BOOK I, CHAPTER 8
On sovereignty

[345] Sovereignty is the absolute and perpetual power* of a commonwealth, which the Latins call maiesia; the Greeks akrh axousia, kurion arche, and kurion politeuma; and the Italians signoria, 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 shevet – 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

* L.78, D.6 substitutes, “Sovereignty is supreme and absolute power over citizens and subjects” (Maestas est summa in civis et subjectos legibusque solius potestas). The Latin is very free to translate as “supreme and absolute.” But “absolute” is effectively added to the definition just a few lines further on at 75, A.5.

† 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” (1091b, p. 66).

‡ L.78, D.1 adds, “Sovereignty (maestas), says Plautus, is taken from greatness (magnitude).”

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.
On sovereignty

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 demere toussins sais). For just as those who lend someone else their goods always retain their 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 (prœcaire). That is why the [Roman civil] law 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. 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 aesymnetes 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

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, Minucius. 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; Mamercus 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.2-7 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; but 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 (novilis) was the son of a new man; a patrician (patrus) was someone descended from the patriarchs and those who were enrolled by Romulus (a patruis et conscriptis a Romulo)."
On sovereignty

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.

(349)

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 [125] 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 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 saeis de la souveraineté*), the other is neither its owner nor possessor, but merely holds in trust.

The same applies to regents established during the 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 (*procurateur*) 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:

> Senatus Mediolanensis potestatem habeat constitutiones Principis confirmandi, inframundi, tollendi, dispensandi contra statuta, habitationes, praerogaciones, restituciones fuciendo, etc., a Senatu ne provocari possit etc., et quicquid faciet pereat vim habeat, ut si a principi factum, ac decretum esset: non tam posse dictorum gratiam, ac veniam tribure, aut literas salvi conductus reis criminae 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., so 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.
On sovereignty

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 dépossédés). 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).

[252]

[127] 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 politatem custitit. 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, 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 eldest 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 (seigneur) of a commonwealth can purely and simply give someone absolute and perpetual power to dispose of all possessions.

*1, 8. 4 adds, “then it is a perfect transfer free of all conditions.”
1 “it [the people] has transferred all its power to him [the emperor]” Dig., 1, 4 (de amstitutibus principum).
1, 8. 2, C2, 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.”
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 rare gift, because it carries with it neither conditions nor restrictions. It is a gift free from obligations and conditions, properly so-called, and which is more powerful than any other condition that what is commanded by the law of God and of nature.

We can also see this formula, or one like it, in the ceremony in Carinthia. Here a black cock is solemnly sacrificed in a meadow near the city of St. Vitus, and the procession, with a black cow on its right, a white mare on its left, and the people all around. The person coming forward to the altar and offering the sacrifice may be interpreted as the bishop, who commands by the law of God and of nature.

The person who, on the strength of this, wrote that the king was then elected by the people, is quite certain that Seneca, the Great, who had held the kingdom by the strength of the stronger, had his posterity, male and female, have held the kingdom ever since, by right of succession, in the closest
relative. And Pedro Belluga of Aragon, who has provided a painstaking account of the law of Aragon [in his Speelum princeps], 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

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 dispensated 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 dispensated 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-

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*tions without a recommendation by the people up until the adoption of the Cornelian law, which was published at the request of a tribune. It was now decreed that no one could be exempted from the force of the law, or be given dispensation, by the Senate unless there were at least two hundred senators (present). For although it was [already] forbidden on pain of death by the law of the Twelve Tables to grant any privilege unless in the great assembly of the people (comitia centuriata), this law was ill enforced.23 However this may be, a subject who is exempted from the force of the laws always remains in subjection and obedience to those who have the sovereignty. But 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, and to suppress or repeal disadvantageous laws and replace them with others—which cannot be done by someone who is subject to the laws or to persons having power of command over him.24

This is why the law 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.25 And so we see that in all edicts and ordinances the clause is added, "notwithstanding all edicts and ordinances from which we have derogated and do derogate" by these presents along with a derogation of [previous] derogatory clauses (et à la derogatoire des derogatoires)."26 This clause was always added in

