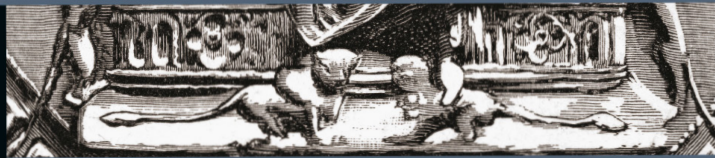




MEDIEVAL SOVEREIGNTY



Andrew Latham

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To Wendy, Bernadette, and Michael
Omnia meae debeo familiae!

Prologue

The central problem for historians of the foundations of modern international thought should...be, "How did we"—whoever "we" may be—"come to imagine that we inhabit a world of states?"

David Armitage, *Foundations of Modern International Thought*¹

Jean Bodin (1529/30–1596) exaggerated the novelty of his analysis of political power, and historians have exaggerated the novelty of his exaggeration. That Bodin stressed his originality is forgivable; that is an author's prerogative. That historians have accepted his contention without careful scrutiny is less understandable.

Kenneth Pennington, *The Prince and the Law, 1200–1600*

This book has two main aims. The first is to provide a tightly focused account of the most pivotal episode in the historical evolution of the idea of sovereignty—which I define generically as the supreme authority to command, legislate, and judge—in the thirteenth century. Although the existing historiographical literature is replete with studies that trace the evolution of that idea—even if they don't use the word "sovereignty" to describe it—in the fourteenth, fifteenth, and sixteenth centuries, no such account exists for the thirteenth century. To be certain, over the past half-century or

I Works not referenced in the footnotes or only in short form there are fully cited in the Further Reading at the end of this work.

so a great deal of research has been done on aspects of the political thought during this era. But these efforts have tended to be fragmented, following different lines of inquiry, and emphasizing different themes. A conceptually focused interpretation, one foregrounding the role played by thirteenth century thought in the evolution of a coherent theory of sovereignty, has been lacking. My hope here is to begin to address this lacuna by providing an account of how a series of thirteenth-century contests over the locus and character of supreme authority ultimately made it possible “to imagine that we inhabit a world of [sovereign] states.”

My secondary goal, hinted at in the epigraphs above, is to reconnect early modern theorists of sovereignty to the medieval intellectual tradition out of which they emerged. Thinkers like Bodin and Vattel did not invent the modern concept of sovereignty out of whole cloth. Rather, they assembled it out of the intellectual resources inherited from their medieval forebears, in the first instance from fourteenth-century thinkers like Marsilius, Baldus, and Bartolus, but via them from the thirteenth-century thinkers discussed in this book. While the specific questions they sought to address may have been unique to the early modern moment, and while there is no gainsaying the novelty and impact of their contributions, it is a central aim of this book to demonstrate that the early modern theorists of sovereignty were in a very real sense the apotheosis of a centuries-long medieval tradition of philosophical speculation about the locus and character of supreme authority.

This second claim, of course, contradicts the arguments, assertions, and assumptions of what I will call the “modernist” school of the history of the idea of sovereignty. Doubtless out of an abundance of concern with some scholars’ claims regarding the transhistorical and immutable nature of “sovereignty,” most modernists simply refute the very existence of a medieval sovereign state or the constitutive idea upon which such a state might be constructed. While the line of argumentation developed in these works is understandable, and at times quite illuminating of the non-statist aspects of medieval polit-

ical life, it is also disappointing; for it means that the existing modernist literature practically erases the entire pre-history of the modern political order—and especially the pre-history of the early modern state-building project and the ideas driving, shaping, and conditioning that project.

Underpinning the speci c weaknesses of this viewpoint is a tendency to unduly exoticize the medieval world, treating it as both mysterious and radically di erent from the modern one. Almost without exception, existing modernist accounts are premised on what Sverre Bagge has called the “great Divide.” on one side of that divide is the de nitively modern idea of sovereignty and its derivative state and state-system, changing and evolving to be sure, but easily comprehensible to modernist scholars trained to think in terms of these categories. on the other side of the divide is the medieval world, an “orientalized” o ther comprising an exotic congeries of ideas, institutions, and structures that are so alien as to render the epoch simultaneously both irrelevant to the study of modern political life and inaccessible to the contemporary modernist scholar.

