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SOVEREIGNTY AND SYMBOLIZATION

By Hans Lindahl, Tilburg*

Abstract. The traditional definition of sovereignty as "the highest power within a political community" conceals the pattern of representation characteristic of political rationality: investing power in political actors within a community requires removing sovereignty to a point beyond that community whence the exercise of power can be conditioned or limited. This double movement of investiture and divestiture reveals that political power mediates absence and presence, transcendence and immanence, generality and particularity. Mediation is not a specifically political phenomenon; according to Ernst Cassirer, it defines the symbolic relation human beings entertain with reality. Building on Cassirer's philosophy of symbolic forms, this paper examines how symbolization sheds light on the concept of power and justifies sovereignty as a necessary political category.

A basic presupposition dominates the conceptualization of sovereignty since the introduction of this concept into the vocabulary of political and legal theory by Bodin: sovereignty is a "historical" category. In contrast with the localized and personalized exercise of political power in the Middle Ages, the importance of sovereignty for modern legal and political theory stems from the concentration and centralization of political power characteristic of the modern state. By implication, the erosion of the nation-state's primacy on the international arena implies the wane of sovereignty as a fundamental legal and political category. In *The End of Sovereignty?*, perhaps the most cogent and comprehensive critique of the concept of sovereignty to date, Joseph Camilleri and Jim Falk forcefully advocate this thesis. Insisting on "the need for historical perspective", the authors stress that the concept of sovereignty is tied to a specific discourse, namely, "a way of describing and thinking about the world in which nation-states are the principal actors, the principal centres of power, and the principal objects of interest".¹ The book explores phenomena which progressively undermine the primacy of the sovereign state, such as the internationalization of production, trade and finance, the homogenization produced by technological change, the globalization of the security dilemma, the enhanced impact of ecological change and

* This paper has benefitted greatly from discussions with Loc Hong, Frans van Peperstraten, Jean-Marc Piret, Bert van Roermund, Wim Staat and Klaas Tindemans.

¹ Joseph A. Camilleri/Jim Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World*, Hants/England: Edward Elgar 1992, p. 2.

local and transnational forms of a "politics of protest". The authors predict that a basic contradiction between two forms of interdependency will increasingly characterize the modern state, namely, "one which institutionalizes the principles of autonomy, community and identity and another which in practice negates these principles by clinging to the increasingly elusive notion of state sovereignty" [ibid., p. 254]. At first blush, their argument is plausible: as is the lot of all historical concepts, sovereignty has finally exhausted its utility and threatens to arrest new political developments. Yet more than the wealth of information and insights marshalled by the authors to underpin their thesis, what interests me is the concept of sovereignty itself. Assuming that "the central issue is not the shape or size of political entities ... but ... the very nature of the political domain" [ibid., p. 250], can we at all imagine a "political domain" in the absence of sovereignty?

Within this broader context, the rocky road leading to political integration in Europe places the concept of sovereignty squarely on the agenda of political and legal theory. A case in point is the judgment whereby the German Federal Constitutional Court decided on the validity of Germany's ratification of the Maastricht Treaty. In its decision, the Bundesverfassungsgericht invoked the principle of state sovereignty to set limits to European competence concerning issues related to German jurisdiction. This controversial decision has led jurists to reexamine the scope and relevance of sovereignty. In his assessment of this judgment, T. Koopmans, Advocate-General at the Dutch Supreme Court, articulates a view increasingly prevalent among European jurists: "European integration confronts us with new problems for which the old conceptual framework is no longer adequate ... Concepts such as 'state' and 'sovereignty' no longer have an explanatory capacity; they can no longer provide an acceptable guide for further action. We must slowly move in another conceptual direction."² Notice that despite their conflicting

² T. Koopmans, 'Rechter, D-Mark en democratie: het Bundesverfassungsgericht en de Europese Unie', in: *Nederlands Juristenblad* 8 (1994), p. 249. Jean-Marie Guéhenno expounds a comparable thesis in: *La fin de la démocratie* (Paris: Flammarion 1993). Insisting on the unique, specifically European, constellation of historical conditions which gave birth to the nation state, he argues that a new set of circumstances augurs "the end of nations" [ibid., p. 15]. Not surprisingly, he assesses the process of political integration in Europe in the light of this novel form of political organization. Rejecting both "nationalism", which wishes to preserve the existence of the nation state as the cornerstone of European politics, and "federalism", which endorses a sort of "super-nation" with a European identity, Guéhenno predicts that "Europe will not become a petrified, institutional structure related to a territory with fixed, unchangeable borders. It will participate in a whole of competing institutions that does not obey any clear architecture..." [ibid., p. 80]. The implications of this thesis for the concept of sovereignty are perceptive: "state sovereignty [will] be split up into various functional structures..." [ibid., p. 81].

views on the relevance of sovereignty for the European Union, both the Bundesverfassungsgericht and Koopmans share an uncontested presupposition: sovereignty is *state-sovereignty*, that is to say, a historically circumscribed political and legal category.

Undeniably, the rapid changes we are presencing will bring increased pressure to bear on the nation-state and may, indeed, lead to novel forms of political organization. But regardless of the direction these changes will take, a remark by Hans Kelsen concerning the task of a philosophical analysis of sovereignty suggests that this abrogation of a key concept is facile and entirely imaginary: "a historical legitimation of the current usage of the concept of sovereignty is not at issue. An expression was required for a necessary representation (and this necessity requires scientific demonstration)."³ Sovereignty is no merely historically bounded concept that could be abolished when the concrete circumstances so require; it is a *necessary* concept. Although the term "sovereignty" was introduced rather late in the history of political and legal theory, its *function* is coeval with political power itself. Accordingly, sovereignty's continued "right of existence" does not depend on the lot of the nation-state. Sovereignty does not confront us with the question whether we can imagine a political framework without nation-states; it raises the question concerning the conditions under which a political community, whatever its specific configuration, is *at all* possible. Sovereignty is not merely "a new way of thinking about an old problem: the nature of power and rule";⁴ it is a constituent of political power in all its historical permutations. Ineluctably, the alleged necessity of sovereignty for politics and law provokes the "*quid iuris?*" question: how can this conceptual necessity be justified? Why is no political community possible in the absence of sovereignty?

Addressing this question requires criticizing yet a second presupposition at the heart of the standard interpretation of sovereignty. In Bodin's footsteps, political and legal theory interprets sovereignty as the highest power *within* a political community. In other words, the sovereign is *present* in the political community; supreme political power is localized in one or more actors that participate in the political life of a community,

³ Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer reinen Rechtslehre*, Tübingen: J. C. B. Mohr 1928, p. 3. "The concept of sovereignty... is no more and no less historical than that of state and law; ... if sovereignty is to be recognized as essentially related to state and law, this holds as much for the state and the law of the ancient Egyptians as for modern Europeans" [ibid., p. 4]. The fundamental shortcoming in Kelsen's analysis of sovereignty, however, is that he justifies the necessity of sovereignty for *legal epistemology*, but not its function as a *political* category.