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21 For "But this law was ill enforced" L84, D12 substitutes, "But that law had been amended by the Senate."
22 For "However this may be..." power of command over him" L84, D12-85, B substitutes, "Someone who is exempted from a single law, or many laws, or all the laws is still bound by the authority of those who have the rights of sovereignty. This applies even if he is exempted from every law of his country indefinitely, as was Augustus who, even though he was princeps of the Roman people—that is, the first person of the commonwealth—prevented to be below the people taken collectively in whom the commonwealth's sovereignty lay. For the most part, accordingly, he brought his legislative proposals to the people since it was the people not Augustus who made law, and when it came to electing magistrates, he shook the hands of citizens by way of recommending his candidates to the people. But someone who holds the rights of sovereignty should not be bound by the command of any other person, a point that was put very pithily by Tiberius when he told the Senate, 'The only reason this can be is that none is given (Non aliter ratio constat, quam si nulli reddatur). He was speaking of the sovereign right of giving law not only to individuals, but to all collectively, and of abrogating laws already made, which cannot be done by someone who is bound by the commands and orders of another.'
23 The quotation of Tiberius is from Tacitus, Annales, 1, 6. As McRae [g., n.] points out, the source has uni rather than nulli (which may or may not change the meaning of a cryptic remark).
24 Et à la derogatoire des derogatoires is omitted at L85, B6. The meaning of the French seems unclear.
ancient laws, whether the law [to be amended] had been published by the same prince or by his predecessor. For it is well known that the laws, ordinances, letters patents, privileges [132], and concessions of princes, have force only during their lifetimes unless they are ratified by the express consent, or at least the sufferance, of a prince who is cognizant of them. This especially applies to privileges. This explains why Bartolus de Saxoferrato, when he was sent on an embassy to the emperor Charles IV to obtain confirmation of the privileges of Perugia, obtained the confirmation, but with the clause included, “Until such time as they may be revoked by our successors,” since he [Charles] could do nothing to prejudice their rights.* This was the reason why Michel de l'Hôpital, the chancellor of France, refused to seal the confirmation of privileges and exemptions from taille of Saint-Maure-les-Fossés, even though he had been ordered to do it (by Charles IX). It was because they conferred a perpetual exemption, which is contrary to the nature of personal privileges and diminishes the power of successor princes. And privileges cannot be given to corporations and guilds except for the lifetime of the prince who grants them, even if the word perpetual is used, which it never is in the democratic and aristocratic states.²³ This is why the emperor Tiberius, Augustus’ successor, ordered that privileges granted by deceased emperors should not have any effect if their successors had not confirmed them. For, as Suetonius reports, those who had been given privileges wanted to have their exemptions taken as perpetual unless the grant had been (expressly) limited to a definite period of time. We also see that upon the advent of a new king in this kingdom, all the guilds and communities ask for confirmation of their privileges, powers, and jurisdictions – the Parlements and sovereign courts²⁶ as well as particular officials.

If the sovereign prince is thus exempt from the laws of his predecessors, much less is he bound by laws and ordinances that he has made himself. For although one can receive law from someone else, it is as impossible by nature to give one’s self a law as it is to command one’s self to do something that depends on one’s own will. As the law says, Nulla obligatio consittere potest, quae a voluntate promitterit statum caipir – which is a rational necessity and clearly demonstrates that a king cannot be subject to the laws. Just as the pope never ties his

*²⁶. Cz adds, “even if this clause had not been added.”
**²⁶. No obligation can exist that depends on the will of the person promising.”
On sovereignty

whether with or without an oath, as is any private individual. And just as a private individual can be relieved of a promise that is unjust or unreasonable, or burdens him too much, or was put upon him to his substantial loss through trickery, fraud, error, force, [134] or reasonable fear, so for the same reasons can a prince, if he is sovereign, be relieved of anything that involves a diminution of his majesty. And so our maxim stands. The prince is not subject to his own laws or to the laws of his predecessors, but only to his just and reasonable contracts in the observation of which his subjects in general or particular subjects have an interest.

Here many commentators mistakenly confuse the prince’s laws with his contracts, which they call laws, and mistaken also is he [Pedro Belluga] who takes what are called compacted laws (lois pactiones) in the Estates of Aragon to be contracts of the prince. When the king makes an ordinance at the request of the Estates and receives money for it, or a subsidy, they say that the king is bound by it, and as for other laws that he is not bound. Nevertheless they admit that the prince can override it if the reason for the law should cease. This is true enough, and well founded in reason and authority. But there is no need for money and an oath to oblige a sovereign ruler if the subjects to whom he has given his promise have an interest in the law being kept. For the word of the prince should be like an oracle, and his dignity suffers when one has so low an opinion of him that he is not believed unless he swears, or is not [expected to be] faithful to his promises unless one gives him money. Nevertheless the force of the legal maxim still remains. A sovereign prince can override a law that he has promised and sworn to keep if it ceases to be just without the consent of his subjects, although it is true that in this case a general derogation does not suffice unless a special derogation goes along with it. But if there is no just cause to set aside a law that he has promised to maintain, the prince ought not and cannot [justly] contravene it.

