

*What is Sovereignty?**

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The concept of sovereignty is one of the most complex in political science, with many definitions, some totally contradictory.¹ Usually, sovereignty is defined in one of two ways. The first definition applies to supreme public power, which has the right and, in theory, the capacity to impose its authority in the last instance. The second definition refers to the holder of legitimate power, who is recognized to have authority. When national sovereignty is discussed, the first definition applies, and it refers in particular to independence, understood as the freedom of a collective entity to act. When popular sovereignty is discussed, the second definition applies, and sovereignty is associated with power and legitimacy.

* Translated by Julia Kostova from “Qu’est-ce que la souveraineté?” in *Éléments*, No. 96 (November 1999), pp. 24-35.

1. Cf. Charles Merriam, *History of the Theory of Sovereignty since Rousseau* (New York: Columbia University Press, 1900); Perry Anderson, *Lineages of the Absolute State* (London: New Left Books, 1974); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Bertrand de Jouvenel, *De la souveraineté* (Paris: Génior, 1955); *In Defense of Sovereignty*, ed. by W. J. Stankiewicz (London: Oxford University Press, 1969); Joseph Camillieri and Jim Falk, *The End of Sovereignty?* (Aldershot: Edward Elgar, 1992); A. H. Chayes, *The New Sovereignty* (Cambridge: Harvard University Press, 1995); *State Sovereignty as Social Construct*, ed. by Thomas J. Biersteker and C. Weber (Cambridge: Cambridge University Press, 1996); Bertrand Badie, *Un monde sans souveraineté. Les États entre ruse et responsabilité* (Paris: Fayard, 1999). Discussion of this subject has become so confused that the notion of sovereignty tends to lose its political character, as is the case with Patricia Mishe, who claims that only the earth is sovereign. (“Ecological Security and the Need to Reconceptualize Sovereignty,” in *Alternatives* No. 14, pp. 390-391), or with Robert Garner, who wants to extend sovereignty to animals (“Ecology and Animal Rights. Is Sovereignty Anthropocentric?” in Laura Brace and John Hoffman, eds., *Reclaiming Sovereignty* [London: Pinter, 1997]).

Sovereignty and Political Authority

On the international level, sovereignty means independence, i.e., non-interference by external powers in the internal affairs of another state. International norms are based on the principle of the sovereign equality of independent states; international law excludes interference and establishes universally-accepted rules. Thus, sovereignty is eminently rational, if not dialectical, since the sovereignty of a state depends not only on the autonomous will of its sovereign, but also on its standing *vis-a-vis* other sovereign states. From this perspective, one can say that the sovereignty of any single state is the logical consequence of the existence of several sovereign states.²

It is thus a serious mistake to assume that sovereignty is possible only within the framework of the classic type of state, i.e., a nation-state, as do representatives of the “realist” school, such as Alan James and F. H. Hinsley, or neo-Marxist theoreticians like Justin Rosenberg.³ One should not confuse the concepts of nation and state, which do not necessarily belong together, or assume that the concept of sovereignty was formulated clearly only in terms of the theory of the state. Closer to the truth is John Hoffman’s assertion that “sovereignty has been an insoluble problem ever since it became associated with the state.”⁴ Even though a concept of sovereignty did not exist before the 16th century, it does not follow that the phenomenon did not exist in political reality, and that it could not have been conceptualized differently. For example, Aristotle does not mention sovereignty, but the fact that he insists on the necessity for a supreme power shows that he was familiar with the idea, since any supreme power — *kuphian aphen* with the Greeks; *summum imperium* with the Romans — is sovereign by definition. Sovereignty is not related to any particular form of government or to any particular political organization; on the contrary, it is inherent in any form of political authority.

The problem with sovereignty appeared at the end of the Middle Ages, when the question posed was no longer only about the best form of government or the limits of political authority, but about the relation

2. This is the starting point of the debate between the classic “realist” school, which defines sovereignty as “centralized power, exercising its authority over a territory” (Hans J. Morgenthau, *Politics among Nations. The Struggle for Power and Peace* (New York: Alfred A. Knopf, 1948)), and the so-called “dependalist” school.

3. Alan James, *Sovereign Statehood* (London: Allen & Unwin, 1986); F. H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986); Justin Rosenberg, *The Empire of Civil Society* (London: Verso, 1994).

4. John Hoffman, *Sovereignty* (Buckingham: Open University Press, 1998), and *Beyond the State* (Cambridge: Polity Press, 1995). See also, Andrew Vincent, *Theories of the State* (Oxford: Basil Blackwell, 1987), p. 32.

between the government and the people, i.e., the relation between ruler and ruled in a political community. This is the question that Jean Bodin (1520-1596) attempted to answer in *La République*, published in 1576.⁵ Bodin did not invent sovereignty, but he was the first to make a conceptual analysis of it and to propose a systematic formulation. He did not initiate this project by observing a real state, but by attempting to restore public order, which had been damaged by the religious wars, and by legitimating the emancipation of French kings from the Pope and the emperor. This is why Bodin's doctrine naturally constituted the ideology of territorial realms seeking to gain independence from the empire, and to transform the power that had obtained in royal dominance over feudal lords.

Jean Bodin: Ideologist of Territorial Realms

In *La République*, Bodin begins by reminding his readers that sovereignty (*majestas*), the foundation of his entire system, is a prerogative of authority, being itself one of the presuppositions of politics. Like the majority of the authors of his time, he asserts that a government is strong only when it is legitimate, and he emphasizes the fact that a government's actions always should be in accord with certain norms, which are determined by justice and reason. Nevertheless, he understands that such considerations do not suffice to clarify the idea of sovereign power. Thus, he asserts that the source of power lies in the law, and that the capacity to make and break laws belongs only to the sovereign: the power to legislate and to rule are identical. The conclusion Bodin reaches is radical: since the prince is not subject to his own decisions or decrees, he is above the law.