⁴ David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Cambridge: Polity Press 1995, p. 39.

whether the monarch, the dictator or, in democracy, the people. This presupposition, I will argue, involves a fundamental misunderstanding about the concept of political power. The sovereign must be *absent* from the political community, whatever its form of organization; sovereignty may not be assigned to any actor or set of actors comprising a polity. In other words, political power must always represent the sovereign. Precisely because the absence of the sovereign is a *political imperative*, the possibility that his absence turn into presence cannot be excluded. The inversion whereby the power-holders in a community no longer represent sovereignty, but appropriate it for themselves, implies that political power becomes illegitimate. In this sense, political power is unstable. The aforementioned inversion does not call for opposing a "normative" to a "descriptive" concept of political power; it requires a *conceptual* analysis that grounds the distinction between legitimate and illegitimate power in the distinction between, respectively, the representation and presence of the sovereign. Accordingly, I will justify the necessity of sovereignty as a political category by addressing the following questions: why must political power represent sovereignty? Why is illegitimacy to be construed as a deviation from this pattern of representation?

Our itinerary unfolds in two stages. Focusing on Jean Bodin, § 1 discusses the concept of political power associated to his theory of sovereignty. An analysis of the unreflected residue of Bodin's doctrine shows that political power relates two terms variously called absence and presence, transcendence and immanence, the general and the particular. Sovereignty is the "highest" power in a political community because it functions as the pole of absence, transcendence or generality represented by political power. In other words, political power *mediates* sovereignty. It will be argued, moreover, that mediation characterizes both theocratic and democratic political power. Consequently, further insight into the concept of political power and the necessity of sovereignty as a political category requires that we turn, in § 2, to consider the general meaning of mediation. Ernst Cassirer has not only shown that mediation and symbolization are interchangeable terms, but that they determine the human relation to reality. Accordingly, transcendence and immanence, absence and presence, generality and particularity, are the ingredients that determine our symbolic relation to the world. The concept of political power as the representation of sovereignty concretizes for the political sphere this general symbolic relation to the world. Significantly, Cassirer's theory also makes clear that symbolization can break down, that mediation can collapse into presence or immediacy, whereby humans are confronted with an absolute reality. Political absolutism – violence in politics – is a figure of the absolutism of reality.

I. Sovereignty and Political Power

Jean Bodin's *République* is the point of departure for contemporary views concerning the relation between political power and sovereignty. Referring to Bodin, David Held summarizes this relation as follows: "there must be *within* every political community or state a determinate sovereign body whose powers are recognized by the community as the rightful or legitimate basis of authority" [Held 1995, p. 41 (my italics, H. L.)]. This, indeed, is Bodin's explicit thesis. In his view, the monarch, the people and aristocracy – the possible bearers of sovereign power according to his threefold typology of the state – are all actors within the political community. Although Bodin has repeatedly been assailed for linking his theory of sovereignty to the defense of royal absolutism, his critics have not called into question the presupposition that the sovereign is located within the polity. Closer consideration of Bodin's doctrine of sovereignty reveals, however, that supreme power does not lie "within" the political community, but "without", that is to say, outside or beyond the circle of those who effectively exercise or can exercise political power. His threefold typology of the state is, in this sense, fundamentally confused: the monarch cannot be sovereign in the strict sense of the term, and if the people is sovereign in democracy, then not as the ensemble of political actors within a community. This insight will prove decisive to grasping the symbolization inherent to political power. Let us briefly sketch the core of Bodin's doctrine and subsequently dig out what one might call the unreflected residue of his thinking on sovereignty.

1. After God, the Prince

"Sovereignty is the absolute and perpetual power of a commonwealth."⁵ Sovereign power, according to Bodin's famous definition, is not only superior but supreme power. In effect, the term "highest" means what is not derivative. The sovereign is unconditional because all power is ultimately exercised in its name; whereas all other power relations are grounded in, or conditioned by, the sovereign, sovereign power is ungrounded or unconditioned power.⁶ In this sense, the sovereign is *abso-*

⁵ Jean Bodin, *Six livres de la République*, Aalen: Scientia Verlag 1977, p. 122/1. Where possible, citations are from the partial translation of the 'Six livres' published under the title 'On Sovereignty', edited and translated by Julian H. Franklin, *Cambridge Texts in the History of Political Thought*, Cambridge: Cambridge University Press 1992. In these cases, the first page number refers to the original French text and the second to the English translation.

⁶ Alluding to the relation between law (*lex*) and to bind (*ligere*), Bodin notes: "Persons who are sovereign must not be subject in any way to the commands of someone else and must be able to give the law to subjects ... This is why the law

lute. How must we interpret the difference between unconditioned and conditioned power? As a difference in *degree*? Or as a difference in *kind*? Although Bodin does not formulate this question, his explicit theory of sovereignty leaves no doubt as to the answer: the difference is in degree, not in kind. Although the monarch, the people or aristocracy are "supreme", they designate political actors *within* the community. This presupposition dominates all later thinking on sovereignty.

Notice, moreover, that sovereignty is not merely the "highest power", but the highest power of a *political community*. The *République* indicates that "a commonwealth without sovereign power that unites all [its] members and parts, and all families and collegial organs into a single body, is not a commonwealth" [ibid., p. 12]. Sovereign power is absolute in the sense of the ground or condition of political unity. Bodin further notes: sovereignty is "the true foundation and the pivot on which turns the state of a city and on which depend all magistrates, laws and ordinances, and which is the sole union and liaison of families, bodies and collegial organs, and of all individuals in a perfect commonwealth" [ibid., p. 14]. These observations introduce a new element into the conceptualization of sovereignty, an element that is not merely bound up with the (emergence of the) modern state. In effect, power and sovereignty are linked to the general problem and the concept of a (political) order. The concept of sovereignty implies an answer to the following question: *how is a political order possible?* If the problem of (political) order evokes the problem of the unity of a manifold, then sovereignty denotes the condition whereby a manifold of individual actions can appear as a political *unity*. Accordingly, the distinction between the ground and the grounded, the condition and the conditioned, now reappears as the distinction between the *general and the particular*. Sovereign power, by this criterion, functions as the generality whence, in spite of their variegation, multiple actions can appear as *the same*, i.e. as particular manifestations of a single political community, rather than as an arbitrary or haphazard collection of occurrences.⁷ The concepts of sovereignty and political power lead, consequently, to the distinction between order and chaos.

says that the prince is not subject to the law; and in fact the very word 'law' in Latin implies the command of him who has the sovereignty" [ibid., p. 131/11].

⁷ From this perspective, Neil MacCormick's proposal that "the most appropriate analysis of the relations of legal systems is pluralistic rather than monistic, and interactive rather than hierarchical", implies a fundamental misconception of the concept of sovereignty in its relation to political unity. The idea of a "plural sovereignty", wherein "systems are distinct and partially independent of each other, but partially overlapping and interacting", that is to say, partially *dependent*, contradicts the very concept of sovereignty, namely, the single (because highest) ground of political unity. See Neil MacCormick, *The Maastricht-Urteil: Sovereignty Now*, in: F. Fleerackers/E. van Leeuwen/B. van Roermund (eds.), *Law, Life*

Political power is a specific instance of the general relation between the "ground" and the "grounded": sovereign power necessarily evokes its counterpart – grounded, conditioned power – and vice-versa. This general, albeit formal, determination of the concept of sovereignty discloses an incongruity in Bodin's thinking: "He is absolutely sovereign who recognizes nothing, after God, that is greater than himself" [ibid., p. 124/4]. For if unconditionality defines sovereign power, then the characterization of the prince as sovereign is a contradiction in terms. By definition, who recognizes God as greater than himself is not absolute, but conditioned in his power. The "sovereign prince, who is answerable only to God" [ibid., p. 125/4], is *not* sovereign; God is absolute. Bodin was well aware of this inconsistency: "if we say that to have absolute power is not to be subject to any law at all, no prince of this world will be sovereign, since every earthly prince is subject to the laws of God and of nature and to various human laws that are common to all people" [ibid., p. 131/10]. Instead, Bodin was concerned with identifying the highest power *within* a political community, that is to say, the individual or individuals who effectively exercise command over the subjects of a polity. At the background of these analyses of sovereignty lie, of course, the struggle between the French king and the German emperor, and the ongoing effort of the popes to subordinate monarchs to their own power. By making the prince directly answerable to God, Bodin took sides with the French monarch against the emperor and the pope. As he notes, "I will only speak about temporal sovereignty ... such that one understands who are absolutely sovereign princes, and whether the other princes are subject to the emperor or to the pope" [ibid., p. 191].

