), owe much to the fact that he combines a logical account of political and legal supremacy which is secular and absolute, with a thorough review of public law in contemporary and historic European States. Here I shall attempt briefly to outline the fundamental features of Bodin's theory of 1576, and some of the precursors for his ideas in early legal and political writings. I shall also mention some of the genuinely problematic aspects of his thought on the subject, notably his efforts to balance the secular idea of absolutism with limits implicit in a strong commitment to constitutionalism. But first we need to look at the Politiques as a political group or faction with its own ideology, and to situate Bodin intentionally.

It is essential, in order to understand Bodin, to be aware of the intellectual environment in which he himself lived and wrote, especially the context of prevalent discourses in his own ideological constituency. For this reason we need to preface an account of his theory of sovereignty with an account of French Humanism in the Sixteenth century and in particular the ideological position of the Politiques. This presents us with a picture of intellectual life in which Humanism and the Politiques merge one into the other as they seek to reinvent political philosophy along Greek lines and separate the State as a topic of discourse, deriving a separation of Church and State to compare with Calvinism. Indeed, the broad class of Humanists was easily capable of collecting together Huguenot

and Politique writers within one movement. Some Politiques were Huguenots of the less militant sort at any rate. Against all of these positions - Huguenot, Politique, Humanist - was the Counter-reformation policy, advanced by the Jesuits, of using the weapons of Humanism against Humanism and its numerous offspring. After the death of Bodin his ideas were to be published in England in an intellectual environment in which Humanism had been almost unknown in intellectual circles before the Elizabethan period, whereas Huguenot ideas, for a variety of reasons, were quick to take root. The context was very different from the one in which Bodin had written, making the progress of Politique ideas in England a vastly more difficult process than the advance of radical Protestantism.

The Politiques are often associated with the position developed by Michel de l'Hopital in the early 1560s, which is based on toleration in the national interest and ultimately (1598) finds expression in the famous Edict of Nantes.<sup>1</sup> In this form, l'Hopital's position re-emerged late in the religious wars among (mainly) Catholic followers of Alençon, including Bodin. The term Politique, originally a slur used by extreme (Ultramontane) Catholics against academics such as Denys Lambin, a colleague of Ramus, was taken up as a party label only after 1572, where it applied "to a sort of emerging common front consisting of a few Huguenots as well as moderate Catholics".<sup>2</sup> In Yates's *French Academies* she refers to both a Politique academy of Anjou and a Politique party of the early 1560s, consisting of Catherine de Medici, the Cardinal of Lorraine, l'Hopital and Jean de Monluc the Bishop of Valence. This party was primarily responsible for the Colloquy of Poissy and the Edict of St Germain, which coincided with the early phase of the Huguenot movement, when reconciliation appeared to be a feasible option on both sides.<sup>3</sup> The Politique "academy" of Anjou on the other hand consists of the circle of moderates of both sides, including Bodin, which centred on Alençon in the late 1570s and early 1580s, not many years before a re-emergence of calls for toleration during the final cataclysmic phase of the French religious wars in the early 1590s, when the League and Henri IV struggled for ultimate victory. When the French Estates met at Blois in 1576 it

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<sup>1</sup> Skinner, *The Foundations of Modern Political Thought*, (Cambridge,1978), Vol.II, pp.250-251. T. M. Paeker, "Protestantism and Confessional Strife", in R. B. Wernham (ed), *The New Cambridge Modern History: III, The Counter-Reformation and Price Revolution* (Cambridge,1971), pp.96-97.

<sup>2</sup> Donald R. Kelley, *The Beginning of Ideology: Consciousness and Society in the French Reformation* (Cambridge,1981), pp.204-205.

<sup>3</sup> F. Yates, *French Academies of the Sixteenth Century*, pp.199-205.

was possible to follow the machinations of a Politique party with an agenda to forestall any reopening of the religious war when twenty Deputies of the Second Estate led by the Duke of Montpensier petitioned the King with a *Remonstrance* against war.<sup>4</sup> The publication of Bodin's *Six Books of the Commonwealth* in 1576 predates the flourishing of Politique texts by a decade or more. The best known Politique work is probably the *Satire Menipee* of 1594, and to this we should add Barclay's *De Regno et Regali Potestate*, not published until 1600. Stankiewicz also points to polemical works such as Hotman's *Brutum Fulmen* and Belloy's *Apologie Catholique* as works which adopted the Politique position because it suited the cause of Henri of Navarre (Henri IV).<sup>5</sup>

Yet what might be termed the Politique "attitude" was more widespread than this account indicates, and it extends to earlier French Humanism and its strongest champions (and is not unknown in connection with academics from the University at Toulouse other than Bodin). The earliest figure in this tradition is Jacques Lefevre d'Étaples, the leading French academic on the eve of the Reformation. In the Christmas of 1512 he published his edition of *The Epistles of St. Paul* which has been regarded as "the first Protestant book", in which he advanced the cause of faith above works.<sup>6</sup> Lefevre d'Étaples was almost single-handedly responsible for the introduction of Aristotle into France in an authentic and unmodified form. Margolin quotes Mario Equicola:

If we venerate Aristotle we should also venerate [d'Étaples]. If we wish to understand Aristotle, let us read Lefevre: he defines, analyses, explains, paraphrases, refutes, organises, clarifies, teaches, and, just like the rising sun, he dispels the clouds of obscurity surrounding each of Aristotle's works.<sup>7</sup>

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<sup>4</sup> Mack P. Holt, *The Duke of Anjou and the Politique Struggle during the Wars of Religion* (Cambridge, 1986), pp.83-86.

<sup>5</sup> W. J. Stankiewicz, *Politics & Religion in Seventeenth-Century France* (Berkeley, 1960), p.42.

<sup>6</sup> Augustin Renaudet, "Paris from 1494 to 1517 - Church and University", Werner Gundersheimer (ed), *French Humanism: 1470-1600* (London, 1969), p.84.

<sup>7</sup> Jean-Claude Margolin, "Humanism in France", Anthony Goodman & Angus MacKay (eds), *The Impact of Humanism on Western Europe* (London, 1990), p.184.

Thus, the ground was cleared for future moderates of both sides who believed that a better known Classical, Biblical and Patristic canon could bridge the religious divide, as it was later to do for Richard Hooker.

Returning to the Politique “attitude” of scholarly toleration begun by d’Etaples, this also became one of the hallmark features of French Humanism in the reigns of Henri II and Francis I. One of the pupils of d’Etaples, Guillaume Farel, became a Lutheran in 1521, had dealings with Erasmus in 1523, and subsequently sponsored Calvin’s first stay in Geneva in 1536. In 1535 another pupil of d’Etaples, Robert Olivetan used Hebrew and Greek philology to re-translate the Bible into French, incorporating the d’Etaples New Testament, to produce in Lyons the text of the Bible preferred by the Huguenots. In 1533 Etienne Dolet became an outspoken advocate of intellectual freedom while studying Cicero at Toulouse.<sup>8</sup> Dolet became known to the world as the publisher of Rabelais’ *Gargantua*, and another leading Humanist, Bonaventure Des Periers, went straight from working on the Lyons Bible project to the court of Marguerite de Valois, Queen of Navarre, to help publish the *Heptameron*.<sup>9</sup> Quentin Skinner has identified Sebastian Castellio as a Huguenot Humanist with an eirenic view on toleration prefigured by Guillaume Postel and very similar to Bodin’s.<sup>10</sup> Castellio also did a version of the *Bible and Apocrypha* which was printed (editio princeps) Basle, 1551.<sup>11</sup> Long before Postel and Castellio, a strongly Neoplatonist eirenic philosophy based on Ficino’s Hermetic school was developed in Symphorien Champier’s *De Quadruplici Vita* of 1507.<sup>12</sup> This philosophy also profoundly influenced Bodin and later, Hooker. Without this philosophy Bodin could never have

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<sup>8</sup> Donald R. Kelley, *The Beginning of Ideology*, p.160. Jean-Claude Margolin, “Humanism in France”, pp.190-192.

<sup>9</sup> Here he might have encountered Gerard Roussel, Marguerite’s chaplain, who had been a student of d’Etaples. Jean-Claude Margolin, “Humanism in France”, p.184.

<sup>10</sup> Skinner, *The Foundations of Modern Political Thought*, Vol.II, pp.244-248. For an account of Postel’s influence on Bodin see the Introduction to M. L. D. Kuntz (ed.), *Jean Bodin - Colloquium of the Seven about Secrets of the Sublime* (Princeton,1975).