This formula was already the work of Roman jurists: "*Princeps legibus solutus*" [The prince is not bound by the law]. Bodin writes: "Those who are sovereign must not be subject to the authority of anyone else. . . . This is why the law says that the prince must be excluded from the power of law. . . . The law of the prince depends exclusively upon his pure and sincere will."⁶ In this case, it is sovereign power that allows the prince to impose laws that do not apply to him, because the exercise of power does not oblige him to have the consent of his subjects — sovereignty is totally independent of the subjects on whom laws are imposed. Richelieu later would say that "the prince is the master of the formalities of law."

5. Jean Bodin, *The Six Bookes of a Commonweale*, a facsimile reprint of the English translation of 1606, corrected and supplemented in the light of a new comparison with the French and Latin texts, edited with an Introduction by Kenneth Douglas McRae (Cambridge: Harvard University Press, 1962).

6. *Ibid.*, II, 2.

Because of this legislative power, supreme authority had to be unique and absolute, which is why Bodin's definition of sovereignty is the "absolute and perpetual power of a republic,"⁷ i.e., this power is unlimited in the sphere of human affairs. Sovereignty is absolute in the sense that the sovereign is not subject to law; on the contrary, he may decree and annul laws at will. Conversely, the ability to make laws requires sovereignty to be absolute ("it cannot be cut into pieces," Bodin says), because the power to legislate is indivisible. The remainder of the political prerogatives of the sovereign are dependent upon this initial affirmation. One could say that the fundamental characteristic of sovereignty is that it grants to the prince, who is subject to his will alone, the power of not being tied to or dependent upon anyone. His power is not delegated, temporary, or accountable to anyone; if his power depended upon anyone but himself, either internally or externally, he would not have the power to make law. He no longer would be sovereign.

Thus, Bodin's sovereignty is totally exclusive: by giving the king the role of unique legislator, it grants the state an unlimited and original authority. Consequently, a sovereign state is defined as one whose prince does not depend on anyone but himself. This implies that a nation is formed within a state, and that it is identified with this state. For Bodin, a country might eventually be defined in terms of its history, its culture, its identity, or its morals, but, politically, what constitutes a state as such is its sovereignty: the absolute power that forms the republic as a political entity, unique and absolute. The state must be one and indivisible, because it represents the legislative monopoly of the sovereign. Local autonomies are allowed, but only if they do not constrain the authority of the prince. Actually, they are always more limited. The state is a monad, while the prince is "separated from the people," i.e., placed in an isolation bordering on solipsism.

Obviously, this new theory of sovereignty was crucial. On the one hand, it dissociated civil from political society, a theme which became crucial at the start of the 18th century; on the other, it laid the foundation for the modern nation-state, which is characterized by the indivisibility and absoluteness of its power. With Bodin, political theory became modern.

For Bodin, sovereignty is inseparable from the idea of a political society that abolishes particular ties and loyalties, and bases itself on the ruins of concrete communities. Implicitly, the political bond already creates a governmental contract in which all mediations between the members of

7. *Ibid.*, I, 8.

society (individuals) and power are eliminated. This rupture between pre-political communities and political society was adopted first by the absolute monarchy, and then by the nation-state. The state is defined primarily by its homogeneous character, and this homogeneity can be either natural (cultural or ethnic) or synthetic (through relegation of collective differences within the private sphere). In other words, given the implicit egalitarianism ensuing from the fact that the model is based on a direct and unconditional bond between ruler and ruled, Bodin's concept of sovereignty redefined "the people" as being uniquely composed of individuals, equally alienated from sovereign power.

Divine Absolutism Becomes Royal Absolutism

It is not difficult to detect the religious foundations of Bodin's doctrine. Bodin's understanding of political power is merely a profane transposition of the absolute way God and the Pope exercise power over Christians, even though he denounces the medieval concept of power as merely a delegation of God's authority. For Bodin, the prince no longer is satisfied to hold power by "divine right." By granting himself the power to decree and annul laws, he acts like God. He forms a distinct entity, ruling the social body in the same way that God governs the cosmos. Thus, the sovereign's absolute rectitude is nothing more than the transposition into the political sphere of the Cartesian God, who can do everything except desire evil. Surreptitiously, sovereignty became infallible. In other words, Bodin makes sovereignty profane by taking it away from God, and then makes it again sacred in a profane form: he takes leave of God's monopolistic and absolute sovereignty and ends up with the monopolistic and absolute sovereignty of the state. All of modernity resides in this ambiguity: on the one hand, political power is secularized; on the other, the sovereign, now identified with the state, becomes a person granted quasi-divine political power. This confirms Carl Schmitt's theory, according to which: "All significant concepts of the modern theory of the state are secularized theological concepts."⁸

It is important to note that Bodin's theory of sovereignty does not imply any particular type of regime. Bodin prefers monarchy, since power is naturally more concentrated, but he emphasizes that the exercise of sovereignty is equally compatible with aristocracy and democracy, although the danger of division of power is much greater. It is equally

8. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, translated by George Schwab (Cambridge, MA, and London: The MIT Press, 1985), p. 36.

significant that the appearance of an indivisible sovereignty, excluding any limits or controls, was accompanied by the strong intervention of state jurists. The direct heir of 13th century legists, whose work allowed royalty to impose itself on feudal lords, Bodin identifies political power with the capacity to make laws. However, he adds that the sovereign, although not bound by the laws he decrees, can still be bound by a contract, a treaty, or even by his subjects in what today is called a constitution. As Julien Freund notes: “This makes Bodin see sovereignty no longer only as a phenomenon of power, but also of right.”⁹ And this is what allows certain liberals to claim to be followers of Bodin.

