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CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

论主权

On Sovereignty

Bodin

博丹

Edited by

JULIAN H.

FRANKLIN

中国政法大学出版社

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JEAN BODIN

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On Sovereignty
Four chapters from
The Six Books of the
Commonwealth

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JEAN BODIN
On Sovereignty

剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

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CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

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To the memory of my mother, Molly Franklin

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Introduction

An outline of Bodin's career

Jean Bodin (1529/30–1596) was born at Angers into a modestly successful middle-class family. He entered the Carmelite order in 1545 and seemed destined for a career in the Church. But in 1548–49 he obtained release from his vows, apparently on the grounds that he had been too young at the time he professed them. For some time, indeed, he seems to have been moving in other directions. Having gone in 1547 to the Carmelite house in Paris, he managed to pursue studies at the royal Collège de quatre langues, and by the time he left Paris, around 1550, he had acquired a truly formidable humanist education. He was to become one of the foremost polyhistorians of his period. By this time he had also become engaged in a private search for religious truth which was to put him under suspicion of heresy at many points in his career. He was probably charged with heresy in 1547, and may have escaped punishment only by recanting. But the evidence for a public conversion to Calvinism in the early 1550s is indecisive and is generally discounted.

Throughout the 1550s, Bodin was a student of law at the University of Toulouse where he also served as a teaching assistant. In the later Renaissance, and in France more than any other place in Europe, academic jurisprudence had become closely linked to humanist erudition, and Bodin was strongly attracted to it. But by the end of the decade in Toulouse, his hopes for an academic career were disappointed. He was unable to obtain a professorship, and was unsuccessful also in his attempt to promote a new humanist college for the youth of the city. Around 1561, accordingly, he returned to

Paris as a barrister in Parlement. But Bodin's public career was always subordinate to an encyclopedic program of research and writing, projected in his early years. His *Methodus ad facilem historiarum cognitionem*, a guide to the study of universal history, appeared in 1566. In 1568 he published *La response à M. Malestroit*, which attributed the price revolution of the period to the influx of bullion from America. Despite anticipations by Copernicus, it was the first elaboration of the quantity theory of money from the standpoint of political economy. As a result of such writings, as well as his broad erudition and a gift for conversation, Bodin became something of a public figure.

By the end of the 1560s, he had come to the attention of high personages at the royal court. Around 1570, he was entrusted by the king, Charles IX, with a number of administrative and political missions; his company was sought by Henry III who became king in 1574; and in 1571 he entered the service of Francis, duke of Alençon, the youngest of the princes of the blood, and next in line to the throne after Henry III, who could not have children. As counsellor and master of requests to Alençon, Bodin not only had excellent long-term prospects, but also became directly involved in much of the intrigue and diplomacy of the time. But the high point of his prospects came with the publication in 1576 of his *Six livres de la république*.^{*} This was a systematic exposition of French and universal public law, unprecedented in its scope and depth, which developed an absolutist theory of royal sovereignty while still accommodating a great many traditional restraints on the practice of governance. Coming at a dark period in the French religious wars, this account was welcomed in enlightened sections of the French political elite, and the *République* won almost instantaneous acclaim. In 1576, Bodin also contracted an advantageous marriage. His future thus appeared assured.

There now occurred, however, an unfortunate confrontation with the government. In 1576, Bodin was chosen as a deputy for the Third Estate of Vermandois to the Estates-General of Blois. As all kings did at all Estates, Henry III urgently requested new taxation, and sought to make it popular by promising to use the revenues to enforce religious uniformity. Bodin, as an enlightened royalist, was opposed to civil war and saw only a calamitous new burden for an already over-taxed Third Estate. By dogged and courageous opposition, he turned

^{*}The accent on 'république' will be supplied in all cases in accordance with modern usage.

the Third against the king's proposals, and also prevailed against various stratagems of the government designed to override the Third Estate's refusal. This stance, as we shall see, was not inconsistent with recognition, as Bodin understood it, of the king's absolute authority. But it cost him the favor of the court and the high office of royal master of requests to which he had expected an appointment.

In 1577, Bodin published an account of the Estates of Blois and also an answer to early critics of his *République*. In 1580, he published his distressing and all too influential book on demonology, *De la démonomanie des sorciers*, in which he described at great length the passion of witches for evil forces and the way by which they should be detected and punished. In 1581, he was sent to England to help advance the duke of Alençon's continuing matrimonial suit with Elizabeth I; a year later he accompanied the duke to Antwerp, where the latter made yet another unsuccessful attempt to get a crown. But with the death of the duke in 1584, Bodin's involvement in high politics was over. He had already left Paris for Laon, the seat of his wife's family. There he succeeded to the post of king's attorney on the death of his brother-in-law in 1587. Bodin remained at Laon in that capacity until his death in 1596.

