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Sovereignty and Decentralization – two competing perspectives on the crisis of the French monarchy in the 16th century

INTRODUCTION

The outbreak of the first religious war in France in 1562 marked the beginning of a prolonged and acute crisis which was to beset the kingdom for decades and which cannot be explained solely by the intensity of both sides' doctrinal zeal. Economic, social, political and legal factors were all at play, thus adding to the complexity of the conflict. In its process the military and financial weakness of the monarchy soon became evident as the royal armies were unable to deal a decisive blow to the Huguenot movement sturdily entrenched in the southern regions of France. The monarchy's simultaneous inability to forge a durable compromise furtherly exposed its deficiency and clearly indicated that the rising tensions could no longer be contained by the institutional and political framework of the kingdom. Desperate measures ensued, only to make the situation worse as the radicalization of Huguenots (and in due course also of the staunchest Catholics) after the assassination of their leaders in August 1572 and the subsequent outburst of popular violence towards the Protestant minority clearly showed. By November 1576 (and after 5 inconclusive wars in a period of merely 24 years) when the meeting of the Estates General began in Blois, no one doubted the profoundness of the crisis.¹

The state of lasting conflict prompted both sophisticated theorists and partisan pamphleteers to produce treatises offering solutions supposedly capable of mending the dysfunctional body-politic. Jean Bodin's *Les Six livres de la République*

¹ For a detailed analysis of the widespread reformist sentiment in the French society during the Wars of Religion see M. Greengrass, *Governing Passions: Peace and Reform in the French Kingdom, 1576–1585*, Oxford 2007.

(henceforth *République*) published early in 1576 clearly stood out, as it offered a comprehensive theory of the state unified by a single sovereign power that allowed the commonwealth to exist in the first place and that, if it had been properly understood, would have protected it from the raging anarchy.² On the other side of the confessional barricade, Huguenots were waging their own ideological battles against the crown, trying to come up with arguments that would allow them to justify their resistance and at the same time *not* to present themselves as a seditious minority threatening the stability of the kingdom.³ The most sophisticated treatise belonging to that tradition of thought was *Vindiciae, contra tyrannos* published anonymously in 1579, but probably written five years previously either by Philipp du Plessis Mornay or Hubert Languet (we shall refer to the author of the *Vindiciae* as Brutus – the pseudonym he himself employed).⁴ Both *République* and *Vindiciae, contra tyrannos* have been studied extensively (although the former has drawn much wider attention). The scholarly debate regarding the former seems to be centred around the relationship between Bodin's concept of sovereignty and the rise of absolutism⁵, whereas the latter is usually placed firmly within the context of the so-called Huguenot theory of revolution, as its last, most consistent piece.⁶

² Bodin clearly stated that that was his aim in the preface to the first French edition of 1576 where he presented himself as giving advice on the proper legal and political arrangement of the commonwealth and denouncing the pernicious theories advocated by “Machiavellians” and preachers of popular sovereignty (clearly referring to the Monarchomach theories) that had, in his eyes, disastrous effects. J.H.M. Salmon, *Bodin and the Monarchomachs* [in:] idem, *Renaissance and Revolt: Essays in the intellectual and social history of early modern France*, Cambridge 1987, p. 121.

³ To be sure, that “moderate” approach was not the only one present among the Huguenots. See R. Kingdon, *Calvinism and resistance theory, 1550–1580* [in:] J.H. Burns, M. Goldie (eds.), *The Cambridge History of Political Thought 1450–1700*, Cambridge 1991, pp. 193–218.

⁴ A detailed discussion of the problem of authorship and the publication date can be found in G. Garnett, *Introduction* [in:] Anonymous (1579), *Vindiciae, contra tyrannos: or, concerning the legitimate power of a prince over the people, and of the people over a prince*, transl. and ed. G. Garnett, Cambridge 1994, pp. xx–xxii (date), lv–lxxvi (authorship).

⁵ A classic work that presented Bodin's supposed adoption of absolutism in *République* as a decisive break with his earlier “constitutional” theories presented in *Methodus ad facilem historiarum cognitionem* (1566) is J.H. Franklin, *Jean Bodin and the rise of absolutist theory*, Cambridge 1973. This vision has been criticized by other scholars who pointed out that Bodin was far from advocating unbridled, absolute power of the king, and that his theory of state evolved gradually much like that of Th. Hobbes in *De cive* and *Leviathan*. See R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy*, Cambridge 2015, pp. 56–62; D. Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, Oxford 2016, pp. 187–188.

⁶ A classic analysis is: Q. Skinner, *The Foundations of Modern Political Thought*, vol. 2: *The Age of Reformation*, Cambridge 1978, pp. 302–338. Anne McLaren has recently criticized the scholarly focus on the influence of Roman law tradition in *Vindiciae*, advocating in turn a more religion-based interpretation. A. McLaren, *Rethinking Republicanism: “Vindiciae, contra tyrannos” in Context*, “The Historical Journal” 2006, Vol. 49, No. 1. For a persuasive refutation see: G. Garnett,

It is not the aim of this paper to contest these perspectives, but rather to look at both treatises from a slightly different angle – namely as answers to the ongoing institutional crisis of the monarchy, especially as seen through the lenses of strictly interdependent issues of decentralization and inadequacy of the royal administration. It should at once be pointed out that neither of these works was written as a direct response to that specific problematic, let alone exclusively for that purpose. Nevertheless, it will be argued that the specific tension between the royal administration and the complicated structure of local networks of power not only rendered it impossible for both Bodin and Brutus not to take a stance on that matter but also influenced their theories. Accordingly, we shall begin with a brief description of the institutional structure of the French kingdom prior to the outbreak of the Wars of Religion which quickly proved inadequate once the conflict commenced. The emphasis will be put on the fragile cooperation between the royal government in Paris and virtually innumerable local institutions and territorial networks of power that allowed the Valois kings to control the state in times of relative stability, but which collapsed when faced with the internal struggle and proactive contestation of kingly authority. That introductory chapter will form the bedrock for the subsequent analysis of how Brutus and Bodin tried to incorporate the complex institutional reality of the French kingdom into their own theories. As a result, we hope to shed some light at the peculiar ways that Bodin and Brutus tried to circumvent the problems posed by the existence of local power networks, defused or used them to their own advantage as well as how it limited their theories.

THE CRISIS OF THE MONARCHY

For the purposes of this paper, three institutional aspects of the Renaissance Valois monarchy in the years preceding the outbreak of the Wars of Religion are of particular importance.⁷ In the first place it ought to be noted that the French victory in the Hundred Years War and the subsequent incorporation of Burgundy (1477), Provence (1481), and Brittany (1491) – domains with long traditions of independence – brought somewhat paradoxical results. On the one hand, having finally defeated the English and solidified their internal position, the French monarchs seemed stronger than ever before. On the other hand, it soon became obvious that the cooperation of local elites, a certain acceptance of particularism which grew in

Law in the "Vindiciae, contra tyrannos": a Vindication, "The Historical Journal" 2006, Vol. 49, No. 3.