The problem with sovereignty is differently posed with Thomas Hobbes (1588-1679). While, in Bodin’s theory, the idea of absolute sovereignty is oriented explicitly against feudal power, which implies granting the prince authority independent of his subjects’ consent, for Hobbes, it results from a meditation on the destructive character of the “state of nature.” As is well-known, Hobbes was the first to invoke a social contract based on the rationality of individuals. He says that individuals have decided to enter society and to place themselves under the authority of a prince in order to end the “war of all against all,” which is characteristic of the “state of nature.” Thus, Hobbes introduced the concept of the consent of the governed, but the conclusions he drew from this went even further than Bodin. While Bodin maintains a certain duality between the sovereign and the people, Hobbes erases it completely. By entering society, individuals agree to give up entirely their sovereignty in favor of the prince, which is the opposite of Rousseau’s social contract. With Hobbes, the price of security is obedience; the people are fused within the sovereign, whose authority is assimilated with the individual wills. Thus, it could be said that the state “swallows” the people (unlike in Rousseau, where, through the general will, the people “swallow” the state).

Thomas Hobbes: Sovereignty Reinforced

Not only unbound by the reciprocity of contract, since he did not sign it, but, also, since his power is derived from the rational will of all, the sovereign has the right to require total obedience from everyone. Since his legitimacy stems from the fact that the members of society have forfeited their sovereignty voluntarily, he depends neither on persons nor situations, but stands on right and law. The people cannot oppose him since,

9. Julien Freund, *L'essence du politique* (Paris: Sirey, 1965), p. 118.

not owing anything to anyone, he cannot be dispossessed of his authority. Better yet, he is the only one who retains the unlimited freedom of the state of nature. His sovereignty is thus equally indivisible and absolute. As with Bodin, sovereignty for Hobbes is completely unitary and identified with the state; any division or fragmentation of power is considered to be the cause of instability and political separation.¹⁰

Fair enough, there is something paradoxical in this modern formulation of sovereignty. In fact, both Bodin and Hobbes distinguish between tyranny and sovereignty, but they are able to do so only because they specify the objective limits of sovereignty, even while defining it as indivisible and absolute.¹¹ This limitation might reside in the prince's obligation to respect certain natural or divine laws, or in the finality of power (serving the common good without infringing on the rights of the members of society), or in the criteria of the legitimate exercise of power: for Bodin, it is the law; for Hobbes, it results from individual consent. This entirely unexpected theoretical conclusion emerges even from the dynamics of absolutism.

Another contradiction in Bodin stems from the fact that, to the extent that sovereignty constitutes an unlimited authority, the political community presumably constitutes the relation of ruler and ruled, despite the distinction between them, as it is precisely this relation that gives the prince the power to promulgate laws in a sovereign manner. In other words, the more autonomous the state, the more problematic the exercise of sovereignty. Conversely, if the public sphere has unlimited authority over the private sphere, the distinction between the two becomes relative. This contradiction creates a widening gap between state sovereignty and popular sovereignty.

The French Revolution: Continuity and No Rupture

The French Revolution preserved the very content of the concept of sovereignty embodied in the absolute monarchy, and took credit for giving it back to the nation. Hence the difficulty for the republican tradition to reconcile the first two articles of the Declaration of Rights, which affirmed the pre-eminence of universal individual rights, with the third article, which decreed that the nation is the supreme authority: "The principle of sovereignty resides essentially in the nation; no body, no individual can exercise authority not emanating from it." The idea of absolute sovereignty not only remained constant from the *ancien régime* to the Revolution, but the

10. Hobbes writes in *Leviathan* (1651): "A kingdome divided in itselfe cannot stand."

11. See Preston King, *Ideology of Order: A Comparative Analysis of Jean Bodin and Thomas Hobbes* (London: Frank Cass, 1974), p. 79.

revolutionary idea of the pre-eminence of national sovereignty was also stressed from the beginning of the movement, i.e., prior to 1792 or 1793, and, thus, before the Jacobinist party came to power.¹² The key moment can be traced to the unilateral decision of the people (“teirs-état”) in 1789 to initiate a process of verification of the mandates of the deputies, which launched the process of transformation of the general states into a national assembly, as well as the process leading to the political sovereignty of the deputies.

A discussion arose concerning the question of whether the common people should be represented in a Popular Assembly or in a National Assembly. Siéyès’ faction, which urged the communes to constitute a “National Assembly,” opposed the Mirabeau faction, which proposed the name “Assembly of the People’s Representatives.” The rivalry between the two factions revealed a difficulty in defining the “nation.” Eventually, Siéyès’ proposition was accepted, while Mirabeau’s was rejected as harmful to the right of the nation. Siéyès considered the nation to be “a body of members, living under a common law,” a rigorously homogeneous body, whose foundation is separated from any pre-political determination. It was to this body, and only to this body, that sovereignty should be returned: “The nation is before all, it is the origin of all. Its will is always legal, it is the law itself.”¹³ On June 17, 1789, the name “National Assembly” was adopted, based on the assumption that the representation of the nation must be “one and indivisible.” Since the general will was embodied in the legislative body, it followed that national representation *is* the nation. From this moment on, sovereignty became an attribute of the nation and was transferred from the “the top” to the National Assembly. Thereafter, the “nation” corresponded to the space of the collective sovereignty incarnated in the National Assembly. Fundamentally, revolutionary sovereignty did not originate with the appearance of the electoral body, but simply represented a transfer of royal sovereignty: the nation was said to be sovereign, it was a *fait accompli*, and it acquired legitimacy even before the citizen statute was discussed.

