

The question of sovereignty reappeared at the end of the Middle Ages, when many began to ask not only what is the best possible form of government, or what should be the purpose of the authority held by political power, but what is the political bond that unites a people to its government? That is to say, how ought we to define, within a political community, the connection between those who govern and those who are governed?

This is the question that Jean Bodin attempted to address in his famous book, *La République (The Commonwealth)*, which appeared in 1576. Bodin did not invent sovereignty, but he was the first to make a conceptual analysis and to propose a systematic formulation. The starting point for this exercise was not an observation of the facts but a two-fold aspiration: first, Bodin's desire for a restoration of the social order, which had been turned upside down by the religious wars, and second, the demand, on the part of the kings of France, for emancipation from every form of allegiance to the emperor and the pope. Bodin's treatment of sovereignty would quite naturally constitute the ideology of the territorial kingdoms, then in their infancy, which sought to emancipate themselves from the tutelage of the Holy Roman Empire, while consolidating the transformation of power that resulted from the king's success in dominating his feudal nobility.

Bodin begins by recalling, quite correctly, that sovereignty (or *majestas*), which he makes the cornerstone of his entire system, is an attribute of the power to command, which itself constitutes one of the givens of politics. Like most authors of his time, he also declares that a government is only strong if it is legitimate, and he underscores his conviction that a government action must conform to a certain number of values determined by justice and reason. He is well aware, however, that such considerations are not enough to account for the notion of sovereign power. For that reason, he declares that the source of power

derives from the law. The capacity for making and breaking the laws belongs to the sovereign. That is what constitutes the hallmark of sovereignty: The power to legislate and the power to govern are identical. The conclusion that Bodin deduces from this is radical: Since he cannot be subjected to the decisions that he makes or to the decrees he issues, the prince is necessarily above the law.

This is the formula that had appeared among Roman legal experts: *princeps solutus est legibus*. "Those who are sovereign," writes Bodin, "must not be in any way subject to the commands of others. . . . That is why the law says that the prince is absolved from the power of the laws. . . . The laws of the prince depend only on his pure free will." The prince, therefore, possesses the sovereign power to impose laws that are not binding on himself, and, to exercise this power, he has no need of the consent of his subjects—which means that sovereignty is totally independent of the subjects on which it imposes the law. Cardinal Richelieu would later say, in the same spirit, that "the prince is master of legal formalities."

By this reason of its legislative power, continues Bodin, the supreme authority is and can only be unique and absolute, whence his definition of sovereignty as the "absolute and perpetual power of a commonwealth"—that is to say, as an unlimited power in the order of human affairs. The absolute power of sovereignty lies in the fact that the sovereign is not subject to his own laws but issues and abrogates them as he likes. On the other hand, the ability to make laws requires that sovereignty be absolute, because the legislative power cannot be shared. All the rest of the sovereign's political prerogatives stem from this initial affirmation. Bodin deduces from this that the fundamental characteristic of sovereignty is that it confers on the prince, who is subject to no rule beyond his own will, the power not to be bound or dependent on anyone, his power being neither delegated, nor temporary, nor responsible to anyone whatsoever. In

fact, if he were to set about depending on someone other than himself, whether domestic or foreign, he would no longer have the power to legislate. He would no longer be sovereign.

Bodin's sovereignty is therefore completely exclusive: In assigning to the king the role of unique legislator, it confers on the state an unlimited power to act. As a result, a sovereign state is defined as a state whose ruler depends on no one other than himself. This implies that the nation is constituted as a state, and even that it is identical with the state. For Bodin, a country may exist by reason of its history, its culture, its identity, or its customs, but it does not exist politically except to the extent that it is constituted as a sovereign state. Sovereignty is then the absolute power that makes a commonwealth a political entity, itself unique and absolute. The state must be one and indivisible, since it is nothing other than an expression of the legislative monopoly held by the sovereign. Local autonomies can only be admitted to the extent that they do not constrain the prince's authority. In fact, these autonomies will never cease to be ever more constrained. The state thus becomes a monad, while the prince finds himself divided from the people—which to say, placed into an isolation that borders on solipsism.

The significance of this new theory is evident. On the one hand, it dissociates civil society and political society, a dissociation that political thought will make great use of at the beginning of the 18th century. On the other hand, it lays the foundation of the modern nation-state, which is characterized by the indivisible nature of its absolute power. With Bodin, political theory enters, with both feet, into modernity.