Notice, however, that Bodin does *not* suppress God as the ground of the prince's power. It would seem that he could have circumvented papal or imperial authority even more effectively by recognizing the king as absolute or sovereign in the strict sense of the word. Nonetheless, Bodin is categorical in the passage cited earlier: "if we say that to have absolute power is not to be subject to any law at all, no prince of this world will be sovereign, since every earthly prince is subject..."⁸ The subject-

and the Images of Man. *Modes of Thought in Modern Legal Theory*. Festschrift for Jan M. Broekman, Berlin: Duncker & Humblot 1996, p. 452.

⁸ Held recognizes this point as well: "The absolutist monarch claimed to be the ultimate authority on all matters of human law, although it is important to note that this broad writ was understood to derive from the law of God. The king's legitimacy was based on 'divine right'. In this particular sense, political authorities were regarded as being as much under the law as any other corporate institution" [Held (note 4), p. 35]. But this "particular sense" is none other than the sense implied in the concept of sovereignty itself: strictly speaking, the monarch is *not* sovereign. As with Bodin, the fact that the monarch could not posit himself as supreme or sovereign is so evident to Held that it leads to no further reflection on his part.

tion of the prince to God remains undisputed and, for that very reason, lies beyond the pale of theoretical discussion. But this seemingly nominal inconsistency hides a far-reaching implication: the proviso "after God" suggests that political power "within" a community is subordinated to a highest power situated "outside" the polity.⁹ Negatively speaking, this tenet reads as follows: no political actor or actors of a community may be absolute or sovereign. That is to say, only conditioned power is allowed to be *present* in a political community; the sovereign must always remain *absent* from the sphere of political reality. *Sovereign power must be represented*. In other words, sovereign power must be *transcendent*, not *immanent*, to a political community. In a nutshell, Bodin's proviso evidences that the power relations between the sovereign and the subjects must be *indirect*. God commands, but commands through the prince. Political power must mediate sovereignty; otherwise put, political power must represent an absent or transcendent power.

Nevertheless, this imperative does not exclude the possibility that a political actor arrogate absolute power for himself, that is, that the sovereign becomes *present* in the political community. The point, however, is that solely this arrogation of sovereign power defines political absolutism, properly speaking. That sovereignty can be "arrogated" by an actor or group of actors implies, furthermore, the priority of political power as the representation of sovereignty and that, by such appropriation, political power becomes illegitimate and even the expression of violence.

2. Popular Sovereignty

To be sure, the characterization of political power as the mediation of sovereignty remains tied to the medieval context of the relation between God, the prince and the subjects. To this extent, Bodin's theory applies to a specific epoch of Western culture. Nonetheless, this characterization of power is neither geographically nor historically circumscribed; the

⁹ Returning to an earlier question, the "ground" of political unity – sovereign power – is not of the same order as the "grounded"; the difference is in kind, not merely in degree. Thus, Bodin's assertion that "a commonwealth without sovereign power that unites all [its] members and parts into a single body, is not a commonwealth" needs to be cast in a different light. The *unity* of a plurality of individual actions must be established by reference to a pole of generality situated "beyond" that manifold of actions. A political community requires a transcendent moment whence the ordering of society by political power can be enacted and justified. Moreover, as sovereign power is located at a point external to a political community, Bodin's entire argument in favor of royal absolutism can be circumvented. The point is not that the highest power *within* a political community must be concentrated in a single person – it need not be –, but that (conditioned) power within a community, whether concentrated or divided, presupposes an unconditioned power transcendent to the community as the condition of its unity.

mediation of sovereignty also characterizes political power outside Western culture and in modern Western democracy. Clifford Geertz, the cultural anthropologist, notes, for instance, that "the basic principle of Indonesian statecraft [is] that the court should be a copy of the cosmos and the realm a copy of the court, with the king, liminally suspended between gods and men, the mediating image in both directions..."¹⁰ Here again we find the basic pattern of mediation as the relation between transcendence and immanence, absence and presence, generality and particularity. That the cosmos limits all power in the realm means that the king mediates between the sovereign and the subjects. The cosmos, as absolute power, remains absent from the political arena, that is, must be represented in the political community. A comparable situation presents itself in traditional Vietnamese politics, which builds on Confucianism: "the Vietnamese ruler was ... considered to be the Son of Heaven (*thien-tu*), the recipient of a Heavenly Mandate (*thien-men*) to rule the people. This authority, it was believed, could be entrusted to officials who would then govern in the sovereign's name."¹¹

In addition to the aforementioned "theocratic" forms of political power, the mediation of sovereignty also characterizes political power in modern democracies. This interpretation of sovereignty runs counter to the established view on political power in modern democracy. Indeed, the thesis that popular sovereignty inaugurates an *immanent* conception of political power has become a fixture of political science and constitutional law doctrine. Carl Schmitt formulates this view in the following terms: "all democratic thinking necessarily moves in representations of *immanence*. All deviation from immanence would negate the identity [of the people with itself]. Every kind of transcendence introduced into the political life of a people leads to a qualitative differentiation of high and low, above and below ... whereas in a democracy state authority must issue from the people and may not emanate from a person or position standing above it."¹² Democracy, according to this view, makes of the

¹⁰ Clifford Geertz, *Centers, Kings, and Charisma: Reflections on the Symbolics of Power*, in: *Local Knowledge*, New York: Basic Books 1983, p. 130.

¹¹ Mark W. McLeod, *The Vietnamese Response to French Intervention, 1862-1874*, New York: Praeger Publishers 1991, p. 2. [This example was brought to my attention by Loc Hong, H. L.] See also E. Evans-Pritchard, *The Divine Kingship of the Shilluk of the Nilotic Sudan*, Cambridge: Cambridge University Press 1948.

¹² Carl Schmitt, *Verfassungslehre*, Berlin: Duncker & Humblot 1928, pp. 237-238. And further: "To the conception of God in the seventeenth and eighteenth centuries belongs the idea of his transcendence vis-à-vis the world ... All the identities that recur in the political ideas and in the state doctrines of the nineteenth century rest on ... conceptions of immanence: the democratic thesis of the identity of the ruler and the ruled..." Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty*, translated by George Schwab, Cambridge, Mass.: The MIT Press 1985, p. 49.

sovereign a worldly rather than an otherworldly figure. Thus, the principle of popular sovereignty not merely postulates a relation of identity between the people as rulers and ruled, but interprets that identity in terms of *presence*: "This principle of the identity of the people ... with itself as a political unity is based on the fact that there is no state without a people and, therefore, that a people must always be present as an existent magnitude" [ibid., p. 205]. In its very presence and immediacy, the people – the *pouvoir constituant* – has unseated the *Deus absconditus* as the highest power of a political community, a power to which all other powers – the *pouvoir constitué* – are subordinated. By implication, the "secularization" leading to democracy transforms the structure of political power: the mediation of sovereignty gives way to a politics of *immediacy*. Schmitt does not hesitate to draw the political implications of this alleged secularization: "the concrete existence of a politically unified people has precedence over every norm" [ibid., p. 121]. Significantly, authors for whom the political implications of Schmitt's doctrine of popular sovereignty are unpalatable share this presupposition with their antagonist.¹³

Undoubtedly, the emergence of modern democratic politics heralds a transformation in the conceptualization of political power and sovereignty, a transformation concerning which only highly summary remarks can be made hereafter. Our question, however, is another one, namely, whether this transformation *eliminates* a transcendent grounding of political power.