On the other hand, he is not bound to the contracts and oaths of his predecessors unless he is their heir. And this is the ground on which

the Estates of Aragon complained to King Alphonso that he had changed and altered the money of Aragon to gain a profit, that this was to the extreme disadvantage of his subjects and foreign merchants, and that it was contrary to a promise made by James I, king of Aragon, in April 1265 and confirmed by King Peter in 1336, who swore to the Estates that he would never alter the money. For this the people, by way of recompense, [135] promised the king one maravedis per hearth every seven years to be paid by all those whose worth came to fifteen maravedis, [a coin] which is equal to half a barden. Now it is clear that the kingdom of Aragon goes by heredity to males and also to females; yet the purpose of the convention between the prince and the people ceasing, as well as of the subsidy for which the kings of Aragon passed the ordinance that I have mentioned, the prince is no longer bound by it, any more than the people are bound to pay the subsidy imposed if the prince does not keep his promise.

It is essential, therefore, not to confuse a law and a contract. Law depends on him who has the sovereignty and he can oblige all his subjects [by a law] but cannot oblige himself. A contract between a prince and his subjects is mutual; it obligates the two parties reciprocally and one party cannot contravene it to the prejudice of the other and without the other’s consent. In this case the prince has no advantage over the subject except that, if the justice of a law that he has sworn to keep ceases, he is no longer bound by his promise, as we have said, which is a liberty that subjects cannot exercise with respect to each other unless they are relieved [of their obligations] by the prince.

Furthermore, sovereign princes who are well informed never take an oath to keep the laws of their predecessors, or else they are not sovereign. Someone will object, perhaps, that, before he is consecrated, the emperor, who has precedence over all other Christian kings, swears in the hands of the archbishop of Cologne to keep the laws of the Empire and the Golden Bull; to establish justice; to obey the pope; to maintain the Catholic faith; and to defend widows, orphans, and the poor. That in sum is the oath that Charles V took and which was sent to the pope by Cardinal Cajetan, the papal ambas-

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*“any more . . . keep his promise” is omitted at 1:87, C2.
†“sovereign” is omitted at 1:87, C10.
‡For “obey the pope” 1:87, D6 substitutes “courteously respect the sovereignty of the pope.”
On sovereignty

I have also learned that the oath found in the library of Beauvais is very similar and is by the same King Philip I.

But I have seen another version of our oath, in a very old little book in the abbey of St. Allier in Auvergne, *which reads, "I swear in the name of almighty God and I promise to govern well and duly the subjects committed to my care, and with all my strength to give (faire) judgment, justice, and mercy." This seems to be taken from Jeremiah (9, 24) where it is said, "I am the great God eternal who gives (fai) judgment, justice, and mercy, and in these things I take special delight." This shows at a glance that the oaths contained in a printed book recently published on the coronation ceremony entitled Sacre du Roy have been much changed and altered from their ancient form. But one can see in either [of the above] version[s] of the oath that there is no obligation to keep the laws unless right and justice would be affected adversely (sincere tant que le droit et la justice souffrira). Indeed it seems that the ancient kings of the Hebrews did not take any oath at all, not even those who were consecrated by Samuel, Elijah, and others.

But some kings take a more restrictive oath (serment plus strict) like the oath of Henry III, king of France and Poland, which runs as follows:

Ego Henricus Rex Poloniae, etc. iuro Deo omnipotenti, quod omnia iura, libertates, privilegia publica et privata, iuri communi non contraria, ecclesiis, principibus, baronibus, nobilibus, civibus, incolis per meos praedecessores Reges, etc. quosqueque principes dominos regni Poloniae iussu donata, ab ordinibusque tempore interregni statuta, sancta, nobis oblatia, observabo, [137] etc. iustitiamque omnibus incolis iusta iura publica administrabo. Et si (quo abint) sacramentum meum violaveris, nullam nobis incolae regni obedientiam praestare dehabet, etc. sic me Deus adiuverit.†