<sup>11</sup> G. Garnett (ed.), *Vindiciae Contra Tyrannos* (Cambridge,1994), p.28n102. Castellio also regarded (in 1562) the Turkish enemy less odious than the Catholic enemy, by reason of their Islamic tolerance in many matters of conscience; *Ibid*, p.65n190.

<sup>12</sup> Margolin, “Humanism in France”, pp.187-189.

elaborated the “logic of indivisibility” by which something indivisible (the State) can exist within another indivisible entity (the Cosmos).<sup>13</sup>

In later Sixteenth century France figures like Jacques Cujas, l’Hopital, Pasquier, J. A. de Thou, and Joseph Scaliger multiply to reveal tight networks of academic Humanists exerting a pragmatic and Politique influence.<sup>14</sup> Groups of French Humanists meeting regularly, such as the Pleiade, were known as “academies” from at least the time of Henri II.<sup>15</sup> Liberal views were common in such circles of academics, and one should not assume that the only Politique academy was in the household of Alençon, although it does seem to be the model for La Primaudaye’s fictional Anjou academy.<sup>16</sup> From 1576 the Palace Academy adopted the Politique position of pragmatic toleration, as evidenced by the prominent place of the staunchly Huguenot lector Agrippa D’Aubigne, and at about this time Baif’s musical academy included several Huguenot musicians.<sup>17</sup>

From either the Humanist Neoplatonist or Humanist Huguenot position, then, religious toleration was a good thing in ethical as well as pragmatic terms. Out of the theory of toleration the Politiques were able to advance, ultimately, their view of the prime importance of the political. It is hard not to agree with Stankiewicz when he asserts that:

The Politiques alone ... asserted religious toleration to be an expedient and not an ethical principle. They built up their theory of political activity on the basis of sheer expediency and were not reluctant to declare their intentions and purposes. In the end they succeeded in devising a practical method of action, and their theory contained something beyond immediate usefulness and workability. ... In a certain sense they fostered the development of later political trends. They were not absorbed purely by religion, but stood above religious controversies, and their preoccupation with practical political solutions anticipated the future dominant role

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<sup>13</sup> Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge, 1995), p.142.

<sup>14</sup> For example, see Garnett (ed.), *Vindiciae Contra Tyrannos*, p.111n295.

<sup>15</sup> Frances Yates, *The French Academies of the Sixteenth Century* (London, 1947), p.19.

<sup>16</sup> *Ibid.*, p.123.

<sup>17</sup> *Ibid.*, pp.122-123.

of politics.<sup>18</sup>

The legacy of the earlier Humanists to the Politiques was not just toleration itself; Humanist views of the possible were broad and encouraged political experimentation, within which a new State oriented paradigm could grow as, for example, with Machiavelli. With the formidable support of such predecessors, Politique writers, especially those like Bodin who were also ranked among the Humanists, could wield great influence. Bodin's invention of the idea of sovereignty is both a distillation of the Politique position and a logical extension of Humanism, and it is to Bodin that I shall now turn.

The legal basis of the State which is so central to the present day idea of sovereignty predates the formulation of the theory of sovereignty by Bodin, owing to the adoption of legal ways of arguing conflicting claims to certain types of political power by the Pope and Emperor in the medieval period. But only with the emergence of the State, seen in the writings of Machiavelli and his contemporaries, is it possible for sovereignty to be coherently argued. The realism of Machiavelli combined with the (medieval) constitutionalism of Seyssel (or Fortescue) is a mix of very disparate elements to be sure, and yet this is broadly what is achieved by Bodin's theory of sovereignty. In this first Chapter I shall elucidate the way that Bodin, mainly in his *Six Books of the Commonwealth*, tied together all of these disparate medieval strands of thought, using the newly found realist view of the State which distinguishes renaissance political thought, as the uniting element.

Realism, whether it came from the secularization of politics in the wake of the Reformation or from an unencumbered reading of the Greek philosophers and Roman historians, can be seen in the return of rhetorical writings which litter the Sixteenth century. Realism also marks the turning of political theory away from law and towards bureaucracy. The growth of bureaucracies based on royal appointments is germinal for the formation of the State in European history, as an English law lord not long ago pointed out:

Once central government was firmly established in England, power - what in modern political science would be known as executive, judicial and legislative power - was concentrated in the King. No line was drawn at first between the

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<sup>18</sup> Stankiewicz, *Politics & Religion in Seventeenth-Century France*, p.55.

public and private business of the King. But, as the latter grew, administrative convenience called for some devolution [and this went]... with the increase in the powers of the Crown in the 16th century.<sup>19</sup>

Because the power and complexity of bureaucracies had grown so much, politics was changing rapidly. By the Sixteenth century political theorists could no longer merely repeat the traditional homilies to princes in ignorance of the realities of politics, evidence of which was clearly emerging in recent history.<sup>20</sup> Bodin was able to write in an atmosphere of discovery and disenchantment with old views of law and politics; an atmosphere which questioned orthodoxy and looked to the tangible world for evidence of new understandings. There is an echo of Machiavelli where Bodin says: “it is not our intent or purpose to figure out the only imaginary form and Idea of a Commonweale, without effect, or substance, as have Plato and Sir Thomas More”, and in his first Preface, he condemns only the amoralism of the Florentine, not his realism.<sup>21</sup> Renaissance writers on politics created new theories based on induction and observed evidence. Notwithstanding their reliance on the same classical writers, by and large, as the Scholastics, these theorists had easy access (thanks to the printing press) for the first time since antiquity to the Greek canon, both in the original and in reliable translations.<sup>22</sup> Although their books are filled with arcane theories, and often lack what we would call coherence, renaissance writers precociously anticipate a great deal of later political philosophy, including not only theories of the State, but also of political economy, the social contract, legitimation, democracy and nationalism. Bodin is typical of this eclectic breed, with his grand synthesis of Aristotle, Roman law, Machiavellian realism, and Ramism (a rhetorical form of rationalism developed by Petrus Ramus), to which an unkind Bodin scholar could add misogynist tendencies, cabalism, astrology, and numerology. But he is typical in the other sense as well, in that his writing

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<sup>19</sup> Lord Simon of Glaisdale in the Law Lords in 1978; quoted by Colin Turpin, *British Government and the Constitution - Texts, Cases and Materials* (London,1990), p.158.

<sup>20</sup> A good example is the *Memoires* of Philippe de Commines. This was partly translated into English in 1596. Charles Whibley (ed.), *The History of Commines: Englished by Thomas Danett, Anno 1596* (London,1897). According to the Preface (p.3), the translation had been circulating in MS for “thirty years”. The role of historians in spreading renaissance ideas to England was highly significant.

<sup>21</sup> Jean Bodin (Knolles edition), *The Six Bookes of a Commonweale* (London,1606), Facs. (Cambridge, Mass.,1962), p.3. For the first Preface see pp.A69-A70.

<sup>22</sup> Myron P. Gilmore, *The World of Humanism* (N.Y.,1962), pp.190-194.

seems to be constantly reaching out from the mundane comparison of institutions towards some undiscovered general theory, some entity which would unite the worlds of knowledge and experience forever, and this searching brings him time and time again to one or other of the questions that were later to make Hobbes, Locke, Rousseau, Kant and Burke famous.

Bodin's theory is based on an Aristotelian or Ramist method of analysing politics, combining very broad definitions with a strongly empirical treatment of the parts so indicated.<sup>23</sup> The overall plan of the *Six Books* shows how serious Bodin was at attempting a systematic and comprehensive account of the practical knowledge of politics and administration,<sup>24</sup> Book I, the largest of the Books, deals with the State, the family, and citizenship. It is followed by a Book on the types of States and a Book on organs within the State, including deliberative and magisterial organs, and civil society. Book IV discusses the State in history, including the reasons for the decline of different types and the question of faction and discord, and is followed by a Book on the climatic theory of history, and economic and military policy. The sixth and final Book begins with a study of taxation and money supply, then hurries through a defence of monarchic constitutions and problems of succession, finishing with a curious theory of universal harmony and the role of numerology in history. Bodin develops his core theory in Book I, where there are short passages which attempt philosophically to define sovereignty, as well as two long Chapters of special significance. The first of these, Chapter 8, uses examples to illustrate the absolute and perpetual nature of sovereignty itself, and the second, Chapter 10, lists the practical political attributes of the State in terms of powers or "marks" of this type of sovereign authority.

