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The Mediterranean Legacy in the Concept of Sovereignty: A Case of Legal and Philosophical Hybridity

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**THE MEDITERRANEAN LEGACY IN THE
CONCEPT OF SOVEREIGNTY:
A CASE OF LEGAL AND PHILOSOPHICAL
HYBRIDITY**

Alessio Lo Giudice*

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ABSTRACT

The ideas of centralized political power and monarchy that emerged from the Mediterranean world are among the most important philosophical bases for the concept of sovereignty. My thesis is that the normative idea of an absolute, independent, and exclusive center of power originates in a complex case of philosophical hybridity. It is the outcome of the alternation between the conception of the Sovereign as *representing* the supreme power (the indirect theory) and the conception of the Sovereign as *directly containing* that power (the direct theory). The former conception is usually associated with the history of Western

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political culture and the passage from Greek to Roman ideas of public authority. The latter conception is typically associated with the understanding of supreme political power found in Eastern culture, as exemplified in Persian kingship and the Byzantine theocracy.

My intention is to show how the modern concept of sovereignty has emerged from a mixture of these two conceptions. In fact, the early philosophical structure of sovereignty in both its monarchical and its democratic versions can be summed up in the notion of secularized transcendence. The sovereign benefits simultaneously from both the conceptual model of subjectivity (the indirect theory) as a mask that represents a center of attribution (*le Roi est mort, vive le Roi*), and the conceptual model of a material supreme subject (the direct theory) who embodies the primacy of an authority that is beyond actual social relationships (*l'État c'est moi*).

I. INTRODUCTION

My thesis is that the normative idea of sovereignty, that is, of an absolute, independent, and exclusive center of power, is a complex instance of philosophical and cultural hybridity. It constitutes a specific kind of mixture whose nature seems obvious in the complex transition from pre-modernity to modernity but that is clearly freighted with the multiple nature of the millennia-long historical experience of Mediterranean life.

This thesis does not challenge the widespread conception of sovereignty as a typical legal-political category of modernity. That conception is not at issue in my analysis. In fact, it is precisely from the perspective of a philosophical discontinuity in the concept of sovereignty that it becomes possible to grasp the unique mixture of ancient and modern features to be found in new ways of theorizing supreme legal and political power. In tracing this conceptual history, we need to adopt a specific approach that seeks to identify the area of convergence where past concepts are subsumed into and transformed by modern concepts. This approach entails taking account of both the rupturing impact on culture and society of new principles and the presence of traces of

past attitudes in the formation of new styles of life and thought.¹ Thus I am not questioning the need to interpret and understand the concept of sovereignty in a holistic way, that is, by taking into consideration the network of social, historical, political, and cultural features that frame modernity.

At first glance, the conception of sovereignty in the Mediterranean region seems to consist of a temporal-spatial mosaic of interdependent elements that compose a single conceptual structure: that of a transcendent, absolute power intended to further human well-being. The modern European attitude towards centralized power would appear to derive from this structure, even when we take account of the indisputable differences between Eastern and Western conceptions of power. The point is that the cultural mobility that has always been a feature of the Mediterranean region allowed for numerous intersections and cases of intermingling between Eastern and Western cultures in a way that was decisive for the development of the concept of sovereignty.

II. BRIEF HISTORICAL OVERVIEW

From a historical perspective, an illuminating picture of this process of hybridization, specifically relevant to the development of the concept of sovereignty, is provided by the relationship between the theocratic autocracies established in the Egyptian and Persian empires and the structure adopted by the Roman Empire in the fourth century.² As Mommsen observed, Roman imperial power was based at this time on the model of the Eastern Hellenistic monarchies. By means of this new model,

1. See REINHART KOSELLECK, *VERGANGENE ZUKUNFT: ZUR SEMANTIK GESCHICHTLICHER ZEITEN* (Suhrkamp, Frankfurt, 1979).

2. Groundbreaking work on this process of hybridization, including the presentation of precise data, can be found in Pier Giuseppe Monateri, *Black Gaius: A Quest for the Multicultural Origins of the "Western Legal Tradition"*, 51.3 *HASTINGS L.J.* 479 (2000). See also Dionysios Zakythinos, *Processus de Féodalisation*, 2 *L'HELLÉNISME CONTEMPORAIN* 499 (1948); D. ZAKYTHINOS, *BYZANCE: ETAT-SOCIÉTÉ-ECONOMIE* (Variorum, London, 1973); *SOCIAL AND POLITICAL THOUGHT IN BYZANTIUM FROM JUSTINIAN I TO THE LAST PALAEOLOGUS: PASSAGES FROM BYZANTINE WRITERS AND DOCUMENTS* (Ernest Barker ed., Clarendon Press, Oxford, 1957).

imperial dignity had been sacralized. The emperor was no longer *primus inter pares* but rather a distant and holy person. He was viewed as a divinity that was to be honored; and then, following Constantine's reform, as a person representing the divinity.³

These Hellenistic political models that so strongly influenced the Eastern Roman Empire and thus the complex process of formation of the Byzantine Empire had of course in turn been based on Alexander the Great's celebrated conquest of the Persian and Egyptian empires and thus they incorporated a mixture of Greek, Egyptian, and Persian political and cultural characteristics. In Alexander's project and in his political praxis, the intention was evident of combining Greek political models with elements of a pronounced Eastern character. Alexander was attracted in particular by the sacralized conception of the topmost political figures in Eastern culture.