Simply stated, modernists almost unanimously assert, assume, or argue that the medieval world order did not comprise states organized around the idea of sovereignty, but around a distinctively medieval organizing principle (feudalism and hierarchy being the usual suspects) that produced functionally di erentiated polities (never states) subject to di erent laws of development. External sovereignty, they maintain, was impossible because of the universalist claims of the pope and emperor, both of whom claimed and exercised authority over kingdoms, principalities, and cities. Similarly, internal sovereignty was short-circuited by feudalism, custom, and ecclesiastical and temporal “liberties,” all of which meant that there was no supreme locus of political authority within any given polity.

The result of all this, modernists maintain, was that Latin Christendom was segmented politically into several qualitatively distinct types of political unit—the Holy r oman Empire, the Catholic Church, city-states, urban leagues, feu-

dal lordships, principalities, kingdoms, and even guilds and monasteries—all of which were structured around some combination of territorially non-exclusive and overlapping feudo-vassalic networks and pervasive papal and imperial hierarchical structures. By way of contrast, modernists typically argue, assert, or assume that the post-medieval or modern world order is made up of separate, territorially exclusive, functionally isomorphic states possessing both internal and external sovereignty.

This study rejects this perspective, arguing instead that sovereignty as a theologically inflected political concept decisively crystallized in the Latin Christian political imagination sometime around the turn of the fourteenth century. Specifically, the argument I will develop will unfold as follows. At the turn of the thirteenth century, two basic models of sovereignty were in circulation in Latin Christendom. On the one hand, there was the “hierocratic model.” This model accepted that the *societas christiana* was divided into two domains or orders—spiritual and temporal—each governed by its own distinctive powers, but argued that as the spiritual power exceeded the temporal in honour and dignity, the spiritual exceeded the temporal in power and jurisdiction. According to this view, the spiritual power in effect mediated between god and the temporal powers, instituting the latter on god’s behalf and judging it if it failed to do His will. Supreme authority was not shared by two coordinate powers but vested in the spiritual power alone. This power could delegate the material sword to the temporal authority, but that authority was then expected to wield it in the service of god and His Church. If it did not, the spiritual power could remove the material sword from the prince’s hand and transfer it to someone more worthy.

On the other hand, there was the “dualist-imperialist model.” On this view, the *societas christiana* was still divided into two domains or orders—lay and clerical—each of which had a distinctive way of life and governed by its own distinctive power. But, in an already well-established analogy drawn from scripture, emperors were said to wield the material sword

and govern the temporal domain (the universal Empire), while popes wielded the spiritual sword and governed the spiritual domain (the universal Church). In this model, neither power infringed on the jurisdiction of the other. Both derived their powers directly from god, and while the spiritual power enjoyed greater dignity, this did not translate into greater power, authority, or jurisdiction. Supreme authority to legislate, command, and judge was thus divided between two coordinate powers: the Church and the Empire.

By the turn of the fourteenth century, however, these two models had decisively given way to a radically new one, which I will call the “dualist-regnalist” model.² According to this model, supreme authority was vested neither in the pope nor the emperor; nor was it divided between coordinate temporal and spiritual powers (kings and popes). Instead, it was vested exclusively in the king, who held it directly from god or (in the case of John of Paris, for example) “the people,” without any papal or imperial mediation. Signi cantly, and in a radical break with the established norms of the preceding several centuries, this new political vision held that the king’s supreme authority to legislate, command, and judge applied to the clergy as well as the laity, at least concerning temporal matters. Despite periodic nostalgic e orts to revive the hierocratic model (Alvarus Pelagius and Augustinus Triumphus) and the imperialist one (Englebert of Admont and Dante Alighieri), this new model would emerge triumphant by the middle decades of the fourteenth century (in the works of Marsilius of Padua, Baldus, Bartolus, and others).³

In this volume, I examine what is perhaps the key “inflation point” in this historical process, tracing how a bitter conflict between King Philip IV of France and Pope Boniface

2 Following Susan Reynolds, I use the word “regnal” to convey that the referent object of claims to sovereignty was the *regnum* or kingdom: Susan Reynolds, *Kingdoms and Communities in Western Europe 900–1300*, 2nd ed. (Oxford: Clarendon Press, 1997), 254.

