BOOK I, CHAPTER 8
On sovereignty

Sovereignty is the absolute and perpetual power* of a commonwealth, which the Latins call maiestas; the Greeks akra eousia, kurion arche, and kurion politeuma; and the Italians segnoria, a word they use for private persons as well as for those who have full control of the state, while the Hebrews call it tomech shècet — that is, the highest power of command.† We must now formulate a definition of sovereignty because no jurist or political philosopher has defined it, even though it is the chief point, and the one that needs most to be explained, in a treatise on the commonwealth. Inasmuch as we have said that a commonwealth is a just government, with sovereign power, of several households and of that which they have in common,‡ we need to clarify the meaning of sovereign power.

I have said that this power is perpetual, because it can happen that one or more people have absolute power given to them for some certain period of time, upon the expiration of which they are no more

*1.58, D6 substitutes, “Sovereignty is supreme and absolute power over citizens and subjects” (Maiestas est somma in eis ac subditiu legibusque solata potestas). The Latin thus speaks of “supreme and absolute” without reference to “perpetual.” But “perpetual” is effectively added to the definition just a few lines further on at 79, 345.

The distinction between citizen and subject that appears in the Latin is spelled out in chapter 6. A citizen is distinguished from a slave by personal freedom, and from an alien by the right to enjoy common privileges. But citizenship does not necessarily imply political participation as in Aristotle. “Speaking properly... [a citizen] is nothing other than a free subject holding by another’s sovereignty” (1961, p. 68).

‡1.78, D11 adds, “Sovereignty (maiestas), says Festus, is taken from greatness (magnitudo).”

†“A commonwealth is... have in common” repeats, with slight variations, the celebrated definition with which the République opens. République est un droit gouvernement de plusieurs familles, et ce qui leur est commun, avec puissance souveraine.
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than private subjects. And even while they are in power, they cannot call themselves sovereign princes. They are but trustees and custodians of that power until such time as it pleases the people or the prince to take it back, for the latter always remains in lawful possession (qui en demeure toujours saisi). For just as those who lend someone else their goods always remain its owners and possessors, so also those who give power and authority to judge or to command, either for some limited and definite period of time or for as much and as long a time as it shall please them. They still remain lawfully possessed of power and jurisdiction, which the others exercise in the manner of a loan or grant on sufferance (prétaire). That is why the [Roman civil] law\(^1\) holds that the governor of a region, or the lieutenant of a prince, being a trustee and guardian of someone else’s power, returns it when his term has expired. And in this respect, it makes no difference whether the officer is high or petty.

If it were otherwise [123], and the absolute power conceded to a lieutenant of the prince were called sovereignty, he would be able to use it against his prince, who would then be no more than a cipher, and the subject would then command his lord, and the servant his master, which would be absurd. The person of the sovereign, according to the law, is always excepted no matter how much power and authority he grants to someone else; and he never gives so much that he does not hold back even more. He is never prevented from commanding, or from assuming cognizance – by substitution, concurrence, removal, or any way he pleases – of any cause that he left to the jurisdiction of a subject. Nor does it matter whether the subject is a commissioner or an officer.\(^1\) In either case the sovereign can take away the power with which he was endowed by virtue of the commission or the statute of his office, or he can retain him on sufferance in so far and for as long as it pleases him.

Having laid down these maxims as the foundations of sovereignty, we may conclude that neither the Roman dictator, nor the Spartan harmost, nor the aemynetes at Salonica, nor he whom they call the archus in Malta, nor the balia of old in Florence – all of whom had the same duties – nor the regents in kingdoms, nor any other commissioner or magistrate who had absolute power for a limited time to dispose of the affairs of the commonwealth, had sovereignty. This holds even though the early dictators had full power and had it in the best possible form, or optima lege as the ancient Latins called it. For
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there was no appeal [from a dictator] in those days, and all the other officers were suspended. This was the arrangement up until the time the tribunes were established, who continued in their functions and retained their right of intercession notwithstanding the creation of a dictator. If an appeal was taken from the dictator, the tribunes assembled the commons and summoned the [complaining] parties to present the grounds of their appeal, and the dictator to defend his judgment. This is what was done when the dictator Papirius Cursor wanted to have Fabius Maximus I, the master of the horse (magister equitum), put to death, and when the dictator Fabius Maximus II wanted to do the same to his master of the horse, Minutius. It thus appears that the dictator was neither a prince nor a sovereign magistrate, as many have written, and that he held nothing more than a simple commission to conduct a war, or to put down sedition [124], or to reform the state, or to bring in new magistrates.*