⁷ The following description of the French monarchy is largely based on J. Russell Major, *From Renaissance Monarchy to Absolute Monarchy: French Kings, Nobles, and Estates*, Baltimore 1994, pp. 3–56.

strength during the war was indispensable if the kingdom was to operate effectively and be able to withstand its own territorial expansion. The provincial sovereign courts were established to administer justice on king's behalf, the local assemblies were frequently consulted and their right to consent to taxation (if they did possess it) was usually respected. As J. Russell Major put it: "In fact, by accepting, nay, even encouraging, provincial autonomy and by respecting the privileges of their subjects, Charles [VIII] and Louis [XII] strengthened the monarchy. People with little historical association with the crown, like those of Dauphiné and Provence, and those who had been devoted to their dukes, like the Burgundians, learned to become loyal subjects. In an age when the crown had neither an adequate army nor a bureaucracy to compel obedience, this accomplishment was of the highest importance."⁸ For all the rationality of that policy however, the decentralization of the administration of justice and acceptance of the existing network of local assemblies meant that the French kings had to take this institutional structure into account when shaping their strategy, even though their adherents never failed to underscore the constitutional right of the king to enforce his will regardless of other loci of power.⁹

Secondly, the ability to enforce various institutions to obey royal commands proved indispensable as the ever-rising costs of war in Italy, increasing inflation, and at times lavish expenses of the court were forcing the Valois monarchs to seek new sources of revenue. That was especially true during the reign of Francis I and his successors, who never failed to avail themselves of any opportunity to generate additional income. They found these opportunities in selling offices (more often than not created specifically in order to be sold),¹⁰ imposing new types of taxes or increasing the old ones and borrowing heavily (typically from their subjects). All these measures, however, not only failed to prevent the financial situation of the subsequent kings from deteriorating, but caused the royal debt to soar to an unprecedented level, forcing the crown to seek closer cooperation with their increasingly impatient and already heavily burdened subjects. By 1560, merely two years before the first War of Religion, there was no other way of funding royal expenses but to call a meeting of the Estates General – a clear sign of the monarchy's vulnerability and a significant encouragement to all those who advocated a more inclusive,

⁸ Ibidem, p. 24.

⁹ As chancellor l'Hopital did on behalf of Charles IX in the opening speech of the Estates General in 1561. Q. Skinner, *The Foundations...*, vol. 2, p. 256. In financial matters kings often invoked the doctrine of "evident necessity" to impose taxes without assemblies' consent which allowed them to obtain necessary revenue and maintain the impression of operating within the constitutional structure of the kingdom. J. Russell Major, *From Renaissance Monarchy...*, pp. 16–19.

¹⁰ J. Russell Major, *From Renaissance Monarchy...*, pp. 104–105.

decentralized constitutional shape of the monarchy and called for more frequent meetings of local assemblies and the Estates General alike.¹¹

Thirdly, the simultaneous growth of the corps of professional royal officers (partially as a result of the venality of offices, partially due to genuine efforts to create more efficient system of administration) caused strong resentment toward the representatives of the central government on the part of local, “old” nobility, who saw these developments as grave threats to their traditional role as enforcers of the royal will in their localities.¹² Nevertheless, the traditional ties of deference formed into an elaborate system of clientage still played a vital role in the functioning of the monarchy as “kings, who could win the loyalty of their greatest nobles by distributing patronage and others favours judiciously, found that through these nobles they could penetrate into the provinces and still lower reaches of the government.”¹³ Crucially, however, as soon as royal power suffered a severe blow with the death of Henry II in 1559 and then was constantly undermined by powerful noble factions (Guises, Bourbons, etc.) and the ongoing civil war, those very same channels of influence turned out to be a double-edged weapon as the competing sides used them to muster their own supporters and solidify areas under their control.¹⁴ The tension between the expanding centralized administration and the particularism of the provinces, the constant need of money on the king’s part that forced him to seek the approval of his policy from his subjects, the complex network of clientage – these three aspects of political reality of the sixteenth-cen-

¹¹ Ibidem, pp. 113–114.

¹² During the Estates General of 1560 and 1561 the secular estates protested vehemently against the new nobility (*noblesse de robe*) closely tied to the growing royal administration, as well as against the taxation of their own wealth. Both secular estates were only willing to agree for the taxation of the other two, thus not only thwarting king’s hopes but also failing to recognize that their refusal to aid the crown rendered future meetings of the Estates General rather unlikely. The clergy, having agreed to help the monarch financially, was to be convoked relatively frequently in the decades to come. See J. Russell Major, *The Third Estate in the Estates General of Pontoise, 1561*, “Speculum” 1954, Vol. 29, No. 2, pp. 460–476.

¹³ J. Russell Major, *From Renaissance Monarchy...*, p. 95. There has been a debate, initiated by Robert Harding, whether the clientage system was gradually losing its importance during the Wars of Religion in favour of new, ideological rather than personal ties based on “party” system. Harding claimed that that was indeed the case, but detailed case-studies conducted *inter alios* by Mark Greengrass and Sharon Kettering showed that the client-patron ties did not disappear with the advent of party allegiances during the Wars of Religion but functioned within them and lasted well into the 17th century. R. Harding, *Anatomy of a Power Elite: The Provincial Governors of Early Modern France*, New Haven 1978, pp. 68–87; M. Greengrass, *Noble Affinities in Early Modern France: The Case of Henri I de Montmorency, Constable of France*, “European History Quarterly” 1986, No. 16; S. Kettering, *Clientage during the French Wars of Religion*, “The Sixteenth Century Journal” 1989, Vol. 20, No. 2.

¹⁴ M. Holt, *The French Wars of Religion, 1562–1629*, Cambridge 2005, p. 51.

ture France seriously crippled the ability of the monarchy to address the challenges posed by the Wars of Religion.

The course of the fifth and sixth Religious Wars (1574–1577) can very well serve as an example of how exactly these institutional constraints curtailed the power of the central government. The smouldering hostilities in the provinces escalated into a full-blown conflict when king Henry III failed to control his own brother and heir presumptive – the duke d'Alençon, who fled the court in September 1575 and began to actively denounce the royal government in order to build his own position – if need be by siding with Huguenots and employing their arguments to criticize the unconstitutional actions of the king.¹⁵ A coalition was formed, led by d'Alençon, great Huguenot nobles – Condé and Navarre (who escaped from the court in February 1576), alongside the Catholic magnate and Governor of Languedoc – Henri I de Montmercy. The royal army was unable to capture fortified settlements, not for the first time during the Wars of Religion proving its weakness.¹⁶ The rebel army combined with German mercenaries under Casimir of Palatinate was clearly superior to the forces loyal to the heavily indebted king who had no choice but to negotiate a settlement. The Edict of Beaulieu was issued on 6 May 1576. The Huguenots were allowed to worship publicly in all France (with the exception of Paris), special *chambres-mi-partes* were established to adjudicate cases involving litigants of both religions, the Estates General were to be convoked in order to discuss the long-overdue reform of the kingdom.¹⁷ To be sure, Alençon's ambitions had also been satisfied – a generous grant of domains finally allowed him to expand his network of clients.¹⁸ The Estates General that met at Blois in November 1576 turned out to be a disappointment for both the king and the Huguenots. The discussion immediately turned to the question of religion rather than to the financial aid to the monarchy as the king had hoped. In the absence of any substantial representation of the Huguenots, and under increasing pressure from Catholic leagues that sprang up in the provinces as the outrage caused by the Edict of Beaulieu intensified, the king effectively decided to go back on his word and proclaim (albeit indirectly) the exclusive Catholicity of the kingdom, thus making another war inevitable.¹⁹ Characteristically, however, the Estates General refused to provide the king with financial support.²⁰ The pattern was then bound

¹⁵ Ibidem, pp. 104–105.

¹⁶ M. Greengrass, *Governing Passions...*, p. 30.

¹⁷ M. Holt, *The French Wars...*, pp. 106–107.

¹⁸ His household increased from 415 members before the edict to 942 when, in addition to numerous domains, he was granted the former title of his brother – duke d'Anjou. S. Kettering, *Clientage...*, p. 238.

¹⁹ M. Greengrass, *Governing Passions...*, pp. 88–89.

²⁰ E.g. the list of grievances presented to Henry III by the nobility was long and included issues such as venality of offices, growth of *noblesse de robe* and the need to create new general tax

to be repeated. The poorly equipped royal army could not force the Huguenots into obedience. Another settlement followed, this time concluded in Bergerac in September 1577. As with the previous peace agreements, the difficulty did not lie in signing a document, but in carrying out its provisions.

The subsequent two years of struggle to pacify the provinces and enforce the terms of the agreement yet again showcased the fragility of the royal power. Each province had its own convoluted political and personal arrangement which created a variety of different problems.²¹ Sovereign parliaments were unwilling to register the peace; the attitudes of minor officials were heavily reliant on local circumstances.²² The Queen Mother Catherine de Medici herself went on a tour around the southern provinces in order to personally resolve at least part of the seemingly innumerable local conundrums that rendered the “king’s peace” so fragile.²³ A valiant effort that brought only temporary results, if it managed to bring any at all. In 1579, merely two years after the Bergerac peace, yet another war broke out.