From this Mediterranean dynamic of the interaction between legal and political power, the conception of the governor as *Deus et Dominus* and the establishment of a vast bureaucratic apparatus emerged as salient in the most significant political entities of the region. As well, the cult of the emperor was established, along with the organization of a system of officialdom closely linked to the source of power. Finally, this conception of the sovereign appears to have been systematically transmitted through the Byzantine interpretation of imperial divinity and was maintained (of course in Christian terms) even following the Christianization of the Empire.

Thus in this conception, the emperor, by virtue of his dignity, is understood to stand above all other people as the imitation of God. He is God's shadow on Earth. He is invested with a majesty of divine origin. He is not just a representative of the supreme power, but an intermediate figure between God and humans who participates in the nature of the holy. He is the God of the World. Indeed, the emperor's holiness and Christ's divinity are strongly connected. Numerous imperial rites and ceremonies of Byzantine society evince the practice of a sort of

3. See 1-2 FRANTISEK DVORNIK, *EARLY CHRISTIAN AND BYZANTINE POLITICAL PHILOSOPHY: ORIGINS AND BACKGROUND* (Dumbarton Oaks, Washington, 1966).

“Christomimesis.” Thus the common unifying feature of the most significant (in terms of extension in time and relevance to modernity) Mediterranean political experience, an experience that did not come to a formal end until 1453, was that of a relationship between politics and transcendence: a legitimizing relationship ensured by the role of a holy emperor conceived of as a figure with direct contact with the transcendent.⁴

This feature is closely linked to a belief shared by the Byzantines with other peoples of the Mediterranean region, namely that their community in some manner constituted a divine manifestation, a theophany.⁵ In a framework of this kind, a highly important notion is that of the center; that is, the idea of the supreme city as the center of the world where the point of contact with the transcendent is located.

III. THE HOLINESS OF THE POLITICAL

We are dealing, then, with the question of the relationship between politics, law, and the dimension of the holy. Within this framework, the concept of the “holy” is equivalent to the meaning of a productive social ritual that is never totally subjective, since its orientation depends on its relationship with the transcendent. In this sense, the dimension of the holy is the sphere in which mechanisms of collective and symbolic identification unfold. It is a foundational dimension for the “political,” since we find in it original and unchanging dynamics of inclusion/exclusion. We are dealing with a kind of process of political consecration that is in a sense very close to Émile Durkheim’s notion of the “holy.” For Durkheim, the holy stands for a collective representation that makes it possible to order, and thus constitute, reality. This representation is a sociocultural datum that allows individuals to transcend themselves by virtue of their identification with the group. Thus the symbolic separation of the “holy” from the

4. For an insightful overview of the relationship between holiness and political power in Christian Europe, see *ADVENIAT REGNUM: LA REGALITÀ SACRA DELL'EUROPA CRISTIANA* (Franco Cardini & Maria Saltarelli eds., Name, Genova, 2000).

5. See HÉLÈNE AHRWEILER, *L'IDÉOLOGIE POLITIQUE DE L'EMPIRE BYZANTIN* (PUF, Paris, 1975).

“profane,” deriving from humankind’s original socio-religious attitude, is *the* original operation of social classification.⁶

And indeed, symbolic function is integral to sacrificial experience, both in original true sacrifices and in subsequent developments in which a purely linguistic ceremony prevails over the physical aspects of the ritual. What is at issue here is the symbolization of the community’s political and social origins through its link with the principle of the transcendent. But this reality is the product of a cultural process of social institution that, by consecrating a “place,” sanctions a difference between the real and the unreal, the human and the non-human. Pierre Bourdieu’s analysis of the meaning of consecrating rituals as legitimizing rituals of a social reality is precisely relevant here. According to Bourdieu, in rituals of consecration we are dealing with institutive rituals of sociality, that is, with rituals that lead to the recognition as legitimate and natural of a difference that is in fact arbitrary. From this perspective, the sacralization of a space and of a leader within this space is an institutive ritual of sociality because it simultaneously establishes and consecrates a difference.

Thus the institution of society is an operation of attribution of properties to places, persons, actions, behaviors, and objects in a way that makes it possible to perceive these properties as something natural. What is communicated and represented, and therefore perceived, as the manifestation of the holy (theophany) is precisely a political and legal order interpreted as the product of a consecrating separation: “To institute, in this case, is to consecrate, that is, to sanction and sanctify a particular state of things, an established order, in exactly the same way that a *constitution* does in the legal and political sense of the term.”⁷

6. See ÉMILE DURKHEIM, *LES FORMES ÉLÉMENTAIRES DE LA VIE RELIGIEUSE* (PUF, Paris, 1968) (1912).

7. PIERRE BOURDIEU, *LANGUAGE AND SYMBOLIC POWER* 119 (John Thompson ed., G. Raymond & M. Adamson trans., Harvard University Press, Cambridge, 1993). The original version is in PIERRE BOURDIEU, *LANGAGE ET POUVOIR SYMBOLIQUE* 177 (Éditions du Seuil, Paris, 2001) (1993) (“Instituer, en ce cas, c’est consacrer, c’est-à-dire sanctionner et sanctifier un état de choses, un ordre établi, comme fait, précisément, une *constitution* au sens juridico-politique du terme.”).