The 1791 Constitution went even further. It specified that “sovereignty is indivisible, inalienable, and imprescriptible” (Chapter III, Article 1). In

12. This insight is one of the merits of the recently published book by Ladan Boroumand, who came to this conclusion following a meticulous study of the texts. See Ladan Boroumand, *La guerre des principes. Les assemblées révolutionnaires face aux droits de l’homme et à la souveraineté de la nation, mai 1789-juillet 1794* (Paris: Ecole des hautes études en sciences sociales, 1999).

13. Emmanuel-Joseph Siéyès, *Qu’est-ce que le tiers-état?* [1788] (Geneva: Droz, 1970), p. 180.

fact, in August 1791, during the debate on the final revision of this article, an earlier version submitted to the Assembly attributed to sovereignty only the quality of indivisibility. Robespierre demanded that inalienability be added.¹⁴ On September 7, 1791, Siéyès declared: “France must not be an assembly of small nations, governed separately in democracy; it is by no means a collection of states; it is a unique entity, edified by integrating parties.” Subsequently, on September 25, 1792, France declared itself to be “one and indivisible.” Intermediate bodies and basic popular collectivities were considered to be illegitimate. A year later, this position was reiterated by the Jacobins in their denunciation of the “federalist danger.” Accordingly, the revolutionaries would attempt to rid themselves of all linguistic dialects, and would demand suppression of the ancient provinces and their substitution with geometrically equal departments.¹⁵

“The People” Become an Abstraction

Once the concept of “the nation” was legitimated, the concept of “the people” became an abstraction. This was the price “the people” had to pay for declaring themselves to be “sovereign.” As Boroumand observes: “If ‘the people,’ as an objective reality, cannot be admitted to the sphere of national sovereignty, which is a metaphysical entity *par excellence*, then their metamorphosis into an ideal entity allow them to participate in the logic of national sovereignty without endangering the transcendent existence of ‘the nation’ incarnated in representation.”¹⁶ In other words, “the people” are perceived to be a manifestation of the principle of unity and indivisibility, but without any presupposition of them being composed of

14. The Assembly diverged from Rousseau on this point. Rousseau defined sovereignty in terms of inalienability, rather than indivisibility (“viewing sovereignty as separate is erroneous”, he wrote, since he saw it from a different perspective). On the one hand, he speaks of inalienability not in terms of the sovereign power exercised in the name of “the nation,” but, rather, in terms of the people, who until today retain their power through their representatives. On the other hand, he makes indivisibility a characteristic of sovereign power, which he considers to be essentially homogeneous, while the revolutionaries attributed it to the people assimilated with the nation. Boroumand notes: “Where, for Rousseau, the exercise of sovereignty is inalienable, for the Revolution, it is indivisible, which justifies its monopoly by representation. And where, for Rousseau, the extension of sovereignty is indivisible, for the Revolution, it is inalienable, which justifies an unlimited authority of sovereignty and, consequently, the amalgamation of powers.” Ladan Boroumand, *La guerre des principes, op cit.*, p. 171.

15. See R. Debbasch, *Le principe révolutionnaire d’unité et d’indivisibilité de la république* (Paris: Economica, 1988); and Lucien Jaume, *Le discours jacobin et la démocratie* (Paris: Fayard, 1999).

16. Ladan Boroumand, *La guerre des principes, op. cit.*, pp. 165-166.

particular communities and distinct entities. The idea of a nation as a unitary and transcendent entity, whose unity and indivisibility are necessarily independent of any external principle, ended by reestablishing the notion of a people *jusqu'à s'y substituer* [who have substituted themselves], which has remained a tradition in French common law until today. Finally, the revolutionary concept of sovereignty made nationality and citizenship synonymous: no longer was there any national who was not a citizen (except for the deprivation of civil rights), or any citizen who was not a national. Being so "indivisible" and unitary, "the people" had become an abstraction. That is why, even today, France is not a federal state and cannot recognize the existence of a Breton or a Corsican people.

Thus, the same concept of sovereignty, understood as the "absolute and eternal power" of a republic and the source of all the rights and duties of the citizenry, obtained both during the *ancien régime* and the Revolution. Jacobinist sovereignty is no more restricted than Bodin's sovereignty. The revolutionaries denounced "federalism" on the same grounds as the absolute monarchy, when, for instance, the monarchy reproached the Protestants for seeking to "cantonize" France after the Swiss model. They demonized and fought against the local particularities in the same manner in which royal power tried to limit the autonomy of the feudal lords by any means possible. In order to legitimate revolutionary justice, they employed the same arguments that Richelieu used to defend the discretionary power of the prince. The Revolution opposed national sovereignty to royal absolutism, not by challenging absolutism, but by transferring the absolute prerogatives of the king to the nation.

