

# THE SOCIAL POWER OF BODIN'S 'SOVEREIGNTY' AND INTERNATIONAL LAW

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[The word 'sovereignty' provides a forceful example of the social power of language as an organic instrument playing a leading role in the continuous and continuing process of creating and transforming human reality. The paper examines a pivotal episode in the history of the word 'sovereignty' — its formal introduction in the 16<sup>th</sup> century by Jean Bodin in his *Six Livres de la Republique*. It focuses on the social effects 'sovereignty' has had on the shared consciousness of humanity, including that of the international community. The proposed metalogical inquiry adopts a method that draws from the hermeneutic school of historical knowledge. The argument is that Bodin used 'sovereignty' for the purpose of attributing to the ruler (the French king) supreme power in the hierarchical organisational structure of society. This idea of a pyramid of authority is found in different elements of the discourse in *Six Livres de la Republique*, which is examined in the immediate context of Bodin's personal background as well as the extended social, political and intellectual context of 16<sup>th</sup> century France. The conclusion shows that Bodin's work was the first seminal step in the development of contemporary ideas of 'internal sovereignty' and 'external sovereignty'. It is thus part of the history of the true power that the word at hand has exercised in framing the international state system and hence the international legal system.]

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## I INTRODUCTION

The word 'sovereignty' is one of those powerful words that has its own existence as an active force within social consciousness.<sup>1</sup> Through the cognitive

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<sup>1</sup> Such a conceptualisation of words as instruments, separate and distinct from reality, is essentially *nominalist* — etymologically, belonging to a name. Nominalism is a medieval philosophy, most often associated with William of Ockham, which took the view that abstract concepts are merely words and do not refer to anything that exists in the way that particular things exist.

process of the human mind, not only can language represent reality, but it may play a leading part in creating and transforming reality, including modelling the shared consciousness of society.<sup>2</sup> Indeed, words are activities in themselves; they are dynamic mental–social phenomena; they actually exist and act within human consciousness.<sup>3</sup> As such, words constitute organic instruments that can demonstrate, and may actually be strategically used to carry, tremendous social power within the shared consciousness of humanity.<sup>4</sup>

The word ‘sovereignty’ has a history, a history of the true power that it has exercised in framing the international state system and hence the international legal system.<sup>5</sup> The principal objective of this paper is to examine a pivotal episode in the history of the word ‘sovereignty’, which must be distinguished from the history of the *concept* of sovereignty.<sup>6</sup> As Philip Allott explained:

As persons and as societies, we are what we were able to be, and we will be what we are now able to be. *So it is with the history of words.* We are what we have said; we will be what we are now able to say. *Words contain social history, distilled and crystallized and embodied and preserved, but available also as a social force, a cause of new social effects.*<sup>7</sup>

Therefore, the word ‘sovereignty’ has a history going beyond the history of its changing meaning, its changing definition. That is, it contains a history of the *social effects* of its changing meaning.

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<sup>2</sup> This is based on Ludwig Wittgenstein’s theory of language, which, initially, was to the effect that words could represent reality; that language offered, as it were, a picture of the world: Ludwig Wittgenstein, *Tractatus Logico-Philosophicus* (1961) 15, 51. However, in his later work on the issue, the Austrian philosopher categorically revised his position and argued that words and expressions do not merely provide a representation of reality but that, in effect, language is an *activity* happening within reality, that it is indeed a participant in human consciousness: ‘Here the term “language-game” is meant to bring into prominence the fact that the *speaking* of language is part of an activity, or of a form of life’: Ludwig Wittgenstein, *Philosophical Investigations* (1958) 11 (emphasis in original). See also Philip Allott, ‘The Nation as Mind Politic’ (1992) 24 *New York University Journal of International Law and Policy* 1361, 1361–2:

With Wittgenstein, we have been forced to face the possibility that human communication is not the transfer of something called Truth through a neutral medium called Language. Communication would then have to be regarded as simply another form of human activity, sharing in the intrinsic and irreducible ambiguity of all human activity.

<sup>3</sup> John L Austin, *How to Do Things with Words* (1962) 4–7.

<sup>4</sup> The term ‘organic’ is used here to denote a property of language that allows words and expressions to be simultaneously autonomous and intertwined with the reality they represent. This idea is linked to the so-called ‘Ogden and Richards’ Triangle’, whereby words are considered linguistic signs (or ‘symbols’) which indirectly represent reality (or ‘referent’) through the cognitive process of the human mind (‘thought’ or ‘reference’), all of which operate for the purpose of communication within the shared consciousness of society: Charles Ogden and Ivor Richards, *The Meaning of Meaning — A Study of the Influence of Language upon Thought and of the Science of Symbolism* (2<sup>nd</sup> ed, 1927) 10–11.

<sup>5</sup> On sovereignty at international law, see Ian Brownlie, *Principles of Public International Law* (5<sup>th</sup> ed, 1998) 289–99.

<sup>6</sup> On concepts and how some concepts are considered essentially contestable (that is, unable to attract a consensus on their definitions), see Walter Gallie, ‘Essentially Contested Concepts’ (1955–56) 56 *Proceedings of the Aristotelian Society* 167; John Gray, ‘On the Contestability of Social and Political Concepts’ (1977) 5 *Political Theory* 331; William Connolly, *The Terms of Political Discourse* (3<sup>rd</sup> ed, 1993) 10–44.

<sup>7</sup> Philip Allott, *Eunomia — New Order for a New World* (1990) 9 (emphasis added).

Semantically, as James Crawford wrote, '[t]he term "sovereignty" has a long and troubled history, and a variety of meanings.'<sup>8</sup> Recently, Richard Bilder provided a useful summary:

I think that the term sovereignty is very generally used to mean simply a state's right to do as it wishes, particularly within its own territory, free of external constraint or interference. But here are some more scholarly definitions:

- The *American Heritage Dictionary* defines sovereignty as 'supremacy of authority or rule as exercised by a sovereign or sovereign state' or, alternatively, as 'complete independence and self-government.'
- Max Huber, as Arbitrator in the 1926 *Island of Palmas* case, wrote that: 'Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise there, to the exclusion of any other states, the function of a state.'
- Judge Alvarez, in his individual opinion in the *Corfu Channel* case, wrote that: 'By sovereignty, we understand the whole body of rights and attributes which a state possesses in its territory, to the exclusion of all other states, and also in its relations with other states.'
- Helmut Steinberger, in the *Encyclopedia of Public International Law* says that: 'Sovereignty denotes the basic international legal status of a state that is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or territorial jurisdiction of a foreign state or to foreign law other than public international law.'
- Professor Lou Henkin, in *How Nations Behave*, writes that the principle holds that: '[E]xcept as limited by international law or treaty, each state is master of its own territory.'
- And at the recent ASIL meeting, Professor Tom Franck suggested, interestingly and much more broadly, that a going definition of sovereignty is the loci of the formation of rights and duties generally recognized as establishing and implementing entitlements, distributions and obligations.<sup>9</sup>

This multitude of meanings brought Louis Henkin to observe: 'sovereignty is a bad word, not only because it has served terrible national mythologies; in international relations, and even in international law, it is often a catchword, a substitute for thinking and precision.'<sup>10</sup>

Never before, perhaps, have these remarks been more apposite to describe the way some contemporary issues are addressed on the international plane. For instance, the word 'sovereignty' has been used in arguments against the new doctrine of pre-emptive strike, which has been invoked by the United States in its foreign relations with states that harbour terrorism (and, arguably, the states of the so called 'axis of evil'). Likewise, the discourse over the International Criminal Court, which was established by the *Rome Statute of the International*

<sup>8</sup> James Crawford, *The Creation of States in International Law* (1979) 26.

<sup>9</sup> Richard Bilder, 'Perspectives on Sovereignty in the Current Context: An American Viewpoint' (1994) 20 *Canada-United States Law Journal* 9, 10-11 (footnotes omitted).

<sup>10</sup> Louis Henkin, 'International Law: Politics, Values and Functions — General Course on Public International Law' (1989) 216 *Recueil des Cours de l'Académie de droit international de La Haye* 9, 24-5. See also Louis Henkin, 'The Mythology of Sovereignty' in Ronald St John Macdonald (ed), *Essays in Honour of Wang Tieya* (1994) 351.

*Criminal Court*<sup>11</sup> and became operational in The Hague on 1 July 2002,<sup>12</sup> includes a litany of arguments directly or indirectly linked to ‘sovereignty’.<sup>13</sup> Lastly, the debate surrounding the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*,<sup>14</sup> be it in the US, Canada or Australia, undoubtedly brings into play rhetoric that centres on the word ‘sovereignty’.

The present study argues that a satisfactory consideration of the idea of sovereignty in international law must begin with an appreciation of the genesis of the word ‘sovereignty’, which was introduced for the purpose of domestic governance. The paper will thus attempt to bring out the original function that the word at hand, the inception of which is credited to Jean Bodin, played in modelling socially constructed reality in mid 16<sup>th</sup> and early 17<sup>th</sup> century Europe. The underlying objective is to illustrate the role that powerful words like ‘sovereignty’ play in the continuous and continuing process of reality-creation. Thus, examining the use that Bodin made of the word ‘sovereignty’ will shed light on our understanding of the international state system and hence the international legal system.

The proposed metalogical<sup>15</sup> inquiry into the word ‘sovereignty’ must be undertaken in a way, and according to a method, that will bring out the history of its existence as an active force within the shared consciousness of society — as a ‘*mot-force*’,<sup>16</sup> to borrow from Fouillée’s ‘*idée-force*’.<sup>17</sup> For this purpose, the approach adopted here benefits from the insights of the well-established intellectual method known as the hermeneutic school of historical knowledge, which will be briefly discussed below.

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<sup>11</sup> Opened for signature 17 July 1998, [2002] ATS 15 (entered into force 1 July 2002) (*‘Rome Statue’*).

<sup>12</sup> Pursuant to art 126, the *Statute of the ICC* entered into force upon the ratification of 60 states.

<sup>13</sup> On the creation of the International Criminal Court, see William Schabas, *An Introduction to the International Criminal Court* (2001) 13–20; on the rhetoric of ‘sovereignty’ surrounding the creation of the International Criminal Court see Rolf Fife, ‘The International Criminal Court — Whence It Came, Where It Goes’ (2000) 69 *Nordic Journal of International Law* 63; Patricia McNerney, ‘The International Criminal Court: Issues for Consideration by the United States Senate’ (2001) 64 *Law and Contemporary Problems* 181; William Schabas, ‘International Criminal Court: The Secret of its Success’ (2001) 12 *Criminal Law Forum* 415; Richard Wilkins, ‘The Right Thing the Wrong Way — Implications of the New International Criminal Court’ (2002) 17 *The World and I* 265.

<sup>14</sup> Opened for signature 16 March 1998, 37 ILM 22 (not yet in force) (*‘Kyoto Protocol’*).

<sup>15</sup> That is, the second-order activity of investigating language and thoughts.

<sup>16</sup> That is, a ‘word-force’.

<sup>17</sup> That is, an ‘idea-force’. Alfred Fouillée wrote:

*Si nous avons adopté cette expression très générale d’idée-force, c’est précisément pour y envelopper tous les modes d’influence possible que l’idée peut avoir, en tant que facteur, cause, condition de changement pour d’autres phénomènes, etc, en un mot toutes les formes d’efficacité quelconque, par opposition aux idées-reflets, aux idées-ombres qui n’entrent pour rien dans le résultat final et n’en sont que des symboles ou des aspects.*

Alfred Fouillée, *L’évolutionnisme des idées-forces* (1890) xi (emphasis in original). See also Alfred Fouillée, *Morale des idées-forces* (1908).