IV. THE MODERN CONCEPT OF SOVEREIGNTY

What is really surprising, given the flux of change one finds in the history of ideas and cultures, is the reappearance at the end of the sixteenth century of extremely centralized organizations of political power, in contrast to the chaotic plurality of legal and political centers of power typical of the Middle Ages. This reappearance is especially surprising in its implicit assumption and positioning of a “holy” subject that transcends social reality for the purpose of governing it. In conceptual terms, this subject stands for the core of a single, central political and legal power. Thus from this perspective, the idea of an absolute, exclusive, and independent power, embodied in the institutional figure of the sovereign as the core of the modern state, shows the implicit persistence of a structural conception of supreme power. It is a conception in which, as we will see, the relationship between politics and the transcendent continues to figure; but this relationship has changed in significant ways and now emerges as a bare conceptual model fully contextualized within the complex turn of the modern.

It is widely recognized that the crisis of the medieval order is visible in the process of the formation of modern states. According to historiography convention, the Peace of Westphalia of 1648 is emblematic of this epochal political and legal transformation.⁸ What is crucially relevant to the thesis of the present article is the celebrated reaffirmation in the texts of the Peace of Westphalia of the principle of *cuius regio, eius et religio*, which had been established in 1555 in the Peace of Augsburg. This principle enshrines the link between an individual’s authority over a region (including over a kingdom) and that individual’s religious faith: the latter automatically becomes the state religion. Thus we have here the establishment of a link between territory and the cultural identity of a people that is forming itself as a nation under the exclusive and independent direction of a unique authority.

8. The literature on the Peace of Westphalia is of course vast. For a systematic but also unconventional conceptual approach, see *PEACE TREATIES AND INTERNATIONAL LAW IN EUROPEAN HISTORY: FROM THE LATE MIDDLE AGES TO WORLD WAR ONE* (Randall Lesaffer ed., Cambridge University Press, Cambridge, 2004).

Within this set of interconnections that link territorial, political, and cultural-religious elements, we grasp the existence of the nucleus of sovereignty as the expression of the modern conception of political authority.

The feudal lord becomes sovereign in the territory that belongs to him. Within this framework, he accedes to the status of the one who has no superior. Thus the sovereign exercises his power *superiorem non recognoscens*. His authority is exclusive, since there is no possibility for the exercise of a legitimate power that, within a specific territory, is not subject to the sovereign's will. But further, his authority is also independent of that of other sovereigns who symmetrically exercise their own power over specific populations and territories.

It can thus be affirmed that post-Westphalia European society was composed of a plurality of territorially based political systems. Each of these systems had a supreme and independent governing authority. The medieval political-theological *universitas* now acquired the nature of an international *societas* of sovereign states. Sovereign power emerged from the intersections and complex links among political and normative centers that had been typical of the Middle Ages. Thus the sovereign state, at any rate in ideal terms, neutralized the medieval system of dispersed powers and established a centralizing authority. The population governed by the sovereign had the duty to obey the laws he enacted; and the possibility of external interference by presumptively superior authorities, like the pope and the emperor, were in principle eliminated: *rex est imperator in regno suo*.

An important example of the modern theory of sovereignty that nevertheless reveals significant traces of its medieval origins is Jean Bodin's *Les six livres de la République* (1576).⁹ Bodin advances an original notion of absolute power (*ab-solutus*, that is, without constraints). On one hand, absoluteness is to be confined

9. For overviews of Bodin's thought, see ROGER CHAUVIRÉ, *JEAN BODIN AUTEUR DE LA RÉPUBLIQUE* (Champion, Paris, 1914); SIMONE GOYARD-FABRE, *J. BODIN ET LE DROIT DE LA RÉPUBLIQUE* (PUF, Paris, 1986); Julian H. FRANKLIN, *J. BODIN AND THE RISE OF ABSOLUTIST THEORY* (Cambridge University Press, Cambridge, 1973); DIEGO QUAGLIONI, *I LIMITI DELLA SOVRANITÀ: IL PENSIERO DI J. BODIN NELLA CULTURA POLITICA E GIURIDICA DELL'ETÀ MODERNA* (Cedam, Padova, 1992).