The French monarch was simply unable to pacify the country that was so divided both ideologically and institutionally, especially because his own powers relied so heavily on the net of decentralized power structures. As Mark Greengrass puts it: “the enforcement of the peace of Bergerac was not simply the implementation of an act of state. Its success relied on informal power structures. Secretaries, *écueyrs*, masters of the horse, illegitimate sons, friends of the family carried verbal messages, letters, and memoranda to curry friendship, beg favour, dispel a rumour, or divulge a secret. Between the king, his secretaries, and senior courtiers on the one hand, and the governors, lieutenants, marshals, and admirals of the French aristocratic firmament on the other, lay reticulations of influence which complemented

tailleur ordinaire to fund the army – of course to be paid exclusively by the third estate. M.P. Holt, *Attitudes of the French Nobility at the Estates-General of 1576*, “The Sixteenth Century Journal” 1987, Vol. 18, No. 4, p. 493.

²¹ Suffice it to say that in Languedoc the Governor tasked with overseeing the implementation of the peace of Bergerac was Henri I de Montmercy – the very same noble who took part in the fifth War of Religion on the Huguenot side, hardly a loyal, dedicated royal officer. Ibidem, pp. 142–143.

²² See for example a case-study of the town of Chalons-sur-Marne in which the king, the Guise governor and the city council all had their own agenda and fought for influence and control over local policy. M. Konnert, *Provincial Governors and Their Regimes during the French Wars of Religion: The Duc de Guise and the City Council of Chalons-sur-Marne*, “The Sixteenth Century Journal” 1994, Vol. 25, No. 4, pp. 833–835.

²³ The Queen quickly learned how many local networks of power existed in the south-western France and how difficult it was to convince their members to settle down and respect the terms of the Bergerac settlement. M. Greengrass, *Governing Passions...*, pp. 189–192. The tour of 1579 was not the first one in Catherine’s de Medici political career. Back in 1564–66 she organised ‘le grand voyage de France’ of her son Charles IX in order to castigate the unruly provincial sovereign courts that were refusing to register a new edict of tolerance. A direct king’s intervention in the form of *lits de justice* forced the courts to register the document, but the necessity of personal involvement of the monarch was an ominous sign. M. Holt, *The French Wars...*, pp. 58–63.

the official state at every turn. The distant officialdom of the state was tamed by endless requests for a generous decision in this instance, the gift of an office for that relative, the imperative claims to respect a family connection or reclaim a past favour.”²⁴ The institutional framework of the sixteenth-century France was anything but simple. We shall now examine how both Bodin and Brutus incorporated it into their theories.

RÉPUBLIQUE

Jean Bodin published *République*, his most famous work on political theory, in 1576 in the middle of the fifth War of Religion and merely few months before the meeting of the Estates General in Blois during which he took a very active role as an advocate of a moderate, anti-war policy.²⁵ Despite this highly relevant moment of publication, Bodin’s theory was not simply a product created specifically in order to support the king in his struggle against those who contested his authority. It has been convincingly argued that Bodin’s thought developed over time and that to see in *République* a drastic change of opinion or complete abandonment of the theories presented in 1566 (in *Methodus ad facilem historiarum cognitionem*) is an exaggeration.²⁶ That of course is not say that Bodin was free from involvement, also on theoretical grounds, in the current affairs of the French kingdom. Perhaps the most compelling evidence to that effect (if his unequivocal statements from the subsequent prefaces are not enough)²⁷ is that he decided to publish the book in French and only later began to deliberately style himself as a cool-headed theorist formulating his opinions without paying attention to the brutal world of day-to-day political strife.²⁸

Regardless of these considerations, it is generally acknowledged that Bodin was the first political thinker to produce a comprehensive theory of sovereignty as a power unifying the commonwealth and of sovereign as essentially unbound

²⁴ M. Greengrass, *Governing Passions...*, p. 145.

²⁵ A description of Bodin’s activity during the Estates General can be found in O. Ulph, *Jean Bodin and the Estates-General of 1576*, “The Journal of Modern History” 1947, Vol. 19, No. 4. For a recent, detailed account see H.A. Lloyd, *Jean Bodin, ‘This Pre-eminent Man of France’: An Intellectual Biography*, Oxford 2017, pp. 159–188. The moment of *République*’s publication was not a coincidence. The kingdom was full of polemical literature, including that penned by Henry III himself. *Ibidem*, p. 117.

²⁶ We have already indicated this shift of scholarly opinion. See G. Garnett, *Introduction*.

²⁷ Q. Skinner, *The Foundations...*, vol. 2, p. 285.

²⁸ For an analysis of Bodin’s approach to that matter see A.M. Blair, *Authorial Strategies in Jean Bodin* [in:] H.A. Lloyd (ed.), *Jean Bodin. The Reception of Bodin*, Leiden 2013.

by positive law which is but an expression of his will.²⁹ But how did the complex institutional structure of the French kingdom fit into this theory? Was it to be replaced with the all-embracing, rationalized system of administration controlled from Paris, or was it allowed to exist? A brief outline of Bodin's theory of state is necessary before we attempt to answer this question.

Perhaps the most distinctive feature of Bodin's theoretical undertakings was his search for universal principles that would allow for a truly scientific analysis of the state and its powers.³⁰ Bodin rejected the approach of both the Bartolists who treated the Roman civil law as a source of rules applicable regardless of spatial and temporal context, and of the legal humanists such as Alciato on the grounds that they blurred the distinction between private and public law by employing concepts derived from the Roman civil law to analyse the reciprocal powers of the prince and his subjects.³¹ He turned instead to historical, comparative studies of constitutional arrangements of various commonwealths with hopes of finding a common feature that could be used as a departure point for the scientific analysis of the state.³² Bodin summarized his findings in the opening passage of *République* famously stating that "a Commonweale is a lawfull government of many families, and of that which unto them in common belongeth, with a puissant soveraigntie."³³ Succinct as that definition is, it forms a foundation upon which the entire subsequent analysis hinges, very much in line with Bodin's intentions.³⁴ The distinctive feature of political life is the existence of a sovereign power within the state for "a Commonweale

²⁹ It has been argued quite convincingly that Bodin's theory of sovereign power that stands above the positive law owes much to the thought of medieval jurists who presented rulers as *legibus soluti* (and yet at the same time subject to the constraints imposed by the natural and divine law). According to that interpretation, Bodin's greatest achievement was not really to *invent* new categories of thinking about the sovereign power, but rather to *incorporate* them into a comprehensive, well-presented theory available to a wider public. See K. Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in Western Legal Tradition*, Berkeley 1993, pp. 276–284.

³⁰ For Peter Ramus as a possible source of Bodin's inspiration see K.D. McRae, *Ramist Tendencies in the Thought of Jean Bodin*, „Journal of the History of Ideas” 1955, Vol. 16, No. 3. Ramus, however, never took it upon himself to thoroughly apply his logic to the realm of politics.

³¹ D. Lee, *Popular Sovereignty...*, pp. 166–168.

³² As Marie-Dominique Couzinet puts it, Bodin advocated a more proactive approach to history (writing rather than reading of history) and thought that: “[...] in history the best part of universal law lies hidden, and what is of great weight and importance for the best judgement of legislation – the custom of the peoples, and the beginnings, growth, conditions, changes, and decline of all states – are obtained from it.” M.-D. Couzinet, *On Bodin's Method* [in:] H.A. Lloyd (ed.), *Jean Bodin...*, pp. 45–46.

³³ J. Bodin, *The Six Bookes of a Commonweale*, transl. R. Knolles, ed. K.D. McRae, Cambridge 1962, p. 1.