Consider Art. 20(2) of the *Grundgesetz* of the Federal Republic of Germany, which formulates concisely the concept of political power characteristic of the modern democratic constitutional state:

¹³ Martin Kriele, for example, explains the difference between monarchical and popular sovereignty in the following terms: "the democratic sovereign relinquishes sovereignty when it has exercised its 'pouvoir constituant'. It no longer has the capacity to act immediately ... Unlike the sovereign people, [the sovereign monarch] does not withdraw after enacting the constitution, but remains at all times present and capable of acting." Einführung in die Staatslehre. Die geschichtlichen Legitimitätsgrundlagen des demokratischen Verfassungsstaates, Opladen: Westdeutscher Verlag 1994, p. 277. Although Kriele aims at defending the constitutional state against Schmitt's interpretation of popular sovereignty, Kriele agrees with the key presupposition of his opponent, namely, that the sovereign people is an ontic category. Although we cannot discuss this point here, once Kriele concedes this cardinal tenet, his theory of the democratic constitutional state cannot fend off the implications of Schmitt's political theory. Anticipating Cassirer's terminology, both Kriele and Schmitt incur in legal substantialism, i.e. the presupposition that the legal order reproduces a social order given in advance of all legal conceptualization. (For critiques of legal substantialism or representationalism, see Jan M. Broekman, *Recht und Anthropologie*, Freiburg: Alber Verlag 1979 and B. van Roermund, *Law, Narrative and Reality: an essay in intercepting politics*, Dordrecht: Kluwer Academic Publishers 1997.)

"All state authority emanates from the people. It shall be exercised by the people by means of elections and voting and by specific legislative, executive, and judicial organs."

At first sight, Art. 20(2) of the German *Grundgesetz* seems to confirm the interpretation of immanent political power in democracy, namely, all powers are derived from the people and the people are the electorate, that is to say, the assembly of actors composing a political community. Closer analysis reveals, however, that this conclusion is unfounded.

In effect, "the people" appears twice in this legal text and in each case with a different meaning. The first sentence of Art. 20(2) states the principle of popular sovereignty as the cornerstone of democracy: the people are the highest power of the Federal Republic of Germany. All exercise of political power within this political community is subordinated to, or conditioned by, the sovereign people. Furthermore, that *all* state authority emanates from the people recognizes that the manifestations of power in a political community are manifold, yet that these are manifestations of power within a single political community. In other words, the people, as sovereign, function as the *ground of the unity of a manifold of power relations*. Accordingly, "the people", as per the first sentence of Art. 20(2), are the point whence a multiplicity of relations can appear to the actors of the German political community and to others as relations within the *same* political order.

The second sentence of this article states, on the other hand, that the people exercise power by means of voting and elections. Clearly, however, only *individual citizens* elect persons to public offices. Here, "the people" are the summation of those entitled to vote and elect. In other words, this is an *aggregate or numerical* concept of the people. For, as Lefort notes perceptively, "at the very moment when the people are supposed to express their will, [universal suffrage] transforms them into a pure diversity of individuals, each one of whom is abstracted from the network of social ties within which his existence is determined – into a plurality of atoms or, to be more precise, into statistics".¹⁴ But this numerical notion of a set of individuals entitled to elect and be elected encloses a double implication. For the one, it already presupposes the *unity* of a political community and, thus, popular sovereignty; for the other, it implies precisely the opposite of unity and generality, namely, *division and particularity*. Accordingly, only individual citizens are *present* in the political community; as sovereign, i.e. as the ground of the unity of a political order, the people are *absent* from elections and referenda. What characterizes political power in democracy is: not that the

¹⁴ Claude Lefort, *Democracy and Political Theory*, trans. David Macey, Cambridge: Polity Press 1988, p. 227.

sovereign is immanent to the political community, but that the *content* of the unity implied in sovereignty, that is to say, the content of the general end unifying particular interests in society, becomes indeterminate and indeterminable. In the same stroke by which the content of political unity becomes indeterminable, democracy institutionalizes a continued division and conflict in society. Herein lies, amongst others, a basic contribution of human rights to modern politics. Human rights give free play to social division and conflict, thereby impeding that any group within the polity can arrogate sovereignty. When "the people" succeed God as the ground of political unity, human rights aim to ensure that the people, as sovereign, cannot be identified with any particular interest advocated in society. In other words, human rights hold the political distinction between transcendence and immanence firmly in place.

Here again it may be objected that social division is an empirical fact and that, in the event of the unanimity of all those entitled to vote, the sovereign people are present. In other words, the *possibility* that the sovereign people be present cannot be ruled out, even if the reality of democracy indicates that the people, as sovereign, are never actually present. This objection must also founder. For the unity of a political community is a unity *over time*. Political actors change, and the ever changing summation of these actors is no less transient than these. Variable aggregations of political actors can only appear as manifestations of a *single* political community by reference to a ground of unity that is not itself in space and time, i.e. that is not present or real, but *transcendent* to the political community: the sovereign people.¹⁵ In short, the stipulation that "all state authority emanates from the people" means that the special organs exercising political power *mediate* sovereignty in a democratic community. Although the relation between the represented and the representant becomes problematic, democracy retains the basic structure of political power: the representation of sovereignty. *Mediation – the relation between immanence and transcendence, the individual and the general, presence and absence – determines a political community as democratic.* In contrast with democracy, the abyss of totalitarianism appears when the sovereign becomes present in society in the form of an

¹⁵ The drafters of the French constitutions of 1789 and 1791 indirectly broached this problem when noting that it would not be in accordance with the principle of the *pouvoir constituant* for future generations to be subordinated to a constitution they had not accepted, proposing, therefore, that the constitution be submitted to ratification every twenty years. (See Egon Zweig, *Die Lehre vom Pouvoir Constituant. Ein Beitrag zum Staatsrecht der französischen Revolution*, Tübingen: J. C. B. Mohr (Paul Siebeck) 1909.) Obviously, pressing this argument to its logical conclusion requires submitting the constitution to ratification with every new citizen, not merely with every new "generation". More importantly, however, this proposal presupposes political unity over time.

alleged "identity" between a leader and the people. The totalitarian abyss is a modern figure of the instability characteristic of political power.¹⁶

If political power must be conceived as the mediation of sovereignty, we must probe more deeply into the concept of mediation. This inquiry transports us to the domain Cassirer calls "symbolization".