Sovereignty, then, is not limited either in power, or in function, or in length of time. As for the ten commissioners established [at Rome] for reforming customs and ordinances (Decemviri legum ferendarum), even though they had absolute power without appeal and all the magistrates were suspended for the term of their commission, they still did not have sovereignty. For when their mission was accomplished, their power expired, in exactly the same manner as the dictator’s. Thus Cincinnatus, after defeating the enemy, laid down the dictatorship, which he had held for only fifteen days; Servilius Priscus did the same after eight days; Mamerius after one. The dictator, furthermore, was [simply] named by one of the more eminent [patrician] senators (the interrex) and not by an edict, law, or ordinance which, in ancient times as much as now, was required for erecting an office;† as we shall explain in due course. If anyone objects that Sulla

* L.80, A.3 adds, “or for driving in a nail [that is, ritually marking the passage of a year].”
† L.80, B.2—3) corrects “The dictator, furthermore ... erecting an office,” and also adds a marginal note on the rank ordering of Roman senators, “A dictator was not named by the Senate, or the people, or the magistrates, or by a consultation of the people; or by any laws — which were always necessary for the creation of magistrates — but rather by an interrex who could only be of patrician blood since it was not sufficient to be an ennobled senator in order to name a dictator.”

The marginal note to this passage reads, “A new man (novus) was someone who was the first [of his family] to obtain the honor [of high office] in the commonwealth; an ennobled man (nobilis) was the son of a new man; a patrician (patricius) was someone descended from the patricians and those who were enrolled by Romulus (a patribus et conscriptis a Romulo).”
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obtained a dictatorship for eighty years by the lex Valeria, I will answer, as Cicero did, that it was not a proper law, and not a dictatorship, but a cruel tyranny, which, in any event, he gave up four years later when the civil wars had quieted down. Moreover, Sulla allowed the tribunes to use their veto freely. And although Caesar took a dictatorship for life, he too did not remove the tribunes’ right of veto. But since the dictatorship had been expressly abolished by law, and he had used it nevertheless as a cover for seizing the state, he was killed.

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But let us suppose that a people chooses one or several citizens, to whom it gives absolute power to manage the state and to govern freely, without having to submit to vetoes or appeals of any sort, and that this measure is reenacted every year. Shall we not say that they have sovereignty? For he is absolutely sovereign who recognizes nothing, after God, that is greater than himself. I say, however, that they do not have sovereignty, since they are nothing but trustees of a power that was confided to them for a definite period of time. Hence the people did not divest itself of sovereignty when it established one or more lieutenants with absolute power for a definite time, even though that is more generous than if the power was subject to recall at the people’s pleasure without a pre-established time limit. In either case the lieutenant has nothing of his own and remains answerable for his charge to the person of whom he holds the power to command, unlike a sovereign prince who is answerable only to God.

But what would we say if absolute power were conceded for nine or ten years, as it was in the early days of Athens when the people made one of the citizens sovereign and called him archon? I still maintain that he was not a prince and did not have sovereignty, but was rather a sovereign magistrate who was accountable to the people for his actions after his time in office had expired. One might still object that absolute power can be given to a citizen as I have indicated, yet without requiring him to answer to the people. Thus the Cnidians annually chose sixty citizens whom they called “amnemones” – that is to say, beyond reproach – and granted them sovereign power with no appeal from them, either during their term in office or after it, for anything that they had done. Yet I say that they did not have sovereignty in view of the fact that, as custodians, they were obliged to give it back when their year was up. Sovereignty thus remained in the people, and only its exercise was in the amnemones, whom one could

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call sovereign magistrates, but not sovereigns pure and simple. For the first is a prince, the other is a subject; the first is a lord, the other is a servant; the first is a proprietor and in lawful possession of the sovereignty (et saisi de la souveraineté), the other is neither its owner nor possessor, but merely holds in trust.