to the exercise of political-legal power in the sense of the sovereign's positive statutes. This means the absoluteness does not equate to power without limits, for the sovereign must respect God's laws. On the other hand, Bodin's intention is not to set factual limits on sovereign political power. Rather he wishes to preserve the normative value of the idea of "nature" as a horizon within which the rationality of sovereign power is to be confined. The measure of nature provides the foundation for the rationality of political power and thus the rationality of absoluteness as its inescapable prerogative. The conceptual supremacy of the sovereign is rationally justified by the absolute transcendence of the "natural" order. Interpreting Bodin's thought, we might say that, in the modern "natural" world of equal individual subjects, a purely sovereign power finds its foundations in the rational idea of an absolute (and so "unequal") center of power that, by virtue of its "inequality," can serve as a legitimate authority over its subjects: "Similarly sovereign power given to a prince charged with conditions is neither properly sovereign, nor absolute, unless the conditions of appointment are only such as are inherent in the laws of God and of nature."¹⁰

Thus it is understandable that Bodin should arrive at this famous definition of sovereignty: "*Sovereignty* is that absolute and perpetual power vested in a commonwealth."¹¹ Under this conception, absoluteness coincides with the uniqueness of the political-legal source represented by the sovereign. Its perpetual nature is evident in the new prerogative assigned to sovereign power in modernity, namely exclusive competence to enact laws. Bodin situates the specific function of a sovereign subject in the concrete establishment of a normative order. The sovereign is

10. JEAN BODIN, *SIX BOOKS OF THE COMMONWEALTH* (J. M. Tooley trans., Basil Blackwell 1955) (1576), available at <http://www.constitution.org/bodin/bodin.txt> (Last visited October 24, 2011). The original version is in J. BODIN, *LES SIX LIVRES DE LA RÉPUBLIQUE* 89 (Reproduction of the Paris Edition by Jacques du Puys, BNF, Gallica, 1581-1583) (1576) ("Aussi la souveraineté donnée à un Prince sous charges & conditions, n'est pas proprement souveraineté, ny puissance absolue: si ce n'est que les conditions apposées en la création du Prince, soyent de la loy de Dieu ou de nature.").

11. *Id.* The original version is in J. BODIN, *LES SIX LIVRES DE LA RÉPUBLIQUE* 85 (1576) ("La *souveraineté* est la puissance absolue et perpétuelle d'une République.").

justified and legitimized before his modern subjects by virtue of his ability to deal rationally with the need for coexistence and within the framework provided by God's laws.

Another (perhaps more radical) instance of the development of the modern concept of sovereignty that— notwithstanding its disruptive assumptions and outcomes— features traces of a shared heritage with the Mediterranean tradition of absolute power is found in the theory Thomas Hobbes set out in *Leviathan* in 1651.¹²

According to Hobbes, the natural condition of equality between people is an essential condition of subjectivity. The anthropology of conflict advanced by Hobbes derives from this radically modern starting point:

Nature hath made men so equal, in the faculties of the body, and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind than another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he.¹³

Hobbes' anthropology, relying for its starting point on the metaphorical-transcendent notion of the state of nature, may be represented (if perhaps somewhat simplistically) in the form of this strict logical sequence: equality of individuals => equality of hope => possibility of convergent desires for the same goods => mutual diffidence => war of all against all as outcome of a strategy of anticipation => consequent generalized condition of brutishness and isolation.

According to Hobbes, anthropologically, the neutralization of this endemic conflict in a pre-legal and pre-institutional context can be guaranteed simply by an internal solution within the

12. From among the many works that deserve mention, I recommend for general accounts of Hobbes' life and ideas, RICHARD TUCK, *HOBBS* (Oxford University Press, Oxford-New York, 1989); and NORBERTO BOBBIO, *THOMAS HOBBS* (Einaudi, Torino, 2004) (1989).

13. THOMAS HOBBS, *LEVIATHAN, OR THE MATTER, FORME AND POWER OF A COMMON-WEALTH ECCLESIASTICALL AND CIVIL* 82 (J.C.A Gaskin ed., Oxford University Press, Oxford, 2008) (1651).

dynamics of the conflict. The conflict itself will select a subject that has attained, even if only temporarily, to a power that overcomes all other subjective powers and is thus feared by everyone. But in order to exploit this precarious situation to obtain peace before the decline that is inescapable for any temporary superior power, a stabilizing step is necessary. This stabilization may be guaranteed by the institutionalization of this anthropologically based hierarchy. In particular, a stable context is achievable by means of legal tools (covenants) likely to make permanent the excess of power of a given subject who, being feared by all, will be capable of ensuring the peace. Thus the *pactum unionis* is also a *pactum subjectionis* to a subject who is invested with the power of all the individuals and who thus becomes the most powerful among them. This makes possible the transition from the precarious state of nature to a stable and permanent civil society.

This transition performs its function simply through the dynamic of representation in which is crystallized the idea of a sovereign subject who transcends the multitude of people represented and who is conceived of as an external center of unity and as himself the condition for unity:

A multitude of men, are made *one* person, when they are by one man, or one person, represented; so that it be done with the consent of every one of that multitude in particular. For it is the *unity* of the representer, not the *unity* of the represented, that maketh the person *one*. And it is the representer that beareth the person, and but one person: and *unity*, cannot otherwise be understood in multitude.¹⁴

Thus from a logical-temporal perspective, the covenants are not divisible, since the members of the multitude are associated with each other by virtue of the fact that they are subject to the same institutional person who performs a representative function. Representation, as legal form, frames the nuclear structure of the Hobbesian state and the Hobbesian concept of sovereignty.¹⁵ The

14. *Id.* at 109.