## II THE HERMENEUTICS OF HERMENEUTICS

Hermeneutics comes from the Greek *herm'neutikì*, and derives from the name of the god Hermes, the wing-footed messenger of the city of Olympia.<sup>18</sup> Etymologically, it conveys the idea of interpretation as an assertion, explanation and translation of recorded expressions.<sup>19</sup>

Long considered part of philology,<sup>20</sup> hermeneutics was first developed to ascertain, at the end of a chain of copyists, the authenticity of Christian texts.<sup>21</sup> Historiography adopted the approach<sup>22</sup> and thus 'raised the critique of historical sources to the rank of methodical scholarship.'<sup>23</sup> By the end of the 18<sup>th</sup> century, hermeneutics had moved beyond the technical examination of texts and had begun to consider the issue of the nature of historical knowledge and the objectives of historical accounts.<sup>24</sup> In the 19<sup>th</sup> century, hermeneutics became philosophical and was extended to the study of the irreducible conditions of understanding.<sup>25</sup> This evolution explains why, in modern times, the term 'hermeneutics' is open to several interpretations.<sup>26</sup>

However, the most apposite interpretation for the purposes of the intended metalogical inquiry into Bodin's 'sovereignty' appears to be the traditional hermeneutic question about the accurate understanding of history and other recorded expressions. There exists a group of mildly hermeneutic historians,<sup>27</sup> led by Quentin Skinner<sup>28</sup> and John Pocock<sup>29</sup> at the University of Cambridge, who specialise in the history of ideas. *Mutatis mutandis*, therefore, their writings

<sup>18</sup> See Richard Palmer, *Hermeneutics — Interpretation Theory in Schleiermacher, Dilthey, Heidegger, and Gadamer* (1969) 12.

<sup>19</sup> Terry Hoad (ed), *The Concise Oxford Dictionary of English Etymology* (1986) 215.

<sup>20</sup> That is, the study of words.

<sup>21</sup> See Paul Ricoeur, *Interpretation Theory: Discourse and the Surplus of Meaning* (1976) 22. It is also noteworthy that hermeneutics later acquired a pre-eminent role in the Catholic-Protestant debate on the more truthful version of the Bible.

<sup>22</sup> The two founders of this hermeneutics are Ast and Schleiermacher: see Friedrich Ast, *Grundlinien der Grammatik, Hermeneutik und Kritik* (1808); Friedrich Schleiermacher, *On Religion: Speeches to its Cultured Despisers* (Richard Crouter trans, 1988 ed) [trans of: *Über die Religion: Reden an die Gebildeten unter ihren Verächtern*].

<sup>23</sup> See Zygmunt Bauman, *Hermeneutics and Social Science* (1978) 7.

<sup>24</sup> See, especially, Wilhelm Dilthey, *Introduction to the Human Sciences* (Ramon Betanzos trans, 1989) [trans of: *Einleitung in die Geisteswissenschaften*].

<sup>25</sup> Hans-Georg Gadamer, *Truth and Method* (Hans-Georg Gadamer trans, 1975 ed) [trans of: *Wahrheit und Methode — Grundzüge einer philosophischen Hermeneutik*]. Gadamer's philosophical hermeneutics has become a school of its own, with other writings and applications in many different disciplines, including law: see Donald Hermann, 'Phenomenology, Structuralism, Hermeneutics, and Legal Study: Applications of Contemporary Continental Thought to Legal Phenomena' (1982) 36 *University of Miami Law Review* 379; David Hoy, 'Interpreting the Law: Hermeneutical and Poststructuralist Perspectives' (1985) 58 *Southern California Law Review* 136; Simeon McIntosh, 'Legal Hermeneutics: A Philosophical Critique' (1982) 35 *Oklahoma Law Review* 1; Brad Sherman, 'Hermeneutics in Law' (1988) 51 *Modern Law Review* 386.

<sup>26</sup> Palmer identified six distinct interpretations of hermeneutics: Palmer, above n 18, 33.

<sup>27</sup> See Philip Allott, 'International Law and the Idea of History' (1999) 1 *Journal of the History of International Law* 1, 18, fn 41.

<sup>28</sup> On Skinner's work, see generally James Tully (ed), *Meaning and Context — Quentin Skinner and His Critics* (1988).

<sup>29</sup> See John Pocock, *Politics, Language and Time — Essays on Political Thought and History* (1972).

would appear most relevant to the present study, which concerns the history of a word or, more precisely, the history of the word's changing social effects. Falling within the traditional hermeneutics, the Cambridge theory of historical understanding of ideas was thus explained by Skinner:

To understand a text must be to understand both the intention to be understood, and the intention that this intention should be understood, which the text itself as an intended act of communication must at least have embodied. *The essential question which we therefore confront, in studying any given text, is what its author, in writing at the time he did write for the audience he intended to address, could in practice have been intending to communicate by the utterance of this given utterance.* It follows that the essential aim, in any attempt to understand the utterances themselves, must be to recover this complex intention on the part of the author.<sup>30</sup>

The approach adopted by this article to examine Bodin's use of the word 'sovereignty' draws heavily from these insights. Such considerations indeed help to elucidate the history of its existence as an active force within the shared consciousness of society.

Therefore, in analysing Bodin's recorded expressions, this article aims to discover what he intended to communicate with the word 'sovereignty' and what his contemporaries understood him to say. Borrowing from the Cambridge theory, the enlarged historical context of the proposed metalogical inquiry should include the author's background, the social environment and targeted audience, as well as the political situations prevailing at the time. These elements will no doubt contribute to a reconstruction of the totality of the historical shared consciousness of the relevant society and help reach an understanding of the discourse on sovereignty that corresponds, as much as human-scientifically possible, to Bodin's original creative expression.<sup>31</sup> This is the kernel of the method adopted for the following project.

### III THE WORD 'SOVEREIGNTY' IN BODIN'S *SIX LIVRES DE LA REPUBLIQUE*

Although some point out that he did not invent it,<sup>32</sup> most consider Jean Bodin the 'father'<sup>33</sup> of 'sovereignty' because he provided 'the first systematic

<sup>30</sup> Quentin Skinner, 'Meaning and Understanding in the History of Ideas' (1969) 8 *History and Theory* 3, 48–9 (emphasis added).

<sup>31</sup> See also Richard Rorty, 'The Historiography of Philosophy: Four Genres' in Richard Rorty, Jerome Schneewind and Quentin Skinner (eds), *Philosophy in History — Essays on the Historiography of Philosophy* (1984) 49, 53: 'Historical reconstructions of what uneducated dead thinkers would have said to their contemporaries — reconstructions which abide by Skinner's maxim — are, ideally, reconstructions on which all historians can agree'.

<sup>32</sup> Authors generally agree that the idea of sovereignty existed in Europe well before the 16<sup>th</sup> century: see, eg, Gérard Mauret, 'Bodin Jean, 1530–1596 — *Les Six Livres de la République, 1576*' in François Chatelet, Olivier Duhamel and Evelyne Pisiér (eds), *Dictionnaire des Oeuvres Politiques* (1986) 99, 99. See also Robert Bonner, 'Lawyers and Litigants in Ancient Athens' in Joseph Smith and David Weisstub (eds), *The Western Idea of Law* (1983) 303, 303: 'Nowhere has popular sovereignty been so completely realized in practice as in ancient Athens. The sovereign people exercised their power not merely at intervals; they actually wielded it at all times'.

<sup>33</sup> Jacques Maritain, 'The Concept of Sovereignty' in Wladyslaw Stankiewicz (ed), *In Defense of Sovereignty* (1969) 41, 43.

discussion of the nature<sup>34</sup> of this extraordinarily powerful word. He has been referred to, very accurately, as a man who is 'often quoted, but rarely read.'<sup>35</sup> The following hermeneutics-informed metalogical inquiry into the word 'sovereignty' in Bodin's work begins with the author's background, moves to the actual text in which the word is found, and finally considers the social, political and intellectual situation in 16<sup>th</sup> century France.

#### A Bodin's Immediate Personal Context

Born in 1530, a significant year for humanism with the foundation of the *Collège de France*,<sup>36</sup> Bodin was the youngest of seven children in a family belonging to the municipal bourgeoisie in Angers. His early education was both theological and humanist — he trained for the priesthood with the Carmelites and later went to study languages (Greek and Hebrew) in Paris, where he also expanded his already considerable knowledge of classical authors, including the leading humanist scholars. There are speculations of possible charges of heresy and of time spent in the Calvinist stronghold of Geneva in the late 1540s and early 1550s; what is known with relative certainty, however, is that Bodin returned to Angers in 1548–49 and was released from his vows on the plea that they were professed at too early an age.<sup>37</sup>

In the 1550s, Bodin was reading civil law at the University of Toulouse, the centre of legal studies in France,<sup>38</sup> where he also taught and apparently attempted, unsuccessfully, to gain a permanent post.<sup>39</sup> In 1561–62, he returned to

<sup>34</sup> Charles Merriam, *History of the Theory of Sovereignty since Rousseau* (1900) 13. See also Donat Pharand, 'Perspectives on Sovereignty in the Current Context: A Canadian Viewpoint' (1994) 20 *Canada–United States Law Journal* 19, 19; Johan van der Vyver, 'Sovereignty and Human Rights in Constitutional and International Law' (1991) 5 *Emory International Law Review* 321, 324; James Bryce, *Studies in History and Jurisprudence* (1901) vol 2, 84.

<sup>35</sup> Eelco van Kleffens, 'Sovereignty in International Law' (1953) 82 *Recueil des Cours de l'Académie de droit international de La Haye* 1, 52. See also Kenneth McRae, 'Introduction' in Kenneth McRae (ed), *Jean Bodin — The Six Bookes of a Commonweale* (1962) A3, A25.

<sup>36</sup> See André Gardot, 'Jean Bodin — Sa place parmi les fondateurs du droit international' (1934) 50 *Recueil des Cours de l'Académie de droit international de La Haye* 545, 559.

<sup>37</sup> For recent biographies of Jean Bodin, see Marie-Dominique Couzinet, 'Note biographique sur Jean Bodin' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 233; Julian Franklin, 'Introduction' in Julian Franklin (ed), *Jean Bodin — On Sovereignty: Four Chapters from The Six Books of the Commonwealth* (1992) ix; Jacques Sallot, 'Jean Bodin, sa famille, ses origines' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 111.

<sup>38</sup> On Bodin's time at the University of Toulouse, see Henri Gilles, 'La Faculté de Droit de Toulouse au temps de Jean Bodin' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 313.

<sup>39</sup> Given his academic background, therefore, it is certainly right to say that Bodin was a theologian, a humanist and a jurist. Gardot put it as follows: '*Par sa formation livresque, Bodin est essentiellement un théologien. Il est un humaniste. Il est un juriste. Dieu, l'humanité et la loi: telles sont les trois sources auxquelles sa science d'écolier, de professeur et de savant a puisé*': Gardot, above n 36, 578.

Paris and became an *avocat* at the *Parlement de Paris*.<sup>40</sup> This, however, proved not to be his milieu as he preferred private contemplations in his office to the theatrical performances at the *barreau*.<sup>41</sup> This is evidenced by his prolific writing in the 1560s, including three pieces on completely different subjects<sup>42</sup> — *Methodus ad facilem historiarum cognitionem*,<sup>43</sup> published in 1566, on a method of study for universal history; *Juris universi distributio*,<sup>44</sup> drafted in the mid 1560s but only published in 1578, on a system of universal law; and *La response à M de Malestroit*,<sup>45</sup> published in 1568, on the economics of inflation.<sup>46</sup>

Having come to the attention of the royal court, Bodin was given a series of public charges, including a commission for the reformation of forest tenures in Normandy and a delegation to welcome the ambassadors of the new monarch of Poland, Henri, Duke of Anjou, King Charles IX's brother. In 1571, he entered the household of the King's youngest brother, François, Duke of Alençon, as counsellor and master of requests. These appointments gave Bodin a public status and a direct access to the inner circle's intrigues and diplomacy, which placed him in a dangerous position when, following the death of Charles in 1574, Protestant-supported François attempted to supplant the lawful heir to the throne,

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<sup>40</sup> See Roland Delachenal, *Histoire des avocats au Parlement de Paris — 1300–1600* (1885) 399–406, which shows that on 10 June 1562, two barristers named Jean Bodin — one of whom is no doubt the one from Angers — took oath as members of the *Parlement de Paris*; see also *idid* 30, where Delachenal explicitly refers to Jean Bodin.