Both the definitions and attributes need to be linked for a true understanding of his fusion of constitutionalist and absolutist ideas, whereby the legal absolutism inherent in the definitions is balanced by the sensible attributes of I,10. This is not to underestimate the

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<sup>23</sup> Kenneth D. McRae, "Ramist Tendencies in the Thought of Jean Bodin", *Journal of the History of Ideas*, IV,3 (1955), pp.309-310,319. Ramism was vehemently anti-Aristotelian, but as much as it rejected Aristotle's *Organon*, it had much in common with the political science of his *Rhetoric* and *Politics*. Both Ramus and the political Aristotle were rhetorical in method, and tended "to choose a proper ... topic and then to devise a pattern of discourse to give it maximum memorability and effectiveness, emphasising not only logic and consistency but also persuasiveness, impact and usefulness". Donald Kelley, *The Beginning of Ideology* (Cambridge, 1981), p.142.

<sup>24</sup> For an exhaustive list of the arguments, see McRae's summary in the Introduction to Bodin (Knolles edition), *The Six Bookes of a Commonweale*, pp.A91-A103.

contrast between the two, and there is of course an epistemological dualism between the normative qualities of the definitions and the realist or empirical approach which is so characteristic of the work as a whole, and of the discussion of attributes in particular. This dualism is probably so marked because Bodin is using a new concept, which he himself does not fully understand, to explain certain well-understood features of the early modern State. His writing is more descriptive than analytical, and his thought lacks the rather philosophical cast of Grotius, Hobbes, and other seventeenth century political writers.

The archetype definition of “sovereignty” in the *Six Books* is at the very beginning of I,8 where he says:

Majesty or sovereignty is that most high, absolute and perpetual power over the citizens and subjects in a commonwealth which the Latins call *Majestatem* ... that is to say, the greatest power to command.<sup>25</sup>

This definition combines medieval Roman law notions with a modern analytical emphasis which treats each polity as a unique specimen. Before the sixteenth century, *majestas* was usually applied to the Holy Roman Emperor, or by extension, the Pope, if you accepted the theory of the Keys of Rome. The quality of *majestas* is also derived from the more military *imperium*, implying definite powers of command, and the legal meaning of the term was based on a Roman original, but worked into law at some remove from the original maxims, via Tribonian’s *Laws* and the work of a number of Italian glossators and post-glossators. From Justinian to the renaissance, the adoption of theories of rule based on *imperium* glossed over the complex and structurally divided constitutionalism of historical Rome. Looking at the Roman original, Walter Ullmann goes so far as to say that for the Romans it is possible to argue that “*majestas* and ‘sovereignty’ were two interchangeable concepts”.<sup>26</sup> But the medieval world had no secular republican basis on which to build such a concept,<sup>27</sup> and so it was translated to rulers themselves in their highest public capacity, becoming the

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<sup>25</sup> Bodin (Knolles edition), *The Six Bookes of a Commonweale*, p.84. It “is so called of mightiness”. Note the term “perpetual” - Bodin is unique because he locates the State in time as well as in legal space.

<sup>26</sup> Walter Ullmann. *Principles of Politics and Government in the Middle Ages* (London, 1966), p.136.

<sup>27</sup> The republican ideal did live on in the middle ages, as the *res publica Christiana*.

*merum imperium* (“undiluted power”) of Martinus, which could be applied either to the Emperor or the Imperial magistracy, without reference to the people.<sup>28</sup> Such a marked conceptual change made the Latin original based on republicanism less meaningful than an empirical and historical (i.e. comparative) analysis of medieval and renaissance examples. The Romanism in Bodin, like that of Machiavelli, is born-again Romanism reassembled from ruins themselves only detectable within layers of medieval scholarship, where theology, politics and law are intermingled.

Although the greater part of Chapter 8 is devoted to piecemeal discussion of the qualities implied by the terms “absolute” and “perpetual” without detailed analysis, there are two short passages which do add to the definition with which he begins the Chapter. Towards the end of his discussion of privileges, Bodin says that the “sovereign” is one (or a group):

whose office it is to give laws unto his subjects, to abrogate laws unprofitable, and in their stead to establish other [laws]; which he cannot do, who is himself subject to laws, or to others who have command over him.<sup>29</sup>

The idea of rule being a matter of legislation, and the making of it being a public office, indicates a constitutionalist element in the theory. Bodin emphasises the Aristotelian view of kingship here, in which laws rule, not men. Yet logically the maker of laws cannot be ruled by the same laws in turn. During his discussion of promises (which is obscure even by Bodin’s standards) he says:

the prince is not subject to his laws, nor to the laws of his predecessors: but well to his own just and reasonable conventions, and in the observation whereof the subjects in general or particular have interest.<sup>30</sup>

Although a narrow definition of conventions as contracts waters down the qualification of the second part upon the first, looking at conventions as public covenants, opens up

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<sup>28</sup> Kenneth Pennington, *The Prince and the Law, 1200 - 1600*, (Berkeley, 1993), pp.20-21.

<sup>29</sup> Jean Bodin (Knolles edition), *The Six Bookes of a Commonweale*, p.91 (misnumbered in the original).

<sup>30</sup> *Ibid.*, p.92.

strongly constitutional approaches to the power of the State.<sup>31</sup> The idea of being “well” subject to legal restrictions strengthens the latter argument, and even if it is only a form of fiscal reciprocity, the precedent is there. Taken together, these definitions contain a significant degree of overlap, pivoting around the central notion of legal supremacy being unitary.

Another important definitive passage is to be found at the beginning of Chapter 10, and again there is ambiguity on the constitutionalist element in the passage. Bodin argues that:

nothing upon earth is greater or higher, next unto God, than the majesty of kings and of sovereign princes; for that they are created His lieutenants for the welfare of other men.

The reason why “majesty” exists is that public welfare is served, providing of course it does not infringe on a Christian’s duty to God. Even though once again the supremacy of the “sovereign prince” is stressed, the definition contains an escape clause, in the form of the reference to the supreme divinity. The reference to God can be read approvingly, though with a very different meaning, by Anglicans and Catholics on the one side, where it would imply an authoritarian descending theory, and by Puritans and other Calvinists on the other side, where it would evoke resistance theory with its affirmation of prior communal rights and religious obligations. In either case the cause of religious conformity is real, whereas for Bodin himself religion was near the bottom of a mystic Jacob’s Ladder that led to the eirenic’s heaven of a single all-embracing truth; each revealed truth is a part, with Natural law somewhere in between. This can be seen from his posthumously published religious dialogue *The Colloquium Heptapolmeres*, now available in the English translation of Kuntz.<sup>32</sup> He was more circumspect in the *Six Books*, for even a writer of Bodin’s prodigious tolerance could not afford to ignore the fact that the Sixteenth century was not completely removed from that medieval outlook, whereby religion is like a ruling ideology, seeking to embody within transcendent rules some sort of public sentiment, and maybe providing guidelines by which the public will can be imposed upon a ruler.

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<sup>31</sup> For a very helpful discussion of the similarity of contracts, promises, and oaths in Bodin’s thought see Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge, 1973), pp.56-59.

<sup>32</sup> Marion Leathers Kuntz (ed.), *Jean Bodin - Colloquium of the Seven about Secrets of the Sublime* (Princeton, 1975).

I want to look at one final definition, and it is the one with which Bodin begins the *Six Books*. He says that:

a commonwealth is a lawful government of many families and of that which to them in common belongs, with a puissant sovereignty. ... [A] commonwealth ought to be a lawful and rightful government [to distinguish it from] the great assemblies of robbers and pirates.<sup>33</sup>

The idea that the State is an association comes from the first Book of the *Politics*, in which Aristotle begins with natural association in the family, passes quickly over the village, and ends by regarding the *polis* as the supreme association, naturally prefigured by the family, yet artificial in the sense that it is based on written and unwritten laws. In Aristotle, the State is an organic unity like a plant or animal, but it can be studied by dissecting the parts, bearing in mind that its *telos* is correspondingly higher than that of an individual person or plant or animal. This high end of politics is linked to accounts of good, justice and the good life which make it clear that certain limits upon supremacy based on public good must apply.<sup>34</sup> Underlying this view of the State is a notion of political self-sufficiency (*autarkia*), and Bodin is unlike previous Aristotelians such as Marsiglio in that he is able to accept Aristotle without reservations, translating Aristotle's idea of supremacy or the "ruling part" into his own concept of sovereignty. He places the *telos* of the State as an association under the umbrella of "puissant sovereignty", which as we have seen from other definitions is a legal idea.