15. The literature on the concept of representation in Hobbesian thought is vast. To mention just a few insightful interpretations: YVES-CHARLES ZARKA,

sovereign power, whose institutional end is individuals' safety, is legally justified by means of a reciprocal authorization exchanged by subjects *uti singuli*:

*I authorize and give up my right of governing myself, to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner. This done, the multitude so united in one person, is called COMMONWEALTH, in Latin CIVITAS.*¹⁶

Thus the sovereign stands in an external position with respect to the covenant. He is a third party who benefits from individuals' authorizations. The subjects are the *authors* of the sovereign's action. The sovereign is the *actor* who acts in the name of the multitude of people. The sovereign's absoluteness is the outcome of the totalizing authorization derived from the subjects' will. The sole effective limit on the sovereign is imposed by the purpose of his having been constituted, that is, by the guarantee of a peaceful social order. But at the end of the day, the effective ability of the sovereign to maintain the peace is not a limitation on the exercise of legal-political power. It is precisely the cause of the sovereign's existence, and when he can no longer guarantee the peace he concretely loses the quality of sovereign. This means that conceptually the Hobbesian sovereign is substantially absolute. He is really a third party *superiorem non recognoscens*. He *materially* transcends the multitude, since he stands outside the social contract; and he *symbolically* transcends the multitude as well,

HOBBS ET LA PENSÉE POLITIQUE MODERNE (PUF, Paris, 1995); Y. C. ZARKA, LA DÉCISION MÉTAPHYSIQUE DE HOBBS. CONDITIONS DE LA POLITIQUE (Vrin, Paris, 1999); RAYMOND POLIN, POLITIQUE ET PHILOSOPHIE CHEZ HOBBS (Vrin, Paris, 1977); DAVID P. GAUTHIER, THE LOGIC OF LEVIATHAN (Clarendon Press, Oxford, 1969); CARL SCHMITT, DER LEVIATHAN IN DER STAATSLHRE DES THOMAS HOBBS. SINN UND FEHLSCHLAG EINES POLITISCHEN SYMBOL (Hohenheim verlag, Köln-Lövenich, 1982) (1938); LUCIEN JAUME, HOBBS ET L'ÉTAT REPRÉSENTATIF MODERNE (PUF, Paris, 1986); FRANCESCO VIOLA BEHEMOTH O LEVIATHAN? DIRITTO E OBBLIGO NEL PENSIERO DI HOBBS, (Giuffrè, Milano, 1979); GIUSEPPE SORGI, QUALE HOBBS? DALLA PAURA ALLA RAPPRESENTANZA (Franco Angeli, Milano, 1989); ADALGISO AMENDOLA, IL SOVRANO E LA MASCHERA. SAGGIO SUL CONCETTO DI PERSONA IN THOMAS HOBBS (Esi, Napoli, 1998).

16. HOBBS, *supra* note 13, at 114.

since he embodies its unity: he is “above” the plurality of the singularities that compose the multitude.

Thus the modern form of political representation as conceived by Hobbes serves as the condition for thinking about the unity of a collective body. It does not consist in the representation of different organizations, social bodies, or parties; it is, rather, the embodiment of the idea of a people and of its unity made possible solely by virtue of representation by one person. This unity acquires its form, its visibility, because of the representative action of the sovereign. Modern political representation, so conceived, has a productive and formative nature: it makes visible and present something that is invisible and absent (a people and its unity) through the presence of a public (representative) entity. As Carl Schmitt has said, the dialectical nature of the concept of representation resides in the fact that the invisible being is presupposed to be absent and yet at the same time made present.¹⁷ The invisible entity of reference, which seems so crucial to understanding the epochal political-legal meaning of the concept of sovereignty in modernity, indicates in a specific way the idea of openness to transcendence that we earlier described as the main Mediterranean legacy in our model of a supreme and absolute power. Thus what emerges from the modern concept of sovereignty, as well as from the significant role of the notion of representation within it, is a specific function filled by conceptual transcendence in order to constitute the political and legal order. The unity in the multitude that constitutes the crucial political question of modernity requires a transcendent movement from empirical reality. This movement is conceptually unresolved, since the ideal nature of the unity of a people is inescapable and is always ideal (absent) even when it is made present by virtue of the political representation of the sovereign.