<sup>41</sup> Henri Baudrillart wrote:

*Plus fait pour les méditations du cabinet que pour les improvisations du barreau, il se livra presque tout entier à l'étude approfondie et philosophique de l'histoire et du droit, amassant dès-lors les immenses matériaux qui devaient lui servir à édifier son principal monument. C'est ainsi qu'il devint un grand publiciste, faute peut-être d'avoir été un bon avocat.*

Henri Baudrillart, *Bodin et son temps — Tableau des théories politiques et des idées économiques au 16<sup>ème</sup> siècle* (1853) 115.

<sup>42</sup> Appositely, Gardot pointed out that Bodin 'a tout abordé, ou presque tout, des sciences de son temps: théologie, philosophie, philologie, histoire, sciences naturelles, sociologie, et jusqu'à l'occultisme': Gardot, above n 36, 552.

<sup>43</sup> Jean Bodin, *Method for the Easy Comprehension of History* (Beatrice Reynolds trans, 1945) [trans of: *Methodus ad facilem historiarum cognitionem* (1566)]. See also Marie-Dominique Couzinet, 'La *Methodus ad facilem historiarum cognitionem*: histoire cosmographique et méthode' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 23; Philippe Dejan, 'Jean Bodin et l'idée de méthode au XVI<sup>e</sup> siècle' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 119. See generally Julian Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History* (1963).

<sup>44</sup> Jean Bodin, 'Juris universi distributio' in Pierre Mesnard (ed), *Œuvres philosophiques de Jean Bodin* (1951) 71.

<sup>45</sup> Jean Bodin, *The Response of Jean Bodin to the Paradoxes of Malestroit* (George Moore trans, 1946 ed) [trans of: *La vie chère au XVI<sup>e</sup> siècle. La response de Jean Bodin à M de Malestroit*].

<sup>46</sup> Some have suggested that Bodin was incarcerated for heresy between 1568 and 1570: see J Boucher, 'L'incarcération de Jean Bodin pendant la troisième guerre de religion' (1983) 1 *Nouvelle Revue du XVI<sup>e</sup> siècle* 33. See also Marie-Dominique Couzinet, 'Note biographique', above n 37, 239; McRae, 'Introduction', above n 35, A7.

Henri. The conspiracy failed, forcing Bodin to disappear from public life for the following two years.<sup>47</sup>

It was thus in seclusion, in Laon, that Bodin wrote his masterpiece, *Les six Livres de la République*,<sup>48</sup> published in 1576. This book was certainly an opportunity to show his loyalty to the new King, Henri III, and to try to win his favour. It was also undoubtedly influenced by his personal experience of the threat of anarchy represented by the St Bartholomew's Day Massacre in 1572, from which, we are told, he narrowly escaped with his life.<sup>49</sup> Running somewhat contrary to his courting strategy, Bodin attended the *Estates-General* of Blois in 1576 and proved a stubborn, if successful, advocate in a confrontation with Henri III's officials over new taxation to which, as he wrote in *Six Livres*,<sup>50</sup> the King must consent.<sup>51</sup> Unsurprisingly, this exasperated the King and destroyed Bodin's chances of an appointment at the court. He returned to Laon to write, among other things,<sup>52</sup> a surprisingly influential book on witchcraft and demonology, *La démonomanie des sorciers*.<sup>53</sup>

Bodin's last involvement in national politics was with the Duke of Alençon, whom he accompanied to England in 1581 for his matrimonial suit with Queen Elizabeth.<sup>54</sup> This allowed the French jurist to gather first-hand information about English affairs and thus test, change and supplement his views on the nature and structure of the English government. Unsuccessful like all Elizabeth's other suitors, the Duke, accompanied by Bodin, left England for Flanders. Here the

<sup>47</sup> See generally Marie-Dominique Couzinet, 'Note biographique', above n 37, 240; Gardot, above n 36, 572–3; McRae, 'Introduction', above n 35, A8.

<sup>48</sup> The original French edition was published by Jacques du Puys (also spelt Jacques du Puis); the date of the privilege was 12 August 1576. Only 19 copies of that version are recorded. Several other editions were published in 1577, 1578, 1579 and 1580. Bodin's Latin edition under the title *De Republica libri sex* was first published in 1586. On the publishing history of the *Six Livres*, see Kenneth McRae, 'A Bibliography of the *République*' in Kenneth McRae (ed), *Jean Bodin — The Six Bookes of a Commonweale* (1962) A78, A79–A80. The version used here is that published in 1583: Jean Bodin, *Les six Livres de la République* (1583) (hereinafter '*Six Livres*'). The English version used is the first translation of the book: Jean Bodin, *The Six Bookes of a Commonweale* (Richard Knolles trans, 1606 ed) [trans of: *Les six Livres de la République*] (hereinafter '*Six Books*').

<sup>49</sup> See Baudrillart, above n 41, 117.

<sup>50</sup> See below n 92.

<sup>51</sup> For more details on the participation of Bodin at the *Estates-General* of Blois, see Owen Ulph, 'Jean Bodin and the *Estates-General* of 1576' (1947) 19 *Journal of Modern History* 289.

<sup>52</sup> It is then that '*Juris universi distributio*', above n 44, was published. Bodin also wrote at that time an account of the *Estates-General* of Blois and, under a pseudonym, replied to early critics of *Six Livres* in a piece entitled *Apologie de René Herpin pour la République de J Bodin*, published in 1581 and included as an appendix in the 1583 edition of *Six Livres*.

<sup>53</sup> Jean Bodin, *La démonomanie des sorciers* (1580). This book 'described at great length the passion of witches for evil forces and the way by which they should be detected and punished': Franklin, 'Introduction', above n 37, xi. See also Nicole Jacques-Chaquin, '*La Démonomanie des sorciers*: une lecture philosophique et politique de la sorcellerie' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 43; Marie-Thérèse Isaac, '"*La Démonomanie des sorciers*": Histoire d'un livre à travers ses éditions' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 2, 377.

<sup>54</sup> The story has it that Queen Elizabeth was not at partial to Bodin, a mutual feeling which influenced how the French theorist referred to the English monarch in the later-published Latin edition of *Six Livres*: Baudrillart, above n 41, 129.

Duke failed once more to obtain a crown, this time when his plan to force Spain out of the Low Countries was thwarted. With the death of the Duke in 1584, Bodin retired, permanently this time, from the public stage and settled down with his family in Laon, where he later took over his brother-in-law's office of *procureur du roi* after the latter's death in 1587.<sup>55</sup>

This was no peaceful time, however, with the new phase of religious wars that broke out following the assassination of Henri III in 1589. The then Protestant Henri of Navarre (King Henri IV) was opposed by Cardinal Charles of Bourbon and the Catholic League, which controlled parts of France, including Laon. Although it ran contrary to his core principles of legitimacy, non-resistance and tolerance, Bodin was forced to collaborate with supporters of the Catholic League to avoid endangering his family and losing his office, his property and even his life (since he was accused of heresy).<sup>56</sup> When the tide turned in 1594, Bodin came forward for the recently converted Henri IV.<sup>57</sup> Between 1594 and his death in 1596 as a result of the plague, Bodin wrote *Universae naturae theatrum*,<sup>58</sup> on the principles of natural science, and *Colloquium heptaplomeres*,<sup>59</sup> a controversial piece on the nature of religion, which was not published until 1857.

### B *The Discourse in Six Livres de la Republique*

Before further considering the hermeneutics of Bodin's 'sovereignty', it is important to thoroughly examine how it was used in *Six Livres*, which will allow us to begin identifying the function he intended the word to play in modelling the shared consciousness of society. One must first point out that Bodin thought it necessary, at the outset of the chapter 'Of Sovereignty',<sup>60</sup> to define it: 'For so here it behoved first to define what majesty or Sovereignty is, which neither

<sup>55</sup> See generally Marie-Dominique Couzinet, 'Note biographique', above n 37, 242–3; Franklin, 'Introduction', above n 37, xi; Gardot, above n 36, 576; McRae, 'Introduction', above n 35, A10–A11.

<sup>56</sup> Jean Bodin's actual religion has been the subject of great controversy, there being some argument as to whether he was Catholic, Protestant or Jewish: see, eg, Maryanne Horowitz, 'La religion de J Bodin reconsidérée: Le Marrane comme modèle de la tolérance' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 201; Paul Rose, *Jean Bodin and the Great God of Nature — The Moral and Religious Universe of a Judaiser* (1980) 1.

<sup>57</sup> On this period, see Paul Rose, 'The Politique and the Prophet: Bodin and the Catholic League — 1589–1594' (1978) 21 *Historical Journal* 783; Paul Rose, 'Bodin and the Bourbon Succession to the French Throne, 1583–1594' (1978) 9(2) *Sixteenth Century Journal* 75.

<sup>58</sup> Published posthumously in 1596. See also François Berriot, 'Le Théâtre de la nature universelle ou le tableau du monde' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 3.

<sup>59</sup> Ludwig Noack (ed), *J Bodin — Colloquium heptaplomeres de rerum sublimium arcanis abditis* (1857). See also Pierre Magnard, 'Le Colloquium heptaplomeres et la religion de la raison' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 71.

<sup>60</sup> *Six Books*, 84; *Six Livres*, 122: 'De la souveraineté'. Unless otherwise noted, spelling has been modernised in these and subsequent references.

lawyer nor political philosopher had yet defined'.<sup>61</sup> In fact, he often defined concepts, for instance '*République*' ('Commonwealth')<sup>62</sup> and '*citoyen*'<sup>63</sup> ('citizen'<sup>64</sup>). This illustrates the tendency of his analysis to be heavily deductive,<sup>65</sup> and not only inductive (that is, based on empirical data found in history).<sup>66</sup>

Accordingly, for Bodin, 'Majesty or Sovereignty is the most high, absolute, and perpetual power over the citizens and subjects in a Commonwealth'.<sup>67</sup> The French text is clearer as it identifies the two characteristics of sovereignty as 'absolute' and 'perpetual': '*La SOUVERAINETÉ est la puissance absolue & perpétuelle d'une République*'.<sup>68</sup> On the next page he reiterates more forcefully: 'Sovereignty is not limited either in power, charge, or time certain'.<sup>69</sup> Be it called 'perpetual', 'absolute', 'unlimited', 'greatest' or 'total',<sup>70</sup> the word 'sovereignty' in Bodin's discourse concerns the reality of the *highest unified power*, as opposed to that of the *subordinate decentralised power*. It is thus a question of a 'pyramid of authority'.

### 1 *Perpetual and Absolute Power*

Concentrating on the actual text of *Six Livres*, the French jurist's discussion therein is essentially based on a distinction between ruler and subject:

For the one was the prince, the other the subject; the one the lord, the other the servant; the one the proprietary and seised of the Sovereignty, the other neither

<sup>61</sup> *Six Books*, 84; *Six Livres*, 122: 'Il est ici besoin de former la définition de souveraineté, parce qu'il n'y a ni jurisconsulte, ni philosophe politique, qui l'ait définie'.

<sup>62</sup> *Six Livres*, 1; *Six Books*, 1.

<sup>63</sup> *Six Livres*, 68.

<sup>64</sup> *Six Books*, 47.

<sup>65</sup> See Roger Chauviré, *Jean Bodin — Auteur de la 'République'* (1914) 104: 'De l'école aussi vient la prédilection évidente de Bodin pour le raisonnement déductif, dérivé du syllogisme scolastique. Il aime à définir, et, d'après des définitions successives, à conclure'.

<sup>66</sup> See Quentin Skinner, *The Foundations of Modern Political Thought* (1978) vol 2, 290–2. It is said that Bodin considered history as 'raw data', as opposed to a discipline in itself, and that he used universal history to remedy the deficiencies of Roman law materials (mainly Justinian's *Corpus Juris*) on the nature and structure of political power. See also Witold Wolodkiewicz, 'Jean Bodin et le droit privé romain' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 303.