As Mona Ozouf writes: "Certainly, the people of the Revolution appear to have separated themselves from the Old World by inventing a society of free and equal individuals. But, in reality, they inherited from absolutism an idea much more ancient and more constraining: the idea of national sovereignty, i.e., a mythic, transcendent order of individuals. And this idea quickly discovered its efficacy when national sovereignty took the vacant place of the absolute sovereignty of the king. . . . The Terror, far from being the expedient of the created despair of a republic in distress, is inscribed in the logic of this element of the *ancien régime*."¹⁷ In fact, even if evidence suggests that the Terror violated the natural rights of individuals, it by no means violated the rights of the nation, which it claimed to guarantee and to preserve. As Boroumand also writes: "The similarities

17. Preface to *ibid.*, p. 10.

between absolutism and Jacobinism are explicable. If the political reflexes and methods were the same before and after 1789, this means that they were moved by the same principle: the sovereignty of the nation.¹⁸ Thus, as Henri Mendras has observed, “what was vindication in the 16th century became in France an absolute doctrine, an intangible principle for the monarchy for two centuries, and then for the constitutions after 1791. This principle was a juridical fiction, an abstraction incarnated in the king, an absolute principle; the king disappeared, the Republic resumed.”¹⁹

Liberal political thought also came back at that point in history, when it recognized the contradictory association in the revolutionary constitutional canon between the affirmation of the universality of human rights and the principle of the sovereignty of the nation. But, it proceeded in the inverse direction of the one prevailing at that time. It sought to discover in the theory of human rights the foundations of a limitation of national sovereignty or, more precisely, the foundations of a transfer of sovereignty from the political to the legal sphere. Actually, with the exception of the followers of Hans Kelsen’s legal positivism (which reestablishes public life merely as a system of norms), the liberals do not refuse to discuss the concept of sovereignty, but they tend to raise it to the level of politics, in order to attribute it to law and, often through law, to the level of “morality.” In this, they could learn from Bodin, who attributed great significance to law, despite the fact that he reached completely opposite conclusions.

Liberals Invent “Ethical” and Juridical Sovereignty

In principle, such an attempt is problematic from the very beginning, since law and politics are not one and the same. Thus, the concept of sovereignty can never be expressed entirely in juridical terms. On the one hand, and contrary to what is accepted today, what is morally right is not synonymous with what is politically desirable. On the other hand, the capacity to judge without appeal is useless without the capacity to *decide* without appeal and to apply what is decided, which law by itself cannot guarantee. As Julien Freund observes: “Law has a specific sphere and so does politics, and they do not coincide, which is why conflicts between them ensue. . . . No judicial system is able to abolish the ruler’s original and arbitrary political will. This reasoning is sufficient in itself to answer definitively the question of the juridical character of sovereignty. . . . The

18. *Ibid.*, p. 535.

19. Henri Mendras, “Le ‘mal de Bodin’. A la recherche d’une souveraineté perdue,” in *Le Débat* (May-August, 1999), p. 72.

juridical reason stems from procedure, not from power, i.e., the ‘sovereignty of the law’ exists to legitimate power, not to constitute it.”²⁰

The liberal theory of the limitation of sovereignty by law — in effect, the sovereignty of law — usually is linked with the desire for a purely legal and rational administration of human affairs. Politics, which is considered to be inevitably dependent upon irrational and arbitrary “decisions,” is disqualified, since the political sphere denies the autonomy and, thus, the essence of law. The attempt to suppress sovereignty first with legislative power, then with law itself, turns out to be a “depolitization” of public life. Accordingly, the titular wielder of power is no more than an executor; in the worst case, merely a figurehead. The democratic sphere of the people’s will can be ignored, since it contradicts the juridical and moral norms that are considered to be superior. In the field of international relations, the result was that it became impossible to recognize political equality among different national sovereignties, and to resolve international disputes collectively. This contradiction led, in turn, to the “right of intervention,” which also pretends to limit political sovereignty by a legal norm and, ultimately, by “moral” values. For example, Daniel Cohn-Bendit and Zaki Laïdi have declared that “ethical sovereignty is a new way to think about sovereignty,” and they have defined this new form as “the refusal to allow anyone to claim sovereignty for objectives contrary to basic freedoms and human rights.”²¹ Such a type of discourse, which is regularly used to justify “humanitarian wars,” i.e., military aggression pretending to be “just,” immediately poses the question of who, besides sovereign states, should concretely limit political sovereignty. By definition, only those who have the means to do so can exercise the “right of intervention.” But, then, law becomes subordinated to power, which contradicts the theory. Far from disappearing, political sovereignty becomes a privilege of those strong enough to enforce the law.

Carl Schmitt is one of the strong critics of the liberal concept of sovereignty, in which the state is subordinated to law, and decision is reached exclusively through discussion, while public life is strictly separated from a largely depoliticized “private sphere.” Schmitt demonstrates that this concept is fundamentally anti-democratic, first, because it tends to discourage wider participation in public life, and second, because it rejects democratic choices which might oppose current juridical and constitutional norms. Schmitt also asserts that legal sovereignty, based on a collection of

20. Julien Freund, *L'essence du politique*, op. cit., pp. 119-120.

21. Daniel Cohn-Bendit and Zaki Laïdi, in *Libération* (June 6, 1999).

norms and procedures, is, by definition, unable to indicate who should decide in a state of exception. Sovereignty then reverts to the problem of identifying the instance (or person) with the capacity to impose its will in a concrete situation — independently, even from law. Since the state of exception most precisely reveals this instance, Schmitt concludes: “Sovereign is he who decides on the state of exception.”²² This is a matter of who decides whether a state of exception *exists*, and who decides *in* this situation. As Freund concludes: “When the exception is not covered by rules or norms, an instance other than law is needed to decide what should be done. Those situations will always be present, especially because they are unpredictable.”²³ From a Schmittian viewpoint, it could be said that there is never an interruption or vacancy of sovereignty. When an instance ceases to be sovereign, another immediately takes its place. It is not necessarily a state instance, but always a higher one. This explains why the real sovereign is not always recognized or called “sovereign.” Hegemony, exercised in a context of power and with effects often exterior to law, is also a form of sovereignty. Thus, sovereignty always exists in the real world. Abandoning the concept will not erase the reality, but only occlude it.²⁴