³⁴ As he puts it: “This definition omitted by them which have written of a Commonweale, wee have placed in the first place: for that in all arts and actions, it behoveth us first to behold the end, and afterward the meanes to attaine thereunto.” *Ibidem*.

without a soveraintie of power, which uniteth in one body all the members and families of the same is no more a common weale, neither can by any meanes long endure.”³⁵

That in any political community there has to be a person, or an institution entitled to issue commands and demand obedience was a commonplace. Bodin’s importance lay in the fact that he set aside the complicated, variable and historically generated structure of rights and legal obligations and isolated a single, overriding power that had to exist beneath (or rather above) that structure and ultimately allowed it to exist.³⁶ Bodin’s opinion on the exact extent and character of that power accounts for his subsequent reception as an advocate of absolute monarchy.³⁷ As he famously put it: “Majestie or Sovereigntie is the most high, absolute, and perpetuall power over the citizens and subjects in a Commonweale: which the Latines cal *Maiestatem*.”³⁸ That *maiestas* or the supreme power within the state was to be seen as emanating from sovereign’s unique capacity to legislate. “Under this same soveriegnitie of power for the giving and abrogating of the law, are comprised all the other rights & marks of soveriegnitie: so that (to speak properly) a man may say, that there is but this only mark of soveraigne power considering that all other the rights thereof are contained in this, *viz.* to have power to give lawes unto all and everie one of the subjects, & to receive none from them.”³⁹ This all-embracing power of the sovereign to control, through his legislative capacity, virtually every aspect of the commonwealth is then explained to be “absolute” in a sense that had already been present in medieval jurisprudence – it is a *maiestas legibus soluta* – sovereign power freed from the constrains of *positive* law, including custom, which “hath no force by sufferance, and so long as it pleaseth the soveraigne prince, who may make thereof a law, by putting thereunto his owne confirmation.”⁴⁰ The constraints did exist, however, in the form of natural and divine law (*ius gentium* was excluded)⁴¹ and in the form of legal limitations inherent in the constitutional structure of the commonwealth itself which ultimately served to safeguard the sovereign power from jeopardizing its own position. In the French context there were two limitations of that kind – the Salic law which ensured the male inheritance of the crown and

³⁵ Ibidem, pp. 9–10.

³⁶ Q. Skinner, *The Foundations...*, vol. 2, pp. 287–288.

³⁷ There were however, some anti-absolutist thinkers who tried to make use of Bodin’s theory for their own purposes. See a useful discussion in J.H.M. Salmon, *The Legacy of Jean Bodin: Absolutism, Populism or Constitutionalism?*, “History of Political Thought” 1996, Vol. 17, No. 4.

³⁸ J. Bodin, *The Six Bookes...*, p. 84.

³⁹ Ibidem, pp. 162–163.

⁴⁰ Ibidem, p. 162.

⁴¹ See for example Bodin’s discussion of slavery, which used to be a part of *ius gentium*, but could not be accepted and was subsequently abandoned. The laws of nature and the divine law cannot be changed. Ibidem, pp. 44–46.

the inalienability of the royal domain which formed the bedrock of sovereign's power.⁴²

Despite these limitations, which Bodin never failed to mention when faced with charges of giving up too much power to the sovereign-king, the relative simplicity of his theoretical construction appealed to many as it genuinely seemed to offer a remedy to anarchy by simply stating that the last word, the ultimate capacity to decide on matters concerning the commonwealth belongs to the sovereign. What followed was a complete repudiation of the Monarchomach theories of revolution, one which was perhaps all the more decisive because it did not attempt to combat them by pointing out inherent loopholes, inconsistencies, or outright manipulation but rather by creating new category of analysis while simultaneously discarding the assumptions upon which Monarchomachs so heavily relied. The logic of his argument based on truly supreme power simply leaves no place for legitimate resistance; Bodin is unequivocal in that regard, clearly stating that “[...] if the prince be an absolute Sovereigne,” as he thought was the case in France, then “it is not lawfull for any one of the subjects in particular, or all of them in general, to attempt any thing either by way of fact, or of justice against the honour, life, or dignitie of the soveraigne: albeit that he had committed all the wickedness, impietie, and crueltie that could be spoken.”⁴³

Crucially, however, this vision of sovereign power bound only by few fundamental laws of the realm as well as by the traditional dictates of natural and divine law forms but one side of Bodin's theory. The other one, perhaps more important from the perspective of this paper, is Bodin's fundamental distinction between sovereignty which in that context can be understood as the perpetual, absolute *possibility* of using power, and government which is the actual *exercise* of authority not necessarily by the sovereign himself; indeed, ideally *not* by the sovereign at all. “But the best kind of Commonweale,” Bodin believed, “is that, wherein the soveraigne holdeth what concerneth his majestie, the Senat maintaineth the authoritie thereof, the magistrats execute their power, and justice hath her ordinarie course.”⁴⁴ To use one's sovereign power and get directly involved in the sphere of government by taking upon oneself “the authoritie of the Senat, or the commaunds, offices, or jurisdictions of the magistrats” is “to be feared, least that they [soveraigns] destitute of all helpe, shall at the length be spoyled of their owne soveraigne majestie also.”⁴⁵ “The true marks of majestie thereunto still reserved,” Bodin stated

⁴² O. Ulph, *Jean Bodin...*, p. 293. “The very restriction of the power of the king became, paradoxically, a positive assertion of sovereignty. The king did not possess the power to divest the crown of power.”

⁴³ J. Bodin, *The Six Bookes...*, p. 222.

⁴⁴ *Ibidem*, p. 518.

⁴⁵ *Ibidem*.

in a paradoxical passage, “the lesse the power of the soveraigntie is [...] the more it is assured.”⁴⁶ From theoretical perspective this discussion might seem to be of secondary importance (after all the sovereign *can* shape the institutional structure of the commonwealth in whatever way he likes – there is no theoretical *necessity* of that distinction), but it is a characteristic feature of Bodin’s reasoning, traceable throughout entire text of *République*, namely his disillusioned recognition of reality and a kind of *soft law*, that although not legally binding, is nevertheless highly advisable to ensure the stability of the kingdom.⁴⁷ What is more, this *soft law* and especially the sovereign-government distinction allows Bodin to contain within his theory of state virtually innumerable existing forms of exercising authority without giving up the consistency of the whole theoretical structure.⁴⁸ It also seems to form yet another constraint on sovereign’s power, even though one of practical rather than legal character.

The discussion which highlights the complicated institutional framework of Renaissance monarchy can be found in Book III, where Bodin devotes a considerable amount of space to analysing various types of magistrates and their legal standing. First, he discusses “central” institutions, starting with the council, which is “a lawfull assemblie of Councillors of Estate, to give advise to them which have the soveraigntie in everie Commonweale.”⁴⁹ Its existence is desirable as “there is nothing that giveth greater credit and authoritie unto the lawes and commandements of a prince, a people, or state or in any manner of Commonweale, than to cause them to passe by the advise of a grave and wise Senat or Councill.”⁵⁰ As Bodin rushes to inform his readers, however, the council is *not* necessary to the state’s existence, because “a prince may be so wise and discreet, as that he cannot find better councill than his owne.”⁵¹ The magistrates on the other hand are “one of the most principall parts of a Commonweale, which cannot stand without Officers and Commisioners.”⁵² Bodin cut right through the old disputes regarding the legal standing of magistrates (e.g. whether they held jurisdiction as their own

⁴⁶ Ibidem, p. 517.

⁴⁷ That aspect of Bodin’s reasoning made him a somewhat unexpected ally of Machiavelli, whom he had supposedly wanted to denounce. Q. Skinner, *The Foundations...*, vol. 2, p. 284.

⁴⁸ D. Lee, *Popular Sovereignty...*, p. 195.

⁴⁹ J. Bodin, *The Six Bookes...*, p. 253.

⁵⁰ Ibidem, p. 254.

⁵¹ Ibidem, p. 253.