<sup>67</sup> *Six Books*, 84.

<sup>68</sup> *Six Livres*, 122 (emphasis in original).

<sup>69</sup> *Six Books*, 85; *Six Livres*, 124: '[La] souveraineté n'est limitée, ni en puissance, ni en charge, ni à certain temps'.

<sup>70</sup> For the different ideas that the term 'absolute sovereignty' can embrace, see Preston King, *The Ideology of Order — A Comparative Analysis of Jean Bodin and Thomas Hobbes* (1974) 140–53.

proprietary nor possessed thereof, neither holding anything thereof, but as a feoffor or keeper in trust.<sup>71</sup>

According to Bodin, therefore, the sovereign prince cannot share his power with a subject without losing his status of sovereign:

It is also by the common opinion of the lawyers manifest, that those royal rights cannot by the sovereign be yielded up, distracted, or any otherwise alienated; or by any tract of time be prescribed against ... [a]nd if it chance a sovereign prince to communicate them with his subject, he shall make him of his servant, his companion in the empire: in which doing he shall lose his sovereignty, and be no more a sovereign: for that he only is a sovereign, which has none his superior or companion with himself in the same kingdom.<sup>72</sup>

The first element of sovereignty, that ‘power ought to be perpetual’<sup>73</sup> (that is, ‘for the term of the life of him that had the power’<sup>74</sup>), contrasts with rulers who, ‘are but men put in trust, and keepers of this sovereign power, until it shall please the people or the prince that gave it them to recall it’.<sup>75</sup> Later Bodin wrote:

If such absolute power be given him purely and simply without the name of a magistrate, governor, or lieutenant, or other form of deputation; it is certain that such a one is, and may call himself a Sovereign Monarch: for so the people has voluntarily disseised and dispoiled itself of the sovereign power, to sease and invest another therein; having on him, and upon him transported all the power, authority, prerogatives, and sovereignties thereof[.]<sup>76</sup>

He also added:

But if the people shall give all their power unto anyone so long as he lives, by the name of a magistrate, lieutenant, or governor, or only to discharge themselves of

<sup>71</sup> *Six Books*, 86; *Six Livres*, 125: ‘[C]ar l’un est Prince, l’autre est sujet: l’un est seigneur, l’autre est serviteur: l’un est propriétaire, & saisi de la souveraineté, l’autre n’est ni propriétaire, ni possesseur d’icelle, & ne tient rien qu’en dépôt.’ See also Mairet, above n 32, 100 (emphasis in original):

*Cette doctrine affirmée de la séparation des deux parties (gouvernante et gouvernée) est capitale: elle exprime la structure fondamentale de l’Etat, sa forme théorique. L’Etat, c’est-à-dire la forme souveraineté, est le système politique de l’ordination de la multitude à l’unité d’un prince: le prince (monarque) en personne. La multitude gouvernée est ramenée à l’Un comme à son prince.*

<sup>72</sup> *Six Books*, 155; *Six Livres*, 215:

*tous sont d’accord que les droits Royaux sont incessibles, inaliénables, & qui ne peuvent par aucun trait de temps être prescrits: & s’il advient au Prince souverain de les communiquer au sujet, il fera de son serviteur son compagnon: en quoi faisant il ne sera plus souverain: car souverain (c’est-à-dire, celui qui est par dessus tous les sujets) ne pourra convenir à celui qui a fait de son sujet son compagnon.*

<sup>73</sup> *Six Books*, 84; *Six Livres*, 122: ‘puissance est perpétuelle’.

<sup>74</sup> *Six Books*, 87; *Six Livres*, 126: ‘pour la vie de celui qui a la puissance’.

<sup>75</sup> *Six Books*, 84; *Six Livres*, 122: ‘ne sont que dépositaires, & gardes de cette puissance, jusqu’à ce qu’il plaise au peuple ou au Prince de la révoquer’.

<sup>76</sup> *Six Books*, 88; *Six Livres*, 127:

*si la puissance absolue lui est donnée purement & simplement, sans qualité de magistrat, ni de commissaire, ni forme de précaire, il est bien certain que celui-là est, & se peut dire monarque souverain: car le peuple s’est désaisi & dépouillé de sa puissance souveraine, pour l’ensaisiner & investir: & à lui, & en lui transporté tout son pouvoir, autorité, prérogatives, & souverainetés[.]*

the exercise of their power: in this case he is not to be accounted any sovereign, but a plain officer, or lieutenant, regent, governor, or guardian and keeper of another man's power.<sup>77</sup>

This opposition between the 'highest authority' and the 'subordinates' can also be identified in the parts of *Six Livres* dealing with the other feature of sovereignty, namely *absolute* power,<sup>78</sup> which Bodin also defined.<sup>79</sup> He wrote that sovereign princes 'are to give account unto none, but to the immortal God alone',<sup>80</sup> and that a 'sovereign prince next under God, is not by oath bound unto any'.<sup>81</sup> Then, showing that he was exaggerating<sup>82</sup> when he spoke of 'absolute' or 'unlimited' sovereignty, Bodin added the following caveat:

For if we shall say, that he only had absolute power, which is subject unto no law; there should then be no sovereign prince in the world, seeing that all princes of the earth are subject unto the laws of God, of nature, and of nations.<sup>83</sup>

Again, here, the original text is less ambiguous:

*car si nous disons que celui a puissance absolue, qui n'est point sujet aux lois, il ne se trouvera Prince au monde souverain, vu que tous les Princes de la terre sont sujets aux lois de Dieu, & de nature, & à plusieurs lois humaines communes à tous peuples.*<sup>84</sup>

Later, he further stated:

<sup>77</sup> *Six Books*, 88; *Six Livres*, 127:

*Mais si le peuple octroie sa puissance à quelqu'un tant qu'il vivra, en qualité d'officier, ou lieutenant, ou bien pour se décharger seulement de l'exercice de sa puissance: en ce cas il n'est point souverain, mais simple officier, ou lieutenant, ou régent, ou gouverneur, ou gardien, & bail de la puissance d'autrui[.]*

<sup>78</sup> As Skinner pointed out, what Bodin had in mind in characterising the sovereign as 'absolute' is to deny any right of legitimate resistance against a tyrannical ruler: Skinner, *Foundations of Modern Political Thought*, above n 66, 285–7. Franklin argues that, in fact, the principle of non-resistance was implicit in *Six Livres*: Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (1973) 50–2, 93. See also Chauviré, above n 65, 398–403.

<sup>79</sup> See *Six Books*, 88; *Six Livres*, 128.

<sup>80</sup> *Six Books*, 86; *Six Livres*, 125: 'n'est tenu à rendre compte qu'à Dieu'.

<sup>81</sup> *Six Books*, 99; *Six Livres*, 143: 'le Prince souverain ne doit serment qu'à Dieu'.

<sup>82</sup> See King, above n 70, 79, where the author expressed the following opinion (emphasis in original):

But Bodin also spoke in terms of sovereignty being absolute, perpetual (*la puissance absolue & perpétuelle*), total (*toute puissance*), and unlimited (*la souveraineté n'est limitée*, etc). Statements such as these, to put it mildly, may be accounted as exaggerations.

<sup>83</sup> *Six Books*, 90. This excerpt has created some confusion because of Knolles' inaccurate translation, which seems to suggest that Bodin intended to submit the absolute power of the sovereign prince to the law of nations, which has been taken to refer to the modern idea of 'international law'. A much more faithful translation reads:

If we insist however that absolute power means exemption from all law whatsoever, there is no prince in the world who can be regarded as sovereign, since all the princess [sic] of the earth are subject to the laws of God and of nature, and even to certain human laws common to all nations.

Jean Bodin, *Six Books of the Commonwealth* (Marian Tooley trans, 1955) 28 [trans of: *Les six Livres de la République*] (emphasis added).

<sup>84</sup> *Six Livres*, 131.

But as for the laws of God and nature, all princes and people of the world are unto them subject: neither is it in their power to impugn them, if will not be guilty of high treason to the divine majesty, making war against God; under the greatness of whom all monarchs of the world ought to bear the yoke, and to bow their heads in all fear and reverence. Wherefore in that we said the sovereign power in a Commonwealth to be free from all laws, concerned nothing the laws of God and nature.<sup>85</sup>

The laws of God and of nature, as well as the human laws common to all peoples, are really one and the same.<sup>86</sup> They refer to principles of reason and justice, to a superior moral (and non-temporal) order, and thus are not strictly enforceable.<sup>87</sup> This is Bodin the humanist speaking.<sup>88</sup> Specifically, this higher law is the basis for three limits on supreme power,<sup>89</sup> the third of which is incidental to the first two: (i) to honour contracts,<sup>90</sup> (ii) to respect private property,<sup>91</sup> and (iii) to consent to taxation.<sup>92</sup> There exist also fundamental laws<sup>93</sup>

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<sup>85</sup> *Six Books*, 92; *Six Livres*, 133:

*Mais quant aux lois divines & naturelles, tous les Princes de la terre y sont sujets, & n'est pas en leur puissance d'y contrevenir, s'ils ne veulent être coupables de lèse majesté divine, faisant guerre à Dieu, sous la grandeur duquel tous les Monarques du monde doivent faire joug, & baisser la tête en toute crainte & révérence. Et par ainsi la puissance absolue des Princes & seigneuries souveraines, ne s'étend aucunement aux lois de Dieu & de nature[.]*

<sup>86</sup> They would constitute what is referred to in French as '*droit*' (in Latin, '*ius*'), as opposed to positive law which is called '*loi*' in French ('*lex*' in Latin). See Carl Friedrich, *The Philosophy of Law in Historical Perspective* (1963) 60–1; Gardot, above n 36, 593–4, 624; Léon Ingber, 'Jean Bodin et le droit naturel' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 279, 292.

<sup>87</sup> See Chauviré, above n 65, 469–70: '*Mais, dira-t-on, ces principes n'auront de valeur pratique que si le monarque absolu veut bien les reconnaître; nul ne l'y peut contraindre, et tout dépend de sa bonne volonté, qui demeure incertaine*'. See also Franklin, 'Introduction', above n 37, xxiv. However, see McRae, 'Introduction', above n 35, A15:

Writing in the sixteenth century, Bodin could not treat the laws of God and nature as merely moral obligations, as might the jurist of today. Like most of his contemporaries, he firmly believed that the sovereign is directly responsible to God, and he had an unquestioning faith in divine retribution for actions which contravened the higher law. Political sovereignty operated within the wider framework of an ordered universe governed by God.

<sup>88</sup> Humanist scholars, such as Alciati, Zasius and Cajucius, premised their approaches on the firm conviction that there was one universal legal order, which was the basic source of all human laws: see Alessandro d'Entrèves, *The Notion of the State — An Introduction to Political Theory* (1967) 82; Friedrich, above n 86, 53–5; George Sabine, *A History of Political Theory* (3<sup>rd</sup> ed, 1951) 132.

<sup>89</sup> According to Franklin, except for taxation, there is nothing inconsistent with the limits Bodin imposes on supreme authority and absolutism: Franklin, *Jean Bodin and the Rise of Absolutist Theory*, above n 78, 70. On these prescriptions generally, see Yves Charles Zarka, 'État et gouvernement chez Bodin et les théoriciens de la raison d'État' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 149, 152–3; Baudrillard, above n 41, 271–3.

<sup>90</sup> *Six Livres*, 152–4; *Six Books*, 106–7.