Johannes Althusius: Divided Sovereignty

Bodin’s concept of sovereignty successively inspired absolute monarchy, revolutionary Jacobinism, state nationalism, republican ideology, fascism and totalitarian regimes. This explains why today this view of sovereignty can be found within totally opposite political groups: “nationalistic” republicans and xenophobic nationalists, revolutionaries and counter-revolutionaries, and among both leftists and rightists.²⁵ All these groups

22. Carl Schmitt, *Political Theology*, *op cit.*, p. 5 (translation altered).

23. Julien Freund, *L’essence du politique*, *op. cit.*, p. 125.

24. Cf. Paul Hirst, “Carl Schmitt’s Decisionism,” in Chantal Mouffe, ed., *The Challenge of Carl Schmitt* (London: Verso, 1999), pp. 7-17.

25. For example, Joseph de Maistre, who was influenced by Bodin, wrote that: “any sort of sovereignty is absolute by nature,” i.e., in a way, it always is despotic, since nothing can be superior to the sovereign, and sovereignty cannot be limited without being destroyed. See *De la souveraineté du peuple. Un anti-contrat social* (Paris: Presses Universitaires de France, 1992, p. 179). Maistre understood, contrary to many of his disciples, that the French Revolution is explained, above all, by the evolution of the monarchy toward absolutism, an evolution which makes the power unbearable while implying the simultaneous undermining of the nobility and the third estate, whose respective functions were indispensable for the smooth functioning of society. This idea would be further explored by Tocqueville. Maistre accurately notes that “sovereignty is based on human consent, since, if a certain people decides to disobey, then sovereignty would disappear; it would be impossible to imagine the establishment of sovereignty without imagining a people agreeing to obey” (*Ibid.*, p. 92).

have in common an attachment to the notion of sovereignty and, above all, to the belief that sovereignty cannot be conceived of other than in Bodin's sense. However, the idea of sovereignty expressed by Johannes Althusius in his major work, *Politica methodice digesta* (1603), is completely different.

An adversary of Bodin, Althusius (1557-1638) bases his argument on Aristotle when describing man as a social animal naturally inclined to mutual solidarity and reciprocity — what he calls communication of goods, services, and rights. For Althusius, political science is a methodical description of the conditions of social life; he uses the word “symbiosis” to describe how it functions. Denouncing the idea of a self-sufficient individual, he argues that society is first, a relation among its members (or “symbiots”), and second, based on a series of political and social pacts concluded successively from the bottom up by a multitude of autonomous, natural, and institutional associations (or “consociations”), both public and private: families and households, guilds and corporations, civil communities and secular bodies, towns and provinces, etc. These “consociations” coalesce in an order from the most simple to the most complex. On each level, individuals interact, not as isolated units, but as members of an already existing community, which never abandons the totality of its rights in favor of a larger society. In this context, Althusius examines the notion of representation in a sense completely different from that of liberal thought: for Althusius, the social contract is not a unique act resulting from free individual wills, but, rather, an integrating alliance (*foedus*) — a continuing process of “symbiotic” communication of individuals defined, above all, by their mutual belonging.

The People Delegate, but They do not Forfeit Sovereignty

Global society, which Althusius calls the “integral symbiotic community,” is defined as an organization ascending from a plurality of communities founded on prior associations and multiple memberships, and disposing of overlapping powers. The political body is the result of this process of uniting communities, where each successive level draws its legitimacy and its capacity to act from the autonomy of the lower levels.²⁶ The goal of public action is to specify the levels of mutual solidarity and the autonomy of the collective participants, whose consent is actualized

26. Cf. Alain de Benoist, “Johannes Althusius, 1557-1638,” in *Krisis* (March 1999), pp. 2-34. Cf. also Chantal Delsol, *L'État subsidiaire* (Paris: Presses Universitaires de France, 1992); and “Souveraineté et subsidiarité, ou l'Europe contre Bodin,” in *La Revue Tocqueville* (1998), p. 2.

and organized in an open dialectic of the general and the particular, the basic idea being “what concerns all must be approved by all” (“*quod omnes tangit, ab omnibus approbetur*”). In this regard, one could speak of “an ascending system of “consecutive federalization”²⁷ or a “consociative democracy” (Arendt Lijphart).

For Althusius, sovereignty or “majesty” belongs to the people in perpetuity. It cannot be prescribed, because it resides inalienably in the popular community, and because “there is no absolute personal power in a community.” The people can delegate it, but cannot forfeit it. “The right of majesty,” writes Althusius, “cannot be ceded, abandoned, or alienated by its proprietors. . . . This right has been established by those who participate in this kingdom collectively, and by each of them individually. They are the ones who create it; without them, it could neither be established nor maintained. I have given politics the right of majesty, but I have attributed it to the kingdom, i.e., to the republic or the people,” says Althusius, adding that he “does not care about Bodin’s clamour.”