⁵² Ibidem, p. 278. A detailed discussion of Bodin’s distinction between two types of officers can be found in: D. Lee, *Popular Sovereignty...*, pp. 208–217. Characteristically, Bodin preferred “ordinary” magistrates, who derived their authority from the law rather than directly from the arbitrary will of the sovereign and who had the crucial ability to shape their administrative decisions as local circumstances required. As he puts it: “[...] the Edicts and lawes leave many things to the consciences and discretions of the Magistrats: who indifferently applie and interpret the lawes according to the occurrents & exigence of the causes presented: Whereas Commissioners are otherwise bound,

dominium or merely as *usufruct*) and claimed that an “Officer therefore is a publike person, who hath an ordinarie charge by law limited unto him. A Commisioner is a publike person, but with an extraordinarie charge limited unto him, without law, by vertue of commission onely.”⁵³ Clearly, because the law (and the commission) were ultimately coterminous with sovereign’s will, the existence of magistrates’ offices depended entirely upon his decision.⁵⁴ Precisely because of that, magistrates and commissioners could be seen as indispensable on the basis of realities of the sixteenth-century French kingdom rather than as necessary consequences of the theory itself. After all, Bodin did admit that: “the first Commonweales were by soveraigne power governed without law, the princes word, becke, and will, serving in stead of all lawes.”⁵⁵

After describing the legal status of various magistrates, however, Bodin moves on to discuss the role played within the state by “Corporations, and Colledges, Estates, and Communities.”⁵⁶ It is precisely in this discussion that Bodin attempts to incorporate the varied local structures of power into his theory. Analogically as in the case of the council and magistrates, a commonwealth without those associations is a theoretical possibility for it “may be so strait, as that it may have neither corporation nor colledges, but onely many families in it.”⁵⁷ Interestingly, Bodin links the emergence of these local structures to difficulties on the sovereign’s part to effectively control his subjects. As we learn: “the princes and lawgivers which first founded Commonweals, who had not yet discovered the difficulties they were to prove, to keep & maintaine their subjects by the way of justice, ordained and maintained fraternities, communities, and colledges; to the end, that the parts and members of the self same body of a Commonweale, being at accord among themselves, it might be for them the more easie to rule the whole Commonweale together.”⁵⁸ They play a significant role in the workings of the commonwealth’s machinery as they are instituted “either for religion, or for policie, and so concerne but wordly things.”⁵⁹ Corporations of judges (such as Parlement of Paris) and of magistrates, assemblies of estates (including the Estates General and provincial

and as it were tyed unto the verie words of their commission, and especially where question is of the affaires of state.” J. Bodin, *The Six Bookes...*, p. 289.

⁵³ *Ibidem*, p. 278.

⁵⁴ That all magistrates derived their authority from the king was already claimed by Du Moulin, although he operated within the tradition of thought that employed the terminology of *dominium* to analyse respective positions of kings and magistrates. H.A. Lloyd, *Constitutionalism* [in:] J.H. Burns, M. Goldie (eds.), *The Cambridge History...*, p. 262.

⁵⁵ *Ibidem*, p. 293.

⁵⁶ *Ibidem*, p. 361.

⁵⁷ *Ibidem*.

⁵⁸ *Ibidem*, p. 363.

⁵⁹ *Ibidem*, p. 364.

estates), communities of towns and villages – all these institutional forms are incorporated *en bloc* into Bodin's vision of the state.⁶⁰

It is true that these institutions are not treated by Bodin as legally “immune” communities that can exist without sovereign's acceptance; on the contrary, Bodin informs his readers that “everie corporation or college, is a lawfull communitie or consociation under a soveraigne power,” a definition which implies that without the sovereign's permission “there can be no colledge.”⁶¹ The sovereign's entitlement to control local communities is particularly important, as “colledges and communities evill governed, draw after them many factions, seditions, part-takings, monopolies, yea and sometime the ruine of the whole Commonweale also.”⁶² Here he is speaking of the ruin which he saw with his own eyes and which we described in the preceding chapter. And yet, despite his own diagnosis, he never went as far as to advocate a fully centralized administration of political life. Not only did he unequivocally assert the necessity of associations, stating that “[...] to demaund, whether communities and colledges be necessarie in a Commonweale is as much, as to demaund, Whether that a Commonweale can be maintained and upholden without love and amitie without which the world it selfe cannot long stand,”⁶³ he also gave his own answer to the institutional struggles of the monarchy: “[...] the just Monarchie, hath not any more assured foundation or stay, than the Estates of the people, Communities, Corporations, and Colleges: For if need be for the king to levie money, to raise forces, to maintaine the Estate against the enemy, *it cannot be better done, than by the estates of the people, and of every Province, Towne, and Communitie.*”⁶⁴ Bodin's response to the ongoing crisis did not consist in *replacing* the local power structures with a single, unified will of the sovereign, but rather in emphasizing the ultimate *dependence* of these structures upon that will, while at the same time firmly recognizing them as virtually indispensable elements of commonwealth's framework. Bodin firmly believed that the ruler “must varie the estate of the Commonweale to the diversitie of places; like unto a good Architect, which doth fit his building according to the stuffe hee finds upon the place.”⁶⁵ That “local” perspective may perhaps be of lesser theoretical importance for the subsequent thinkers than the usually recognized constraints of the sovereign power in the form of natural law, divine law, and the fundamental laws of the kingdom,

⁶⁰ Ibidem, pp. 364–365.

⁶¹ Ibidem, p. 365.

⁶² Ibidem, p. 380.

⁶³ Ibidem p. 379.

⁶⁴ Ibidem, p. 384. Italics added.

⁶⁵ Ibidem, p. 547. Bodin elaborated on that point by presenting his peculiar theory of different “dispositions” of men that were interdependent with climate (Book V, Chapter 1).

but it certainly was important for Bodin and, in his eyes, strongly qualified the sovereign power.

Monarchy, as Bodin very well knew, was in no position to contest the prerogatives of all local networks of power, nor should it attempt to do so. Bodin's response to the ongoing crisis of royal power and his advice for the king can thus appear to be somewhat disheartening for Valois sovereigns. Bodin did indeed state clearly that, although it was in their legal capacity to dispense with unruly local assemblies, disobedient magistrates, malcontent councillors, and seditious noble factions, to stay in control of the state without them was virtually impossible. Something that the sons of Henry II knew all too well themselves and what was soon to be fully exploited by Brutus in the *Vindiciae contra tyrannos* to which we now turn our attention.

VINDICIAE, CONTRA TYRANNOS

The *Vindiciae, contra tyrannos* published in 1579 was the most notorious Monarchomach treatise that appeared during the French Wars of Religion. It is usually seen as the final, most complete statement of the so-called Huguenot theory of revolution which had previously been developed by *inter alios* François Hotman (in *Franco-Gallia* published in 1573) and Theodore Beza (in *De iure magistratuum* published in 1574).⁶⁶ Brutus, just as Hotman and Beza before him, differed from the numerous partisan pamphleteers who employed sectarian, religious arguments to viciously attack the king and his court (especially after the St. Bartholomew's Day Massacre). He understood the realities of the sixteenth-century France well enough to realise that the only way for the Protestants to survive was to appeal to the moderate Catholics, who were more interested in thwarting the far-reaching ambitions of the Valois monarchs and protecting their own status within the kingdom than in waging yet another costly and divisive war against their compatriots.⁶⁷ Accordingly, the theory developed in the *Vindiciae* was based upon legal and political arguments that could, at least potentially, be accepted on both sides of the religious division. That, however, did not mean that Brutus's treatise was but a mixture of commonplaces. On the contrary, the *Vindiciae* offered a comprehensive analysis of "the legitimate power of a prince over the people, and of the people over a prince," that was radical both in its axioms and in its conclusions. We shall begin with a brief outline of the *Vindiciae*'s main arguments before taking a closer look at the

⁶⁶ Ralph Giesey famously called them "the Monarchomach Triumvirs." R. Giesey, *The Monarchomach Triumvirs: Hotman, Beza and Mornay*, "Bibliothèque d'Humanisme et Renaissance" 1970, Vol. 32, No. 1.

⁶⁷ Q. Skinner, *The Foundations...*, vol. 2, p. 305.

ways in which Brutus addressed the existing tension between the local and central institutions. As a result, we hope to show that, in the eyes of the Huguenot writer, the dispersed network of power within the French kingdom might have been more important than it is generally acknowledged.