<sup>91</sup> *Six Livres*, 156–7; *Six Books*, 109–10.

concerning 'the state of the realm, and the establishing thereof',<sup>94</sup> from which 'the prince cannot derogate'.<sup>95</sup> These pertain, essentially, to (i) the rules of succession to the throne<sup>96</sup> (based on Salic law),<sup>97</sup> and (ii) the inalienability of the public domain.<sup>98</sup>

## 2 The Power to Make Law

With respect to ordinary positive laws,<sup>99</sup> Bodin wrote: 'So we see the principal point of sovereign majesty, and absolute power, to consist principally in giving laws unto the subjects in general, without their consent.'<sup>100</sup> Further, the ruler would be *legibus solutus*<sup>101</sup> — 'a king or sovereign prince cannot be subject to his own laws'.<sup>102</sup> This aspect of the word 'sovereignty' is elaborated in the chapter 'Of the True Marks of Sovereignty',<sup>103</sup> where 'law' is defined as '*the command of a Sovereign concerning all his subjects in general: or else concerning general things*'.<sup>104</sup> To make law is thus the key mark of a

<sup>92</sup> *Six Books*, Book VI, Chapter II, 'Of Treasure', 649–86; *Six Livres*, Livre VI, Chapitre II, 'Des Finances', 855–913. This particular limit on the power of the sovereign has been said to constitute a contradiction in Bodin's theory of sovereignty. Baudrillart wrote about consent to taxation: '*Quelle réserve ou plutôt quelle contradiction!*': Baudrillart, above n 41, 275. See also Antonio Maronglu, 'Bodin et le consentement à l'impôt' in *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 365; Michael Wolfe, 'Jean Bodin on Taxes: The Sovereignty–Taxes Paradox' (1968) 83 *Political Science Quarterly* 268.

<sup>93</sup> On this type of laws, see King, above n 70, 133–4:

Bodin made a distinction between basic and non-basic law; between law that was and was not essential to the continuation of a political order; between law that was and was not fundamental; between law that was and was not constitutional.

See also McRae, 'Introduction', above n 35, A17, where the author explains that they are founded in 'the constitutional history of France'.

<sup>94</sup> *Six Books*, 95; *Six Livres*, 137: '*l'état du Royaume & de l'établissement d'icelui*'.

<sup>95</sup> *Six Books*, 95; *Six Livres*, 137: '*le Prince n'y peut déroger*'.

<sup>96</sup> *Six Books*, 721–54; *Six Livres*, 973–1013.

<sup>97</sup> Salic law guaranteed male succession to the French throne: *Six Livres*, 1011–13; *Six Books*, 753–4. See also Alain Néry, 'Jean Bodin et la théorie statutaire de la couronne' in *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 337.

<sup>98</sup> See *Six Livres*, 857–63; *Six Books*, 651–4.

<sup>99</sup> *Six Livres*, 129: '*Cette puissance est absolue, & souveraine: car elle n'a autre condition que la loi de Dieu & de nature ne commande*'; *Six Books*, 89: 'This so great a power given by the people unto the king, may well be called absolute and sovereign, for that it has no condition annexed thereunto, other than is by the law of God and nature commanded'.

<sup>100</sup> *Six Books*, 98; *Six Livres*, 142: '*Par ainsi on voit que le point principal de la majesté souveraine, & puissance absolue, git principalement à donner loi aux sujets en général sans leur consentement*'.

<sup>101</sup> That is, released from the law, not bound by the law: see Skinner, *Foundations of Modern Political Thought*, above n 66, 289; Chauviré, above n 65, 314: '*Que le prince ne soit pas soumis à la loi, rien n'est plus évident, puisqu'il la crée, et la modifie donc, et s'en exempte à son gré*' (footnotes omitted).

<sup>102</sup> *Six Books*, 92; *Six Livres*, 132: '*[L]e Roi ne peut être sujet à ses lois*'.

<sup>103</sup> *Six Books*, 153; *Six Livres*, 211: '*Des vraies marques de [la] Souveraineté*'.

<sup>104</sup> *Six Books*, 156 (emphasis in original); *Six Livres*, 216: '*est le commandement du souverain touchant tous les sujets en général, ou de choses générales*'; cf Max Shepard, 'Sovereignty at the Crossroads: A Study of Bodin' (1930) 45 *Political Science Quarterly* 580, 597: 'But Bodin never meant that law is merely and always the command of the sovereign'.

sovereign,<sup>105</sup> something that even those who ‘have written best [about the state] have not sufficiently and as it ought, manifested’.<sup>106</sup> Bodin instructed further:

Wherefore let this be the first and chief mark of a sovereign prince, to be of power to give laws to all his subjects in general, and to every one of them in particular, (yet is not that enough, but that we must join thereunto) without consent of any other greater, equal, or lesser than himself. *For if a prince be bound not to make any law without consent of a greater than himself, he is then a very subject: if not without his equal, he then has a companion: if not without the consent of his inferior, whether it be of his subjects, of the Senate, or of the people, he is then no sovereign.* And as for the names of Lords and Senators, which we often times see joined unto laws, they are not thereunto set as of necessity to give thereunto force or strength, but to give unto them testimony and weight, as made by the wisdom and discretion of the chief men, so to give them the better grace, and to make them to be the better received; and not for any necessity at all.<sup>107</sup>

On the related issue of customs, Bodin acknowledged that some say that ‘customs have almost the force of laws’,<sup>108</sup> even though they ‘depend not of the judgement or power of the sovereign prince, who as he is master of the law, so are particular men masters of the customs’.<sup>109</sup> This contention is dismissed by Bodin, for ‘custom has no force but by sufferance, and so long as it pleases the sovereign prince, who may make thereof a law, by putting thereunto his own confirmation’.<sup>110</sup> Similarly, a monarch is not bound by his coronation oath,<sup>111</sup> which he can ‘frustrate and disannul’<sup>112</sup> whenever ‘the reason and equity of

<sup>105</sup> According to Bodin, there would be nine marks of sovereignty: (i) the power to legislate, (ii) to make war and peace, (iii) to appoint higher magistrates, (iv) to hear final appeals, (v) to grant pardons, (vi) to receive homage, (vii) to coin money, (viii) to regulate weights and measures, and (ix) to impose taxes: see Baudrillart, above n 41, 277–80.

<sup>106</sup> *Six Books*, 153. See also *Six Livres*, 212: ‘[C]eux qui en ont mieux écrit n’ont pas éclairci ce point comme il méritait’. The legislative ramifications of sovereignty are said to be the ‘greatest innovation’ in Bodin’s theory because, in medieval times, the ruler’s functions were merely judicial and administrative; they now included not only the interpretation and application of rules, but also the making of law: see McRae, ‘Introduction’, above n 35, A14. This new discretion accorded to the sovereign was required in post-medieval Europe where societies were increasingly subject to expansion and change, which called for a more flexible legal system that could accommodate new circumstances and needs: see William Church, *Constitutional Thought in Sixteenth-Century France — A Study in the Evolution of Ideas* (1941) 230–1.

<sup>107</sup> *Six Books*, 159–60 (emphasis added); *Six Livres*, 221 (emphasis added):

*Et par ainsi nous conclurons que la première marque du Prince souverain, c’est la puissance de donner loi à tous en général, & à chacun en particulier: mais ce n’est pas assez, car il faut ajouter, sans le consentement de plus grand, ni de pareil, ni de moindre que soi: car si le Prince est obligé de ne faire loi sans le consentement d’un plus grand que soi, il est vrai sujet: si d’un pareil, il aura compagnon: si des sujets, soit du Sénat, ou du peuple, il n’est pas souverain. Et les noms des seigneurs qu’on voit apposés aux édits, n’y sont pas mis pour donner force à la loi, mais témoignage, & quelque poids pour la rendre plus recevable.*

<sup>108</sup> *Six Books*, 160; *Six Livres*, 222: ‘la coutume n’a pas moins de puissance que la loi’.

<sup>109</sup> *Six Books*, 160; *Six Livres*, 222: ‘si le Prince souverain est maître de la loi, les particuliers sont maîtres des coutumes’.

<sup>110</sup> *Six Books*, 162; *Six Livres*, 222: ‘la coutume n’a force que par souffrance, & tant qu’il plaît au Prince souverain, qui peut faire une loi, y ajoutant son homologation’.

<sup>111</sup> *Contra* Shepard, above n 104, 594–5: ‘My own impression is that Bodin regarded the coronation oath as of transcendental importance’.

<sup>112</sup> *Six Books*, 94; *Six Livres*, 135: ‘casser ou annuler’.

them' ceased.<sup>113</sup> In fact, being 'bound by oath to keep the laws and customs of their country',<sup>114</sup> Bodin wrote, would amount to '[the] overthrow [of] all the rights of sovereign majesty'.<sup>115</sup>

This sense of unified legal authority as the ultimate mark of sovereignty was applied to forms of government, which Bodin classified based on the *locus* of power.<sup>116</sup> He asserted that 'there are but three estates or sorts of Commonwealth; namely a Monarchy, an Aristocracy, and a Democracy',<sup>117</sup> depending on whether sovereignty resides in one, a few or all the citizens. It follows that what some authors have referred to as a 'mixed state' is impossible,<sup>118</sup> for

if sovereignty be of itself a thing indivisible, (as we have before showed) how can it then at one and the same time be divided between one prince, the nobility, and the people in common? The first mark of sovereign majesty is, to be of power to give laws, and to command over them unto the subjects.<sup>119</sup>

As far as his country was concerned, he added:

And this opinion of the mixed state has so possessed the mind of men, that many have both thought and written this monarchy of France (than which none can be imagined more royal) to be mixed and composed of the three kinds of Commonwealths, and that the parliament of Paris has the form of an Aristocracy, the three estates of a Democracy, and the king to represent the state of a monarchy: which is an opinion not only absurd, but also capital. For it is high treason to make the subject equal to the king in authority and power, or to join them as companions in the sovereignty with him.<sup>120</sup>

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<sup>113</sup> *Six Books*, 94; *Six Livres*, 135: 'la justice d'icelles'.

<sup>114</sup> *Six Books*, 101; *Six Livres*, 145: 'obligés de faire serment de garder les lois & coutumes du pays'.

<sup>115</sup> *Six Books*, 101; *Six Livres*, 146: 'dégradent la majesté souveraine'.

<sup>116</sup> See Sabine, above n 88, 346.

<sup>117</sup> *Six Books*, 184; *Six Livres*, 252: 'il n'y a que trois états, ou trois sortes de Républiques, à savoir la Monarchie, l'Aristocratie, & la Démocratie'.

<sup>118</sup> See Julian Franklin, 'Sovereignty and the Mixed Constitution: Bodin and His Critics' in James Burns (ed), *The Cambridge History of Political Thought — 1450–1700* (1991) 298, 302–5.

<sup>119</sup> *Six Books*, 185; *Six Livres*, 254–5:

*Car si la souveraineté est chose indivisible, comme nous avons montré, comment pourrait-elle se départir à un Prince, & aux seigneurs, & au peuple en un même temps? La première marque de souveraineté, est [de] donner la loi aux sujets: & qui seront les sujets qui obéiront[.]*

<sup>120</sup> *Six Books*, 191; *Six Livres*, 262–3:

*On a voulu dire & publier par écrit que l'état de France était aussi composé des trois Républiques, & que le Parlement de Paris tenait une forme d'Aristocratie, les trois états tenaient la Démocratie, & le Roi représentait l'état Royal: qui est une opinion non seulement absurde, mais aussi capitale. Car c'est crime de lèse majesté de faire les sujets compagnons du Prince souverain.*

### 3 General Assemblies and Magistrates

Moreover, given that supreme power is held at the top of a pyramid of authority — most appropriately by a king<sup>121</sup> — the consent of subordinate bodies is never required and their recommendations have no binding effect. Indeed, Bodin maintained that, although laws are generally changed ‘after general assembly of the three estates of France’,<sup>122</sup> it is never ‘necessary for the king to rest on their advice’,<sup>123</sup> and it is always possible to ‘do the contrary to that they demand, if natural reason and justice so require’.<sup>124</sup> Except with regard to taxation, the *Estates-General* do not have ‘any power in any thing to command or determine, or to give voice, but that that [sic] which it pleases the king to like or dislike of, to command or forbid’.<sup>125</sup> The same was said about the *Parlement de Paris*, which cannot ‘call in question the laws or decrees proceeding from the king concerning matters of state’.<sup>126</sup>

The ramifications for sovereignty of the independence<sup>127</sup> and power of magistrates are also significant for the ongoing metalogical inquiry of this word, which reveals an emphasis on a pyramid of authority.<sup>128</sup> Bodin wrote that, although a sovereign may choose to delegate his power,<sup>129</sup> ‘he may take unto himself the examination and deciding of such things as he has committed unto his magistrates or officers’.<sup>130</sup> At any time, ‘he may also take the power given them by virtue of their commission or institution, or suffer them to hold it so

<sup>121</sup> In the last chapter of *Six Livres*, Bodin compared the three forms of government and took the view that the monarchy was superior: *Six Books*, 700–21; *Six Livres*, 937–72. However, he did not advocate it for all societies indiscriminately because, based on extrinsic elements in nature like the climatic zone in which they live, some peoples needed a different form of government. This is known as Bodin’s ‘theory of climate’: *Six Books*, 545–68; *Six Livres*, 663–701.