Far from being separated from the people, sovereignty emanates from them. The prince derives his function only from the inalienable right of the people to govern themselves. There is no other authority than that invested in the people — no authority in the form of the transfer of power from the people to the prince, but, rather, in the form of a delegation of power that the people never cease to possess intrinsically and substantially. In other words, the prince exercises his power under the control of the people, and he must use it for the common good, which remains his main goal.²⁸ Thus, the prince does not govern society as if he were alienated from it or independent of it. He is not the proprietor, but the trustee of sovereignty: he possesses only the right of this sovereignty. This same idea can be found in Rousseau, but with a crucial difference: Rousseau admits *only* that, in terms of his theory of the general will, a fundamentally unitary and homogeneous society is based on the absolute denial of any “partial society,”²⁹ while Althusius’ system is based on the participation and representation of all particular identities.

Therefore, sovereignty is not absolute; on the contrary, it can be distributed and shared. Inspired both by the imperial model, ancient Ger-

27. Thomas O. Hueglin, “Le fédéralisme d’Althusius dans un monde post-westphalien in *L’Europe en formation* (Spring 1999), p. 33; and *Community - Federalism - Subsidiarity* (Waterloo: Wilfrid University Press, 1999).

28. As Thomas Aquinas writes: “Something done for the common good goes to the people or to someone who represents the people” (“*alicujus gerentis totius multitudinis*”).

29. Jean-Jacques Rousseau, *The Social Contract*, II, 3.

manic communal “freedoms,” and the functioning of the common and cooperative associations of the old Hanseatic towns,³⁰ Althusius concludes that, on each level of society, two series of organs are needed: one, representing the lower communities, which are established to retain the power that they may exercise concretely; the other, representing the upper level, whose attributions always are limited by the first. Each lower level designates its rulers, who are also its representatives *vis-à-vis* the upper level, and the delegation of this power can be withdrawn at any time. Given the conditional nature of this delegation, the power of the upper level is always dependent upon the consent of the lower levels. The state is superior to each of the levels beneath it, but not to the unity of them all. The prince, as already seen, exercises sovereign power through delegation based on a reciprocal pact, in which he is considered to be the representative of the people, while the people retain the power to delegate. The power of the prince is supreme, since he has the greatest authority, but this authority also is limited by the autonomy of the “consociations,” which prevent him from infringing upon their own particular powers. The principle of sovereignty is preserved, but is subordinated to mutual consent.

The Interlacing of Levels of Power

For Althusius, sovereignty is not synonymous with omnicompetent authority. It only represents the level of power with the greatest capacity to decide and to execute a given task. The sovereign cannot act willfully without being held accountable. He has more extensive power, but he can use it only for what it was granted. On each level, there is an “exchange of sovereignty,” i.e., a differentiation of instances, and a sharing of jurisdictions, which are arranged from the lowest to the highest. While Bodin’s sovereignty is at once a pyramid and a circumference, with a surface oriented toward the center, Althusius’ sovereignty is structured like a labyrinth and is based on the essential principle that “the vassal of my vassal is not my vassal,” i.e., it implies plurality, autonomy, and the interlacing of levels of power and authority.

Bodin’s model has prevailed since the Treaty of Westphalia (1648), and it is precisely on this model that the nation-state, the most common political form of modernity, was constructed. One of the consequences of this evolution has been that those who wanted to reject this model, judging

30. Cf. Otto von Gierke, *Das deutsche Genossenschaftsrecht*, 4 Vols. (Berlin: Weidmann, 1898-1913); Perry Anderson, *Lineages of the Absolute State*, *op. cit.*, pp. 27-28; Andrew Vincent, *Theories of the State* (Oxford: Basil Blackwell, 1987), p. 34.

it to be implicitly totalitarian, but not having any other concept, often have been prone to reject any notion of sovereignty.

This is the case with Jacques Maritain, for whom sovereignty cannot be conceived other than as a phenomenon that transcends the body politic absolutely, and that exercises its power independently of it, which is why he rejects it. Maritain writes: "Sovereignty is incompatible with democracy." Inapplicable with respect to the people and to the state, it implies that power is superimposed on the body politic and that it "absorbs" those who are governed. Thus, he concludes that: "The concepts of sovereignty and absolutism were forged together on the same anvil. They need to be banished together."³¹

Advocates of sovereignty today commit the same error as Maritain. They assume that a sovereignty that is shared, distributed, or limited, a sovereignty that is not allowed to develop into an unlimited, unconditional, and absolute power, does not merit the name, and they come to precisely the opposite conclusion. They say that they favor sovereignty, but one based on the same definition.

Federalism and Subsidiarity

As Chantal Delsol has observed, in reality "today Bodin's sovereignty is only surface deep. In fact, it has neither a concrete existence nor a traceable legitimacy."³² The idea of the nation-state, which reigned in Europe from the Peace of Westphalia until the first half of the 20th century, is today reaching its end; two world wars have revealed its limits. The erosion from both the top and the bottom of the nation-state signifies the end of modernity; in political terms, the end of the Westphalian Age.³³ Referring in conclusion to what has been called "Bodin's evil"³⁴ should not be understood

31. Jacques Maritain, *L'homme et l'Etat* in *Oeuvres Complètes*, Vol. 9 (Paris: Universitaires, Fribourg, et Saint Paul, 1982), p. 539.

32. Delsol, *L'État subsidiaire*, *op.cit.*, p. 53.

33. Cf. Gene Lyons and Michael Mastanduno, eds., *Beyond Westphalia?* (Baltimore: John Hopkins University Press, 1995). The Westphalian model is criticized equally by Daniel Deudney, who opposes to it the "Philadelphian model," with which James Madison's name is associated and which was dominant in the US during the period between the creation of the Union and the beginning of the War of Secession. In the latter model, all collective players are "constituting members of the sovereign." See Daniel Deudney, "Binding Sovereigns. Authorities and Structures and Geopolitics in Philadelphian Systems," in Thomas Bierksterker and Cynthia Weber, eds., *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press).