Like Aristotle, Bodin is bringing together empirical knowledge about the form and function of political society and the premiss that all which is highest in a State must be unitary. This concept of the unitary law-driven State, in which responsibility is added to

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<sup>33</sup> Jean Bodin (Knolles edition), *The Six Bookes of a Commonweale*, p.1. The reference to "robbers and pirates" is very similar to Calvin's remark on the ungodly ruler in the Prefatory Address to King Francis at the beginning of the *Institutes*; J. T. McNeill (ed.), *Calvin: Institutes of the Christian Religion* (London, 1961), p.12. This relates to Augustine's passage "Kingdoms without justice are like criminal gangs", *City of God*, IV, iv, which in turn goes back to Cicero's *De Re Publica*, III, xiv; Henry Bettenson (ed.), *Augustine: The City of God* (Harmondsworth, 1984), p.139; Clinton Walker Keyes (ed.), *Cicero: De Re Publica; De Legibus* (London, 1951), pp.202, 203.

<sup>34</sup> Aristotle, *The Politics*, 1252a24-1253a39. The texts I have been using here are (Saunders ed.) *Aristotle - The Politics* (Harmondsworth, 1982), pp.54-61, and Saunders (Tr.) *Aristotle - Politics Books I and II* (Oxford, 1995), pp.2-4. There is a valuable Commentary in the latter text at pp.59-71.

legal authority of an absolute nature, is indispensable when theorising the contemporary State, in which sovereignty has these same broad characteristics. Bodin's definitions of an "absolute and perpetual" autonomous complex of institutions which is necessary in a State, goes beyond political realism to posit a logical requirement that sovereignty is one and indivisible. Because the quality of sovereignty is common to all States it allows us to compare all States by looking at them from the point of view of sovereignty. It also removes from consideration rival claims to authority, such as the Church, papacy, and regional barons. This idea, as we shall see, was no less revolutionary for the English than it was for Bodin's French contemporaries.

Other types of association which do not have sovereignty are described by Bodin in Book III as "corporations and communities". Such associations are intermediates between the family and the State:

And, as many families by amity allied, are members of one corporation and community; so many corporations and communities allied by a sovereign power, make one Commonweale.<sup>35</sup>

He quickly adds that such intermediaries are not vital, and that a State could contain "neither corporation nor colleges, but only many families in it". Yet he accords to these corporations the status of "civil society". Like the State, civil society is an outgrowth of the political and social instinct intrinsic to human nature, patterned on the family. Bodin ties this in with his own belief in Natural law (see below), noting that the "father of nature", who founded the family "in the beginning together with mankind", had "ingrafted" reason in people. This same reason "had made man desirous of the company and society of man", which is exemplified by the urge "to participate together both in speech and conversation", although in the Latin version "conversation" (*usus*) is understood broadly as social intercourse.<sup>36</sup> Unfortunately, this social instinct cannot offset other factors which produce the state of nature (Bodin does not actually use this term), which is as nasty and brutish in this text as it would later be for Hobbes. In Bodin's account of the origins of the State population pressure soon creates situations where, in the absence of "law or command", the

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<sup>35</sup> Bodin (Knolles edition), *The Six Bookes*, p.361.

<sup>36</sup> *Ibid.*

strong violently oppress the weak. In time, the oppressed establish for their protection “strong towns and cities”.<sup>37</sup> Here then is the image of the ancient *polis*, in which “law or command” is no longer absent, and sociable instincts find satisfaction. While this theory of the state of nature allows for voluntary contracting together to form the prototype State, there is an urgent necessity driving any such contract which makes opting out virtually impossible.

In the *Six Books* the overall position of the definitions is obviously a legally absolutist one, but this overall position is somewhat modified by the constitutionalism and institutionalist perspective of the author. Even so, several propositions emerge when these definitions are considered. We learn that sovereignty is indivisible, unique, absolute and perpetual within a State. We also learn that sovereignty is puissant or coercive by nature, that the ability to command is the source of law and territorial independence, and that the State is a lawful association. Set against this abstract theory are the attributes of rule in practice, which Bodin sets out in the form of lists, and also discretely throughout the text. Not many contemporary theorists deal with the empirical side of legal supremacy, but, going back a few years, Ernest Barker recognised that the notion of sovereignty is “limited and defined by its nature and mode of action”; these lists of powers serve the same function for Bodin.<sup>38</sup> McIlwain also says that such power is “limited internally”; it must be used with “justice and not at discretion”, and must aim at the common good.<sup>39</sup> Bodin uses the formal account of rule embedded in sovereignty as a cord which binds these attributes of actual States into a tight bundle of legally absolute powers.

The attributes in question have a long and distinguished history in medieval law. These powers crystallised in the year 1154, when the German army under Frederick Barbarossa invaded the valley of the Po, and within a couple of years subjugated the pretty Romanesque towns of Lombardy. The history of “marks” or “regalia” of secular power in political theory begins at the Diet of Roncaglia. The Diet was held in 1158 and, according

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<sup>37</sup> *Ibid.*, p.362.

<sup>38</sup> Ernest Barker, *Principles of Social and Political Theory* (Oxford,1952), p.60. See also pp.215,216.

<sup>39</sup> C. H. McIlwain, *Constitutionalism and the Changing World* (Cambridge,1939), pp.42-43.

to Otto of Freising, lasted but three days.<sup>40</sup> Here Frederick the First employed the jurist Bulgarus and his associates from Bologna University to compile all the secular rights then existing in Canon Law, in Charters of communes and in the newly uncovered *maxims* of Roman Law.<sup>41</sup> In the Roncaglian Decrees of 1158 these secular rights of rulers add up to define an integral whole, the *plenitudo potestatis* of the Emperor, in imitation of the Late Roman precedents.<sup>42</sup> Because Frederick had actually conquered the Lombard cities, the various constitutions and charters of the Lombards were alleged to be null and void. His solution to this was not to do the expected thing and re-confirm the bulk of the charters, but to attempt to transfer all of the secular political powers recognised at the time into his own name, as would befit a genuine Roman Emperor.

There are two elements in the Roncaglian Decrees which seek for the first time in the West to delineate the supremacy of secular rulers: the re-establishment of the Roman fiction that the Emperor is the fountainhead of justice, and the setting down in writing of Imperial regalia or marks in the fashion of civic regalia claimed by the Lombard cities. The list of regalia quoted by Otto of Freising is mostly fiscal. It includes: “[power over] dukedoms, marches, counties, consulates, mints, market tolls, forage tax, wagon tolls, gate tolls, transit tax, mills, fisheries, bridges, land tax and personal taxes [poll and hearth taxes]”.<sup>43</sup> Frederick’s political position as undisputed king of the Germans and conqueror of the Lombard city-states gave him two more powers, those of administering justice and the power of final appeal. This Imperial attribute of justice could be understood in terms of a legislative power, but if so then it is a law-declaring rather than law-making power, which was put into effect by the small army of *podesta* or Magistrates sent to Lombardy by Barbarossa (and later, from one city to another).<sup>44</sup>

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40 Otto of Freising (Mierow ed), *The Deeds of Frederick Barbarossa* (N.Y.,1953) IV, i - xi. The formal speeches were no doubt only a small part of the deliberations that took place among the princes, prince-bishops and Bolognese lawyers.

41 Kenneth Pennington, *The Prince and the Law, 1200 - 1600*, (Berkeley, 1993), pp.13ff.. The Roman Law Codices were recovered by Werner (Irnerius) in Ravenna about 1095 and brought to Bologna. See Henry Hallam’s *Church and State*, (London, 1868), pp.353-354.

42 Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols, I, (Cambridge,1978), pp.8-9.

43 Otto of Freising, *The Deeds of Frederick Barbarossa*, IV, vii.

44 Otto of Freising, *The Deeds of Frederick Barbarossa*, IV, ix. Kenneth Pennington, *The Prince and the Law, 1200 - 1600*, pp.11-12.

Kenneth Pennington notes that the import of Frederick's regalia was first realised by Canonists in the early thirteenth century.<sup>45</sup> Civilians such as Accursius and Azo developed constitutionalist readings of the Roman Law passages used by the Bolognese lawyers while agreeing with much of their legal absolutism.<sup>46</sup> By the fourteenth century Bartolus and Baldus were applying the Imperial powers in new ways to other independent kingdoms and to the Papacy.<sup>47</sup> Later in the same century jurists became interested in the notion of higher laws which can limit these powers though they are not enforceable, including Natural Law and customary law.<sup>48</sup> Nor can the Scholastic reworking of Aristotle be ignored. During the later Middle Ages, the West became acquainted with Aristotle's *Politics*, and this supplemented the Roncaglian list of marks of state power with a more general idea of powers. Aristotle lists the powers of the "deliberative element" as "war and peace, the making and dissolving of alliances, legislation, the penalties of death, exile and confiscation of goods, [and] the choosing of officials".<sup>49</sup> Marsiglio, although himself a Ghibbelline and an Aristotelian, only lists the powers or "modes of plenitude of power" of the Church in Book Two of his *Defensor Pacis*. Even then, he restricts the discussion to powers of taxing and appointing, with brief mention of a legislative power.<sup>50</sup>

When Bodin first lists regalian powers, in his *Methodus* of 1566, he includes Aristotle as one of the main sources for the idea.<sup>51</sup> But this should not blind us to the path from Roncaglia to Bodin. Imperial and Papal claims to *plenitudo potestatis* were assimilated by French kings in the fourteenth century, who claimed the Roman law style of emperorship and unlimited taxing powers.<sup>52</sup> In his *Insignia Pecularia* of 1520, written while he was royal *procureur* or attorney for Maine in 1509, Jean Ferrault describes these

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45 Pennington, *The Prince and the Law, 1200 - 1600*, p.32.