<sup>122</sup> *Six Books*, 95; *Six Livres*, 137: ‘après avoir bien & duement assemblé les trois états de France en général’.

<sup>123</sup> *Six Books*, 95; *Six Livres*, 137: ‘nécessaire de s’arrêter à leur avis’.

<sup>124</sup> *Six Books*, 95; *Six Livres*, 137: ‘[L]e Roi ne puisse faire le contraire de ce qu’on demandera, si la raison naturelle, & la justice de son vouloir lui assiste’.

<sup>125</sup> *Six Books*, 95; *Six Livres*, 137: ‘aucune puissance de rien commander, ni discerner, ni voix délibérative: mais ce qu’il plaît au Roi consentir, ou dissenter, commander, ou défendre’.

<sup>126</sup> *Six Books*, 267; *Six Livres*, 358: ‘de mettre en délibération les ordonnances émanées du Roi concernant les affaires d’état’.

<sup>127</sup> According to Bodin, judges are virtually irremovable except for cause: see *Six Livres*, 429–51; *Six Books*, 325–42.

<sup>128</sup> See generally; Blandine Barret-Kriegel, ‘Jean Bodin: de l’empire à la souveraineté de l’état de justice à l’état administratif’ in Centre de Recherches de Littérature et de Linguistique de l’Anjou et des Bocages de l’Ouest, Université d’Angers, *Jean Bodin — Actes du colloque interdisciplinaire d’Angers* (1985) vol 1, 345, 353–4; Simone Goyard-Fabre, ‘Le magistrat de la république’ in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 115.

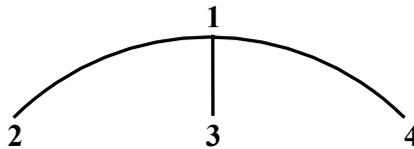
<sup>129</sup> Bodin provided a non-exhaustive list of those areas in which the sovereign may share his power: (i) the administration of justice, (ii) the appointment and dismissal of officials, (iii) the dispense of rewards and punishment, and (iv) the debate of state affairs. This is what Sabine referred to as ‘practical decentralization’: Sabine, above n 88, 346.

<sup>130</sup> *Six Books*, 85; *Six Livres*, 123: ‘de connaître par prévention, ou concurrence, ou évocation, ou ainsi qu’il lui plaira des causes dont il a chargé son sujet, soit commissaire, ou officier’.

long as shall please him'.<sup>131</sup> Later, in a chapter entitled 'The Power and Authority of a Magistrate over Particular and Private Men, and of His Office and Duty',<sup>132</sup> it is clearly explained that magistrates and commissioners are 'mere executors and ministers of the laws and of the princes, from whom they have their authority';<sup>133</sup> they do not hold 'any power in this point or respect in themselves'.<sup>134</sup>

#### 4 Recapitulation

The system of political power and authority put forward in *Six Livres* through the use of 'sovereignty' is therefore essentially interested in the *hierarchical structure* of governance in society.<sup>135</sup> Bodin used this word to place the holder of supreme power at the apex of the pyramid of authority. Although never expressed in the clearest of terms, this idea was nevertheless conveyed primitively at the end of the manuscript in a somewhat simplistic diagram:<sup>136</sup>



Although not quite a pyramid, this figure is intended to illustrate the hierarchy of authority within society. It shows the legal superiority of the sovereign (represented as '1') over what are referred to as the three estates, namely, the ecclesiastical order (represented as '2'), the military (represented as '3'), and the common people (represented as '4').<sup>137</sup>

Therefore, the metalogical analysis of the word 'sovereignty' in Bodin's *Six Livres* forcefully shows a strong predominance of the reality of the *highest unified power*, distinguished from that of the *subordinate decentralised power*. Indeed, the very definition of 'sovereignty', the 'perpetual' and 'absolute' elements insisting on highest temporal authority, the power to make law as the principal mark of sovereignty, the mere consultative role of the *Estates-General* and the *Parlement de Paris* in the legislative process, and the ultimate obligation of the magistrates to apply sovereign orders, all demonstrate that the word at hand was used by Bodin to advocate, call for, and bring about the unity of authority and power in 16<sup>th</sup> century France. This function becomes even clearer with a further hermeneutics-informed inquiry.

<sup>131</sup> *Six Books*, 85; *Six Livres*, 123: 'auxquels il peut ôter la puissance qui leur est attribuée, en vertu de leur commission, ou institution: ou la tenir en souffrance tant & si longuement qu'il lui plaira'.

<sup>132</sup> *Six Books*, 325; *Six Livres*, 429: 'De la puissance des Magistrats sur les particuliers'.

<sup>133</sup> *Six Books*, 333; *Six Livres*, 439: 'simples exécuteurs & ministres des lois & des Princes'.

<sup>134</sup> *Six Books*, 333; *Six Livres*, 439: 'aucun pouvoir pour ce regard'.

<sup>135</sup> As a result, it is fair to say that Bodin should be associated with this idea of a pyramid of authority rather than with unlimited, despotic absolutism: see King, above n 70, 79.

<sup>136</sup> *Six Books*, 790; *Six Livres*, 1056. This diagram is almost always overlooked by the commentators who analyse Bodin's theory of sovereignty.

<sup>137</sup> *Six Books*, 790–1; *Six Livres*, 1056–7.

C *Extended Historical Context*

The social and political situation in the second half of 16<sup>th</sup> century France was marked by recurrent civil and religious wars, from Henri II's persecution policy (based on the motto '*un roi, une loi, une foi*'<sup>138</sup>), to the St Bartholomew's Day Massacre (where between 10 000 and 20 000 people perished) and the revival of the Catholic League as the driving force of the Counter-Reformation.<sup>139</sup> Conditions went from bad to worse as years passed and conflicts became endemic;<sup>140</sup> the following account of the siege of Paris by the Huguenots in 1590 graphically illustrates the ordeal:

Paris endured a famine, to which that of 1870 was child's play. For some time rations of bread, with a piece of cat or dog, were served to the poor; but cats, dogs, rats, and mice rapidly disappeared. The hide of every beast in Paris was devoured. Candle grease became a luxury. The Duchess of Montpensier advised the people to dig up bones from the cemeteries and grind them into flour, but death was found to result from the Duchess of Montpensier's bread. Mme de Montpensier was asked for her pet dog to feed the poor. She replied that she was keeping it for her last meal. Noble ladies declared that they would eat their children rather than admit the heretics, and the more suffering classes took them at their word. The German mercenaries chased the children down the streets, as the children had chased the dogs. Everything, sarcastically wrote L'Estoile, was ruinous except sermons, of which starving people could have their bellyful.<sup>141</sup>

In fact, the progressive collapse of royal authority and the gradual disintegration of civil order came to affect morality and the very social fabric of France.<sup>142</sup>

From a place that had generally been blessed with a stable legal and political structure, Bodin's country was now in crisis. The supreme authority of the ruler was challenged from all directions — contests for succession which affected the stability of the monarchy; rivalries between the different houses and families for spheres of influence; feudal resistance to competence transfers to Paris; efforts of the Reformation to change both the religious and political tenets in France; and external pressure from the Holy Roman Empire, the papacy and antagonistic countries such as England.<sup>143</sup> Hence the references in the preface of *Six Livres*<sup>144</sup> to preserving 'this royal form of government from destruction',<sup>145</sup> and to the

<sup>138</sup> That is, 'one king, one law, one faith'.

<sup>139</sup> See generally Lucien Romier, *Les origines politiques des guerres de religion* (1913–14); James Thompson, *The Wars of Religion in France, 1559–1576* (1909); John Viénot, *Histoire de la Réforme française* (1926–34).

<sup>140</sup> The different conflicts may be grouped in the following chronology: 1562–63, 1567–68, 1568–70, 1572–73, 1574–76, 1577, 1579–80 and 1585–98.

<sup>141</sup> Edward Armstrong, *The French Wars of Religion* (2<sup>nd</sup> ed, 1904) 73–4.

<sup>142</sup> See Chauviré, above n 65, 267.

<sup>143</sup> See Gardot, above n 36, 620–1.

<sup>144</sup> Bodin wrote several prefatory texts to his *Six Livres*: (i) an introduction that appeared in all French editions, (ii) a Latin letter added to the revised French editions from 1578 onwards, and (iii) another different introduction to the Latin editions. The translation by Knolles, *Six Books*, contains a preface of his own composing, although based on several ideas used by Bodin in his introductions: see 'Appendix A — Bodin's Prefaces' in Kenneth McRae (ed), *Jean Bodin — The Six Bookes of a Commonweale* (1962) A69–A73.

<sup>145</sup> Taken from McRae's translation of the preface to the Latin version of *Six Livres*: *ibid* A72.

need to 'warn those who have survived the earlier disasters',<sup>146</sup> against the risks of 'unforeseen destruction of the state.'<sup>147</sup>

As regards the intellectual environment of the time, Bodin may be associated with the political philosophy of the *Politiques*, the moderate party which advocated peace, tolerance and national unity.<sup>148</sup> More importantly, however, *Six Livres* represented a break in what would be referred to as 'constitutionalism' in modern terms, which had been developing in France during the 16<sup>th</sup> century in the works of theorists like Barthélemy de Chasseneuz,<sup>149</sup> Claude de Seyssel,<sup>150</sup> and Seigneur du Haillan (publishing under the name Bernard de Girard),<sup>151</sup> all of whom generally held that, although having supreme power, the ruler was expected to govern according to the law and was not to change it without consulting the *Estates-General* or the *Parlement de Paris*.<sup>152</sup>

On the other hand, Catherine de Medici's Chancellor, Michel de l'Hospital,<sup>153</sup> and later other humanists including Charondas et Le Roy,<sup>154</sup> not only promoted the extension of royal powers to the making of laws, but also contested the 'right to remonstrate' exercised by the *Parlement de Paris*, and denied the *Estates-General* anything other than an advisory role in the legislative process.<sup>155</sup> It appears, therefore, that the use of the word 'sovereignty' in *Six Livres* fell squarely within this school of thought (although only 10 years earlier, in *Methodus*,<sup>156</sup> Bodin himself had adopted a much more constitutionalist line of reasoning).<sup>157</sup> Thus Bodin borrowed ideas, but he also innovated with his sovereignty:

His new conception of kingship may have been founded upon widely accepted political doctrines, but he defined it in such fashion that it was better able to meet the necessities of the moment than that of any earlier writer.<sup>158</sup>

In the 16<sup>th</sup> century, therefore, France was a relatively well-organised country, but its social fabric and political stability were in a state of crisis. The constitutional argument was popular in academic circles and, of course, used

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<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> See Sabine, above n 88, 341.

<sup>149</sup> Barthélemy de Chasseneuz, *Consuetudines ducatus burgundiae* (first published 1517, 1616 ed); Barthélemy de Chasseneuz, *Catalogus gloria mundi* (first published 1529, 1529 ed).

<sup>150</sup> Claude de Seyssel, *La monarchie de France* (first published 1519, revised ed, 1961). On the close link between de Seyssel and Bodin, see Yves Charles Zarka, *Philosophie et politique à l'âge classique* (1998) 116–19.

<sup>151</sup> Bernard de Girard, *De l'estat et succez des affaires de France* (first published 1571, 1609 ed); Bernard de Girard, *Histoire générale des Roys de France* (first published 1576, 1627 ed).