The same applies to regents established during the absence or minority of sovereign princes, no matter whether edicts, orders, and letters patent are signed and sealed with the regents’ signature and seal and are issued in their name, which was the practice in this kingdom prior to the ordinance of King Charles V of France, or whether it is all done in the king’s name and orders are sealed with his seal. For in either case it is quite clear that, according to the law, the master is taken to have done whatever a deputy (procureur) did on his authority. But the regent is properly the deputy of the king and the kingdom, so that the good Count Thibaut called himself procurator regni Francorum (deputy of the French kingdom). Hence when the prince, either present or absent, gives absolute power to a regent or perhaps to the senate, to govern in his name, it is always the king who speaks and who commands even if the title of regent is used on edicts and letters of [126] command.

Thus we see that in the absence of the king of Spain, the senate of Milan and of Naples had absolute power and issued all of its commands in its own name, as is evident from the ordinance of Emperor Charles V:

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Senatus Mediolansensis potestatem habeat constitutiones Principis confirmandi, infirmandi, tollendi, dispensandi contra statuta, habilitationes, praerogationes, restitutiones faciendi, etc. a Senatu ne procori possit etc., et quicquid factet parem vim habeat, ut si a principe factum, ac decretum esset: non tamen possit delictorum gratium, ac veniam tribuere, aut literas salvi conductus reis criminum dare.*

This all but unlimited power was not given to the senate of Milan and of Naples to diminish the sovereignty of the king of Spain in any way, but rather to relieve him of bother and concern, to which must

* The senate of Milan shall have the power of confirming, invalidating, and repealing ordinances of the prince; of granting dispensations from the statutes; and of granting permissions, prerogatives, and restitutions etc.; no appeal shall lie from the Senate etc., and whatever it shall do shall have the same force as if it had been done or decreed by the prince: but it shall not grant pardon or forgiveness for crimes, or give letters of safe conduct to persons accused of criminal offenses.
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also be added the fact that it was revocable at the good pleasure of him who granted it.

But let us suppose that this power is given to a lieutenant of the king for life. Is this not sovereign and perpetual power? For if perpetual were taken to mean that which never ends, sovereignty would not exist except in aristocracies and democracies, which never die. Even if the word perpetual, as used of a monarch, was understood to include not only him but his heirs, there would still be few sovereign monarchs inasmuch as there are very few that are hereditary. Those especially would not be sovereign who come to the throne by election. We must, therefore, understand the word “perpetual” to mean “for the life of him who has the power.”

I would add that if a sovereign magistrate, whose term is only annual or is for a fixed and limited time, contrives to prolong the power entrusted to him, it must either be by tacit consent (de gré à gré) or by force. If by force, it is called a tyranny. Yet the tyrant is nonetheless a sovereign, just as the violent possession of a robber is true and natural possession even if against the law, and those who had it previously are dispossessed (en sont dessaisis). But if a magistrate prolongs sovereign power by tacit consent, I say that he is not a sovereign prince, since he has nothing except by sufferance, and all the less so if no time limit is set, for then he has only a precarious commission (commission précaire).

It is well known that there never was a greater power than that which was given to Henry of France, duke of Anjou, by King Charles IX, for it was sovereign power, and did not omit a single item of regalian prerogative. Yet no one can tell me that he was a sovereign, for even if the grant had been perpetual, he was styled the king’s lieutenant-general. Furthermore, the clause “So long as it shall please us (Tant qu’il nous plaira)” was affixed to his letters [patent] which indicates a grant on sufferance, and his power was always suspended in the king’s presence.