The ideological stance adopted by Brutus in order to denounce the supposedly illegal actions of the king was, for the most part, based upon the assumptions that had already been present in the works of his Huguenot predecessors.⁶⁸ The most important and at the same time the most controversial of those assumptions was the supposed superiority of the people over the king, a crucial point of departure for a Huguenot writer wishing to prove the legitimacy of opposing the royal authority. Accordingly, arguments from virtually every possible source were employed to solidify that very foundation of the entire theoretical structure. In the first place, the Scripture was used to prove that the existence of the royal authority within the commonwealth was not a theoretical necessity and that it was perfectly possible to have a functioning body politic with no king whatsoever. After all, “several ages before the people of Israel petitioned God for a king,” Brutus reminded his readers, “God had already sanctioned the law of the kingdom which is found in Deuteronomy.”⁶⁹ Secondly, the same conclusion could also be corroborated by a simple observation that it would be absurd to have a king without a people to rule over. As Brutus explained it, “since no-one is born a king, no-one is a king in himself, and no-one can rule without a people. But, on the contrary, a people can exist of itself, and is prior in time to a king.”⁷⁰ What followed was that “all kings were first constituted by the people.”⁷¹ That established, Brutus could then confidently state that “as kings are constituted by the people, it seems definitely to follow that the whole people is more powerful than the king. For such is the force of the word: one who is constituted by another is held to be lesser; and one who receives his authority from another is inferior to his appointer.”⁷² In the realities of the sixteenth century France it was a radical conclusion that not only forced Brutus to rely on rather dubious historical examples derived both from the history of France and of other commonwealths to prove its practical applicability, but also created a range of theoretical problems that had to be answered if the whole structure was to remain consistent *and* support the Huguenot political agenda.

⁶⁸ It is important to note, however, that Brutus’s predecessors themselves drew heavily from many intellectual sources, for instance from the conciliarism that opposed the absolutist ambitions of the Pope. See e.g. F. Oakley, *Almain and Major: Conciliar Theory on the Eve of the Reformation*, “The American Historical Review” 1965, Vol. 70, No. 3.

⁶⁹ Anonymous (1579), *Vindiciae*..., p. 68.

⁷⁰ *Ibidem*, p. 71.

⁷¹ *Ibidem*.

⁷² *Ibidem*, p. 74.

Firstly, the way in which the multitude of people could be said to act and to be superior to the king standing at the top of the governmental hierarchy had to be explained. Brutus resolved that problem by using a time-honoured juridical concept of *universitas* – a fictional, corporate entity that was capable, through its representatives, of expressing its corporate will and thus of taking legal actions.⁷³ That pivotal representative role was then, following the Protestant tradition, said to be performed by the magistrates, who “have received authority from the people,” and who by virtue of that grant represented “the whole assembled people.”⁷⁴ Their responsibilities were subsequently analysed in terms of the law of tutorship. As Brutus explained it, “just as a tutor ought to take care lest his ward’s goods be lost – and unless he does so, is liable to an action of tutorship – so the princes were obliged to protect the safety of the people, which has handed itself over and committed itself entirely into their charge, and which has, in a way, transferred to them all its legal capacity.”⁷⁵ This juridical concept allowed Brutus to present the people as the only *dominus* of the commonwealth i.e. the real sovereign, and at the same time to essentially strip it from any possibility of a direct action which could be carried out only by the tutors, precisely because the people, as their “ward” was incapable of doing so.⁷⁶ When Brutus subsequently moved on to analyse the contractual obligations of the king and the people, the fiction of the corporate entity and its representatives could conveniently be employed not only to explain how the people was able to form any contract with the monarch in the first place, but also to show who was obliged to act in case its terms were breached. It was an issue of crucial importance because the *Vindiciae*’s argument regarding the right to oppose the king relied heavily upon two separate contracts or covenants.

The first, religious one was “a sacred covenant between God, king, and people.”⁷⁷ The king, who had initially gained his authority as a precarious grant from God, subsequently “confirmed” by the people’s vote, promised to rule within the boundaries of the divine law as well as to ensure that the people under his command duly fulfilled its Christian duties. On the other hand, the people, or rather the magistrates on its behalf, pledged to do just that – to obey God’s commands, *and* to see to it that the king did so as well. The precise extent of these duties was then analysed using terms derived from the Roman civil law, specifically the joint stipulation, to the effect that God could be treated as a stipulator (thus having no obligations of his own) while both the king and the people functioned as “co-debtors” who ought to carry out their contractual responsibilities “lest either of them

⁷³ D. Lee, *Popular Sovereignty...*, p. 128.

⁷⁴ Anonymous (1579), *Vindiciae...*, p. 46.

⁷⁵ *Ibidem*, p. 49.

⁷⁶ D. Lee, *Popular Sovereignty...*, pp. 128–131.

⁷⁷ Anonymous (1579), *Vindiciae...*, p. 21.

should pay the penalty for the other.”⁷⁸ “Finally,” as Brutus put it, “as when two parties have promised – especially in those contracts where the pledge is forfeited as a result of any fault [...] – the fault of one harms the other.”⁷⁹ The duty to act was in no way limited by the existing framework of the positive law. Since the divine law was treated as superior to any other system of legal norms, and because every legitimate form of power was ultimately said to be of divine character, it followed that to disobey God’s commands was to lose all legitimacy.⁸⁰ As a result, a failure on the king’s part to keep the terms of the covenant at the same time stripped him of his royal authority, just as an unfaithful vassal would have forfeited his fief by disobeying his liege, and activated the people’s duty to oppose his ungodly commands lest “they would be dispersed and destroyed” by God’s wrath.⁸¹ That, as we have seen, could only be done by the magistrates representing the corporate capacity of the people.⁸² The tripartite covenant was thus put in place to guarantee the Christian character of the kingdom. The kernel of the Huguenot agenda, however, lay precisely in an attempt *not* to accuse the king of breaking the religious covenant, or at least not to rely entirely on that argument, as many Frenchmen either did not think that was the case or, to the Huguenots’ despair, went as far as to criticize the king for failing to crush the Protestant movement. Some other justification of the resistance against the king had to be established.

Brutus found such justification in the terms of the second covenant which had a secular character and was formed between the people, acting as a stipulator through its magistrates and the king who pledged to “rule justly and according to reason.”⁸³ The people was bound to obey the king only “as long as he commanded justly.”⁸⁴ That, in turn, was a clear indication that “the king promised absolutely, and the people conditionally.”⁸⁵ That specific contractual formulation of mutual

⁷⁸ Ibidem.

⁷⁹ Ibidem, p. 40.

⁸⁰ Ibidem, p. 27.

⁸¹ Ibidem, p. 42. This shift from the logic of stipulation to the vassal-liege relationship between God and the king was a characteristic feature of Brutus’s eclectic style of argumentation. He was rarely concerned with the mutual compatibility of the adduced arguments, instead employing them as his current narrative demanded. That, to be sure, only added to the complexity of the work.

⁸² Brutus, unlike Beza and Hotman, did state that God might occasionally send a special avenger of the people who could lawfully kill the tyrant, but he saw that possibility as rather unlikely and advised his readers to “be especially sober and circumspect in this matter.” Ibidem, p. 62. See also Q. Skinner, *The Foundations...*, vol. 2, p. 306.

⁸³ Anonymous (1579), *Vindiciae...*, p. 130. As George Garnett explains it in the footnote No. 439, the use of stipulation to describe the mutual obligations of the magistrates and the king was rather problematic as, by definition, the party that stipulated had no obligations at all towards the party that promised.

⁸⁴ Ibidem.