17. See CARL SCHMITT, *VERFASSUNGSLEHRE* (Duncker & Humblot, Berlin, 1928). Discussing the conceptual structure of political-legal representation see also HASSO HOFMANN, *REPRÄSENTATION. STUDIEN ZUR WORT- UND BEGRIFFSGESCHICHTE VON DER ANTIKE BIS INS 19. JAHRHUNDERT* (Duncker & Humblot, Berlin, 1998); GIUSEPPE DUSO, *LA RAPPRESENTANZA: UN PROBLEMA DI FILOSOFIA POLITICA* (Giuffrè, Milano, 1998); GIOVANNI MAGRÌ, *DAL VOLTO ALLA MASCHERA. LA REPRÄSENTATION NEL DIALOGO TRA GUARDINI E SCHMITT* (Scriptaweb, Napoli, 2010); G. MAGRÌ, *LA LEGGE DELLA FORMA. LA SCIENZA DEL DIRITTO DI CARL SCHMITT* (Scriptaweb, Napoli, 2010).

V. SECULARIZED TRANSCENDENCE

Given the conceptual outcome arrived at in the last paragraph, we should now specify and clarify the Mediterranean legacy in the concept of sovereignty with a reading of the relationship between legal-political power and conceptual transcendence. As Bertrand de Jouvenel has written, there is nothing less natural than that concentration of authority that makes authority distant and invisible.¹⁸ A certain aptitude for the mystical that has historically been weak in the West is needed to grasp the relevance of this concentration; or failing that, the clear presence of a dash of belief in the holy. Indeed, the mix of Eastern traditions of the sacred core of political power with the proto-secularized understanding of authority typical of Greek and Roman culture may be seen as one of the cultural conditions for possibility for the vast process of political unification effected by the establishment of the state in modernity.

From this perspective, early modern literary descriptions of political power are significant. The political and existential representation of the sovereign found in Rosencrantz's speech in Act III, Scene iii, of Shakespeare's *Hamlet* seems to indicate a proto-modern centrality of the sovereign, of his soul in relation to the world around him. Like "a massy wheel / Fix'd on the summit of the highest mount / To whose huge spokes ten thousand lesser things / Are mortis'd and adjoin'd," he is at the center of everything and has innumerable people attached to him, their destinies attached to his destiny.¹⁹ The fall of the sovereign is the fall of a world. This use of the form of the wheel and of the idea of the center as represented in the sovereign's soul points to the unifying capacity of sovereignty when viewed, in modernity, as the locus of political unity.

The persistence of the symbolism of the center of the world, then, is highly relevant to an understanding of the modern face of the sociopolitical, within which the concept of sovereignty is framed. But how are we to understand the meaning of this

18. BERTRAND DE JOUVENEL, *DE LA SOUVERAINETÉ* (Genin, Paris, 1955).

19. WILLIAM SHAKESPEARE, *HAMLET, PRINCE OF DENMARK*, act III, sc. III, (1600-1602).

persistence? How are we to understand this symbolism, given the cultural horizons of an age that has emerged out of a gradual process of secularization? Perhaps we need to recall the cultural and philosophical core meaning of the concept of sovereignty as it appeared in the era of the Peace of Westphalia and in the theories of Bodin and, above all, Hobbes.

The point is to grasp that, from a conceptual perspective, the logic that governs processes of political sacralization expresses the institution of a difference, of a distinguishing feature. On one hand, the process of legitimizing political authority in modernity is founded on the gradual establishment of a self-sufficient humanism;²⁰ on the other hand, it emphasizes the need to institute a new order: an artificial order built by human beings as a creation *ex nihilo*. But as we have seen, the institution of an order is the institution of a difference in relation to the previous chaotic and profane space. The logic of modern sovereignty, then, is the logic of an instituted difference. The sovereign state establishes borders, that is, signs of difference from other profane states. The state is established through the consecration of a territory, its inhabitants, and their form of life.

But this institution is guaranteed, within the conceptual structure of sovereignty, by openness to a secularized transcendence: that is, the transcendence of a sovereign subject who has been instituted as different among equals, as a supreme being in comparison with inferior others, but above all as the locus of the authority that transcends all concrete social relationships. This is an authority that relies on the conceptual model of subjectivity as the mask to which is attributed the unity of the institution as the reflex of the ideal unity of the multitude; and this applies to both the monarch's mask and the people's mask. Thus the secularized transcendence of sovereignty issues from the long-term impersonality of the center of legal and political attribution in which it is embodied.

The *plenitudo potestatis*, as *potestas directa*, is the technical outcome of this conceptual transcendence. More precisely, it is the form that the sovereign, as representative of

20. For a description of this concept, see CHARLES TAYLOR, *A SECULAR AGE* (The Belknap Press of Harvard University Press, Cambridge, 2007).

unity, must acquire in order to make visible the empirically absent unity in the multitude. The peculiar *potestas* of the sovereign, being the acting representation of a subject who is one because he transcends all parties, all singularities, guarantees the transition from the fragmented multitude of the state of nature to the person-multitude that is a people. Thus symbolically the sovereign must represent himself as an entity that tries to make immanent, by virtue of the absoluteness of his power and his decisions, what is in fact designed to remain transcendent: the pure ideal source of unity. The continuous attempt to render this ideal earthly is the regulatory principle of secularized transcendence as embodied in the modern concept of sovereignty. The process of secularization consists, then, of just this attempt, never totally successful, to bring unity to the world.²¹ But the attempt is conceptually destined to partly fail because that unity *in se* stands outside the world; it consists precisely of the perspective of the ideal standing above the material many.