46 Pennington, *The Prince and the Law*, pp.84-85.

47 *Ibid.*, p.90.

48 *Ibid.*, pp.119-131.

49 Aristotle, *The Politics*, 1298a4-8.

50 Alan Gewirth (ed.), *Marsilius of Padua: The Defender of Peace* (N.Y., 1967), pp.313-320.

51 Julian Franklin (ed.), *Jean Bodin - On Sovereignty* (Cambridge,1992), Introduction, p.xvi.

52 Walter Ullmann, *Principles of Government and Politics in the Middle Ages*, pp.205-206.

marks of sovereignty as “privileges”, “rights”, “prerogatives” and “preeminences”.<sup>53</sup> These powers were derived by Ferrault from the Decretals rather than Roman law, and they were unique to the French crown, but the purpose was to make the French monarch “an absolute and sovereign king”.<sup>54</sup> Ullmann adds that “in the sixteenth century it was the jurists, mainly from Toulouse” who extended this argument, with Pierre Grassaille publishing in 1538 a list of 40 “regalia of the French king”, and this influence would still have been strong at Toulouse in Bodin’s student days there.<sup>55</sup> Returning to Ferrault, he includes among his privileges of the crown the powers of legislation, taxation, care of the incapacitated, safe conduct, bearing of arms, and a general power over the temporal affairs of the Gallican Church, and he also emphasises the Salic law.<sup>56</sup> His awareness of the prime importance of the legislative power reminds us that among legal writers the germ of a theory of sovereignty was already in existence at the beginning of the Sixteenth century.

In the Roncaglian tradition, Bodin lists the principal powers of the State and discusses them in Chapter 10 of the first Book. As well as the lists, Bodin also raises individual powers in the course of Chapter 8, including the making of war and peace, appointment of the “magistrates” or greater officers within the executive, the granting of pardons and reprieves, final appeal, legislating and of course the taxing power.<sup>57</sup> In Chapter 10 the attributes are listed twice, first briefly, and later as the introduction to a sustained treatment of each of the various powers which takes up the bulk of the Chapter. In the first of these lists, Bodin says that it is the “sovereign” which

gives laws to his subjects; which makes peace and war; which appoints all the officers and magistrates of his country; which imposes tributes, and at his pleasure eases whoever he sees as good; which has the power of life and death.<sup>58</sup>

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<sup>53</sup> Jacques Poujol, “Jean Ferrault on the King’s Privileges: A Study of the Medieval Sources of Renaissance Political Theory in France”, *Studies in the Renaissance*, V (1958), pp.15,17.

<sup>54</sup> Poujol, “Jean Ferrault on the King’s Privileges”, pp.17,19-20.

<sup>55</sup> Ullmann, *Principles of Government and Politics in the Middle Ages*, p.210n3.

<sup>56</sup> Poujol, “Jean Ferrault on the King’s Privileges”, pp.21-24.

<sup>57</sup> Jean Bodin (Knolles edition), *The Six Bookes of a Commonweale*, pp.85,87,88,91,97, (p. 91 misnumbered in the original)

<sup>58</sup> Bodin (Knolles edition), *The Six Bookes of a Commonweale*, p.154.

A few pages later, where he begins the detailed treatment of attributes, Bodin emphasises the pre-eminence of the legislative power, and the depth of his legalism is demonstrated by his suggestion that all other attributes without exception can be contained within the lawmaking power.<sup>59</sup> The remaining powers after the legislative power are making war and peace; hearing final appeals; appointing and dismissing the higher officeholders; taxation; granting privileges and exemptions; weights and measures; coinage; receiving oaths of unreserved fidelity and a number of other more trivial powers.<sup>60</sup> Here is the realist view of the State, based on a comparative and empirical analysis of institutions.

The spelling out of these powers shows how the mode of action of the bearer of sovereignty often involves political constraints. Some attributes, like the making of war and peace, or weights and measures, are so pragmatic as to be hard to argue against. Others, like taxation and the appointment of magistrates are a source of difficulty for Bodin because there are limiting factors involved which contradict the absoluteness found in his definitions. I shall return to these limits shortly in the discussion of specific constraints (below).

Bodin has defined the “absolute and perpetual” nature of sovereignty, and also described its mode of operation in terms of certain powers. Limits occur in both of these approaches in his work. In the former case they arise partly from the legal nature of his definitions and partly from his belief in public welfare, and in the latter case they arise from the fact that he lists a finite and concrete set of powers. Looking at the attributes, it is surprising how familiar they are, suggesting that some aspects of the State have changed little in the past four centuries. They describe an institution, and can only be referred to as ethical in the broad sense that the State does not use Machiavellian methods but strives to be just in practice.<sup>61</sup>

Bodin does include some specific constraints upon sovereignty, and I will examine these shortly, but they are not enough seriously to undermine his legal absolutism.

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<sup>59</sup> *Ibid.*, 161, (misnumbered in the original).

<sup>60</sup> *Ibid.*, p.162.

<sup>61</sup> F. J. C. Hearnshaw, “Bodin and the Genesis of the Doctrine of Sovereignty”, R. W. Seton-Watson (ed), *Tudor Studies* (London,1924), pp.125-126.

However, his lists of attributes are themselves statements of omission in that they make the range of possible powers more restricted than it might otherwise have been. For example the will of the sovereign is never binding on the conscience, as in a theocracy. When his definitions are considered, the impression given is of something completely new in 1576, but also something which appears monolithic and frightening. The attributes of the State, when enumerated by Bodin, make it appear more limited, and the overall effect of the lists of attributes is to show that the very broad power indicated in the definitions is only to be used in the narrower confines of the proper activities of the State.

Generally, the attributes represent needs within the collective side of the State which the definitions, concentrating on the logic of supremacy, tend to overlook. This is summed up in the idea of a “body politic”. Bodin states that the “whole body of citizens” constitutes a commonwealth, but only provided a determinate sovereign is also present.<sup>62</sup> This is not the same as saying that the sovereign is the actual personification of the body politic, but rather that the two meet in a true commonwealth. Bodin’s theory can be viewed in this light as an attempt to reconcile the potentially antagonistic forces of the civil society on the one hand and the authority of the State on the other. F. H. Hinsley suggests that these two ideas need to be acknowledged, along with their contradiction of each other, before any theory of sovereignty can be posited.<sup>63</sup> This is Bodin’s vision when he likens the body politic to the ship of Theseus, where the form stays the same while the material is in *stasis*, and it underlies his goal of reconstructing a divided France based upon “mutual harmony between the king and his obedient subjects, and a happy unforced agreement the one with the other”.<sup>64</sup> Here, then, is a sense of constitutionalism which is much deeper than a purely “absolutist” reading prepares us for, and more in keeping with Reynolds’ idea of the joining of the subjects to the king “as allies”, implying rights on both sides.<sup>65</sup> Bodin’s coupling of the body politic and supreme legal authority may be the basis of the modern State, but in order to play this role it must be stable and this means being based on a degree

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<sup>62</sup> Bodin (Knolles edition), *The Six Bookes*, p.717: “a commonwealth [is] but one body”. See also p.493.

<sup>63</sup> F. H. Hinsley, *Sovereignty* (Cambridge, 1986), 2nd ed., pp.25-26. His first Chapter revolves around this point.

<sup>64</sup> Bodin (Knolles edition), *The Six Bookes*, pp.9,205.

<sup>65</sup> Beatrice Reynolds, *Hotman and Bodin - Proponents of Limited Monarchy in Sixteenth Century France* (N.Y., 1931), pp.147-148.

of compromise on the part of each, and thus a notion of limits upon the authority of the sovereign.