3 Francis Oakley, *The Watershed of Modern Politics: Law, Virtue, Kingship, and Consent (1300–1650)*, (New Haven: Yale University Press, 2015).

VIII at the turn of the fourteenth century resulted in both the effective extinction of the hierocratic vision and the mutation of dualism into something qualitatively different from what it had been during the thirteenth century. My main argument is that in defending the right of the French king to try French clerics in French courts in the opening years of the fourteenth century, the pro-royal polemicists (represented by John of Paris) not only realized their goal of demolishing the hierocratic conceptual framework but in the process quite inadvertently undermined the premises of the dualist-imperialist one as well.⁴ Drawing on the theological, juristic, and philosophical resources available to them—and especially the fruits of the papal decretals *Quanto personam* and *Per venerabilem*—they collectively developed a new political vision, characterized by novel and distinctive arguments and assumptions regarding the locus and character of supreme authority. While this process was not completed until the middle of the fourteenth century, and while its ultimate culmination did not occur until the sixteenth century, by the time of Boniface's death in 1303 it was certainly well underway.

In order to facilitate analysis of this episode of rapid conceptual mutation and innovation and bring into sharper relief whatever patterns of transformation might emerge, I have organized my treatment of it around two sets of organizing themes. The first of these has to do with the *character* of sovereignty—that is, with the historically specific way in which the meaning of supreme authority is articulated and delimited. Among the more important of these concepts are *legibus solutus* (loosed from the laws), *plenitudo potestatis* (fullness of power), *potesta absoluta* (absolute power), and *pro ratione voluntas* (by reason of will).

The second set of organizing questions has to do with the *locus* of sovereignty. Specifically, each chapter attempts to

4 In the first half of the fourteenth century, the idea of regnal sovereignty was further developed by thinkers such as Oldradus de Ponte, Marsilius of Padua, Bartolus of Saxoferrato, and Baldus de Ubaldis.

map how those engaged in political disputes thought about the location of supreme authority. Was sovereignty vested in the person of the emperor? The pope? The king? or was it vested in more abstract or collective institutions such as the “crown,” “the council,” or even “the people”? Each chapter also seeks to illuminate the various ways in which canonists and polemicists justified and explained their respective conclusions regarding the proper locus of supreme authority.

With these questions in mind, Chapter 1 recounts how, in glossing the decretal *Quanto personam*, canon lawyers speculated on and ultimately defined the character of sovereignty—that is, how these jurists framed the distinctive and defining qualities of the supreme authority to command, legislate, and judge. Chapter 2 explores how the decretal *Per venerabilem* and its glosses specified the ultimate locus or site of that supreme authority. Taken together, these two chapters demonstrate that the ideas about the character and locus of supreme authority—ideas that would later at the turn of the fourteenth century be assembled into an increasingly coherent theory of sovereignty—were developed and refined in debates about canon law over the course of the thirteenth century. This is not to suggest, of course, that similar ideas were not evolving in the field of civil or roman law. given the interpenetration of the two domains of jurisprudence—collectively referred to as the *ius commune*—this would be highly unlikely indeed. And, indeed, in Chapter 2 I undertake a brief excursus into the realm of roman law as it dealt with the crime of treason, primarily to demonstrate that such a parallel thread existed. rather, it is merely to bracket out the civil law for heuristic purposes—that is, to focus more closely on the evolutionary dynamics taking place in the domain of canon law and its associated realms of political theology and polemics, and to focus specifically on those ideas actually taken up and used in the debate covered in the final two chapters of this volume.⁵ This primary focus on canon law to the exclusion

5 For an overview of the civil law treatment of *imperium* and

of civil law is also recommended by the fact the historical personage whom I identify as the true progenitor of the “modern” idea of sovereignty, John of Paris, was a philosopher, theologian, and Dominican friar. He did not rely on, or communicate in the idiom of, r oman law.

The final half of the book examines the pivotal episode in this dynamic—the turn-of-the-fourteenth century dispute between King Philip IV of France and Pope Boniface VIII. It does this by tracing how protagonists in this political dispute over the locus and character of supreme authority drew on the language developed by the canon lawyers to develop an idea of sovereignty that would have been recognizable to Bodin and other early modern legists and political thinkers. In Chapter 3, I recount the first phase in this dispute in which Philip and Boniface contended over King Philip’s right to tax members of the French clergy to help finance his war against England. Chapter 4 surveys the second phase of this dispute, which had to do with conflicting views on the topic of royal jurisdiction over French clerics.