This dynamic helps account for the clear and deep traces of the pre-modern evident in the visible royal acts engaged in by several modern monarchies. At least until the French Revolution, the king could rely on the argument of the divine nature of his person, for example by pointing to his anointment at Reims; and this attitude was illustrated by his self-attribution of special powers (the Sun King proclaiming his own high and dazzling light). When Louis XIV said *l'État c'est moi*, he was expressing as well his awareness of being a material supreme subject who embodied the primacy of an authority beyond actual social relationships. Consistently with one strand of the Mediterranean legacy, and thus with the Eastern culture of political power, he affirmed a conception of the sovereign as *directly containing* the transcendent supremacy of an absolute center of power (direct representation). Sovereignty is embodied in the monarch's body. We see here the attempt to delineate a subject that directly represents transcendence through the attempt to materialize ideal unity. This is not a third transcendent king evoked by the sovereign, but rather a presumed direct earthly-making of the unity in the king's body.

21. See GIUSEPPE DUSO, LA LOGICA DEL POTERE. STORIA CONCETTUALE COME FILOSOFIA POLITICA (Laterza, Roma-Bari, 1999).

At the same time, however, sovereign power represents itself as articulating, under various configurations, the medieval theory of the king's two bodies.²² The monarch's physical body, which, like every body, is destined to suffer disease and decay, is associated with, and not distinguished from, the institutional and impersonal political body of a king who, as a power, as the center of the world, is immortal. The traditional formula adopted following the accession of a new sovereign, *le Roi est mort, vive le Roi*, is something like the emblem of the coexisting conception of secularized transcendence that seems to be largely associated, at least until the advent of the Byzantine Empire, with the Greek and Roman tradition of the impersonal nature of the supreme power.²³ As Ernst Jünger has written,²⁴ this formula implies a third extra-temporal king, and both the dead king and the living one are images of that king. They are like bodies that wear the mask of this third totally transcendent king who is the supreme center of attribution of legal, political, and social life within the state. Thus we have here, coexisting with the previous theory, a conception of the sovereign as strictly *representing* the supreme power and therefore as representing the original and transcendent source of absolute power (indirect representation). Indeed, the king's physical death makes clear the impossibility of an immanent unity. The *true* sovereign is the third, extra-temporal, king and thus the indirect theory expresses the awareness of the irreducible distance between the physical unity of a person and the unity in a multitude. The latter is just an idea, but an idea with tremendous concreteness. This coexisting conception reminds us that the attempt to give unity earthly form is destined to fail; but this reference to unity as a third transcendent idea is understandable precisely because of the experience of many failures as part of the pretence of making unity earthly.

22. The best known overview of this theory is provided by ERNST H. KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY* (Princeton University Press, Princeton, 1957).

23. For a groundbreaking interpretation of the formula "*Le roi est mort, vive le roi*" see RALPH E. GIESEY, *LE ROI NE MEURT JAMAIS: LES OBSÈQUES ROYALES DANS LA FRANCE DE LA RENAISSANCE* (Flammarion, Paris, 1987).

24. See Ernst Jünger, *Der gordische Knoten*, in *7 SÄMTLICHE WERKE* (Klett-Cotta, Stuttgart, 1980) (1953).

The center of attribution that I have now referred to several times would appear to be, then, the conceptual condition for thinking about the social bond and unity-in-difference in a secularized context. As has been implied, the structure here described has remained substantially unchanged even within the conceptual model of popular sovereignty that begins with Rousseau's theory of democracy, and even taking into account Rousseau's notorious aversion to representative democracy. The twofold conception of secularized transcendence in modern sovereignty as simultaneously *representing directly* and *representing indirectly* supreme and absolute power is manifestly a Mediterranean legacy and the expression of a dialectic that enables the state to perform its regulatory function. This dialectic has, indeed, a normative nature, since it is what to a certain extent has allowed, until the present-day crisis of sovereignty, for the guarantee of a movement towards the impersonality and stability of the institution as a condition for the regulation of contingent aspects of social life.

In fact, especially in the initial stages of the trajectory of change traced by the concept of sovereignty, the reference to the transcendent as embodied in the figure of the sovereign ensured that the project of a secularized unification received driving and legitimizing force. The unity of the supreme center implied the uniqueness of the source of law, with law viewed as the expression of the sovereign's will, thereby guaranteeing the legitimization of positive law without structural reference to classical or explicitly theological forms of justification. Subsequently, the gradual unfolding of the process of secularization allowed for the emergence of an idea of transcendent sovereignty standing high above all other things: no longer embodied in the figure of the sovereign, but rather mainly represented in his person. In this way, the process of secularization gave rise to an idea more familiar to us, that of sovereignty as a supreme and depersonalized institution. What is really at issue in the Mediterranean legacy present in the concept of sovereignty, in the twofold form of conceptual transcendence that I have tried to describe, is the establishment of a dimension of institutional sovereignty, that is, the establishment of the impersonal legal-political condition for the unification of a secularized but not desacralized society.