This was not a happy time for Bodin. After the assassination of Henry III in 1589, a new phase of civil war broke out over succession to the throne. The then Protestant Henry of Navarre (King Henry IV), whose claim to the throne was the stronger under French law, was opposed by Cardinal Charles of Bourbon, who was recognized as King Charles X by the Catholic party. Bodin at Laon was now in a difficult position. The town came under the control of the revolutionary Catholic League which dominated its political life until Laon was taken by Henry in 1594. The League negated all the principles of legitimacy, non-resistance, and toleration with which Bodin had been associated. But like many other royalist magistrates of the time, Bodin collaborated. He was presumably driven by fear of losing his office and his property, and perhaps his life as well, since once again he was under suspicion of heresy. Only in 1594 did he come forward for Henry of Navarre.

Although dreary politically, these last years at Laon were highly productive intellectually. During this period, Bodin published two relatively short pieces on ethics. His massive system of natural philosophy, the *Universae naturae theatrum*, appeared posthumously in

1596, the year of Bodin's death. But the most remarkable achievement of this period was his extraordinary work on religion, the manuscript of which was completed in 1593. The *Colloquium heptaplomeres* is a series of conversations among a proponent of natural religion, a philosophical skeptic, a Jew, a Muslim, a Catholic, a Lutheran, and a Zwinglian on the nature of the true religion, in which all of the historical religions are portrayed as deviations from an original natural religion that is still knowable by speculative reason. For obvious reasons, the book could not be published in Bodin's lifetime, and the first complete edition came only in 1857. Throughout the seventeenth and eighteenth centuries, however, manuscript copies of the *Colloquium heptaplomeres* circulated among the European philosophical elite.

Bodin, as we have indicated, was a religious maverick who may have gone through several phases before reaching his mature position. Given various things he said (and failed to say) on religious subjects, Bodin was very early taken as a Judaizer. And that is now a well-established scholarly opinion. The treatment of the spokesman for Judaism in the *Colloquium heptaplomeres*, the character of his ethical reflections, an episode reported in *La démonomanie des sorciers* – as well as certain indications that go back even earlier – all point to a kind of Judaizing neo-Platonism as Bodin's personal and private religion. Outwardly, however, he remained a Catholic, and on his death, in accordance with his will, he was buried as a Catholic.

Bodin's theory of sovereignty

The four chapters rendered here from Jean Bodin's *Six livres de la république* constitute a relatively small portion of a massive treatise on public law and policy. But it is in these chapters above all that Bodin worked out his analysis of sovereignty which informed his thinking on the state and made the *République* a celebrated work. Bodin's account of sovereignty was a major event in the development of European political thought. His precise definition of supreme authority, his determination of its scope, and his analysis of the functions that it logically entailed, helped turn public law into a scientific discipline. And his elaboration of the implications of sovereignty through a systematic study of comparative public law helped launch a whole new

literary genre, which in the seventeenth century was taken up not only in France and Spain, but in Germany as well.

Bodin's account of sovereignty, however, was also the source of confusion that helped prepare the way for the theory of royal absolutism, for he was primarily responsible for introducing the seductive but erroneous notion that sovereignty is indivisible. It is true, of course, that every legal system, by its very definition as an authoritative method of resolving conflicts, must rest upon some ultimate legal norm or rule of recognition which is the guarantee of coherence. But when Bodin spoke about the unity of sovereignty, the power he had in mind was not the constituent authority of the general community or the ultimate coordinating rule that the community had come to recognize, but the power, rather, of the ordinary agencies of government. He advanced, in other words, a theory of ruler sovereignty. His celebrated principle that sovereignty is indivisible thus meant that the high powers of government could not be shared by separate agents or distributed among them, but all had instead to be entirely concentrated in a single individual or group.