*For "But I have seen... Auvergne" L88, B6–9 substitutes, "Both these oaths have a priestly aroma about them. But I have copied, from the very ancient archives of a library in Auvergne, the purest and best form of oath that can be devised and I recommend it for all kings to admire and imitate."
†"unless right and justice would be affected adversely" is omitted at L88, C6.
‡ Henry, king of Poland etc., swear by almighty God that I will observe all rights, liberties, and privileges public and private not contrary to common law that have been justly granted to churches, princes, barons, nobles, citizens, and inhabitants by the kings my predecessors or by any princes who were lords of the kingdom of Poland, including those established, confirmed, and presented to us by the Estates during the interregnum;
On sovereignty

As for laws which concern the state of the kingdom and its basic form, since these are annexed and united to the crown like the Salic law, the prince cannot detract from them. And should he do so, his successor can nullify anything that has been done in prejudice of the royal laws on which the sovereign majesty is founded and supported.*

One might still object that when Henry V, king of France and England, married Catherine of France, the sister of Charles VII, he swore that he would maintain the Parlement in its liberties and sovereign prerogatives, and that he would administer justice in the kingdom in accordance with its rights and customs. The words here are from the treaty, entered into on 21 May 1420, naming a successor to the crown of France. My answer is that they made him take this oath because he was a stranger coming to a new kingdom, the legitimate successor (Charles VII) having been set aside by a decree of the Parlement of Paris, with Charles absent and in contempt, because of the murder of John of Burgundy, which decree was pronounced at the marble table in the presence of the princes and with the sound of a trumpet.†

But as to general and local customs that do not concern the foundations of the kingdom, it is the custom not to change anything in them without having duly assembled the Three Estates of France as a whole, or of each bailiage in particular.† But this does not mean that their advice must be taken, or that the king cannot do the opposite of what is asked if natural reason and the justice of what he wants support him. It is thus that the grandeur and majesty of a truly sovereign prince is manifested — when the Estates of the people are assembled and present requests and supplications to their prince in all humility, without having any power to command or decree, or even a right to deliberate (my voix deliberative), and whatever the king pleases by way of consent or dissent, command or prohibition, is taken for law, for edict, or for ordinance.

Hence those who have written on the duty of magistrates and other such books are mistaken in holding that the Estates of the people are [198] greater than the prince. It is an opinion that leads subjects to revolt from the obedience they owe their sovereign prince, and there is neither reason nor any basis whatsoever for it unless the king is a captive or insane. For if a sovereign prince is subject to the Estates, he is neither prince nor sovereign, and the state is neither a kingdom nor a monarchy, but a pure aristocracy of many lords with equal power, where the greater part commands the smaller part collectively, and each individual particularly. Edicts and ordinances would then have to be issued in the name of the Estates, and be commanded by them as in an aristocracy where the person who presides has no power and has to obey the orders of the governing body — all of which is absurd and inconsistent [in a monarchy].*

Thus at the assembly of the Estates of this kingdom held at Tours [1484], at a time when King Charles VIII was under age and the Estates had more authority than ever, we see Relfi, the orator who spoke for all of the Estates, begin his speech as follows:

Most high, most powerful, and most Christian king, our sovereign and natural lord. Your humble and most obedient sub-

*The French edition of 1570, octavo, Jacques du Puy, p. 137 (and this edition only, according to McRae, p. 95, note E6) adds: “and also pernicious. And on this pretext [of the people’s superiority] there are some who have sought to make the kingdom elective, with power in the Estates to take scepters and crowns away from the true successors in order to give them to the most factious and ambitious. This inevitably brings with it the ruin of kingdoms that were founded on a rule of succession as their solid foundation, as I pointed out at the Estates of France held at Blois in 1576 which I attended as a deputy sent by the Estates of Vermandois. For it is quite certain that the people as a whole can only petition, that the privy council can only deliberate, and that those who attend the privy council without having a seat in it can only give advice, while the king alone decides. For if it were otherwise, and the decision were in the hands of many, the marks of sovereignty would disappear, and the monarchy would be no more than an aristocracy or a democracy exposed to the dangerous scheming of the most mischievous and factious.” (Bodin does not reject election as inherently incompatible with the principle of monarchy, but only the idea that the power to elect entails a power to depose. His target here could well be François Hotman’s Francogallia [1st ed., 1573], which asserted that connection.)