On this reading, the present crisis of socio-legal unification found at the level of both states and supranational entities is also a kind of crisis of the very idea of conceptual transcendence that has been associated with the concept of sovereignty. In his celebrated introduction to *Leviathan*, Hobbes conceives of sovereignty as the artificial soul of the State, thereby implying it constitutes the immaterial core of supreme power. He seems also to have had clearly in mind the Mediterranean legacy that has been discussed in this paper, in particular as embodied in the Byzantine idea of the emperor as imitation of God. In Chapter XVII of *Leviathan*, Hobbes writes, after describing the social covenant: “This is the generation of that great LEVIATHAN, or rather (to speak more reverently) of that *Mortal God*, to which we owe under the *Immortal God*, our peace and defence.”²⁵ Thus, the Hobbesian covenant is also an act of faith. It expresses the rational process that leads subjects to have faith in their sovereign as the one able to protect them but also as the one who embodies, in his decisions and his representative actions, the unity of the state, the unity of the many.

VI. CONCLUSION

Could there be something in the structure of secularized transcendence that we have no choice but to come to terms with if our aim is the socio-political unification of individuals in a context of pluralism and great diversity? Is the radical horizontality of institutional relationships found in the various contemporary models of governance really suited to the establishment of a social bond?

On this score, it is worth remembering Immanuel Kant’s observations on the nature of the social contract. According to Kant, the indisputable practical reality of the social contract, as an idea of reason and as a keystone by which to measure the legitimacy of every public law, consists in the obligation on the

25. HOBBS, *supra* note 13, at 114; see ALOYSIUS P. MARTINICH, *THE TWO GODS OF LEVIATHAN* (Cambridge University Press, Cambridge, 1992) (For an interesting interpretation, within Hobbesian studies, of the relationship between politics and transcendence).

legislator to enact laws in such a way that they could have been produced by the united will of a people.²⁶

But the united will of a people is not an empirical fact discernible through opinion polls, referenda, or elections. It is, rather, a rational ideal that can be concretely grasped in the form of the duty of civil union, the duty of life together regulated by law. The instantiation *par excellence* of the public good is the civil constitution of a social union that guarantees everyone freedom by means of laws. Thus the truly general interest of a polity is an *a priori* that precedes any recognition of consent. It is the *idea* that allows us to stay together, guaranteeing that nothing has been decided for a people if that same people could never have rationally reached the very same decision on its own.

The general interest cannot, then, be the product of the aggregation of particular interests. The generality of the interest must be established and understood on a different level, one that transcends the logic of balance, of compromises, of negotiations. Indeed, without the assumption of a general interest so conceived, potential negotiations consistent with the democratic rule of law are not conceptually possible. Thus the general interest is the supreme investment in the *salus publica*; it is the investment in a regulated civil life that derives from a foundational and constitutional covenant. It coincides with the “prospect” of a (never totally) secularized transcendence embodied in the modern sovereignty of the people.

Modern democracy, in the form of power of the people and government by the people symbolically conceived, finds a condition for its possibility in the conceivability of the general interest, because a people as a synthetic unity finds conceptual consistency precisely in the representative form of the general interest. From this perspective, a people should be conceived of as the rational outcome of a way of thinking of political unity that presupposes a multitude of subjects. This way of thinking unity seeks unceasingly to bring to reality, to make immanent, the unity and the existence of a people. We need only consider all the

26. See Immanuel Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, XXII BERLINER MONATSSCHRIFT, 201 (Sept. 1793).

attempts to render the direct will of the people empirically visible through referenda and deliberation and the fact that these attempts never seem to pin down unity in a material way and make it possible to perceive a people as one sole thing.

At the end of the day, what I hope can be grasped from the path pursued in this text is the pregnant historical-conceptual nature of the notion of sovereignty. Assuredly it is a modern concept, but within its structure of meaning a specific theoretical tradition about supreme political power has been absorbed and has evolved in line with modern conditions. The Mediterranean legacy bequeathed to the concept of sovereignty through the mutually enriching interactions between the Greek, Egyptian, and Persian cultures of power, and manifested in the mixture that constituted the principle of the topmost political subject in the Byzantine Empire, has clearly been incorporated into the founding ideas of political representation. In this model, representation always comes from the top, from the openness to transcendence that sacralizes the polity that constitutes representation. Modern political representation similarly comes from the top, from the ideal dimension of unity that cannot be discerned in the empirical multitude.

The major modern difference resides in certain foundational assumptions about the representation of unity. In modernity, the rational foundation emerges from the bottom, from the convergent wills of rational agents, naturally equal, free, autonomous, and independent. But at the same time, since the sum of particular wills is different from the will of a people, and since the will of a unitarian people is the sole requirement for the modern legitimization of power, openness to a “conceptual top,” where the idea of unity is visible, becomes inescapable even for modernity. This bottom/top dialectic seems thus to capture the movement of the concept of sovereignty in modernity; but I would argue that this movement appears to have been triggered by the long and venerable tradition of political power in Mediterranean culture.