<sup>152</sup> See generally Franklin, *Jean Bodin and the Rise of Absolutist Theory*, above n 78, 1–22.

<sup>153</sup> Michel de l'Hospital, 'Harangue au Parlement de Paris' in Pierre Duféy (ed), *Œuvres complètes de Michel de l'Hospital, Chancelier de France* (1824) vol 2, 119.

<sup>154</sup> For more detail on these authors, see Church, *Constitutional Thought in Sixteenth-Century France*, above n 106, 205–12.

<sup>155</sup> See generally André Lemaire, *Les lois fondamentales de la monarchie française, d'après les théoriciens de l'ancien régime* (1907) 78–81.

<sup>156</sup> Bodin, *Methodus*, above n 43.

<sup>157</sup> See Franklin, *Jean Bodin and the Rise of Absolutist Theory*, above n 78, 23.

<sup>158</sup> Church, *Constitutional Thought in Sixteenth-Century France*, above n 106, 213.

liberally by governments and officials. ‘If Bodin published *Six Livres*, it was to save the monarchy’, wrote Chauviré.<sup>159</sup> The end he sought was the establishment of a coherent system of political organisation; the means he promoted to reach this objective was the *concentration of supreme power in as few hands as possible*.<sup>160</sup> ‘Public authority’, Bodin argued, ‘was situated entirely in the king. There could be no division of it between the ruler and any other individual in the state, no matter how high that person might stand in office or dignity.’<sup>161</sup>

#### D Social Effects of Bodin’s ‘Sovereignty’

The enlarged hermeneutic context of *Six Livres* in which its discourse existed, and has since been existing, supports the proposition that the word ‘sovereignty’ was used by Bodin for a particular purpose; namely, to place the ruler at the apex of a pyramid of authority. Accordingly, the sovereign prince should enjoy the most supreme power in the hierarchical organisational structure of society, that is, the *highest unified power*, free from any temporal authority.<sup>162</sup> Internally, the *Parlement de Paris*, the *Estates-General*, officials, magistrates and commissioners would all fall under the overarching authority of the monarch.<sup>163</sup> Externally (that is, internationally), the French king would be fully independent of any other political entity, be it the Holy Roman Empire, the papacy, or a foreign country.<sup>164</sup>

*Six Livres* had an immediate impact on the shared consciousness of European societies in general,<sup>165</sup> and that of France in particular: ‘Contemporaries recognized the value of the book at once, and henceforth Bodin was cited as a

<sup>159</sup> Chauviré, above n 65, 402; author’s translation of: ‘*S’il a publié la République, c’est pour sauver la royauté*’.

<sup>160</sup> King concludes: ‘The ideology of order, as in Bodin, might simply be equated with the notion of concentrating as much power in as few hands as possible’: King, above n 70, 156. See also Joseph Camilleri, ‘Rethinking Sovereignty in a Shrinking, Fragmented World’ in R B J Walker and Saul Mendlovitz (eds), *Contending Sovereignities — Redefining Political Community* (1990) 13, 16: ‘[Bodin’s] thesis that a central authority should wield unlimited power was in part an attempt to restore order and security to the deeply divided political society in France during that period’.

<sup>161</sup> Church, *Constitutional Thought in Sixteenth-Century France*, above n 106, 237.

<sup>162</sup> ‘Sovereignty, being the highest power in the state, consisted in the *ultimate* and most general power of command over all subordinate branches of government, however, conceived, and without exception’: King, above n 70, 128 (emphasis in original).

<sup>163</sup> See Chauviré, above n 65, 390:

*A l’intérieur, il faut bien qu’elle soit absolue, puisque, nous le savons, si la souveraineté ne restait pas totale aux mains du monarque, la monarchie même disparaîtrait. Mais elle est absolue. Le prince peut avoir un ou plusieurs sénats, grand conseil, conseil privé, conseil étroit, parlement, états généraux, il leur est supérieur à tous, et tous doivent en dernière analyse s’incliner devant sa volonté.*

<sup>164</sup> See Gardot, above n 36, 623:

*La souveraineté est, pour Bodin, absolue en ce sens qu’il n’admet pour le souverain, français notamment, aucune subordination de son pouvoir à celui d’un autre, soit à l’Empereur, soit au Pape. Le roi ne tient rien que de Dieu et de l’épée. Aucun pouvoir politique externe ne saurait s’imposer à lui, aucun pouvoir spirituel non plus.*

<sup>165</sup> See Baudrillart, above n 41, 142: ‘[Les livres de Bodin] obtinrent un immense succès. Sa République [fut] traduite dans presque toutes les langues de l’Europe, ainsi qu’il le dit dans son Apologie de René Herpin’. See also Chauviré, above n 65, 503.

foremost authority.<sup>166</sup> We are told that *Six Livres* 'was used very shortly after [1576] for lectures in Cambridge'<sup>167</sup> and that, by 1580, it was already well used in English political circles.<sup>168</sup> It also had a considerable influence on German theorists who, writing during the 17<sup>th</sup> century, were trying to explain the multifarious political reality of the Holy Roman Empire.<sup>169</sup> However, '[w]hat is most remarkable is the diversity with which foreigners interpreted Bodin after his death.'<sup>170</sup>

Even in France, the decades following the publication of *Six Livres* saw jurists such as Pierre Grégoire,<sup>171</sup> François Grimaudet<sup>172</sup> and Adam Blackwood,<sup>173</sup> distort Bodin's use of the word 'sovereignty' by joining 'legislative sovereignty' (which Bodin submitted to natural and divine law) with the idea of the 'divine right of kings' unlimited by any principle of a higher legal order.<sup>174</sup> This combination was, to a large extent, responsible for the period of extreme,

<sup>166</sup> Church, *Constitutional Thought in Sixteenth-Century France*, above n 106, 212. See also John Allen, *A History of Political Thought in the Sixteenth Century* (1961) 441.

<sup>167</sup> John Figgis, *Studies of Political Thought from Gerson to Grotius 1414–1625* (1907) 126; see also Bernard d'Orgeval, 'De "la République" et de son actualité' in *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 85, 85: 'Durant ce voyage en Angleterre, Bodin devait découvrir, sans doute avec une certaine satisfaction que son oeuvre, dont l'influence en France était restée limitée, se trouvait à Cambridge étudiée, expliquée et commentée comme un classique de la Science politique'.

<sup>168</sup> See Baudrillart, above n 41, 128–9. See also Raymond Minton, 'Les "Six Livres" vus d'outre-Manche' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 2, 469; John Salmon, 'L'héritage de Bodin: la réception de ses idées politiques en Angleterre et en Allemagne au XVII<sup>e</sup> siècle' in *Jean Bodin — Nature, histoire, droit et politique* (1996) 175, 190–200; See further George Mosse, 'The Influence of Jean Bodin's *Republique* on English Political Thought' (1948) 5 *Medievalia et Humanistica* 73, 82: 'There can be little doubt, then, that between 1581 and 1606, when Knolles translated the *Republic*, Bodin's definition of sovereignty had become almost a part of English political thought.' However, Bodin was also strongly criticised by English authors: see, eg, Charles McIlwain, *The Growth of Political Thought in the West — From the Greeks to the End of the Middle Ages* (1932) 364.

<sup>169</sup> See Franklin, 'Sovereignty and the Mixed Constitution', above n 118, 310; Salmon, above n 168, 181–9; Michel Senellart, "'*Juris peritus, id est politicus?*" Bodin et les théoriciens allemands de la prudence civile au XVII<sup>e</sup> siècle' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 201.

<sup>170</sup> Salmon, above n 169, 176; author's translation of: 'Ce qui est vraiment remarquable, c'est la diversité avec laquelle les étrangers ont interprété Bodin après sa mort'.

<sup>171</sup> Pierre Grégoire, *De republica libri sex et viginti* (first published 1578, 1596 ed).

<sup>172</sup> François Grimaudet, *Opuscules politiques* (first published 1580, 1580 ed).

<sup>173</sup> Adam Blackwood, *Adversus Georgii Buchanani dialogum, de iure regni apud Scotos, proregibus apologia* (first published 1581, 1588 ed).

<sup>174</sup> Church wrote:

Bodin's conception of sovereignty had attributed to the ruler the combined authorities to make new law and to enforce its execution. And when royal authority of that type was given a basis in divine authorization, the resulting idealization of the monarch's rule caused thinkers increasingly to regard the law made by the king as the earthly manifestation of God's will or at least to believe that it was inspired by agents beyond the capacity of ordinary mortals. Thus the king was a living law in the most complete sense. Likewise, he could do no wrong, for he himself might establish the standard according to which his acts were evaluated.

Church, *Constitutional Thought in Sixteenth-Century France*, above n 106, 251 (footnotes omitted).

despotic absolutism in the 17<sup>th</sup> century,<sup>175</sup> epitomised by Richelieu's '*raison d'État*'<sup>176</sup> and Louis XIV's '*l'État, c'est moi*.'<sup>177</sup> This is a forceful illustration that a word like 'sovereignty' can be strategically used, and also abused,<sup>178</sup> to exert significant power in humanity and have a tremendous effect on the shared consciousness of society.

#### IV CONCLUSION: FROM INTERNAL TO EXTERNAL 'SOVEREIGNTY'

To conclude, it is first useful to recall the underlying objective of the present metalogical study; namely, to show that the powerful word 'sovereignty' has fulfilled, and still fulfils, incredibly important functions in the continuous and continuing process of reality-creation. It was chosen because the very large-scale word that is 'sovereignty' is liable to have a very large-scale social effect. Bodin's 'sovereignty' provides a strong example of the organic nature of words, as instruments that both represent and create reality through the human mind within the shared consciousness of society.<sup>179</sup> The word 'sovereignty' has been a forceful political tool and rhetorical weapon, and could be compared to both tools such as a hammer and nails, or to weapons such as shells and nuclear bombs.<sup>180</sup>

The uninterrupted quest for a so-called 'proper' or 'adequate' definition of 'sovereignty', in both its internal and international ramifications, bears witness to the unfading materiality of this word for human society. For instance, during the

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<sup>175</sup> See James Scott, *Law, the State, and the International Community* (1939) vol 1, 325 (emphasis added):

the outstanding contribution of Bodin was a political theory whose avowed purpose was the welding of communities more or less independent under the domination of a single sovereign monarch whose word was to be law, *which theory, when pushed to its ultimate conclusion — as it unfortunately was — was to be succinctly expressed in French in a few short words: 'L'État! C'est moi'*.

<sup>176</sup> That is, 'reason of state', or essentially the interest of the state. This concept is to the effect that the wellbeing of a polity justifies more or less any means utilised to promote it internally and externally: see William Church, *Richelieu and Reason of State* (1972) 44–80; Henri Weber, 'Bodin et Machiavel' in Centre de Recherches de Littérature et de Linguistique de l'Anjou et des Bocages de l'Ouest, Université d'Angers, *Jean Bodin — Actes du colloque interdisciplinaire d'Angers* (1985) vol 1, 231; Yves Charles Zarka (ed), *Raison et déraison d'État — Théoriciens et théories de la raison d'État aux XVIIe et XVIIIe siècles* (1994). See also, in relation to Bodin's work, Friedrich Meinecke, *L'idée de la raison d'État dans l'histoire des Temps modernes* (Maurice Chevallier trans, 1973 ed) 59–66 [trans of: *Die Idee der Staatsräson in der modernen Geschichte*]; Diego Quagliani, "'Imperandi ratio": l'édiction latine de la République (1586) et la raison d'État' in Yves Charles Zarka (ed), *Jean Bodin — Nature, histoire, droit et politique* (1996) 161; Zarka, 'État et gouvernement chez Bodin', above n 89.

<sup>177</sup> See Jean-Louis Thireau, *Les idées politiques de Louis XIV* (1973) 9; see generally Ragnhild Hatton (ed), *Louis XIV and Absolutism* (1976).

<sup>178</sup> For illustrations of such uses and abuses, see George Lewis, *Remarks on the Use and Abuse of Some Political Terms* (1832), and in particular on the term 'sovereignty': 33.

