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JEAN BODIN (1529 – 1596)

Jean Bodin was a French sixteenth century jurist, philosopher, and scholar known primarily for his influential account of sovereignty, which he defined as the "absolute and perpetual power of a commonwealth." In addition, he was recognized for his contributions to the philosophy of history, political economy, and religion. He was one of the most influential legal philosophers of the Renaissance and his theories were heatedly debated both by his contemporaries and by succeeding generations of philosophers.

Life of Bodin

Bodin was born in 1529 in Angers, in the northern French duchy of Anjou. Little is known of his family or of his early life, except that his father was a modestly successful burgher, probably a tailor; rumors of his mother being a Jewish refugee from Spain are now generally dismissed. In 1545, he entered the Carmelite order and was sent to Paris, where he received a formidable humanistic education at the Collège de Quatre Langues (later to become the Collège de France). Four years later, however, he obtained a release from his vows and went to Toulouse to study civil law. He returned to Paris around 1561 intending to practice at the bar, but was by all accounts not very successful, and turned instead to legal, historical and philosophical scholarship, which led in his first major work, the *Methodus ad facilem historiarum cognitionem* (*Method for the Easy Comprehension of History*). Two years later he would publish the *Réponse aux paradoxes de M. de Malestroit* (Response to the paradoxes of M. de Malestroit), an important contribution to political economy.

In the meantime Bodin had caught the attention of the French court, and had left his career as a barrister to enter the public service as a king's advocate. Over the next decade he undertook numerous missions on the crown's behalf, and in 1571 became counselor to François, duke of Alençon and younger brother of king Charles IX. He would for much of his life continue to hold various governmental posts and remain involved in public affairs. In 1576, Bodin produced his most important work, the *Six Livres de la République* (*Six Books on the Commonwealth*), which was well received and won instant acclaim for its author. It would be the cornerstone of his fame for centuries to come.

That same year, however, would see his fortune wane. King Henry III, brother and successor of Charles IX, had convened the Estates General at Blois and Bodin was appointed representative of the Third Estate for Vermandois. The king urged the estates to agree to new taxes in order to redouble his efforts to impose religious uniformity by pressing against the Protestant resistance. Bodin led a successful opposition to the king's proposals. He was distraught at the prospect of continuing a ruinous civil war, both because of a pragmatic commitment to religious tolerance, and because he thought the Third Estate was already taxed beyond its means. Later

during the Estates, when the frustrated king attempted to raise revenue through the alienation of the royal domain, Bodin again protested, on the premise that the royal domain was not the king's to alienate but was given to him by the people for his use and enjoyment only. Because of his success in opposition to Henry's designs, Bodin was denied further advancement in the king's court.

Bodin eventually settled in Laon, where he served as a *procureur du roi* (royal prosecutor) from 1587 until his death. During this time, which saw the final phase of the French Wars of Religion, Bodin was at times torn between collaboration with the Catholic League—who opposed the accession of Henry of Navarre to the throne on the grounds that he was a Protestant—and the royal party. His sympathies, by all accounts, lay with Henry, but he had come under suspicion of heresy and was pressed to pledge the Catholic cause. Only when Henry captured Laon in 1594 was Bodin free to declare his true allegiance. Throughout this period he wrote extensively on religion and ethics, and produced the *Colloquium heptalomeris de rerum sublimium arcane subditis* (*Colloquium of the Seven about the Secrets of the Sublime*) which, although completed in 1593, was so controversial that it could only be published posthumously. Near the end of his life, he may have converted to Judaism, and certainly harbored Judaizing tendencies. Nonetheless, when he died in 1596, he was buried as a Catholic.

Bodin's Work

Bodin's reputation rests mainly on his contributions to the legal theory of sovereignty, but nearly as important to the development of political and legal theory were his innovations on the method of jurisprudence. He is credited as one of the precursors of comparative law and of empirical political science.

Innovations in the Method of Jurisprudence

Bodin's exposition of the legal attributes necessary for the independent and effective exercise of power by the sovereign proceeded from a critical analysis of the laws of historical and contemporary states, which he took to be manifestations of universal historical principles. This critical turn contrasted sharply with what had been the dominant attitude of jurists since the *Corpus Juris Civilis*—a compilation of laws, edicts, and commentary from the later Roman Empire—was rediscovered in the twelfth century. For four hundred years before Bodin, the work of jurists had been mostly exegetical, since the *Corpus Juris* was assumed to be internally coherent and, despite its age, perfectly applicable to medieval societies. But in the sixteenth century, the authority and coherence of Roman law began to come under attack by humanist scholars informed by the methods of classical philology and by a renewed faith in universal reason.