What shall we say then of someone who has absolute power from the people for as long as he shall live? Here one must distinguish. If the absolute power is given to him pure and simple without the style of a magistrate or commissioner, and not in the form of a grant on sufferance (précaire), then he surely is, and has a right to call himself, a sovereign monarch. For the people has here dispossessed and stripped itself of its sovereign power in order to put him in possession of it
and to vest it in him. It has transferred all of its power, authority, prerogatives, and sovereign rights to him and [placed them] in him, in the same way as someone who has given up the possession of, and property in, something that belonged to him." As the law says, *Ei et in eum omnem potestatem contulit.* † But if the people concedes its power to someone for as long as he shall live in the capacity of officer or lieutenant, or only to relieve itself of the exercise of its power, then he is not a sovereign, but a simple officer, lieutenant, regent, governor, or guardian and trustee of another’s power. For it is the same as with a magistrate who appoints a permanent deputy and takes no active role in his jurisdiction, but leaves its entire exercise to the deputy. The power of commanding and judging, and the action and the force of the law, 15 do not lie in the person of the deputy, and if he goes beyond the power given him, his acts are of no effect unless they are ratified, accepted, and approved by the person who gave him power. ‡ This is the reason why King John [II of France], on his return from England, solemnly ratified the acts of Charles, his oldest son, who had been named regent, in order thereby to validate and confirm them in so far as that was needed.

So whether it is by commission, nomination to office, or delegation that one exercises someone else’s power, and whether it is for a definite time or in perpetuity, he who exercises [128] this power is not sovereign even if he is not described as an agent or lieutenant in his letters patent. This applies even if the power is conferred by the law of the land, which is an even stronger basis than appointment (election). The ancient law of Scotland thus gave the entire government of the kingdom to the closest relative of a king who was in tutelage or under age {below twenty-five}, with the requirement that all business be carried on in the king’s name. But the rule was suppressed because of the inconveniences that went with it.

We now turn to the other part of our definition and to what is meant by the words “absolute power.” For the people or the aristocracy (seigneurs) of a commonwealth can purely and simply give someone absolute and perpetual power to dispose of all possessions,

* L.82, B4 adds, “then it is a perfect transfer free of all conditions.”
† “it [the people] has transferred all its power to him [the emperor]” Dig., I, 4 (de constitutionibus principum), 1.
‡ L.82, C2–4 adds, “Yet for important matters within his jurisdiction, a magistrate’s ratification is not made retroactive, as is the prince’s, whose power in the commonwealth is supreme.”
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persons, and the entire state at his pleasure, and then to leave it to anyone he pleases, just as a proprietor can make a pure and simple gift of his goods for no other reason than his generosity. This is a true gift because it carries no further conditions, being complete and accomplished all at once, whereas gifts that carry obligations and conditions are not authentic gifts. And so sovereignty given to a prince subject to obligations and conditions is properly not sovereignty or absolute power.

This does not apply if the conditions attached at the creation of a prince are of the law of God or nature (la loi de Dieu ou de nature), as was done after the death of a Great King of Tartary. The prince and the people, to whom the right of election belongs, choose any relative of the deceased they please, provided that he is a son or nephew, and after seating him on a golden throne, they pronounce these words, “We beg you, and also wish and bid you, to reign over us.” The king then says, “If that is what you want of me, you must be ready to do as I command, and whom I order killed must be killed forthwith and without delay, and the whole kingdom must be entrusted to me and put into my hands.” The people answers, “So be it.” Then the king, continuing, says, “The word that I speak shall be my sword,” and all the people applaud him. After that he is taken hold of, removed from his throne, and set on the ground seated on a bench, and the princes address him in these words: “Look up [129] and acknowledge God, and then look at this lowly bench on which you sit. If you govern well, you will have your every wish; otherwise you will be put down so low and so completely stripped, that even this bench on which you sit will not be left to you.” This said, he is lifted on high, and acclaimed king of the Tartars. This power is absolute and sovereign, for it has no other condition than what is commanded by the law of God and of nature.