II. Political Power and Symbolization

Ernst Cassirer's entire philosophy of symbolic forms can be understood as the effort to exhaustively analyze the mediateness of the human relation to reality. By implication, his thinking is a frontal attack on the presupposition that such a relation could be immediate, a presupposition he summarizes under the term "substantialism". Substantialism assumes that human beings enjoy direct access to a reality given absolutely, i.e. which possesses a meaning of its own prior to our meaning-bestowing activities. In his words, "The philosophy of symbolic forms starts from the presupposition that, if there is any definition of the nature or 'essence' of man, this definition can only be understood as a functional one, not a substantial one ... Man's outstanding characteristic, his distinguishing mark, is not his metaphysical or physical nature – but his work."¹⁷ This insight, according to Cassirer, defines the critical turn in

¹⁶ Claude Lefort has shown that a logic of identity characterizes totalitarianism. In other words, the distinction between transcendence and immanence disappears as a result of the identity between the leader and the people. Totalitarianism is a specific manifestation of political violence. The question, therefore, is whether political power retains a mediating structure in totalitarianism. Notice, to begin with, that even a Stalin or a Hitler must act in the name of the people, whereby the structure of political power as the mediation of sovereignty is retained, albeit nominally. Nobody may call himself sovereign, not even the leader of a totalitarian regime. The fact that the sovereign is present in a totalitarian society must therefore be *ideologically* concealed, as Lefort has shown in an important passage of his essay "The logic of totalitarianism". Given "the idea of a power that is self-sufficient", how can this power maintain and perpetuate itself? (*Claude Lefort, L'invention démocratique*, Paris: Fayard 1994, p. 100.) Lefort points in this respect to the totalitarian ideology: "We must identify, at the foundations of such a system, certain key representations that constitute its ideological matrix" (*ibid.*, p. 101). Lefort discusses the various representations which present the people as "a 'natural' order", such that "this [social order] is seen as rational, as [an order] that tolerates no social division or visible hierarchies" (*ibid.*). The totalitarian ideology ensures that political power appears to be subordinated to, and promotes, a natural order. The imperative of political rationality – no actor or set of political actors may be sovereign – calls forth a second imperative: violence must be concealed. Ideological concealment is itself, however, a way of mediating absolute political power, as Lefort's expression "representation" suggests. Anticipating Cassirer's terminology, ideology is a kind of political symbolization. An extended analysis of the relation between political power and ideology falls beyond the scope of this paper.

¹⁷ *Ernst Cassirer, An Essay on Man. An Introduction to a Philosophy of Human Culture*, New Haven: Yale University Press 1944, pp. 67 – 68.

philosophy. The central tenet of critical thinking is the priority of functions over substances. But whereas Kant had systematically worked out this insight within the framework of an inquiry into the conditions of possibility of scientific knowledge, Cassirer broadened this critical turn to culture in general: "The critique of reason becomes the critique of culture."¹⁸

1. Mediation as Symbolization

The symbol furnishes the key to this amplification of the critical project. On the one hand, all cultural manifestations are essentially symbolic productions. This holds for language as much as for myth; for science as much as for art; for technology as much as for religion. On the other hand, the basic insight of critical philosophy – "'being' can be apprehended only in 'action'" [ibid., p. 80] – determines the concept of the symbol. To put it another way, the human access to reality is productive. For a productive relation to reality implies that reality is symbolically constituted. What, then, is a symbol? Characteristically, Cassirer defines what the symbol *is* by what symbolization *does*: symbolic worlds "interpose themselves *between* us and objects. Yet they do not thereby merely characterize, negatively, the *distancing* of the object from us; they create the only possible adequate *mediation* and the vehicle through which any spiritual being can at all be grasped and comprehended by us."¹⁹ Although Cassirer appears to contrast distancing and mediation in this passage, "distancing" actually stands in contrast with "grasping" and "comprehending", i.e. with coming near to, or approaching, the object. "Mediation" encompasses both terms. The "distancing" to which Cassirer refers is an *ideal* distance, namely, the meanings and orders of meanings human beings interpolate between themselves and reality: "No being is tangible or accessible except through meaning."²⁰ Conversely, "grasping" and "comprehending" – approximation – bring reality near in the sense that something appears to human being as "this" or "that", i.e. as the embodiment of a meaning. Consequently, mediation is symbolization, the production of symbols. In effect, the symbol designates "the totality of those phenomena in which the sensuous is in any way filled with meaning, in which a sensuous content ... represents a particulariza-

¹⁸ Cassirer, *Philosophy of Symbolic Forms*. Volume 1: *Language*, trans. by Ralph Manheim, New Haven: Yale University Press 1953, p. 80.

¹⁹ Cassirer, *Der Begriff der symbolischen Form im Aufbau der Geisteswissenschaften*, in: *Wesen und Wirkung des Symbolbegriffs*, Darmstadt: Wissenschaftliche Buchgesellschaft 1956, p. 176.

²⁰ Cassirer, *The Philosophy of Symbolic Forms*. Vol. 3: *The Phenomenology of Knowledge*, trans. by Ralph Manheim, New Haven: Yale University Press 1957, p. 299.

tion and embodiment, a manifestation and incarnation of a meaning" [ibid., p. 93]. Thus, when Cassirer notes that man's outstanding characteristic is his "work", he means that humans are symbolizing beings. Indeed, distancing and approximation are the "work" which gives rise to all cultural productions. Both placing reality at a distance and bringing it near, that is, mediating our access to reality, symbolization denotes the specific manner in which human beings relate to reality.

What general *function* do distancing and approximation serve? What purpose is common to all symbolic forms, including science, art, myth, religion, language and technology? In each of these activities human beings strive "to come to terms with reality, to live in an ordered universe, and to overcome the chaotic state in which things and thoughts have not yet assumed a definite shape and structure".²¹ Despite the undeniable differences in human being's manifold cultural achievements, they all "fulfill one and the same task: the task of *objectification*" [ibid., p. 45]. "Objectivity", by this token, is not a specifically scientific achievement, even though science has its own mode of objectivity. Objectification, in Cassirer's employment of this term, falls together with the concept of *understanding*, namely, the human "understanding of the world".²² Substantialism has to be rejected because natural and social reality must be understood, that is, does not possess a meaning of its own that is directly accessible to human beings. Activities such as science, myth, technology and art are various ways of understanding or objectifying the world. Rendering reality comprehensible requires "raising the particular to the level of the universally valid" [Cassirer 1953, p. 78]. This process of relating the particular to the general consists in the capacity "to find again in the simple, as it were, punctual 'here' and 'now' of present experience a 'not here' and a 'not now'" [Cassirer 1957, p. 114]. Language, art, myth or science are modes of understanding the world, because to "understand" means in each case to be able to "look beyond" the individual, relating it to a whole, i.e. to transcend the present, relating it to the absent. But this, again, is the general meaning of mediation. The relation between immanence and transcendence, presence and absence, particularity and generality, determines the human relation to reality as symbolical. Consequently, that human beings must "understand" reality means that humans are symbolizing beings. In turn, to say that human beings must understand reality is to say that they "have" a

²¹ Cassirer, *The Myth of the State*, New Haven: Yale University Press 1946, p. 15.