<sup>179</sup> On the expression 'organic' instrument, see above n 4. On the dual function of words that both represent and create reality, see Wittgenstein's theory of language, above n 2.

<sup>180</sup> See Allott, *Eunomia*, above n 7, 5:

The life we live in words is, as we know from the whole of recorded human history, a life of tremendous energy. We live and die for words; we create and kill for words; we build and destroy for words; wars and revolutions are made for words.

*acalmie* of the Great War at the beginning of the 20<sup>th</sup> century, Harold Laski wrote:

Nothing is today more greatly needed than clarity upon ancient notions. Sovereignty, liberty, authority, personality — these are the words of which we want alike the history and the definition; or rather, we want the history because its substance is in fact the definition.<sup>181</sup>

Likewise, in international legal literature, Lassa Oppenheim once noted that, 'there exists perhaps no conception the meaning of which is more controversial than that of sovereignty.'<sup>182</sup> Towards the end of that century, after the fall of the Soviet Empire, Boutros Boutros-Ghali expressed similar concerns:

A major intellectual requirement of our time is to rethink the question of sovereignty — not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function.<sup>183</sup>

With his masterpiece *Six Livres*, Jean Bodin was the first writer to provide a theoretical definition and application for 'sovereignty', which in effect constituted a strategic use by him of the word at hand to carry immense social power within the shared consciousness of mid 16<sup>th</sup> and early 17<sup>th</sup> century Europe. As has been shown in this article, the purpose for which 'sovereignty' was introduced then pertained to the sense of a *highest unified power*, as opposed to the sense of *subordinate decentralised power*. Therefore, Bodin used the word 'sovereignty' for the particular purpose of placing the ruler (the French king) at the apex of the pyramid of authority.

However, far from being thus semantically crystallised, this word has in fact never stopped changing, playing an ongoing material role in modelling and transforming the socially constructed reality of humanity. Indeed, as James Leslie Brierly wrote:

[Sovereignty] has never been, at any period of its history, a scientific deduction derived from the examination of the essential nature of political authority; in practice, each theorist on this issue had a goal of propaganda and not a simply scientific goal.<sup>184</sup>

As for Bodin, Brierly wrote that he 'was convinced of the necessity to reinforce the central authority of the French King'.<sup>185</sup> The British internationalist continued: 'Hobbes was frightened by the civil upheavals in which he lived;

<sup>181</sup> Harold Laski, *The Foundations of Sovereignty and Other Essays* (1921) 314.

<sup>182</sup> Lassa Oppenheim, *International Law: A Treatise* (1905) vol 1, 103.

<sup>183</sup> Boutros Boutros-Ghali, 'Empowering the United Nations' (1992) 71 *Foreign Affairs* 89, 99.

<sup>184</sup> See James Brierly, 'Règles générales du droit de la paix' (1936) 58 *Recueil des Cours de l'Académie de droit international de La Haye* 1, 24; author's translation of:

*Celle-ci [sovereignty], à aucune période de son histoire, n'a été une déduction scientifique dérivée de l'examen de la nature essentielle de l'autorité politique; pratiquement, chaque théoricien de cette question a eu un but de propagande et non un but simplement scientifique.*

<sup>185</sup> *Ibid*; author's translation of: 'était convaincu de la nécessité de renforcer l'autorité centralisée du roi de France'.

Locke wanted to defend a revolution; Rousseau, to support the rights of the democracy'.<sup>186</sup>

Focusing on the semantic evolution of Bodin's 'sovereignty' and its application to the 'law of nations',<sup>187</sup> the reality associated with the word was eventually transposed from the internal to the international plane. This was accomplished largely through the work of the Swiss author Emer de Vattel,<sup>188</sup> *Le Droit des Gens; ou Principes de la loi naturelle appliqués à la conduite & aux affaires des Nations & des Souverains*.<sup>189</sup> 'It was a "realistic" book', argued Martti Koskenniemi, 'especially useful for diplomats and practitioners, not least because it seemed to offer such compelling rhetorics for the justification of most varied kinds of State action.'<sup>190</sup>

Since this externalisation of the word, there is a distinction between Bodin's 'internal sovereignty' and Vattel's 'external sovereignty'.<sup>191</sup> Already in the 19<sup>th</sup> century this dichotomy was clear, with Johann Bluntschli for instance writing that 'sovereignty of the State may be looked at from without and from within: from without, as the independence of a particular State in relation to other states [and] from within, as the legislative power of the body politic.'<sup>192</sup> Several

<sup>186</sup> Ibid 25. Author's translation of: 'Hobbes était épouventé par les bouleversements civils au milieu desquels il avait vécu; Locke voulait défendre une révolution; Rousseau, soutenir les droits de la démocratie'.

<sup>187</sup> This was of course the consecrated expression to refer to the legal rules governing the relations between states before Jeremy Bentham introduced his 'international law' at the beginning of the 19<sup>th</sup> century: see Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1823); see also M W Janis, 'Jeremy Bentham and the Fashioning of "International Law"' (1984) 78 *American Journal of International Law* 405.

<sup>188</sup> On Vattel and his work, see generally Edouard Béguelin, 'En souvenir de Vattel' in *Recueil de Travaux offert par la Faculté de Droit de l'Université de Neuchâtel à la Société suisse des juristes à l'occasion de sa réunion à Neuchâtel* (1929) 1; Paul Guggenheim, *Emer de Vattel et l'étude des relations internationales en Suisse* (1956); Emmanuelle Jouannet, *Emer de Vattel et l'émergence doctrinale du droit international classique* (1998); Albert de Lapradelle, 'Emer de Vattel' in James Scott (ed), *The Classics of International Law — Vattel* (1916) vol 1, i; A Mallarmé, 'Emer de Vattel' in Antoine Pillet (ed), *Les fondateurs du droit international* (1904) 31; Coleman Phillipson, 'Emerich de Vattel' in John Macdonell and Edward Manson (eds), *Great Jurists of the World* (1914) vol 2, 477; Peter Remec, *The Position of the Individual in International Law According to Grotius and Vattel* (1960); Francis Ruddy, *International Law in the Enlightenment — The Background of Emerich de Vattel's Le Droit des Gens* (1975); Horatia Muir Watt, 'Droit naturel et souveraineté de l'Etat dans la doctrine de Vattel' (1987) 32 *Archives de philosophie du Droit* 71.

<sup>189</sup> See also Emer de Vattel, *The Law of Nations; or Principles of the Law of Nature, applied to the Conduct and Affairs of Nations and Sovereigns* (Joseph Chitty trans, 1863 ed) [trans of: *Le Droit des Gens; ou Principes de la loi naturelle appliqués à la conduite & aux affaires des Nations & des Souverains*].

<sup>190</sup> Martti Koskenniemi, *From Apology to Utopia — The Structure of International Legal Argument* (1989) 89 (emphasis added). See also J S Reeves, 'La communauté internationale' (1924) 3 *Recueil des Cours de l'Académie de droit international de La Haye* 1, 37–8.

<sup>191</sup> Paul Fauchille, *Traité de droit international public* (1922) vol 1, 224: 'La souveraineté est, ou intérieure et intranationale, ou extérieure et internationale.' See also Hans Morgenthau, 'The Problem of Sovereignty Reconsidered' (1948) 58 *Columbia Law Review* 341, 345; Nkambo Mugerwa, 'Subjects of International Law' in Max Sørensen (ed), *Manual of Public International Law* (1968) 247, 253.

<sup>192</sup> Johann Bluntschli, *The Theory of the State* (2<sup>nd</sup> ed, 1892) 501. See also Thomas Lawrence, *The Principles of International Law* (1895) 56–7.

international legal commentators,<sup>193</sup> such as Henry Wheaton, have expressed the view that sovereignty 'may be exercised either internally or externally.'<sup>194</sup> He elaborated:

Internal sovereignty is that which is inherent in the people of any State, or vested in its rulers by its municipal constitution or fundamental laws. External sovereignty consists in the independence of one political society, in respect to all other political societies.<sup>195</sup>

Thomas Lawrence spoke of 'the conception of a *Sovereign or Independent State*, which possesses not only internal sovereignty, or the power of dealing with domestic affairs, but external sovereignty also, or the power of dealing with foreign affairs.'<sup>196</sup> In brief, *internally* (that is, according to Bodin's use), 'sovereignty' is 'the state's exclusive right or competence to determine the character of its own institutions, to ensure and provide for their operation, to enact laws of its own choice and ensure their respect.'<sup>197</sup> *Externally* (that is, according to Vattel's transformed use), Judge Anzilotti in *Customs Régime between Germany and Austria (Advisory Opinion)* spoke of 'sovereignty (*suprema potestas*), or *external sovereignty*, by which is meant that the State has over it no other authority than that of international law.'<sup>198</sup>

This illustrates the modern history of the true power that 'sovereignty' has exercised in framing the international state system and hence the international legal system. From Bodin's original function, aimed at the internal political and legal organisation of a society of people, Vattel changed the reality associated with 'sovereignty' in order to apply this idea to the political and legal organisation of our society of nations. The foregoing project shows how the creative and transforming function of the extremely powerful word 'sovereignty' is continuous and continuing, changing in its nature and effects over time. This historical inquiry into the theoretical genesis of 'sovereignty' will certainly contribute to the contemporary debates on domestic, transnational and

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<sup>193</sup> See the recent literature by Ronald Brand, 'The Role of International Law in the Twenty-First Century: External Sovereignty and International Law' (1995) 18 *Fordham International Law Journal* 1685, 1689–90; Armelle Treppoz, 'Les sujets du droit international public dans la jurisprudence du Conseil constitutionnel' [2000] *Droit Public* 1629, 1644: '[La souveraineté] est à la fois interne (autorité suprême de l'État à l'intérieur de ses frontières) et externe (indépendance et égalité des États)' (footnotes omitted).

<sup>194</sup> Henry Wheaton, *History of the Law of Nations in Europe and America — From the Earliest Times to the Treaty of Washington, 1842* (1845) 27. See also Fauchille, above n 191.

<sup>195</sup> Wheaton, above n 194, 27.

<sup>196</sup> Lawrence, above n 192 (emphasis in original).

<sup>197</sup> Mugerwa, above n 191, 253. Similarly, see Morgenthau, above n 191, 341.

<sup>198</sup> *Customs Régime between Germany and Austria (Advisory Opinion)* [1931] PCIJ (ser A/B) No 41, 57 (emphasis in original).

international issues of governance,<sup>199</sup> including the doctrine of pre-emptive strike, the International Criminal Court, the *Kyoto Protocol*, and no doubt also the latest trendy 'globalisation', another extremely powerful word.<sup>200</sup>

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<sup>199</sup> As such, this study would fall within what David Kennedy has referred to as the 'newstream' of international legal scholarship, as opposed to the 'mainstream': see David Kennedy, 'A New Stream of International Law Scholarship' (1988) 7 *Wisconsin International Law Journal* 1; David Kennedy, 'A New World Order: Yesterday, Today, and Tomorrow' (1994) 4 *Transnational Law and Contemporary Problems* 329. More particularly, on these new schools and the history of 'sovereignty', as well as the role of language, see Deborah Cass, 'Navigating the Newstream: Recent Critical Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 341, 354, 359.

<sup>200</sup> On the different meanings given to the word 'globalisation' (or '*mondialisation*'), see Ellen Hey, 'Globalisation and International Law' (2002) 4 *International Law Forum* 12. On sovereignty in the age of globalisation, see also Oscar Schachter, 'Sovereignty — Then and Now' in Ronald St John Macdonald (ed), *Essays in Honour of Wang Tieya* (1994) 671, 671–2; Philip Allott, 'The Emerging Universal Legal System' (2001) 3 *International Law Forum* 12, 17:

International social reality has overtaken international social philosophy. The Vattelian mind-world is withering away under the impact of the new international social reality. The reconstruction of the metaphysical basis of international law is now well advanced. The deconstruction of the false consciousness of politicians, public officials, and international lawyers is only just beginning.