Before proceeding to the substance of my argument, let me say a few words about methodology. This study adopts a modified “contextualist” approach, one that focuses on “ideas” rather than “texts,” and I take a “diachronic” rather than “synchronic” perspective. It is contextualist in that it adopts the basic methodological approach of the Cambridge School.⁶ I like the original proponents of this school—most famously Quentin Skinner, John Dunn, and J. g. A. Pocock—I reject the “unit-idea” approach of I ovejoy and his associates,

dominium during this era, see Daniel I lee, *Popular Sovereignty in Early Modern Constitutional Thought* (New York: oxford University Press, 2016).

6 For an overview, see Mark Bevir, “The Contextual Approach,” in *The Oxford Handbook of the History of Political Philosophy*, ed. george Klosko (oxford, 2011), 11–23. r egarding the current state of the art, see Danielle Charette and Max Skjönsberg, “State of the Field: The History of Political Thought,” *History: Journal of the Historical Association* 105, no. 366 (2020): 407–83.

with its focus on fixed ideas floating freely across time. Also like Skinner, and others, I oppose the Straussian search for hidden messages, the materialist reductionism of Marxists, and the post-structuralist skepticism regarding the possibility of an unmediated reading of the past. What I embrace in place of these modes of understanding the history of political thought is the core contextualist insight that political utterances and action must always be understood in its time, place, situation, and circumstances, never through tracing “decontextualised,” essentialized unit-ideas down through the ages. Along with the contextualists, I assume that failure to do this leaves the door open to the twin perils of presentism and anachronism, both of which are always immanent in retrospective interpretations of history.

This study, then, is essentially contextualist in spirit: it takes as its point of departure the assumption that “sovereignty” is not a transhistorical concept passed down through the ages, shaping and reshaping political life in different ways as it touches down in differing historical contexts. Rather, it takes as its jumping off point the assumption that the idea of “sovereignty” (whatever word is used to capture and convey that idea) is always an historically specific answer to the recurring question, posed in different ways in different contexts, “what is the nature, source, and locus of supreme authority?”

But while I have embraced the foundational insights of the Cambridge School, I have of necessity modified them in two significant ways. First, following Mark Bevir’s lead, I have adopted a focus on “ideas” instead of texts.⁷ Bevir argues that historians of political thought should take ideas, rather than texts, as their object of analysis, and that they should treat texts as one medium (among many) for the expression

⁷ Mark Bevir, *The Logic of the History of Ideas* (Cambridge: Cambridge University Press, 1999). For a discussion of Bevir’s work in this area see “Mark Bevir and the Logic of the History of Ideas,” special issue, *History of European Ideas* 28, no. 1–2 (2002): 1–100.

of ideas rather than as the sole object of historical interest. This is a significant reframing, for it transforms the history of ideas from a search for authors' bounded intentions when writing a particular text to a fuller exploration of the ideas that made the text possible in the first place—and which the text might, in turn, recursively refine, rework, or reconstruct. As Bevir puts it:

...the key task of the intellectual historian is the recovery, not of the illocutionary force of texts, but the relevant beliefs. Intellectual historians need not focus on what an author was doing in a text. They can focus on the complex interconnections among an author's beliefs and arguments. Alternatively, they can focus on narratives about intellectual movements and the shifting patterns of beliefs and commitments embedded therein.⁸

Focusing on ideas rather than texts, Bevir concludes, allows us to focus on the dynamics of change and innovation in the history of political thought, rather than simply on explaining the relationship of a text to political language, authorial intention, and historical circumstance.

Second, following the lead of David Armitage,⁹ I have turned away from the synchronic bias of the Cambridge School. I like the contextualists, Armitage is interested in historicizing political thought. Unlike contextualists, however, Armitage employs a method that is diachronic rather than synchronic in nature—that is, one that focuses on tracing change across time rather than on developing snapshots of single, discrete moments. Since the contextualist revolution in the 1960s, most self-identified contextualists have treated context synchronically—that is, limited to discrete and tem-

8 Mark Bevir, "The Logic of the History of Ideas Then and Now," in "Post-Analytic Hermeneutics: Themes from Mark Bevir's Philosophy of History," special issue, *Intellectual History Review* 21, no. 1 (2011): 105–19, at 110.