²² "The Philosophy of Symbolic Forms ... is concerned with all the forms assumed by man's understanding of the world (*Weltverstehen*)." Cassirer (note 20), p. 13.

world. Understanding is an anthropological category, or to put it otherwise, the human relation to reality is mediate, symbolical.²³

Conversely, "misunderstanding" consists in a breakdown of symbolization, that is, of the world's intelligibility. Human beings "have" a world, but they can also "lose" it. Misunderstanding accompanies *immediate* exposure to reality, a reality that in its immediacy is meaningless. Blumenberg puts this point as follows: "The *animal symbolicum* masters a reality that is genuinely lethal to it by letting this reality be represented; it [the symbolic animal] looks away from that which is uncanny, gazing instead toward that which is familiar to it."²⁴ In misunderstanding, reality presents itself to us as what escapes the familiarity created by the system of meanings mediating our access to reality; as the individuality which cannot be related to a generality. Exposure to an immediate reality is, thus, the experience of *meaninglessness*. This experience coincides with our pure passivity, for the meaningless is precisely that in relation to which we cannot orient ourselves, that toward which we cannot take a "stance" or "do" something about. In this sense, an immediate reality confronts us with our own "powerlessness". Accordingly, the experience of meaninglessness is threatening for human beings; in its most intense manifestations, the meaningless is "dreadful". Although the concept of anxiety receives no systematic development in Cassirer's philosophy of symbolic forms, it dominates symbolization.²⁵ In

²³ I cannot discuss here to what an extent the "understanding of the world", as set out by Cassirer, lies close to the concept of "understanding" in Heidegger's *Analytic of Dasein*. (See *Being and Time*, §§ 15 ff.; §§ 31 ff.) Such an investigation would have to be preceded by a comparison of Cassirer's account of "representation" and Heidegger's analysis of "reference". More generally, I will not explore the differences between Heidegger's "fundamental ontology" and Cassirer's philosophical anthropology, that came to the fore in their disputation at Davos (See *Martin Heidegger, Kant und das Problem der Metaphysik*, Frankfurt: Klostermann 1951.)

²⁴ *Hans Blumenberg, Wirklichkeiten, in denen wir leben*, Stuttgart: Philipp Reclam 1981, p. 116. The reference to uncanniness (*Unheimlichkeit*) and familiarity (*Vertrautheit*) immediately brings to mind Heidegger's "Being and Time". Blumenberg explicitly makes this connection in "Work on Myth". Importantly, distancing and approximation, the work of symbolization, also seem to lie at the core of the *Analytic of Dasein* (See the concepts of "reference", "signs", "de-severance" and "significance" in: *Being and Time*, §§ 17, 18, 23).

²⁵ Herein lies a possible bridge toward (and a key for the reinterpretation of) Heidegger's analyses of anxiety and dread in "Being and Time". Geertz has described the relationship between the symbolization and anxiety with admirable perspicuity: "Man depends upon symbols and symbol systems with a dependence so great as to be decisive for his creatural viability and, as a result, his sensitivity to even the remotest indication that they may prove unable to cope with one or another aspect of experience raises within him the gravest sort of anxiety." And he adds: "There are at least three points where chaos – a tumult of events which lack not just interpretations but *interpretability* – threatens to break in upon man: at the limits of his analytic capacities, at the limits of his power of endurance, and at the limits of his moral insight. Bafflement, suffering, and a sense of intractable

contrast with the experience of meaninglessness, "coming to terms with reality" requires conditioning the real by integrating it into a system of meanings or, what means the same, placing reality at an ideal distance whence it becomes intelligible and familiar, thus approachable. The imperative governing the double movement of distancing and approximation can be summarized as follows: *what is may not be absolute*. Myth is "work on the reduction of the absolutism of reality",²⁶ because this reduction is the work of symbolization in general.

2. Sovereignty and Symbolization

If the symbol provides the key to amplifying the project of critical philosophy into a general critique of culture, it also enables differentiated analyses of the various domains of human culture. This double approach is of crucial importance for Cassirer, as it allows him to overcome a methodological dilemma confronting philosophy. On the one hand, particular analyses privileging one or other cultural activity risk losing sight of the underlying unity of these activities. On the other hand, a philosophical analysis that focuses solely on the general conditions of mediation either threatens to be reductionistic, letting one of those cultural activities determine the others, or is too comprehensive and abstract to capture the variegation and specific forms of mediating reality.²⁷

We stand here on the threshold of our own problem, namely, the concepts of sovereignty and political power. Cassirer did not cross this threshold. While he examined highly disparate symbolic forms, he did not submit politics and law to a comparable inquiry. To be sure, Cassirer's later works show an enhanced interest in ethical, political and legal issues. Moreover, his last work is explicitly political-philosophical in character. But the difference between this work and Cassirer's analyses of, say, myth or science is striking. In effect, *The Myth of the State*

ethical paradox are all, if they become intense enough or are sustained long enough, radical challenges to the proposition that life is comprehensible and that we can, by taking thought, orient ourselves effectively within it..." (Clifford Geertz, *Religion as a Cultural System*, in: *The Interpretation of "Cultures"*. Selected Essays, London: Fontana Press 1993, pp. 99 - 100). Bafflement, suffering and intractable ethical paradox are modalities of meaninglessness. In contrast therewith, "making life comprehensible" is precisely what Cassirer calls *objectification*, the function unifying all human symbolization.

²⁶ *Hans Blumenberg, Work on Myth*, trans. by Robert M. Wallace, Cambridge, Mass.: The MIT Press 1985, p. 7.

²⁷ "A 'philosophy of man' would therefore be a philosophy which would give us insight into the fundamental structure of each of these human activities, and which at the same time would enable us to understand them as an organic whole", Cassirer (note 17), p. 68. See Cassirer (note 21), p. 6, where the author explicitly refers to this methodological dilemma as the opposition between a "principle of 'homogeneity'" and a "principle of specification".

critically reconstructs the tradition of political *theory*, but does not offer a concrete analysis of politics as a symbolizing activity.²⁸ And where Cassirer interests himself in law, this is in terms of a theory of natural law, rather than in positive law as a symbolic form. Redressing this omission would greatly exceed the scope of this paper. The task Cassirer assigned a philosophy of symbolic forms – elaborating a phenomenology of “each spiritual activity in which we build a ‘world’ for ourselves in its characteristic configuration, in its order and in its ‘being-thus’”²⁹ – remains largely untraversed territory. We must satisfy ourselves here with examining how Cassirer’s philosophical anthropology illuminates the concept of political power and, as a result thereof, justifies sovereignty as a necessary political category.

Let us return to the general relation between political power and sovereignty outlined in § 1. Beyond all differences distinguishing Medieval politics in Europe from the traditional political system of Indonesia, or power in Vietnam during the 19th century from modern democracy, all these forms of political organization exhibit a single common pattern: political power mediates sovereignty. The mediation inherent to political power obtains expression in the general form of political judgment: “Acting in the name of ... we hereby order that...” Political judgment mediates by relating the particular to the general, the present to the absent, the immanent to the transcendent. From the perspective of Cassirer’s thinking, political power partakes of the general structure of symbolization. Political power symbolizes because mediation defines how humans relate to reality, political or otherwise. Accordingly, when Lefort notes that the unity of society “implies a reference to a place from which it can be seen, read and named... This symbolic pole proves to be power...” [Lefort 1988, p. 225], he states the condition which determines *all* human relations to reality. Society must be seen, read, and named from a point “outside” society because “seeing”, “reading” and “naming” reality from a point beyond it characterizes what it means to understand *any* world and, *a fortiori*, the *political* world. The “enigma” of political power, namely, the “movement of the externalization of the social which goes hand in hand with its internalization” [ibid.], displays the basic structure of objectification constituting *every* symbolic relation

²⁸ Volker Gerhardt has argued convincingly that Ernst Cassirer is “also a systematizer of political thinking”; but to systematize thinking about politics is not equivalent to making the governing tenet of a philosophy of symbolic forms – the priority of functions over substances – the point of departure for an inquiry into politics as a symbolizing activity (Ernst Cassirer’s systematischer Beitrag zu einer Philosophie der Politik, in: Hans-Jörg Braun/Helmut Holzhey/Ernst Wolfgang Orth (eds.), *Über Cassirer’s Philosophie der symbolischen Formen*, Frankfurt am Main: Suhrkamp 1988, pp. 226 – 227).

