

1. From Jean Bodin, *The Six
Books of the Republic*, Book I,
1576

The first and principal function of sovereignty is to give laws to the citizens generally and individually, and, it must be added, not necessarily with the consent of superiors, equals, or inferiors. If the consent of superiors is required, then the prince is clearly a subject; if he must have the consent of equals, then others share his authority; if the consent of inferiors—the people or the senate—is necessary, then he lacks supreme authority. . . .

It may be objected that custom does not get its power from the judgment or command of the prince, and yet has almost the force of law, so that it would seem that the prince is master of law, the people of custom. Custom, insensibly, yet with the full compliance of all, passes gradually into the character of men, and acquires force with the lapse of time. Law, on the other hand, comes forth in one moment at the order of him who has the power to command, and often in opposition to the desire and approval of those whom it governs. Wherefore, Chrysostom⁶ likens law to a tyrant and custom to a king. Moreover, the power of law is far greater than that of custom, for customs may be superseded by laws, but laws are not supplanted by customs; it is within the power and function of magistrates to restore the operation of laws which by custom are obsolescent. Custom proposes neither rewards nor penalties; laws carry one or the other, unless it be a permissive law which nullifies the penalty of some other law. In short, a custom has compelling force only as long as the prince, by adding his endorsement and sanction to the custom, makes it a law.

6. **Chrysostom:** Saint John Chrysostom (ca 347–407), an early Father of the Greek church and a brilliant preacher whose religion led him to condemn the vices of the court of the Eastern Roman emperor.

It is thus clear that laws and customs depend for their force upon the will of those who hold supreme power in the state. This first and chief mark of sovereignty is, therefore, of such sort that it cannot be transferred to subjects, though the prince or people sometimes confer upon one of the citizens the power to frame laws (*legum condendarum*), which then have the same force as if they had been framed by the prince himself. The Lacedæmonians bestowed such power upon Lycurgus, the Athenians upon Solon;⁷ each stood as deputy for his state, and the fulfillment of his function depended upon the pleasure not of himself but of the people; his legislation had no force save as the people confirmed it by their assent. The former composed and wrote the laws, the people enacted and commanded them.

Under this supreme power of ordaining and abrogating laws, it is clear that all other functions of sovereignty are included; that it may be truly said that supreme authority in the state is comprised in this one thing—namely, to give laws to all and each of the citizens, and to receive none from them. For to declare war or make peace, though seeming to involve what is alien to the term law, is yet accomplished by law, that is by decree of the supreme power. It is also the prerogative of sovereignty to receive appeals from the highest magistrates, to confer authority upon the greater magistrates and to withdraw it from them, to allow exemption from taxes, to bestow other immunities, to grant dispensations from the laws, to exercise power of life and death, to fix the value, name and form of money, to compel all citizens to observe their oaths: all of these attributes are derived from the supreme power of commanding and forbidding—that is, from the authority to give law to the citizens collectively and individually, and to receive law from no one save immortal God. A duke, therefore, who gives laws to all his subjects, but receives law from the emperor, Pope, or king, or has a co-partner in authority, lacks sovereignty.