34. Mendras, "Le 'mal de Bodin'," *op. cit.*, pp. 71-89.

as an intention to renounce sovereignty, but, rather, to redefine it from a different prospective, one inspired by Althusius.

In the past, the Althusian type of sovereignty already inspired certain imperial or multinational constructs. Its traces can be found in Austro-Marxist theoreticians like Otto Bauer and Karl Renner, and supporters of a “federative state of nationalities,” in which sovereignty is distributed between different levels of political life.³⁵ But, today, federalism is particularly receptive to a notion of sovereignty closely associated with the principles of autonomy and subsidiarity. In the 1930s, Maritain favored a federal Europe and called for substituting the “statolatry that reigns today” with recognition by states of “a relative autonomy, stronger than the one existing nowadays, to the smaller communities, existing inside the nation-states.”³⁶

A true key to Althusius’ system, the principle of subsidiarity, requires that decisions be made on the lowest possible level by those who sustain the consequences of them most directly. It implies that the smallest political units retain substantial autonomous jurisdictions, and that they be represented collectively on higher levels of power. Decentralization is not the issue. In decentralization, local power is given only the authority that the central power wants to grant it; this authority is only a delegation of this central power, which remains the substantial nucleus of politics in a strictly pyramidal structure of society. For subsidiarity, the reverse is true: local levels do not delegate power to higher levels; rather, they delegate responsibilities and tasks that they cannot perform themselves; they do not cede jurisdictions that they cannot assume, since they resolve in their own way all the problems they can, and they sustain the consequences of their own decisions and choices. Thus, subsidiarity represents a sharing of sovereignty: each level of authority assumes the tasks that it can. One of the consequences is that each community must be able to decide independently what goods and services it wants to have, rather than having a standardized offer of goods and services imposed on it.

35. Cf. Tom Bottomore and Patrick Goode (ed.), *Austro-Marxism* (Oxford: Clarendon Press, 1978); Karl Renner, *La nation, mythe et réalité* (Nancy: Presses Universitaires de Nancy, 1998).

36. “Europe and the Federal Idea,” in *The Commonwealth*, April 19 and 26, 1940; extended version in Jacques Maritain, *L’Europe et l’idée fédérale* (Paris: Mame, 1993), pp. 15-47. The incompatibility of federalism and Bodin’s concept of sovereignty often has been emphasized, notably by Harold Laski (*Studies in the Problem of Sovereignty* (New Haven: Yale University Press, 1917); *The State in Theory and Practice* (London: George Allen & Unwin, 1935), and also by Robert Dahl, *Who Governs?* (New Haven: Yale University Press, 1961).

Europe: A Community of Communities

Subsidiarity is opposed to Bodin's concept of sovereignty, which is based not on the criterion of sufficiency, but on that of superior capacity: the central state must have the authority for itself, since, in principle, it is presumed to be superior. Bodin's concept of sovereignty is more compatible with a dictatorial, than with a democratic regime. However, even in the latter case, the only opportunity it offers its citizens is to choose their representatives. By contrast, the federalist principle of subsidiarity is incompatible with any form of dictatorship, and is more democratic, because it recognizes not only the capacity of individuals and groups to choose their representatives, but also their capacity to participate in public life and to decide by themselves and for themselves. As Delsol has noted: "French society nowadays is democratic, but it is not subsidiary, because it leaves too little space for independence of action by groups, and prefers to confide in the central state to understand what already has been decided democratically."³⁷ The principle of subsidiarity implies autonomy and responsibility, while Bodin's concept of sovereignty, founded on a principle opposed to organized groups, consecrates heteronomy, irresponsibility, and generalized welfare.

More than half a century ago, Michel Glady wrote: "In order to take the road toward real federalism, it is necessary to abandon the nation-state as the foundation of society, i.e., to put an end to imperialism and statolatry. . . . Only the communal formula proves to be pliable, to be humane, and to make it possible to avoid various stumbling blocks."³⁸ From the standpoint of subsidiarity, the real political and social unity, which is superior even to the region, is in fact the commune. Mendras reaches the same conclusion: "The French demonstrate an indefensible attachment to direct democracy: the mayor is a popular public figure, as all politicians are popular who maintain contact with their local constituencies. Thus, it is from the commune that a theory of political legitimacy could be reconstructed in an ascending — not a descending — order."³⁹

In such a perspective, the existence of groups and communities with particular interests do not hinder the common good. Rather, the extension of democratic procedures hinders those factions which act to the detriment of the common interest. Thus, the nation is defined as a

37. Michel Glady, "A hauteur d'homme. Des frontières au fédéralisme, in *L'Ordre nouveau* (November 1934), p. 10.

38. Mendras, "Le 'mal de Bodin'," *op cit.*, p. 86.

39. Delsol, "Souveraineté et subsidiarité, ou l'Europe contre Bodin," *op cit.*, p. 50.

community of communities, which not only can participate in a larger community of a supra-national type, but whose particular communities can choose to have closer contact with other communities. While the Jacobinist viewpoint makes sovereignty the guarantee of national unity, the principle of subsidiarity makes the preservation of pluralism the guarantee of sovereignty. A well-conceived Europe, i.e., a federal Europe, would not be the agent of the dissolution of existing sovereignties, but, rather, the instrument of their rebirth as a means of European sovereignty conceived and practiced differently.