²⁹ Zur Logik des Symbolbegriffs, in: Cassirer (note 19), p. 208.

to reality. For the internal-external articulation of society only specifies for the political domain what we have learned from Cassirer, namely, that immanence and transcendence, presence and absence, individuality and generality, are the ingredients of understanding.

If the general form of political judgment, "Acting in the name of ... we hereby order that...", exhibits the mediation constitutive for symbolization in general, it also reveals the mode of symbolization specific to political power. Indeed, not only is political power exercised in the name of the sovereign, but the sovereign is "that for the sake of which" individual actions are commanded. That is to say, political power mediates insofar as who orders an individual action, justifies the action by recourse to an ultimate end. The sovereign transcends or is absent from political reality in the specific manner of a *highest end*, an end in respect of which all actions commanded by political judgment are a means. Sovereignty denotes a specific attribute of an end of action, namely, its *unconditionality* or absoluteness. The sovereign is the "ground" of a political community in the manner of an end of action whence all individual actions derive their justification. Accordingly, politics specifies the symbolic relation between immanence and transcendence as *purposive*. In the traditional politics of Indonesia this highest end is the cosmos; in medieval politics it is God, the *summum bonum*; in modern democracy it is "the people". Notice that the difference between a theocratic and a democratic political community does not reside in the fact that democracy eliminates the "highest end" of a polity, for without such an end political unity is unthinkable. Instead, what distinguishes democracy from other forms of political organization is that it institutionalizes the indeterminacy and indeterminability of the *content* of the highest end. The sovereign people, as highest end, justifies the action ordered by political power; but the content of this end is the object of incessant social discussion and dissent.

The purposive relation between the "ground" and the "grounded" delivers, moreover, the key to the concept of a political order. A political order presupposes that individual action is not purely immanent, that it surpasses itself in the direction of an end standing "beyond" the immediate ends posited in action. In effect, this surpassing in view of a highest end extends to all actions in a political community, and unifies them as actions pertaining to a political community. Understanding ourselves as actors within a polity implies the "looking beyond" and "looking around" inherent to transcending; but this looking beyond and around is only possible by reference to the highest end called sovereignty. In other words, a manifold of actions can be revealed as a *political unity*, as instances of the *same* political order, because all actions are referred to,

or conditioned by, a *single* (the unconditioned) end. Sovereignty is the purpose whence a political community can appear not merely as a haphazard collection of purposive relations, but as an *order* of such relations, that is to say, a *purposive unity*. This, at bottom, is the meaning of Bodin's observation that "a commonwealth without sovereign power that unites all [its] members and parts ... into a single body, is not a commonwealth". The notion of a political community as a purposive unity is the gateway to a phenomenology of the "political world" or, at least, of a "political *Umwelt*." In particular, it leads to a political concretization of what Cassirer calls "understanding the world".

Indeed, the concept of binding, which functions as the primitive and unproblematic term in Bodin's account of political power, is characteristic for the understanding of the *political* world. Binding – that an action *ought* to be carried out – offers a specific case of what Cassirer calls objectivity. Indeed, "looking beyond" the present action to the end which it ultimately serves, transcending the here and now in view of a purpose not here and not now, is the fundamental achievement of political judgment, as attested to by its general form: "Acting in the name of ... we hereby order that..." In a word, political judgment *obligates*. This "looking beyond" or transcending inherent to obligation is the essence of understanding. Fundamentally, therefore, obligation denotes a specific manner of understanding or objectifying reality; obligation is one of the *animal symbolicum*'s characteristic modes of existence. To "understand" political reality means that individual actions are viewed as obligatory in view of the highest end of a political community. Understanding is not only the fundamental meaning of "obligation", but *obligation designates the mode of understanding germane to politics*. By implication, the political and legal notion of an "order" or "prescription" presupposes the basic function of "ordering" as understanding inherent to human symbolization in general.³⁰

3. Distancing and Approximation: The "Work" of Political Symbolization

Now, the unconditionality of the end posited as sovereign entails that it does not fall together with any particular end advocated by an actor or set of actors in a political community, or, what means the same, the sovereign end is *general*. The individual actions commanded in political

³⁰ From a Wittgensteinian perspective akin to that expounded above, Bert van Roermund argues that we can best understand the law as a "rule" or "symbol", in the sense of how one should "go further in specific cases", rather than as a "prescription". See his unpublished paper: *Het verdwijnpunt van de wet. Een opstel over de symbolwerking van wetgeving*, Tilburg University, the Netherlands, p. 20.

judgment are binding or obligatory insofar as these actions can be related to the generality implied in sovereignty. The sovereign "stands above" the political community in the form of an end "surpassing" all particular interests. As the *summum bonum* of medieval society, God embodied the moment of generality or transcendence whence individual actions, as commanded by the prince, derived their objectivity. After the religious wars, however, each appeal to God as the foundation of political order was met by the following rejoinder: *whose* God? Each faction that invokes God as the foundation of the political order appropriates him as the criterion distinguishing it from other factions. Thus, God forfeited his status as the moment of generality, becoming a particular end of action. The search for a new sovereign becomes inevitable when, as a result of the religious crises in Europe, there is no longer *one* God that could function as the ground of political unity, but a multiplication of gods. The identification between God and diverse political factions meant that, rather than being *absent*, God becomes *present* in the political community. Medieval politics undergoes an epochal crisis not merely because the rulers no longer represent God, but because the latter forfeits his *representability*. If it is at all meaningful to speak about modernity as "secularizing" the Middle Ages,³¹ this can only mean that the politically indispensable distinction between generality and particularity, transcendence and immanence, could no longer be interpreted in terms of the distinction between the "highest" and "created" being. When the theological foundation of political power collapses, modern democracy transferred the moment of generality, transcendence or absence to the "sovereign people", assigning the religious domain to the "private" sphere of individuals, that is, to the sphere of immanence.