9 David Armitage, "What's the Big Idea? Intellectual History and the *longue durée*," *History of European Ideas* 38, no. 4 (2012): 493–507.

porally limited episodes that are discontinuous with other episodes. Armitage, on the other hand, advocates something he calls “serial contextualism”—that is, the construction of a sequence of distinct contexts in which situated actors strategically deploy existing political concepts and arguments to advance or defend a particular point of view. Such a synthesis of *longue durée* historiography with the spirit of contextualism, he argues, allows for the reconstruction of “longer-range histories which are neither artificially punctuated nor deceptively continuous” (Armitage, 499).

With these modifications in place, it should be possible to trace the historical evolution of the history of the idea of sovereignty while avoiding both the Scylla of presentism and anachronism and the Charybdis of a radical historicism that would preclude any sort of diachronic study. In the abstract, my goal is to use this methodology to show how situated yet active historical agents—people engaged in concrete disputes (which may be political, theological, or even merely academic)—drew on the cultural and ideational resources available to them (typically transmitted via traditions and expressed in specific intellectual languages) to develop arguments that explain, advance, or defend their position. More concretely, my objective is twofold. First, to show how ideas related to power and authority circulating prior to the thirteenth century were, over the course of that century, hammered into the precursors of a theory of sovereignty against the anvil of two political-theological debates that unfolded over the course of that century—the debates over the papal bulls *Quanto personam* and *Per venerabilem*. And second, to show how John of Paris drew on the raw materials furnished by thinkers engaged in those earlier debates, as well as those used by his opponents in the Boniface-Phillip contest at the turn of the fourteenth century, to articulate the first coherent theory of regnal sovereignty in his work *De potestate regia et papali*.

Finally, a few words about the scope of this study. A complete account of the evolution of the idea of sovereignty, of course, would entail tracing the evolution of its character

or constituent concepts (*iurisdictio*; *legibus solutus*; *plenitudo potestatis*; *potesta absoluta*; *pro ratione voluntas*; *persona ficta*; and *dominium*) across a number of distinct sites of political theorizing (canon law; Roman law; various polemical literatures; and the works of theologians and philosophers) over the course of several centuries. It would also entail tracing the evolution of the ultimately pervasive belief that the *locus* of supreme authority to command, legislate, and judge was properly vested in kingdoms and other principalities that recognized no superior across those same sites and over the same span of centuries. Finally, it would entail tracing the evolution of the idea that the *source* of supreme political authority some sort of synthesis of “the people” and god. In short, it would entail showing how the ideas that crystallized in the thirteenth century were subsequently received, reworked, and then relayed to the early modern “inventors” of sovereignty by fourteenth-century thinkers such as Marsilius of Padua (ca. 1275–ca. 1342), Bartolus de Saxoferrato (ca. 1313–1357), and Baldus de Ubaldis (1327–1400), and fifteenth-century thinkers such as Nicholas of Cusa (1401–1464) and John Fortescue (ca. 1394–1479)—all of whom were themselves engaged in their own historically specific debates over the character and locus of supreme political authority.¹⁰ In this brief volume, however, my goal is somewhat less ambitious: to trace the evolution of several key concepts that became definitive of the character, locus, and source of supreme political authority during four distinct episodes of rapid conceptual evolution in the thirteenth century. The argument I develop is that, in the text and glosses of *Quanto personam* and *Per venerabilem* Pope Innocent III and the canonists made a number of important contributions to the idea of supreme authority—ideas that would subsequently be refined in the context of the dispute between Boniface and Philip, and that would ultimately cul-

¹⁰ See, for example, Joseph Canning, *Ideas of Power in the Late Middle Ages, 1296–1417* (Cambridge: Cambridge University Press, 2011).

minate in the work of John of Paris. I leave it to others to pick up the thread and weave it into a broader tapestry connecting those ideas developed in the thirteenth century to those that took shape both before and after that fateful century.