In the words of Hinsley, Bodin knew that authority in a State “could only be provided if the body politic were ... integrated” and the highest authority “respected legal and moral rules”, which helps us to understand Bodin’s support of the rule of law.<sup>66</sup> There are two distinct types of limits to this highest authority, both foreshadowed in the account above. The first are abstract constitutional limits arising out of his legal understanding of the central features of sovereignty itself, and the second are concrete limits specified in the text in the course of discussing observed powers and arrangements of government. I propose to deal with these classes of limitation in that order.

The most telling restrictions of the abstract or constitutionalist variety are the rules which govern the status of sovereignty over and above other legal entities. Bodin does discuss these, although his treatment of such *leges imperii* is largely confined to I,8, in a section lasting no more than fourteen lines in the Knolles version of the text.<sup>67</sup> Bodin says:

the laws which concern the state of the realm ... are annexed and united to the crown, the prince cannot derogate from them, such as is the law Salic. And albeit that he so do, the successor may always disannul [sic.] that which hath been done unto the prejudice of the laws royal, upon which the sovereign majesty is stayed and grounded.

Although his only example is the French insistence on adherence to the Salic law in determining the succession, J. H. Burns adds two other examples, non-alienation of the royal lands and the character of offices, as distinct from commissions.<sup>68</sup> Further extension of the principle of the *leges imperii* to cover other forms of constitutional law is possible, if one does not give the passage a restrictive reading based on succession alone. On the basis of an expansive reading of the passage, which is supported by the constitutionalist overtones in the definitions (above), it is possible to see Bodin’s ruler as one who

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<sup>66</sup> F. H. Hinsley, *Sovereignty*, p.121. Bodin (Knolles edition), *The Six Bookes*, p.490.

<sup>67</sup> Bodin (Knolles edition), *The Six Bookes*, p.95.

<sup>68</sup> J. H. Burns “Sovereignty and Constitutional Law in Bodin”, *Political Studies*, VII,2 (1959), p.176.

“possesses ... power as a legitimate sovereignty only in the matrix of a system he has not established and must not subvert”.<sup>69</sup>

The idea of such a “matrix” is very important, as it returns to the notion of limits implicit in the day-to-day workings of the State which arose from his treatment of attributes, and it suggests the thesis that rules which bind the sovereign cannot be placed in laws, and must therefore be understood in terms of the architecture of the constitution. In another sense these are the procedural rules which allow us to distinguish between a genuine prince and a pretender, although this would still require an elaborate constitution supporting the Crown as an institution.<sup>70</sup> While it remains true that these conventions cannot be forced upon the prince, nevertheless if they are neglected the dissolution of the State must follow. Again we can see his belief in the State as a partnership between the *body politic* and the *Crown*, and just as resistance on the part of the people makes the partnership null and void, so too does inappropriate action by the prince. One example of such an inappropriate action would be the relinquishing of a sovereign power or autolimitation, which is ruled out in the Canonist dictum “the Pope cannot bind his own hands”. Another example is the idea that the prince may never privatise the special assets which form the royal patrimony, as in the alienation of Crown land.<sup>71</sup>

There is another form of constitutionalism in the text, although the *leges imperii* are the only constitutional laws to be found in the *Six Books*.<sup>72</sup> This is a form of constitutionalism which does not proceed via laws, and which is seen in relation to the elective monarchy of Poland. In this passage Bodin is dealing with a particular form of coronation oath, not to be confused with the more general type of coronation oath which primarily confirms the supremacy of Natural and Divine laws.<sup>73</sup> The Polish oath contains a promise to respect all forms of common or customary law, leading Bodin to remark that

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<sup>69</sup> J. H. Burns, “The Idea of Absolutism”, John Miller (ed), *Absolutism in Seventeenth-Century Europe* (Basingstoke, 1990), p.30.

<sup>70</sup> J. H. Burns “Sovereignty and Constitutional Law in Bodin”, p.177.

<sup>71</sup> Bodin (Knolles edition), *The Six Bookes*, p.663.

<sup>72</sup> J. H. Burns “Sovereignty and Constitutional Law in Bodin”, pp.174-176.

<sup>73</sup> Bodin (Knolles edition), *The Six Bookes*, pp.94-95.

perhaps the constitution of Poland is republican.<sup>74</sup> Kenneth McRae discusses this passage, and after initially describing it as “a somewhat artificial solution”, decides that it is a mistake to read the passage as an exception to the absolute nature of sovereignty. Rather, it is a question of defining the true nature of the Polish monarchy, and the solution McRae provides is that the type of State oscillates between “aristocracy” between reigns and “monarchy” during them.<sup>75</sup> This is a view in which the limits contained in the oath are only binding *de facto* upon a new prince, to the extent that such a prince is beholden in various ways to the ones who “elect” him. It is not such a limit as the coronation would suggest, and Bodin denies an obligation on the side of the prince to abide by the oath in any cases which would limit the legislative power.<sup>76</sup> Thus, aside from the period of regime change, the integrity of the legislative power overrides even the most solemn oath. On the other side of the equation however, Bodin asserts that princes are bound to their word in treaties with other States, and are also bound to honour contracts with subjects when these are of a pecuniary nature.<sup>77</sup> Julian Franklin does not find a major contradiction between these limits and absolutism, and his reason for saying this is extremely important, and connects with the final and most general of all the general limits mentioned in the text, Natural law. Franklin quotes Seneca: “The king holds everything by public power, but ownership is in the hands of individuals”. A prince who disregards the sanctity of property is acting against Natural law, and is therefore a tyrant.<sup>78</sup> Property being normally subject to law, it is normally not the right of the sovereign to exercise prerogative, but ultimately all property is held by the “public power” of the prince.<sup>79</sup> In view of this legal absolutism, the overriding consideration is that the Crown does only that which is publicly useful, and public usefulness itself can be determined without the direct representation of the Crown, as in the process of electing a Polish prince. The only things that matter are the legal and public institutions for ensuring the continuity of important things like property, weights and

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<sup>74</sup> Bodin (Knolles edition), *The Six Bookes*, p.95.

<sup>75</sup> K. D. McRae, “Bodin and the Development of Empirical Political Science”, H. H. v.Denzer (ed) *Jean Bodin: Verhandlungen ... a Munich* (Munich,1973), p.339.

<sup>76</sup> Bodin (Knolles edition), *The Six Bookes*, p.92.

<sup>77</sup> Bodin (Knolles edition), *The Six Bookes*, pp.89-94.

<sup>78</sup> Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge,1973), p.84.

<sup>79</sup> *Ibid.*

measures, coinage, and taxation, as in Barbarossa's newly acquired towns in Italy. In such matters the "consent of the community" can only limit the prince if the law of nature (or God) is also involved, but the same laws may compel a prince to hear grievances.

The ability of Natural law, and Divine law also, to overturn anything the sovereign does is unequivocally stated in Bodin's theory. But he also, and with equal force, says that the will which makes law is a form of command.<sup>80</sup> His central idea of "sovereignty" has two contradictory aspects here which it must embrace. J. H. Burns combines the two ideas when he characterises law as "not simply the command but the right or rightful command (*droict commandement*) of the sovereign", which "consists essentially in its conforming to the principles of divine and natural law".<sup>81</sup> On the other hand, Julian Franklin claims that Bodin sees natural law as a significant limit, yet not an enforceable one, owing to the inner logic of sovereignty. Franklin says that it is not legally restrictive of rulers except as "a moral obligation binding solely on the ruler's conscience", yet he also states that this idea of "right" could allow "magistrates and judges" to "impose limitations on a king", and was "a force in social life" to be taken seriously.<sup>82</sup> Franklin and Burns differ on the degree to which this limit applies, with Burns taking Bodin more seriously on Natural law.

Bodin sees these higher laws in the same way he sees laws within States, as willed productions, but in this case they reflect the will of a supreme entity, the Great God of Nature. Paul Rose illustrates this from Bodin's *Oratio* of 1559, which argued that "the natural was the key to the understanding of all things", so that while it is willed, this willing is a fiction representing the Platonic idea of the One, which means that Natural law is not law so much as knowledge, and not so much a limit on positive law as a philosophical awareness of the nature of constitutions. It is from the search for nature's secrets in the biology of institutions, Rose reminds us, that Bodin "demonstrated the inner reality of the state which lay beneath the diversity of forms of government".<sup>83</sup> Accordingly, when Bodin says the law of nature must be adhered to, yet provides no coercive mechanism for this to

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<sup>80</sup> Bodin (Knolles edition), *The Six Bookes*, p.84.

<sup>81</sup> J. H. Burns, "The Idea of Absolutism", in John Miller (ed), *Absolutism in Seventeenth Century Europe*, p.28.