But what does it mean, politically speaking, that the sovereign must be *represented or mediated*? Consider, once again, the canonical form of political judgment: "Acting in the name of ... we hereby order that..." This form shows that mediation comprises two interconnected aspects, summarized heretofore under the rubrics generality and particularity, absence and presence, transcendence and immanence. But these conceptual pairs do not exhaust the significance of mediation. On the one hand, as we have seen, the investiture of conditioned power in political actors of a community is simultaneously the divestiture and transfer of supreme power to a point beyond that community. In this sense, sovereign power lies outside the sphere of political reality. The spatial metaphor "outside" points to a fundamental feature of sovereignty, namely, its *removal*

³¹ For a critique of "secularization" as a historiographic category, see Hans Blumenberg, *The Legitimacy of the Modern Age*, translated by Robert M. Wallace, Cambridge, Mass.: The MIT Press 1986.

from the domain of political actors and action. No political actor or actors may be sovereign within a political community because no subject may be immediately confronted with unconditioned political power. "Acting in the name of..." has the function of ensuring that unconditioned power recedes into "farness". In other words, mediation *distances* absolute power – the most pregnant and threatening manifestation of power –, whereby the commands issued by rulers appear to their subjects as conditioned, as grounded. Yet "distancing" does not exhaust the meaning of mediation. Rather than suspending or dissolving political power, the absence of the sovereign from the political arena is the fundamental condition for being able to exercise power within a polity. By acting on behalf of another (the sovereign) power, the ruler within the community *binds* subjects. The removal of unconditioned power from the vicinities of the subject allows the ruler, as conditioned power, to *approach* the subject: "we hereby order that..." To bind is "come near". The nearness of physical coercion, whereby an order is executed against the will of the subject, is a derivative manifestation of the nearness implied in the mediate relation between the sovereign and the subject. "Approximation" is, thus, the second aspect of mediation. Political judgment – "Acting in the name of ... we hereby order that..." – unfolds a double movement of distancing and approximation. "Binding" or constraint is this mediate relation. For if the commands issued in the name of a sovereign power are binding for subjects, conversely, binding denotes the mediate relation between sovereign and subject we call power.

Accordingly, the specific achievement of political judgment is to join proximity with remoteness. More precisely, that power must be exercised in the name of a highest power beyond the domain of political reality implies that political judgment is a particular mode of the relation between approximation and distancing characteristic of symbolization in general. Approximation and distancing *explain* both the political application of the Medieval distinction between "created being" and "highest being", and the democratic distinction between the *pouvoir constituant* and the *pouvoir constitué*; they are not the *result* of these distinctions.

The symbolic relation between distancing and approximation delivers, moreover, the key to what I have earlier called the "instability" of political power. This instability refers, amongst others, to the distinction between legitimacy and illegitimacy. At issue here is not a specific concept of legitimate or illegitimate power, such as one might find embodied in modern democracy or in the Vietnamese statecraft of the XIXth century. The problem concerns how legitimacy and illegitimacy *in general* are conceptually related to political power. In other words, at issue is

how insight into the symbolic relation between distancing and approximation allows us to characterize this distinction *as such*, beyond all its historical permutations. In effect, legitimate power is "grounded" or conditioned power, power that is exercised on behalf of a sovereign. Conversely, illegitimacy ensues when political power within a community no longer recognizes its submission to a highest power, i.e. when it posits itself as sovereign or absolute, no longer bound. Opposition to illegitimate power essays reestablishing the distinction between transcendence and immanence, absence and presence, generality and particularity. In a word, political resistance attempts to *distance* the absolute. The effort to shackle the exercise of power, to limit and tame its reach, posits a sovereign power situated outside the sphere of political reality and to which all political actors are subordinated. In other words, rather than opposing the claim to unconditioned power of the usurper with an equivalent claim to *its own* unconditionality, political resistance subordinates both its claim to power and that of the usurper to *another* – the highest – power, which encompasses both. Such, precisely, is the meaning of the resistance offered by the aristocratic tribunals (*les parlements*) to the French king in the final throes of the *ancien régime*. In the face of the progressive concentration of royal power to the detriment of the powers of these tribunals, "the question about the tribunals becomes the question of the constitution. The existence and right of the tribunals cannot be separated from the representation that there is an objective legal order above the ruler that should be preserved by the courts against the power-judgments and power-claims of the monarchy, and whence emanates the organic position of both crown and the tribunals" [Zweig 1909, p. 162].

More broadly, the instability of political power confronts us with a variety of situations in which the relation between the particular and the general apposite to understanding breaks down.³² To put it another way, these situation confront political actors with the erosion, or in extreme cases, with the loss of a political world. They are the political form of the general experience of meaninglessness which the *animal symbolicum* never succeeds in banishing entirely. The instability of political power points to the general process whereby 'understanding' turns into 'misunderstanding'. Political arbitrariness is a mode of misunderstanding. In effect, the arbitrary designates the non-objective or non-binding, a situation wherein the political subject is no longer faced with the *representation* of absolute power, but with its *presence*. Arbitrariness perturbs

³² Such experiences are analogous to the interruption of the "reference" of equipment examined by Heidegger in: *Being and Time*. Paraphrasing the title of § 16 of this work, the "worldly character of the political order" manifests itself to the participants of that order in experiences such as injustice and arbitrariness.

social life above all because it threatens the capacity of participants to understand the community, that is, it transforms the "familiarity" of political reality into "strangeness", into a situation wherein the members of the political community do not know "what to do" and can no longer "find their way". In its most acute form, political arbitrariness is literally terrifying: the revolutionary terror is a political figure of the dread accompanying the experience of extreme misunderstanding. Such experiences are specific manifestations of the general process whereby political power turns into violence: the meaninglessness of violence presupposes violence as meaninglessness.³³

Let us conclude by returning to our "*quid iuris?*" question concerning the necessity of sovereignty as a political category. According to Cassirer, objectification means "coming to terms with reality", a function he ascribes to all domains of human symbolization. Cassirer elsewhere epitomizes this general function of symbolization as follows: "limiting the unlimited".³⁴ The "work" of symbolization is precisely to limit the unlimited. This is also the core of *political symbolization*, as evidenced in exemplary fashion by Bodin's proviso – "after God, the prince" –. Conditioning political reality has always been the function of sovereignty, even if, as noted earlier, this concept appears relatively late in political theory. Regardless of the figures sovereign power may have adopted or could take in human history, its removal to a sphere located "outside" the political community is itself already work on the reduction of the absolutism of reality. The thesis that "no human society, whatever it may be, can be organized in terms of pure self-immanence" [Lefort 1988, p. 229] simply reformulates the fundamental imperative of politics: *no actor or set of actors in a political community may be absolute*. Sovereignty is no merely historically bounded concept that could be abrogated or even "relativized" when the concrete circumstances so required, because representing sovereignty is the essence of political power as such.

³³ Elias Canetti has presented the difference and relation between violence and power in the following terms: "The word '*violence*' (*Gewalt*) suggests something close and immediate ... something more directly compelling than power. The phrase '*physical violence*' is really only a more explicit expression of the same idea, for power in its lower and cruder manifestations is always better described as violence ... Power is more general and operates over a wider space (*geräumiger*) than violence; it includes much more, but is less dynamic. It is more circumstantial (*umständlicher*) and even has a certain measure of patience." *Elias Canetti, Crowds and Power*, trans. Carol Stewart, New York: Farrar Straus Giroux 1984, p. 281, translation modified. While violence implies immediacy in an acute way, in fact is immediacy *tout court*, the difference between violence and power is not gradual, as Canetti seems to suggest. Violence is *absolute* power, a power that, in its immediacy and directness, is annihilating.

³⁴ Cassirer, *Mythischer, ästhetischer und theoretischer Raum*, in: Ernst W. Orth/John M. Krois (eds.), *Symbol, Technik, Sprache*, Hamburg: Felix Meiner 1985, p. 100.

Returning to Camilleri and Falk, "the politics of a shrinking and fragmenting world" does not augur "the end of sovereignty"; it challenges us to bestow this concept with a new meaning. In short, the "*quid iuris?*" question concerning sovereignty cannot be exhausted or even adequately addressed if we remain within the sphere of "politics" or of "the political" (in Lefort's sense of this expression). The justification of sovereignty is bound up with the symbolic relation human beings entertain with reality in general and political reality in particular. Sovereignty is a necessary political category because human beings retreat from reality in the very act of approaching it.