Bodin stood at the cusp of this critical turn in jurisprudence. He cited Roman sources extensively, but not with the unreflective deference shown by previous generations of jurists; rather, as an example (albeit an important one) of historical practice. To

these sources he juxtaposed ancient and contemporary laws and customs not only from France and Western Europe, but from the fringes of the world known to him: Turkey, Muscovy, Africa, and America. The result was a critical assessment of general principles and patterns of legal order, an unusual accomplishment for his time.

Theory of Sovereignty

As important as his methodological innovations were to the field of jurisprudence, Bodin's most memorable achievement was his account of sovereignty, developed in his most important work, the *Six Books on the Commonwealth*. The aim of the work was ambitious: to provide a methodical account of the ends, structure, and policies of the state, and defend a conception of sovereignty as the absolute and indivisible power to enact laws binding on each and every subject of a realm, without such power being subject to any prior legal or institutional constraint. This thesis, while not completely unprecedented in its time, was nonetheless never as forcefully or systematically presented before Bodin.

Bodin begins with a general assessment of the ends, origin, and concept of political authority. Contrary to later writers (such as Hobbes) who took the individual as the basic unit of inquiry, Bodin considers the family to be the irreducible, pre-political entity. Political activity is first undertaken by heads of families who, although they enjoy lordly power over their household, associate with other heads of families on the basis of equality. Yet "force, violence, ambition, avarice, and the passion for vengeance, armed men against one another" and from the ensuing violence some emerged victors and the rest were reduced to servitude. Bodin thus refuses to draw many lessons of legitimacy from the origin of commonwealths, and throughout the work reiterates that tyrants, although they have acquired power illegitimately, are nevertheless sovereigns in the relevant functional sense.

The cornerstone of the work is Bodin's celebrated formula that "[s]overeignty is the absolute and perpetual power of a commonwealth." The formula requires some explanation. By "perpetual," Bodin meant that power, to be sovereign, must be conferred for the life of the holder, not subject to expiration or revocation. Otherwise, the holder of such power was a mere deputy or lieutenant, since he presumably had to give account of his actions to another. By "absolute" Bodin may have meant a number of different things, and most of the controversy over his theory of sovereignty turns on the precise bounds of Bodin's absolutism.

Bodin opposed the idea of absolute sovereign power to the ancient and medieval idea of a mixed constitution, one in which the attributes of sovereignty were not all possessed by a single individual or determinate body, but rather allocated to different parts of the state. In a mixed constitution the ruler could not enact law or formulate public policy without at some point requiring the consent of some other magistrate; a

king, for instance, could propose a bill but it could only become law through the assent of parliament. This arrangement, Bodin stated, did not only mean that such a king was not sovereign but that, in such a state, no proper sovereign was to be found at all. Sovereignty was either indivisible, or it did not exist.

The same principle that denied coherence to the concept of a mixed constitution, Bodin thought, also made federal arrangements impossible in principle, as well as any legal system in which some magistrates held their authority of their own right, on terms irrevocable by any higher authority. With one hand, Bodin dismissed the authority of medieval Estates, guilds, and chartered cities, rendering them mere consultative bodies; with the other, he also removed the authority of independent nobles, who had often held important public offices by hereditary right. The issue lay at the essence of the attributes of sovereignty: the sovereign was first and foremost the fountain of law, and thus no legal claim could stand but by his acquiescence or approval. The first prerogative of a sovereign prince was to lay down the law, both in general statutes applicable to all subjects, and as specific orders applicable to individuals. But it was of the essence of sovereignty that a prince, if truly sovereign, did not require anyone's permission to exercise this prerogative—not that of his subjects, his peers, or even his putative superiors.

Bodin's attribution of unchecked legislative power to the sovereign effectively inverted the medieval relationship between the ruler and the law. Medieval political theory made the king a creature of the law. He was ostensibly bound by the custom of the realm, by privileges and charters granted by him or his predecessors, and by the general principles of equity contained in the natural law. The image of the king was that of a judge administering justice to his subjects. But Bodin relegates the judicial function of the king to a secondary attribute the exercise of which could be (and often was) delegated to lower magistrates. The image of the king became that of the legislator, the fountain of law and origin of all honors and privileges.