<sup>82</sup> Julian Franklin *Jean Bodin and the Rise of Absolutist Theory* (Cambridge,1973) p. 79

<sup>83</sup> Paul Rose, *Bodin and the Great God of Nature: The Moral and Religious Universe of a Judaiser* (Geneva,1980), p.40.

be enforced, he is removing discussion of the State to a higher realm of “science of law”, itself “based on the true nature of law”.<sup>84</sup> Natural law does not justify legal resistance, but with such moral authority as this, it would be able to justify much illegal resistance. In other words, the term “laws of God and Nature” means more than it would have to a medieval Canonist, because it embraces all thought about law, including political, mathematical, scientific and metaphysical notions, all of them in turn partaking of the single cosmic truth. This is the reverse side of the view of the State as a base bureaucracy entrusted with only the mundane tasks of policy implementation and service maintenance. Such knowledge does not so much overrule the legislative power as describe the conditions in which it exists and is used, the knowledge of which depends not on Church-approved authorities and Scripture, but on secular Classical writings backed up by observation and scientific investigation.

This brings us back to the idea that Bodin’s Natural law encompasses “right”, giving positive law some moral purpose beyond expediency and demarcating areas where it cannot go. Natural law is used in this sense in a number of important passages in the text. At the end of I,8 Bodin says:

For if justice be the end of the law, and the law is the work of the prince, and the prince is the living image of almighty God; it must follow, that the law of the prince should be framed unto the model of the law of God”.<sup>85</sup>

It is the desire for a just State which redeems lawmaking and allows the legislator to imitate God. This is a mixture of constitutionalism and prophecy. The same evangelistic tone is present when Bodin argues that all rulers are bound to retain laws which are in the interests of the body politic.<sup>86</sup> On the other hand he uses Natural law to buttress his theory of non-resistance, such that:

it is not only a law of nature, but also often times repeated amongst the laws of God, that we should be obedient unto the laws and ordinances of such princes as it has

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<sup>84</sup> Paul Rose, *Bodin and the Great God of Nature*, p.41.

<sup>85</sup> Bodin (Knolles edition), *The Six Bookes*, p.113.

<sup>86</sup> Bodin (Knolles edition), *The Six Bookes*, pp.93,112.

pleased God to set to rule and reign over us”.<sup>87</sup>

Ralph Giesey understands the Natural law framework of Bodin’s legal absolutism as much more than a purely ethical set of guidelines:

From judge to legislator denotes the shift from passive to active rulership, from a static to a dynamic state. ... The king is a creator, imitating God, not simply God’s instrument ... The dilemma of Bodin, then, is to want to preserve an eternal and natural order guaranteed by natural law, so that the sovereign’s domain is small in measure as natural law’s is great, but at the same time to empower earthly sovereigns to act creatively on earth as does God in the macrocosm.<sup>88</sup>

Bodin is like Machiavelli in respect of “active rulership”, which, in renaissance fashion, regards the State as a work of art, or more appropriately, architecture. But renaissance political thought is unlike Classical Greek thought, in which the State (*polis*) has an inflexible constitution, often made by a single lawgiver such as Solon or Lycurgus. The renaissance view differs; the renaissance world view was a juxtaposition of Classical ideas and ideas derived from Biblical, Patristic and Scholastic writers for whom divinely ordained order has replaced the chaotic Classical view. Active, creative rulership along Classical lines thus has to coexist with a persisting belief in providence and original sin, although it can be argued that Machiavelli is atypical in this respect. The creative view of politics recalls the words of R. G. Collingwood, who says, on the uniqueness of the renaissance, that:

with the Renaissance a return was made to a humanistic view ... based on that of the ancients. ... Historical thought once more placed man in the centre of its picture....[But man] was not man as depicted by ancient philosophy, controlling his actions and creating his destiny by the work of his intellect, but man as depicted by Christian thought, a creature of passion and impulse.<sup>89</sup>

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<sup>87</sup> *Ibid.*, p.106.

<sup>88</sup> Ralph E Giesey, “Medieval Jurisprudence in Bodin’s Concept of Sovereignty”, H. H. v.Denzer (ed), *Jean Bodin*, pp.183-186.

<sup>89</sup> R. G. Collingwood, *The Idea of History* (Oxford,1946), p.57.

Because Natural law encompasses all general statements about law and politics, Bodin can thereby look down, from a sort of Parnassus of theory, upon princes, even though princes are, within their own sphere, like gods. The humanist is at the fore in this attitude, especially given the humanist philosophy of the well read professional ruler, yet Christian traditions can also be detected in Bodin's strong commitment to order.

Turning from Bodin's general outlook, with its Aristotelian realism and belief in *maxims* of nature, there are a number of specific limits on absolute power, including several mentioned in I,10 in his general discussion of attributes. The most interesting of these spelled out limits is the restriction on taxation which flows from the primacy of the family and corresponding property rights which are very strong. This becomes clearer where he deals with direct versus indirect taxation. Taxes "upon the subject" are taxes:

the which they must never use, unless all the rest fail and that necessity force them that have a care of the commonwealth, being suddenly oppressed by an enemy, or by some other unforeseen accident ... and those charges ... are religious and Godly, without which the state were quite ruined.<sup>90</sup>

The importance of such forms of taxation in sixteenth century France cannot have been lost on such a keen political observer as Bodin, and this counter-intuitive passage is highly problematic.<sup>91</sup> It implies that direct taxation infringes individual property rights unless it is done from a necessity dire enough to make it an issue of national survival, thus rendering it "religious and Godly". Becoming "religious and Godly", it seems, allows the measure to overcome constitutionalist limitations, although it implies that being "religious" and being constitutional are the same thing. Bodin relaxes a little, though, and two pages later he cites Philippe Commines, saying that "no prince has power to lay any imposition upon his subjects, nor to prescribe that right, without their consent".<sup>92</sup> In other words, direct taxation is not ruled out, and may be subject to consent which is no more than tacit. On the other hand, his actions as a Deputy of the Estates at Blois in 1576, where he insisted on a meeting of demands before assenting to pass a subsidy, suggest that he only favoured

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<sup>90</sup> *Ibid.*, p.663.

<sup>91</sup> Martin Wolfe, "Jean Bodin on Taxes", *Political Science Quarterly*, LXXXIII,2 (1968), p.273.

<sup>92</sup> Jean Bodin (Knolles edition), *The Six Bookes*, p.665.

explicit consent.<sup>93</sup> It is suggestive that this is much more in keeping with English parliamentary traditions than French, and future research could well reveal that Bodin was more influenced by English political thought and practice than has been realised. Bodin places no specific restrictions on indirect taxation, although he does explain which sort of indirect taxes or *gabelles* are best. These are the sort which encourage the export of manufactured goods and discourage imports.<sup>94</sup>

Bodin's defence of absolute property rights in I,8 has been traced by Ralph Giesey to the medieval glosses of the civilians, notably Felinus.<sup>95</sup> At the beginning of his section on coronation oaths in I,8 Bodin argues that most oaths are only binding in respect of property rights, reinforcing the idea of private property that comes from Roman law.<sup>96</sup> His passion for these Roman property rights explains why Bodin also uses the concept of "natural and divine law" to guarantee the absolute right of private property.<sup>97</sup> Bodin is internally consistent on these rights. For example, towards the end of I,10 he disputes the right of the Crown to tax the local salt industry on the grounds of private property, but allows excise on imported salt.<sup>98</sup> This is not to say that all property is beyond the reach of the prince, for Bodin agrees that property may be lawfully seized in such cases as high treason, heresy and coining.<sup>99</sup>

Looking at the question of appointments, the difficulty for Bodin is that these are restricted to major offices, the incumbents of which select minor office holders, and Bodin is unable to identify the means of distinguishing between the two categories.<sup>100</sup> Later in the text (III,2) he discusses offices and commissions of a specific nature, and here he

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<sup>93</sup> McRae in Bodin (Knolles edition), *The Six Bookes*, p.A9. Skinner, *The Foundations of Modern Political Thought*, II, pp.296-297.

<sup>94</sup> Jean Bodin (Knolles edition), *The Six Bookes*, p.663.

<sup>95</sup> Ralph E Giesey, "Medieval Jurisprudence in Bodin's Concept of Sovereignty", p.174.

<sup>96</sup> Bodin (Knolles edition), *The Six Bookes*, p.89.

<sup>97</sup> Bodin (Knolles edition), *The Six Bookes*, pp.107-109.

<sup>98</sup> Bodin (Knolles edition), *The Six Bookes*, p.179.

<sup>99</sup> Bodin (Knolles edition), *The Six Bookes*, p.180.