This thesis was controversial even as applied to the more consolidated kingships of France, Spain, and England, and it was hopelessly at odds with the constitution of the German Empire and other monarchies of central Europe and Scandinavia. Yet so seductive was the idea of indivisibility that it remained a celebrated issue among academic jurists for at least a half-century after Bodin wrote.¹

The idea that concentration of power in the ruler is an essential condition of the state as such might seem at first sight to be deliberately absolutist, and Bodin, when he published the final version of his political doctrine in 1576, indeed argued that the king of France had all the power that a government could legitimately exercise, and that apparent restraints on royal power were not constitutional requirements, but mere recommendations of prudence and good government. Yet the earlier history of Bodin's thought suggests a somewhat different starting point. In his *Methodus ad facilem historiarum cognitionem* (1566), Bodin was not an absolutist, or was at least evasive on that subject, and his interest in the theory of sovereignty was clearly technical and quasi-academic.²

In the earliest phase of his professional career as an aspiring teacher at the law school of Toulouse, Bodin had apparently undertaken to identify those powers of a sovereign that could not also be

held as a right of office by ordinary magistrates.³ To say that a magistrate "held" or "had" a power by his right of office had been taken, by most medieval jurists, to mean that he could exercise that power according to his own discretion and without direct reliance on the king, so long as he remained within whatever legal limits might apply. Not all powers were, or needed to be, held this way, of course. The public officer might be acting solely on delegated power subject to immediate control. But by medieval notions, such an officer was little better than a servant. High officers of state, who exercised some degree of *merum*, or "pure" *imperium*, held their *imperium* by right. And since the *merum imperium* could include very high powers of the state, this conception of the right of office was naturally associated with a decentralized administration.⁴

With the growing consolidation of power in the French and other Renaissance monarchies, this view of office was increasingly attacked, most strenuously of all by Andrea Alciato, the great Italian legal humanist of the early sixteenth century. He held that the possession of *merum imperium* by right of office was a corruption of Roman civil law, and that every power in the state, other than (abusive) feudal grants, was merely a right of exercise derived by delegation from the prince.⁵ This opinion was obviously favorable to royal power; and given Bodin's constant preference for strong monarchical authority, one might have expected him to welcome Alciato's view.

But Bodin was also an erudite and cautious legal craftsman who attempted, throughout his career, to reconcile the new idea of royal dominance with the French juridical tradition of which he was a great admirer and connoisseur. Against Alciato, accordingly, Bodin held that by the customary rule of public law in France, high magistrates could hold the *merum imperium* by right of office at least to the extent of imposing capital punishment. But against the medieval exponents of this view, he did not include those prerogatives that could make the magistrate a partner or rival of his prince. These could not be "held," but could be exercised by delegation only.⁶

Unlike Alciato and his followers, Bodin divided the *merum imperium* into a (minor) part that could be held by magistrates, and a (major) part held only by the prince.⁷ By this conservative route he was led, ironically, to a new and theoretically momentous question as to the character of sovereignty. He now sought to determine those powers that could not be held by magistrates, but only exercised, if the

prince was to be accounted sovereign. Although this topic had sometimes been touched upon by other jurists of the time, Bodin was to treat the question in a more fundamental and systematic way than anyone before him. He now proceeded to derive the necessary prerogatives, or "marks," of sovereignty from the concept of supremacy itself. The question that he asked, in other words, was what prerogatives a political authority must hold exclusively if it is not to acknowledge a superior or equal in its territory.

Bodin's first reflections on this question almost surely date back to his early career as an academic jurist at the University of Toulouse (which he left in 1559 after failing to secure a permanent appointment). But the scope and depth of his investigation was decisively shaped by a far-reaching methodological commitment that carried him well beyond the conventional approach to legal studies. Sometime around the end of his period in Toulouse, Bodin concluded that issues of legal theory could not be settled in the traditional fashion of the medieval civil lawyers by appeal to Roman norms alone. The use of high philological technique in the study of the Roman law by the great French school of legal humanism had prepared the way for a methodological revolution in which Bodin became a leading figure. The humanists, rejecting the medieval style of scholastic exegesis, had attempted to get back to the original meaning of the Roman texts, and to recover the underlying system of the *Corpus Juris*. But the further they went, the more critical they became of Roman law itself. The *Corpus Juris*, to list their main complaints, seemed incomplete in many areas, and most especially in public law; Justinian had often been cryptic and inaccurate in representing the best of Roman legal thought; many rules, some of which seemed basic to the system, were peculiar to the Roman state and obsolete for France; the *Corpus Juris* had not been arranged as a logically coherent system, and could not be reduced to one because of its defects and omissions. The intellectual authority of Roman law was thereby shaken, and this had a number of important repercussions.⁸

One of these was a new appreciation of domestic legal custom.⁹ But an additional motif, especially strong in Bodin, was the idea of remedying deficiencies in the system of Roman law by consulting the materials of universal history.¹⁰ This, in large part, was the theme of his *Methodus ad facilem historiarum cognitionem* (1566). The only way, says Bodin in the preface, to construct a truly universal legal science is

to compare "all the laws of all, or the most famous, states and to select the best variety." A few years earlier, perhaps while he was still at Toulouse, he had produced a grandiose design for this comparison with his *Juris universi distributio*, or *Subdivisions of Law in its Entirety*; and the *Methodus*, or *Method for the Easy Comprehension of History*, presented a preliminary statement of his findings for the area of public law in its very lengthy chapter 6.