We can also see that this formula, or one like it, is sometimes used in kingdoms and principalities that descend by right of succession. But there is none quite like the ceremony in Carinthia. Here, in a meadow near the city of Saint Vitus, one can still see a marble rock which is mounted by a peasant, to whom this office belongs by right of succession, with a black cow on his right, a skinny mare on his left, and the people all around. The person coming forward to be the duke

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*“prince and the” is omitted at L.83, A.6.
†L.83, A.8 assigns the speech that follows to “the bishop (pontife).”
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walks amidst a great number of lords dressed in red, with ensigns carried in front of him, and everything in good order except for the duke, who is dressed like a poor shepherd and carries a crook. The man standing on the rock calls out in Slavic, “Who is this who walks so proudly?” The people answer that he is their prince. Then the peasant asks, “Is he a [true] judge? Does he seek the welfare of the country? Is he of free status, worthy of honor, respectful of religion?” They answer, “He is, and will be.” Then the peasant gives the duke a light blow, and the peasant now becomes exempt from all public burdens, while the duke climbs up on the rock brandishing his sword and, speaking to the people, promises to be just. Still in shepherd’s dress he goes to Mass, then assumes a ducal garb and returns to the rock to receive homages and oaths of fealty. But it is true that in olden times the duke of Carinthia was only the Grand Huntsman of the [German] emperor (1331), and after the Empire fell into the hands of the House of Austria, to which the duchy belongs, the title of Huntsman and the ancient form of investiture were abolished and the duchies of Carinthia, Styria, Croatia, as well as the counties of Cilli (Cilli) and Tyrol were annexed to the duchy of Austria.18

Despite what is written about the kingdom of Aragon, the ancient procedure that they used for the kings of Aragon is no longer followed unless the king assembles the Estates, as I have learned from a Spanish knight.* The procedure used to be that the great magistrate, whom they call [130] the justice of Aragon,19 addressed the king in these words:

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\text{Nos qui valemos tanto como vos, y podemos mas que vos, vos elegimos Re con estas y estas condiciones entra vos y nos, un que mende mas que vos.}
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That is, “We who count as much as you, and can do more than you, elect you king on such and such conditions between you and us, that there is one whose command is more powerful than yours.”

The person who, on the strength of this, wrote that the king was then elected by the people is mistaken, since nothing of that sort ever happened.20 For it is quite certain that Sanctius the Great conquered the kingdom by right of the stronger from the Moors who had held it for seven hundred years, and that his posterity, male and female, have held the kingdom ever since by right of succession in the closest

*“unless the king . . . Spanish knight” is omitted at L84, A3.
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relative. And Pedro Belluga of Aragon, who has provided a painstaking account of the law of Aragon [in his *Speculum principum*], wrote that the people has no right to elect a king unless there is a failure of the line.

It is also impossible and contradictory that the king of Aragon should have less power than the Estates of Aragon, since the same author, Belluga, says that the Estates cannot assemble unless there is an express command of the king, and that once assembled they cannot leave if it does not please the king to let them go. It is still more ridiculous to believe that such words [in the alleged ceremony] were spoken to a king who had already been crowned, consecrated, and acknowledged as king by right of succession and who, since he was indeed the sovereign, gave the person called the great justice of Aragon his office, and removed him from it as he pleased. In fact the same author [Belluga] writes that Martin Didato was installed and removed from this office by the queen of Aragon in the absence of her husband, Alphonso, king of Aragon and Sicily.

Although by the king’s sufferance the justice of Aragon judges suits and controversies between the king and the people—which is something that is also done in England, either by the upper house (haute chambre) of Parliament or by the magistrate they call the (chief) justice of England, and by all judges in this kingdom and in every part of it—still the justice of Aragon and all the Estates together remain in complete subjection to the king. As the same doctor says, the king is in no way bound to follow their advice or to grant their requests, which is the rule for all true monarchies, for they have absolute power, as Oldrado said, speaking of the kings of France and Spain.21

[131] Yet these doctors do not say what absolute power is. For 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 peoples.22 On the other hand, it can happen that a subject is dispensed and exempted from all the laws, ordinances, and customs of his commonwealth, and yet is not a prince or sovereign. We have an example of this in Pompey the Great, who was dispensed from the laws for five years by an express ordinance of the Roman people published at the request of the tribune Gabinius. Nor was this dispensing of a subject from obedience to the laws anything strange or new, since the Senate sometimes gave dispensa-