⁸⁵ Ibidem.

relationship between the king and the people allowed Brutus to once again reassert the people's superiority over the king and to delineate its precise extent. The king could only operate within the legal boundaries agreed on by the people. The kingship was neither a form of *dominium* nor an *usufruct*, but a *function* that was limited in its prerogatives and subject to control of the real sovereign – the people, that could hold the king responsible for his illegal actions.⁸⁶ To be sure, the legal boundaries themselves were also subject to heated debates as the struggles between the Parlement and the king clearly showed. From the analytical standpoint, however, the king was put in a peculiar position as he seemed to be, in a way, conceptually removed from the legal body of the people even after the contractual relationship between him and the people had been established. He was but an external agent tasked chiefly with the administration of justice and, if need be, with fighting off the external enemies of the kingdom. As Brutus succinctly summarized it, kings “are constituted by the people, and benefit is to be understood in terms of these two things – justice between citizens and courage against enemies.”⁸⁷ In order to “defend individuals from each other” the king had to be recognized as superior to every other individual magistrate. Since, however, he performed his role solely on the contractual basis and possessed no representative capacity, he was also *inferior* to the magistrates (or to the majority of them) taken as a whole who were *both* the people's tutors *and* its representatives. Certainly, it was an enticing vision for all the advocates of the Estates General that could be treated as the highest, extraordinary representative institution of the people, legally entitled to carry out the much-needed reform of the kingdom, even without the consent of the king himself. As we have seen, however, the problem was that once the Estates General finally gathered, it quickly became obvious that virtually none of the people's representatives that attended the Estates was particularly interested in defending the Huguenots' cause.⁸⁸

As a result, although at this stage the theory was already radical, Brutus still had to find a way to justify the resistance of individual magistrates in case the vast majority of the kingdom's officials cooperated with the tyrannical king instead of opposing him, as that, from the Huguenot perspective, seemed to be happen-

⁸⁶ Ibidem, p. 125.

⁸⁷ Ibidem, p. 96.

⁸⁸ That the *Vindiciae*'s preface was dated 1 January 1577 could hardly be a coincidence. As George Garnett writes, “According to Pierre de Lestoile [...] it was on this day that Henri III declared that he intended to have only one form of religious worship in his kingdom, and revoked the concessions to the contrary which he had made to the Huguenots in the *paix de Monsieur*, and formalised in the treaty of Beaulieu of May 1576.” Ibidem, footnote 17, p. 13. As we have seen in the first chapter, Henri's decision was largely based upon the will of the Estates General themselves. Philipp Mornay, who might have written the *Vindiciae*, was one of the few Huguenots who attended the Estates of 1576, thus witnessing firsthand the king's decision. M. Holt, *Attitudes of the French Nobility...*, p. 492.

ing in France. It is precisely at this point, that the local framework of the French kingdom became particularly important. Crucially, that framework seemed to be inextricably linked to the character of the people itself. Unlike Bodin, who saw the commonwealth as an entity that could only be said to exist when there was a single, unitary sovereign power to hold it together, Brutus accepted the universal sovereignty of the people in every legitimate commonwealth and at the same time admitted a possible structural variety *within* the corporate people i.e. the sovereign itself.⁸⁹ When Brutus tried to elaborate on his characterization of the whole people as a corporate entity represented by its magistrates, he characteristically described the way in which those magistrates had been constituted in the first place simply by saying that they had been “chosen by the people, *or constituted in some other way*.”⁹⁰ Historical examples cited by Brutus seem to confirm that although he saw the people as a corporate entity, it did not, in his eyes, follow that it had no internal structure of its own. In the kingdom of Israel, for instance, “there were the leaders or princes of *tribes*, one from each; then the judges and prefects of *individual cities* – that is, the captains of thousands, of hundreds, and others – who presided over as many families as there were.”⁹¹ Those local magistrates had in their charge particular elements, or parts of the kingdom that could be analytically distinguished from the corporate whole. As Brutus put it, “we are talking about some province or city which forms a part of a kingdom, just as prow, stern, and keel are said to make up parts of a ship, and roof, walls, and foundations parts of a house; and about any magistrate who has that province or city in his charge.”⁹²

The theoretical importance of the internal division of the kingdom resulted from the fact that, according to Brutus, the local magistrates could act on behalf of the communities, or “parts of the kingdom” that remained under their control. Importantly, however, the exact extent of their legal entitlement to oppose the royal authority depended on the character of the contract that had been breached, very much in line with the cautious Huguenot approach. When discussing the terms of the religious covenant Brutus stated that “individual cities, and the magistrates of

⁸⁹ In that regard it is interesting to note that the methodological claim put forth in the *Vindiciae*'s preface seems to constitute an outright opposite of Bodin's approach. We are not told to trace the ramifications of a clearly stated definition, but rather to observe how “from the *effects and consequences* [Brutus] inferred the causes and major propositions or rulers, in order to demonstrate the matter more clearly and definitely.” As an effect, the theory was to be built by the author by “*ascending* through certain degrees *to the peak*: so that in the manner of geometricians – whom he seems to have wanted to imitate in this matter – from a point he draws a line, from the line a plane, and from the plane he constitutes a solid.” The supposed quality of that method of argumentation would mean that all those who reject its conclusions “are manifestly reprobates”, and that “those who cannot perceive what all together as a whole [universi] seem are evidently blind.” *Ibidem*, pp. 10–11.

⁹⁰ *Ibidem*, p. 46. Italics added.

⁹¹ *Ibidem*. Italics added.

⁹² *Ibidem*, p. 50.

individual cities which form part of the kingdom, *individually* promised the same [to obey the divine law, just as the whole kingdom did] in explicit terms, *in so far as it concerned their own interests*.”⁹³ The dispersed character of the pledge to obey the divine law allowed Brutus to claim that every “part” of the commonwealth was bound to oppose any action on the king’s part that breached the covenant with God. Furthermore, since the divine law was truly universal in a sense that no territorial or jurisdictional limits could be applied to the body of the faithful constituting the catholic⁹⁴ Church, it followed that every single community that pledged to obey God’s commands had a duty to oppose the king, who acted contrary to the divine will, not only by protecting the faith within its own borders, but also by actively resisting the monarch who, as a result of breaking the divine law, lost his legitimacy. After all, all the magistrates representing the people, and the local communities, were first and foremost bound to God as they were his “vassals,” and only secondarily to the king. The argument as it stood, however, could certainly be used to reassure the Huguenots themselves, but it could hardly convince the Catholic majority of the kingdom.⁹⁵

What could, on the other hand, be attractive from the perspective of the Catholics struggling against the Valois monarchy, was the magistrates’ role with regard to the secular covenant. Here Brutus clearly distinguished between the officials whose jurisdiction embraced the whole kingdom, and the local magistrates who were said to be responsible solely for the specific part of the kingdom under their control. “And there are,” Brutus informed us, “dukes, marquisses, counts, viscounts, barons, and castellans; and similarly in cities, mayors, bailiffs, consuls, syndics, municipal officials [*scabini*], and others, who have a region or city commended to them individually, in order to protect the people within the extent of their jurisdiction – albeit some of these dignities have become hereditary in our time.”⁹⁶ The crucial question, however, from both the political and theoretical perspective, was how these magistrates were elected and by extension whether they acted as the *representatives* of the respective parts under their control or were simply protecting them. As we have already indicated, Brutus stated that the magistrates were “chosen by the people, or constituted in some other way.”⁹⁷ George Garnett, who has translated the *Vindiciae* and written a comprehensive analysis of its argument, argues that “the author’s assumption appears to be that they [the local magistrates]

⁹³ Ibidem, p. 52. Italics added.

⁹⁴ Brutus deliberately used this term in its original meaning (i.e. “universal”) when he wrote the following phrase “when all Christian kings are inaugurated, they receive the sword expressly for the protection of the catholic – or whole – church.” Ibidem, p. 175.

⁹⁵ G. Garnett, *Introduction*, p. xlix.

⁹⁶ Anonymous (1579), *Vindiciae*..., p. 86.