Here, however, Bodin's image of absolute sovereignty begins to blur. A simple formula would have had the sovereign be exempt from all legal requirements in the exercise of his discretion, or at least from all the requirements of human law. There was no doubt in Bodin or most of his contemporaries that sovereigns were not exempt from the demands of morality or of the laws of God and of nature. But Bodin curiously limited the king in important ways that did not seem at first consistent with the claim of absolute power. For one, a king was not free to violate the contracts that he himself had made, which included contract with his subjects and with foreign princes. Such contracts were binding on the prince at least as long as the interest of the other party in the contract subsisted. Bodin resolves the apparent contradiction by arguing that contracts and promises obligate not by the sanction of the civil law, but by the operation of the law of nature.

A more notorious case of apparent inconsistency is Bodin's curious claim—which he famously advanced as a delegate at the Estates at Blois, on the same year as the publication of the *Commonwealth*—that the sovereign could not tax his subjects without their consent. He also traced this argument to the natural law, as he equated

taxation with the taking of private property, which could not be done without the consent of the owner. This was a curious stance, given that Bodin generally derived the marks or attributes of sovereignty from the powers necessary to the effective imposition of law, and there was already in his time a tradition that considered some level of taxation, voluntary or not, as essential to effective governance. The inconsistency is magnified when one considers that later writers (like Hobbes) who followed Bodin in ascribing to the sovereign all prerogatives necessary to rule included among them the power to tax without consent.

Moreover, Bodin's additional claim at the Estates at Blois—that the king was not free to alienate the royal domain—could be traced back to the same proprietary principle: that the king's alienation of that which did not belong to him would go against the natural law. However, two other reasons for this apparent exception to the wide discretion given to sovereigns seem plausible. The first is an appeal to custom: similar restrictions on the disposition of royal land were the norm across European monarchies, a fact that would not have escaped Bodin's encyclopedic mind; such general acceptance of this norm would strongly recommend it to one attuned to the perspective of "universal history." A second reason is an appeal to prudent public policy: Bodin strongly felt that, in ordinary circumstances, the sovereign should live by his own means. The prohibition on the alienation of the royal domain, together with the requirement that all taxation require the subject's consent may be read against the backdrop of the French Wars of Religion; it served both as a fiscal limit to overzealous ambition, and as respite to a Third Estate already overburdened with taxes.

The matter of consent to taxation and prohibition on the alienation of the royal domain is magnified when the institutional context of these restrictions is considered. Bodin had successfully defended these theses as a representative of the Third Estate, but in the *Commonwealth* he steadfastly denied that the Estates or parlements had any power to impose or veto the sovereign's legislation. Their authority was exclusively consultative. It is unclear whether Bodin's seeming failure to reconcile his theoretical propositions with his political activity should be attributed to a simple mistake on his part, an intractable difficulty in the subject matter, or a legacy of the medieval constitutional structure which Bodin had done so much to dispel, but had only begun to overcome.

Bodin's Legacy

Bodin was not an entirely consistent thinker, and some of his most famous theses about sovereignty were seen, even by his contemporaries and early critics, to rest on misconceptions about the form and exercise of political power. His more famous argument—that sovereignty was indivisible and absolute in principle—has not survived the historical achievements of the constitutional separation of powers and the inherently pluralist order of federalist states. Yet for centuries after Bodin, these phenomena were observed with some puzzlement, and no pluralist theory of sovereignty could dispel the presumption that sovereignty was in its essence an

absolute and undivided authority, and that any deviations from this norm, however successful in practice, could not be justified in principle.

Some of Bodin's mistakes have an ideological source: they reflect his desire for an elegant theory that secured order and promoted good government to overcome the factional strife that was tearing France apart. Other inconsistencies speak more to Bodin's intellectual formation. He had been educated in the best of medieval and Renaissance traditions, and still structured his social world around the categories of pre-modern France, a world of corporations, guilds, estates, and chartered cities. Bodin is standing at the threshold of early modernity; it is only with Hobbes that the threshold is crossed.

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See also absolutism, ancient constitution, authority, civil law, divine right of kings, Hobbes, Thomas, jurisprudence, natural law, natural rights, pluralism, Roman law, sovereignty, state, toleration, tyranny

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