According to Bodin, sovereignty is above all inseparable from the idea of a political society; it abolishes particular connections and loyalties and sets itself up on the ruins of concrete communities. Implicitly, the social bond has already turned into a governmental contract, in which only individuals are involved, eliminating any mediation between members of society and the power of government. This severing of the connections between prepolitical communities and the political unit will be brought about, first, by absolute monarchy, and then by the nation-state, which defines itself above all by its homogeneous character, whether that homogeneity is natural (that is, cultural or ethnic) or acquired (by relegating all collective differences to the sphere of private life).

It is not difficult to see the religious underpinnings of this doctrine: The way in which Bodin conceives of political power is only a profane transposition of the absolutist way in which God exercises His own power—and the way in which the pope rules over Christianity. This is true even though he rejects the medieval conception of power as a simple delegation of God's authority. With Bodin, the prince is no longer content to hold power by "divine right." By giving himself the power to make and unmake laws, he is acting in the manner of God. He constitutes, by himself, a separate whole, which dominates the social whole as God dominates the cosmos. The same goes for the absolute rectitude of the sovereign, which simply translates into the political realm the attributes of the Cartesian god, who can do all that he wills but cannot will that which is evil.

From sovereignty, it is a small, surreptitious step to the notion of infallibility. In other words, Bodin desacralizes sovereignty by taking it away from God, but he resacralizes it immediately in a profane form: He leaves the monopolistic and absolute sovereignty of God in order to end up with the monopolistic and absolute power of the state. All modernity, then in its infancy, re-

sides in this ambiguity: on the one hand, political power is becoming secular; on the other, the sovereign—henceforth identical with the state—is becoming a person endowed with an almost divine political power. This is a perfect illustration of Carl Schmitt's thesis that "all the pregnant concepts of the modern theory of the state are theological concepts that have been secularized."

Bodin's theory of sovereignty, however, does not imply any particular type of regime. He prefers monarchy, because power is naturally more concentrated in a monarchy, but he understands it as equally compatible with the power of an aristocracy or with democracy, though the risk of dividing power is greater in a democracy.

There is something paradoxical in this modern formulation of sovereignty. Bodin takes pains to distinguish tyrannical power from sovereign power but only by appealing to ideas that, objectively speaking, constitute a limitation on sovereignty, even though he defines it as indivisible and absolute. This limitation might reside in the prince's need to respect certain natural and divine laws. It might also reside in the ultimate purpose of power, which is to serve the common good without injuring the rights of the members of society; it might even reside in the criteria for its legitimate exercise. This entirely theoretical bulwark against tyranny will quickly fail, by reason of the very dynamic of absolutism.

The conception of sovereignty that was characteristic of absolute monarchy was preserved in its entirety by the French Revolution, which confined itself to ascribing such power to the nation. From this comes the difficulty that the Republic came up against, when it tried to reconcile the first two articles of the *Declaration of the Rights of Men*, which declare the primacy of the individual's universal rights, with the third article, which makes the nation the sole authority to judge its own competence.

One of the merits of a recent book by Ladan Boroumand is to have established, on the basis of a careful examination of texts, not only the continuity of the idea of absolute sovereignty from the *Ancien Régime* to the Revolution but that the revolutionary affirmation of the primacy of national sovereignty does not date from 1792 or 1793—during the rise to power of the Jacobin Party—but to the very beginning of the movement. The key moment is reached when the Third Estate makes its unilateral decision, in May 1789, to undertake the process of verifying the deputies' credentials, a decision that launches the transformation of the Estates-General into the National Assembly and endows the deputies with political sovereignty.

The motion proffered by the Abbé de Siéyès, which invites the communes to proclaim themselves a "National Assembly," was opposed by Mirabeau's motion, which puts forward the alternative name, "Assembly of the People's Representatives." The rivalry between the two motions uncovers a revealing difficulty in the attempt to define the nation. At the end of the day, Siéyès' motion will carry, while Mirabeau's will be rejected as injurious to the nation's right. For Siéyès, however, the nation is "a living body of associates under a common law," a body that is rigorously homogeneous in its essence and detached from every prepolitical purpose. It is to this body, and to it alone, that sovereignty must be granted. "The nation exists before all, it is the origin of all. Its will is always legal, it is a law unto itself."

On June 17, 1789, Siéyès gets the name "National Assembly" adopted, with the slogan that the representation of the nation can only be "one and indivisible." Since the General Will is re-

garded as taking shape only within the legislative body, national representation is confused with the nation. From that instant, sovereignty becomes the property of the nation, and the sovereignty transferred to the Assembly is to be exercised from on high. Henceforth, the nation corresponds to the area of collective sovereignty that is incarnated in the National Assembly. Revolutionary sovereignty, therefore, does not come originally from the electoral body but represents a simple transfer from royal power.