⁹⁷ Ibidem, p. 46.

are also appointed by the whole people in the public council, for they are bound to render assistance ‘to that part which the people entrusted to them after the king.’”⁹⁸ A tactical reason is then provided to shed some light upon the supposedly centralized system of the magistrates’ appointment. “[...] it would be tactless,” Garnett notes, “and blatantly at odds with the facts, to claim that the nobles – to whom Cono Superantius claims the book is addressed – in any ‘part’ of the kingdom owed their offices to the people of that ‘part.’”⁹⁹

It is true that Brutus is rather cryptic about the ways in which the magistrates could be said to obtain their posts. As we have already argued, it might have been a result of his acceptance of the diversified internal structure of the kingdom, thus constituting an attempt to appeal to the local nobles by recognizing the diverse local foundations of their offices rather than by deriving all of them (very much in the Bodinian fashion) from the centralized decision of the public council representing the whole kingdom. There are two additional hints which might perhaps indicate that Brutus did indeed see the local “parts” of the kingdom as being able to choose their own officials. In the first place, Brutus made it clear, in an astonishing passage, that on entering any city or province the king “is obliged to confirm its privileges, and binds himself by oath to its laws and customs. This applies expressly to the inhabitants of Toulouse of Dauphiné, of Brittany, of Provence, and of La Rochelle, who have very clear agreements [*conventiones*] with kings which would all be in vain, unless they were considered to hold the place of a condition in contract.”¹⁰⁰ That passage seems to indicate that the local parts of the kingdom were entitled to autonomously shape their own contractual relationship with the king. In other words, the local communities *could be represented* as *quasi*-separate legal entities (although always remaining within the framework of the corporate whole). Consequently, to claim that all the local magistrates were appointed on the “central” level would make for a rather peculiar theory in which the local “inhabitants” would have their unique legal entitlements and obligations shaped by the agents not of their direct choosing. Secondly, the centralized appointment of the magistrates would run counter to the Huguenot political agenda. If the centralized public council was to be responsible for electing every single magistrate, then the legal standing of the local magistrates would be entirely dependent upon its decision and it would be difficult to see how a single city or a single magistrate could possibly oppose the public council that acted against him, just as the Estates General had done at Blois.

Garnett’s argument would seem more plausible if we were to see the magistrates solely as the tutors responsible for the well-being of their wards, very much like the king. The people as a whole could then be said to form one complicated contract

⁹⁸ G. Garnett, *Introduction*, p. xxxix.

⁹⁹ *Ibidem*.

¹⁰⁰ Anonymous (1579), *Vindiciae...*, p. 135.

with the king, that contained all the unique, local arrangements of the kingdom's parts, and to subsequently choose local tutors responsible for protecting these arrangements. However, the crucial part of Brutus's reasoning was precisely that the magistrates were tasked with the well-being of their wards' rights *and* were acting as their *representatives*, something that could not have been said about the king. The example of the kingdom of Israel in which "not only the princes of tribes, but also all the captains of thousands, of hundreds, and inferior magistrates were present, *in the name of various cities*, which were covenanting [*paciscerentur*] *individually and by themselves* with the king,"¹⁰¹ seems to show that the local magistrates were indeed responsible not only for the protection of their inhabitants, but could also represent their "local" will that was not coterminous with the will of the whole kingdom.¹⁰² That, in turn, might mean that Brutus recognized the existing framework of the local powers as being dependent upon the decision (or tradition, since the magistrates were said to be hereditary in some areas of the kingdom) of the respective local parts of the commonwealth. An important claim that could be used to oppose the royal officials aiming to enforce the king's will upon the provinces.¹⁰³

Regardless of these considerations, it is clear that Brutus's analysis of the secular covenant could, at least theoretically, be accepted by the Catholic opponents of the Valois monarchy. The exhortations to the French nobles, who should see to it that "the ancient rights of the peoples should be restored in their entirety amongst the Gauls [...] who are free by nature and entirely autonomous in their way of life and the laws and practices of antiquity"¹⁰⁴ played very well into the wide-spread anti-centralization sentiment that we have traced in the first chapter. The supposed superiority of the people over the king was a powerful tool that could be used to counter the unpopular policy of the monarch not on the basis of the practical inadequacy of the royal government (as the Estates used to do anyway), but on the basis of the inviolable right. The popular election of the magistrates could be seen as an indication of the superiority of the traditional administrative network of France, dominated by the local nobles, over the officials appointed by the king,

¹⁰¹ Ibidem, p. 130. Italics added.

¹⁰² In that regard, it would tempting to see Brutus's argument as an antecedent of the famous theory of state as a compound *consociatio symbiotica* developed by Johannes Althusius in 1603. For a brief analysis of that theory see D. Lee, *Popular Sovereignty...*, pp. 237–242.

¹⁰³ As Brutus argued, the French king could only be "received into princely office" after having promised the individual magistrates to uphold "the ancestral laws." "This," he continued, "is the case to such an extent that they [in this context – the king] cannot in any way alter the laws [*iura*] of provinces, or even the municipal ones of individual cities, without the consent of those provinces or municipalities." Anonymous (1579), *Vindiciae...*, p. 101.

¹⁰⁴ Ibidem, p. 8. In fact, the Guises themselves used similar arguments to justify their actions as the monarchy was said to "had become too weak to defend the catholic faith." What was needed, the Guises claimed, was "the assistance of its [the kingdom's] natural defenders (the nobility)." M. Greengrass, *Governing Passions...*, p. 85.

while at the same time the nature of the contract between the king and the magistrates mitigated the potentially dangerous anarchical implications of allowing the people to oppose its supreme magistrate and his representatives. Different local arrangements were to be treated as binding elements of the secular contract itself, that could, or in fact had to, be protected by the local magistrates who were first and foremost responsible for the well-being of the citizens directly under their control – another powerful argument that could be employed by both the Catholics and Huguenots.

The *Vindiciae* offered a radical solution to the crisis of the Valois monarchy. Having identified the illegal actions of the king as the roots of evil, Brutus tried to appeal to the inferior magistrates by effectively creating a powerful legal justification of the actions that they had already been taking for a long period of time i.e. opposing the royal decisions that run counter to their interests or beliefs. The king was to yield to the commands of the Estates General, not the other way around. He was to respect the specific legal arrangements of the local parts of the kingdom and by extension the local networks of power that aimed to protect them. It was not, as Bodin tried to argue, a matter of convenience, but of duty.

CONCLUSION

The chasm between the practical implications of the theories of Bodin and Brutus for the French kingdom could hardly be wider. It was, therefore, just as paradoxical, as it was indicative of the realities of the Valois monarchy, that both Bodin and Brutus decided to emphasize the importance of the local networks of power for the functioning of the kingdom. Although Bodin and Brutus differed when it came to the legal standing of those networks, they nevertheless did agree, albeit for different reason, that the complex institutional structure of France was there to stay and could not simply be ignored. They also seemed to share the belief that in every commonwealth there could only be a single sovereign power. However, because in the French context they ascribed that power to different agents and consequently based the entire legal system of the state upon different foundations, their theories, despite certain similarities, could only lead to two completely opposite answers to the crisis of the kingdom. The echo of those answers was to reverberate throughout Europe for decades, delineating two distinct modes of thinking about the state, sovereignty and local structures of power.

SOVEREIGNTY AND DECENTRALIZATION –
TWO COMPETING PERSPECTIVES ON THE CRISIS
OF THE FRENCH MONARCHY IN THE 16TH CENTURY

Abstract

The purpose of this paper is to analyze two significant treatises concerning the constitutional structure of the 16th century French monarchy, namely Jean Bodin's *Les Six livres de la République* and *Vindiciae, contra tyrannos* written under the pseudonym of Brutus. The texts were answers to an ongoing institutional crisis of the monarchy, especially in light of the strictly connected issues of decentralization and the weakness of the royal administrative apparatus. The paper portrays how the tension between the royal administration and the complicated structure of the local networks of power not only rendered it impossible for both Bodin and Brutus not to take a stance on the matter but also how it influenced the shape of their theories. An analysis of how Brutus and Bodin tried to incorporate the complex institutional realities of the French kingdom into their own theories sheds some light on the authors' attitude towards the functioning of the local centres of power, their theoretical disabling or using them on purpose; it also points to how much the actual decentralization of the state influenced the shape of the theories of both authors.

Keywords: Jean Bodin, Brutus, sovereignty, tyranny, right to resist