<sup>100</sup> Bodin (Knolles edition), *The Six Bookes*, p.166.

develops the distinction between the two types. Office is established and ruled by “edicts” and the “magistrate” in question has tenure. Commissioners are generated from the absolute power of the sovereign, often to examine matters of State, and are of limited duration and terms of reference, with no appeal (except maybe to the prince directly).<sup>101</sup> In the case of officers, their job is merely to apply the law, but their tenure limits the power of the Crown to step outside the rule of law. For Commissioners on the other hand, the limitation is that they can only do what is in the Commission, and to some extent this is limited to areas of national interest. Broadly speaking, appointments involve two limits, the first being the generally legalistic role of the State, and the second being the public good, which justifies both law and more direct forms of State action.

The final specific limit is related to the power of final appeal directly, and to all of the powers indirectly, and this is the principle of non-autolimitation. Here Bodin presents the paradox that a prince may be forced to hear appeals because of the logic that “marks of sovereignty” cannot be alienated. Thus, the King of England (Edward III) was summoned to appear before the Parlement of Paris in 1370, and stripped of the Aquitaine on the charge that he had failed to hear appeals.<sup>102</sup> Similarly, the right to pardon can only be, and must be, exercised by the sovereign. He bemoans the existence of a tradition of pardoning by the religious authorities at Rouen and opposes Good Friday pardoning, the major reason being that these are not based on equity considerations but on religion.<sup>103</sup> On the very last page of I,10 Bodin reiterates that the “marks” are utterly inalienable. This is a restriction in one sense, and a caveat against restriction (by autolimitation) in another sense.<sup>104</sup> Despite the mention in I,10 of certain specific limits to sovereignty, the theme of the Chapter is the exclusiveness of these powers, and this underscores their uniqueness for him, and the uniqueness of sovereignty. Limits are secondary.

In conclusion, Bodin is definitely a constitutionalist, but he is a constitutionalist in the same sense that Aristotle is one. States are utterly autonomous, like biological beings,

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<sup>101</sup> Richard Bonney, “Bodin and the Development of the French Monarchy”, *Transactions of the Royal Historical Society* (XL,1990), pp.46-49.

<sup>102</sup> Bodin (Knolles edition), *The Six Bookes*, p.170.

<sup>103</sup> Bodin (Knolles edition), *The Six Bookes*, pp.173-175.

<sup>104</sup> Bodin (Knolles edition), *The Six Bookes*, p.182.

and contain a life force that energises them, protects their constituent parts from harm, and must be recognised and allowed to guide them as their laws grow. He goes further than Aristotle in his absolutist insistence on law as command, yet he makes up for this in his passion for a type of Natural law which is also absolute. A creative lawmaking power is the definitive characteristic of the modern State, but it is only legally absolute, and it exists for mundane purposes. This emphasis on positive aspects of sovereignty is at variance with Professor Franklin's view that divided power is the essence of constitutionalism, and that Bodin's firm rejection of resistance theory is an implicit rejection of all checks on government.<sup>105</sup> It suggests that Skinner's focus on Bodin's rejection of the view common in the 1560s that limits must be legal in nature, while true, underestimates the potential for constitutionalism within the theory of sovereignty.<sup>106</sup> Writers like Franklin and Skinner, who have reacted to his rejection of the ideology of lawful resistance as if he also rejected constitutionalism, may have thrown out the baby with the bathwater.

### The English Translation of 1606.

Space prevents more than the most cursory glance at the magnificent English translation of Bodin's *Six Books* by Richard Knolles, published in 1606.<sup>107</sup> The Knolles edition was still in use in the late 1640s, and chunks of it were reproduced by Robert Filmer in 1648, using a variant title page claiming that Bodin had been a Huguenot.<sup>108</sup> According to Louis B. Wright, Knolles was "fairly common in colonial libraries", and a copy survives from the library of Elder William Brewster, an early Plymouth settler.<sup>109</sup> Even today this is the only complete and unabridged English version of Bodin's classic, and it is regarded as an excellent translation. From the study of Kenneth McRae we know that Knolles used both the French

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<sup>105</sup> Julian Franklin (ed.), *Jean Bodin - On Sovereignty*, Introduction, pp.xxiii ff.

<sup>106</sup> Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols, II, pp.298-301.

<sup>107</sup> For the life of Knolles, see D. N. B. and Douglas McRae's Introduction to Bodin (Knolles edition), *The Six Bookes*, at A52 et ff.

<sup>108</sup> Constance Smith, "Filmer, and the Knolles Translation of Bodin", *Philosophical Quarterly*, XIII (1963), pp. 248-252.

<sup>109</sup> Louis Wright, *The Cultural Life of the American Colonies* (N.Y.,1957), p.134.

and Latin texts throughout, and where “the two originals differed, Knolles attempted to strike a judicious balance between them.”<sup>110</sup> As far as I have been able to ascertain, unlike Smith’s *De Republica Anglorum* (see below - Cap. 2), Bodin’s *Six Books* was not circulating in English manuscripts in the period prior to 1606.<sup>111</sup> The translation was not reprinted after 1606, and certainly did not achieve the prodigious circulation of La Primaudaye’s *French Academy* (see below - Cap. 3), but it was reissued in the same year with a slightly different title: *Of the Laws and Customs of a Commonwealth*, also printed by Adam Islip for George Bishop, the legal stationer.<sup>112</sup> The wide circulation of Knolles is attested to by the very large number of locations recorded in Pollard & Redgraves’ (Revised) *Short Title Catalogue* (*S.T.C.*), although the exact number printed is likely to remain a mystery.

Although the bare outline of the life of Richard Knolles is available in *D.N.B.*, a much fuller account is to be found in Kenneth McRae’s painstaking preface to the 1962 Harvard facsimile edition.<sup>113</sup> Knolles’ association with Lincoln College, Oxford, a notorious haunt of recusants, raises the question of possible Catholic tendencies, although his subsequent career as schoolmaster at Sandwich suggests that he was an orthodox Anglican.<sup>114</sup> What is more, Sandwich became a centre for Dutch emigrants and refugees at this time, which would have introduced a strong element of Calvinism into local religious life.<sup>115</sup> His most famous work is his *General History of the Turks*, and as well as Bodin, he translated Camden’s *Britannia*, and the controversial Spanish peace treaty of 1604.<sup>116</sup> The available evidence suggests the translation of Bodin was done over three years, from 1603 to 1605, and as it was published by

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110 Bodin (Knolles edition), *The Six Bookes*, p. A38. Although the Italian and Spanish translations rely solely on the French, the German one also utilises both originals.

111 For Smith see Mary Dewar, *Sir Thomas Smith* (London, 1964), p. 113. But see also Gabriel Harvey’s comments, Cap.III (above).

112 See the revised edition of Pollard and Redgrave’s *Short Title Catalogue*, I. 138. *S.T.C.* numbers are 3193 and 3193.5 respectively. A note at 3193.5 links a copy of the Paris 1580 edition to Oxford Aristotelian, John Case.

113 Bodin (Knolles edition), *The Six Bookes*, A52-A62.

114 Bodin (Knolles edition), *The Six Bookes*, pp. A56-A57.

115 *Ibid.*, A57

116 *Ibid.*, A58. For a very interesting view of the place of Turkish histories in European protestant polemics, see John M. Headley, “*Ehe Türkisch als Bächtisch*: Lutheran reflection on the Problem of Empire, 1623-28”, *Central European History*, XX, 1 (1987), pp. 19-25.

the same partnership that had published the *History*,<sup>117</sup> it is tempting to speculate that they put him to it, knowing the favour with which the incoming king viewed the Frenchman's works. McRae makes it clear, however, that the Politique tenet of religious toleration which was so strong in Bodin, was keenly advocated by Knolles, and so the choice may well have been his own, although it could not have prospered as it did without the full blessing of his patron, Peter Manwood.<sup>118</sup> Nor should we be surprised that the *Six Books* had to wait so long for an English translator, considering both the great bulk of the text, and the backlog of Classics being rendered into English in the 1580s and 1590s, which must have soaked up a great deal of the available talent: Holland's Livy, North's Plutarch, Chapman's Homer and Golding's Ovid, to name but four. The timing of the translation and the fact that it was done with the encouragement of a powerful patron, it might be argued, could also reflect a desire in some quarters to curry favour with the new King, by supporting James I's idea of "royal" sovereignty. Further research into the circumstances of the Knolles translation is therefore of more than antiquarian interest.

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<sup>117</sup> Bodin (Knolles edition), *The Six Bookes*, A59.

<sup>118</sup> *Ibid.*, A61. The interest in Bodin may also owe something to the presence of so many Dutch immigrants in the area: Bodin did play a role in Dutch history as part of the Leicester-Alencon expedition in 1581-82.