The Constitution of 1791 goes still further, adding the qualification that “sovereignty is indivisible, inalienable, and indefeasible.” However, in August 1791, in the course of the debate that preceded the final drafting of this article, a first draft submitted to the Assembly still attributed to sovereignty only the quality of indivisibility. *Inalienability* was added at the request of Robespierre. On September 7, Siéyès declares: “France must not be an assembly of little nations, which would govern themselves separately as democracies; it is not a collection of states; it is a unique whole, composed of integrating parts.” By extension, on September 25, 1792, the French Republic is itself proclaimed “one and indivisible.” Thus, intermediate bodies and basic forms of community life are denied any legitimacy of their own. A year later, the Jacobin denunciation of the “Federalist peril” will repeat this argument. Acting on the same principle, the revolutionaries will try to make regional dialects disappear, and then they will demand the suppression of the ancient provinces and their replacement with geometrically equal departments.

Parallel to this, the concept of *the people* receives a purely abstract definition, one that corresponds to the idea of the nation whose priority is immediately declared. This is the necessary condition for the people, in its turn, to be declared “sovereign.” “If as an objective reality,” writes Ladan Boroumand,

the people could not be admitted into the sphere of the nation’s sovereignty, the metaphysical entity *par excellence*, its metamorphosis into an ideal being gives it the right to participate in the logic of national sovereignty without endangering the transcendent existence of the nation, which is incarnate in [the political process of] representation.

Representation, however, is itself conceived as a principle of the unity and “indivisibility” of the people, thereby excluding the idea of a people formed out of particular communities and distinct entities. The idea of the nation, put forth as a unitary and transcendent being whose unity and indivisibility are necessarily independent of any external principle, ends up restoring the concept of the people to the point that the new idea replaces the old, inaugurating a tradition that French law has never ceased to perpetuate. Finally, the revolutionary conception of sovereignty makes nationality and citizenship synonymous: From then on, there will no longer be a French national who is not a French citizen (except when a citizen is stripped of civil rights), nor a citizen who is not a national. The people is all the more indivisible and unitary in that it has become a simple abstraction. This is why France, still today, is not a federal state and cannot recognize the existence of a Corsican or Breton people.

Thus, under the Revolution as under the *Ancien Régime*, the same conception of sovereignty as the “absolute and eternal

power” of a republic is the source of all the rights and duties of the citizen. The sovereignty of the Jacobins allows no more restrictions than the sovereignty of Bodin. The revolutionaries denounce federalism in the same terms that absolute monarchy employed, when, for example, it reproached the Protestants for wanting to cantonize France on the model of Switzerland. They hurl anathemas and struggle against local particularisms in the same way that royal power tried by every means to reduce the autonomy of the feudal nobility. To legitimate revolutionary justice, they advance the same arguments that Cardinal Richelieu used in defending the discretionary power of the ruler. With the Revolution, national sovereignty is in opposition to royal absolutism, not because it rejects absolutism *per se*, but because it is transferring the absolute prerogatives of the king to the nation.

“Certainly,” as Mona Ozouf has written,

the men of the Revolution appear to break with the old world, by inventing a society of free and equal individuals. In reality, they have inherited from absolutism a concept that is much older and more constraining: the idea of national sovereignty, a transcendent mythic body that is in command of individuals. And this idea very quickly recovers its efficacy, and the absolute sovereignty of the nation comes to fill the place left vacant by the absolute sovereignty of the king. . . . The Terror itself, far from being a desperate measure dreamed up by a Republic on the point of collapse, follows logically from what they have borrowed from the *Ancien Régime*.

If, by all the evidence, it violates the natural rights of individuals, the Terror does not at all violate the rights of the nation, which, on the contrary, it intends to guarantee and preserve. “The similarities between absolutism and Jacobinism,” writes Ladan Boroumand, “are easily explained. If the political reflexes and expedients are, before and after 1789, the same, it is from that fact that they are informed by the same principle: the sovereignty of the nation.”

Thus, as Henri Mendras has observed,

What was a claim in the 16th century, became in France an absolute doctrine, an intangible principle for the monarchy during two centuries, then for the constitutions since 1791. This principle was a juridical fiction, an abstraction that was incarnate in the king as absolute prince. With the king gone, the Republic picked up the baton.



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# The Modern Conception of Sovereignty

A Jacobin Invention

by Alain de Benoist