In this fashion, an enterprise that very likely started as an inquiry into the specific prerogatives of the ancient Roman emperors and the kings of France was transformed into a study of sovereignty in every kind of state. In Bodin's design, the basis for comparing states, and explaining their schemes of public law, was to determine and describe the locus of sovereignty in each. It thus required him to work out common principles of sovereignty that would apply to democracies and aristocracies as well as monarchies, and to variants of each of these in different times and places.

One consequence of this was a comprehensive and general definition of the rights of sovereignty. The *Corpus Juris* offered virtually nothing on the theory of public powers since it was primarily a scheme of private law. And the lists of regalian powers taken from feudal law were mere catalogues of particular privileges. In Bodin's *Methodus*, however, the essential rights are distinguished and reduced to five:

And so having compared the arguments of Aristotle, Polybius, Dionysius [of Halicarnassus], and the jurists – with each other and with the universal history of commonwealths – I find that supremacy in a commonwealth consists of five parts. The first and most important is appointing magistrates and assigning each one's duties; another is ordaining and repealing laws; a third is declaring and terminating war; a fourth is the right of hearing appeals from all magistrates in last resort; and the last is the power of life and death where the law itself has made no provision for flexibility or clemency.¹¹

This classification is not quite as modern as it seems. It becomes clear in the *République* that Bodin thinks of the legislative power (which he now puts first among the rights of sovereignty) as a very general power to command, so that it implicitly includes all others. It comprises not only the ordinary power to make law, but also what in modern usage would be called the constituent power, or right to change the constitution. The abeyance of this distinction, as we shall

see, is costly. Yet Bodin makes a very important, and even decisive, step towards an adequate typology of public powers.

A second consequence of Bodin's comparative enterprise was his celebrated claim that sovereignty is indivisible, which he seems to have come to only at this point. In seeking to determine the form of state for ancient Rome and certain other classical republics traditionally reputed to be mixed, Bodin was finally led to ask, in strictly juridical terms, where the locus of sovereignty was to be found in a mixed constitution – in a constitution, that is, wherein the sovereign was said to be compounded of monarchy, aristocracy, and democracy, or any two of these.

Thus put, the question was completely new, since Polybius, and other exponents of the mixed constitution, thought of it more as a balance of effective influence than as a legal formula for partnership in sovereignty. Bodin's answer was that, beyond monarchy, aristocracy, and democracy – three simple forms of state – “no fourth had existed, or could even be imagined.”¹² The difficulty with a mixed constitution, in other words, was not merely prudential or political. As Bodin saw it, the unity of a legal system seemed logically to require the unification of power in a single ruler or single ruling group.

This opinion is, of course, mistaken. Apart from federal decentralization, which I leave aside for the purpose of this Introduction,* a constitution can be mixed either by sharing, or by distribution. Where sovereignty is shared, the outcome is a compound polyarchy, the members of which, each retaining its identity within the whole, are the king, the senate, and the people, or any two of these, who may participate with different weights in any given governmental function. The idea of such a compound is not always easy to imagine.† The President of the United States, for example, is, by

* Bodin considers confederacies in Book I, chapter 7, and, as might be expected, denies that they constitute unified political systems.

† But it was clearly understood by Christoph Besold, one of the earliest and most incisive critics of the thesis of indivisibility. Answering Daniel Otto, a German follower of Bodin, he writes: “It is never possible, he [Otto] says, either in nature or even in imagination, for supreme authority, or majesty, to be shared with an inferior and still remain supreme. It remains supreme, I answer, but not in one individual. It is rather in the whole body, or corporation, of those who rule (*archonten*), but in such a way that it is not distributed equally among the parts. The prince will be conceded some large degree of eminence (which will be larger, of course, than what the Doge has in the Venetian commonwealth) or else it will be an aristocracy” (1626, p. 212). For debates on indivisibility in this period, see Franklin, “Sovereignty and the Mixed Constitution.”