†L89, D32–L89, A2 introduces a significant elaboration, “And if there is any distraction from these fundamental laws (leges imperii), the magistrates normally correct it once the prince is dead. They will not acknowledge any decree of his that goes against the fundamental laws, such as a diminution of the rights of sovereignty or a usurpation of the commonwealth’s domain.” (Thus an act against fundamental law by a previous king may be disallowed by the magistrates upon his death without an act of repeal by the successor.)

‡L89, B3–E2 omits mention of the Estates-General and speaks only of the “convocation of the Estates of each community (nautaque civitatis ordinibus convocatis).” This, however, may have been an oversight, since the consultation of the Estates-General as ordinary practice is implied in the paragraphs that follow.
On sovereignty

jects, convened here by your command, appear before you and present themselves to you in all humility, reverence, and subjection, etc. And I have been charged by everyone in this noble assembly to express to you their good wishes, cordial affection, and firm determination to serve and obey you, and to give you support in all of your affairs, commands, and wishes.

In brief, in all of the speeches and discussions of the Estates there is nothing but subjection, service, and obedience. And the same applies to the Estates of Orléans [1559].

Nor can one say that they do differently in Spain. For the same expressions of submission and subjection, service and obedience, on the art of the entire people to the king of Spain as to their sovereign lord, may be found in the speeches of the Estates held at Toledo in 1552. Here too we find replies of the sovereign prince to the humble requests and petitions of the people with the words “We will” or “We have ordered,” along with other responses of this sort bearing the prince’s refusal or agreement. Indeed, the very tax that the people pay to the king of Spain is called “the service.” Hence [139] Pedro Belluga was mistaken when he said that the kings of Aragon cannot detract from the privileges of the Estates, in view of the privilege granted to them by King James in 1520 and confirmed in 1526. For just as the privilege ceased to be valid on the death of James I without confirmation by his successor, so the same confirmation by the other [and still later] kings is necessary in accordance with the legal maxim that one equal cannot command another (qui ne souffre pas qu’on puisse commander à son pareil).

Although in the Parliaments of the kingdom of England, which they hold every three years, the Estates assume a greater liberty, as is the wont with peoples of the north, yet in fact they too proceed only by supplication and request. In the English Parliament held in October 1560, all the Estates by common agreement had resolved, and gave the queen to understand, that they would not take up any business until she named a successor to the crown. She replied that they were looking to dig her grave before she died, but that all their resolutions would be of no effect without her will; and she did not do anything they asked, as I have learned from the letters of the English ambassador. Moreover, the Estates of England are never assembled, any more than are those of this kingdom or of Spain, but by letters patent and express commands emanating from the king, which clearly shows that the Estates have no power of deciding, commanding, or determining anything, seeing that they cannot meet or dissolve without an express command.

One might still say that ordinances made by the king of England at the request of the Estates cannot be repealed without calling the Estates. That is the common practice, and it is what is ordinarily done, as I have learned from Mr. Dale, the English ambassador, an honorable and learned man. But he has assured me that the king accepts or rejects laws as he sees fit, and does not hesitate to ordain law at his pleasure and against the will of the Estates, as did Henry VIII, who always invoked his sovereign power. For although the kings of England are not consecrated unless they swear to keep the ordinances and customs of the country, that oath must be related to what we have said above.35

[140] But someone may object that the Estates do not tolerate the imposition of extraordinary levies or subsidies unless they are granted and consented to in Parliament, in accordance with a decree of Henry I in the great charter,† a document in virtue of which the people have always prevailed against their kings. My answer is that other kings have no more power than the king of England. For there is no prince in all the world who has the power to levy taxes on the people at his pleasure any more than he has the power to take another’s goods,46 as Philippe de Commines wisely demonstrated at the Estates of Tours [1484] in a speech reported in his memoirs. If the need is urgent, the prince ought not to wait for the Estates to meet47 or for the consent of the people, since its welfare depends on the foresight and diligence of a wise prince. And we will speak of this in due course.48 But it is true that the kings of England, beginning with Henry I as we read in Polydore [Vigilii],49 have customarily asked for an extraordinary subsidy every three years and have almost always received it. Thus at the Parliament that met in April 1570, the queen of England obtained the equivalent of 500,000 gold crowns (escus) by consent of the Estates. And they do the same in the Spanish Estates.

*Lo9, D8 mentions the Spanish Estates along with the English.
†For “a decree of Henry I in the great charter” Lo9, D8 substitutes, “an ancient law of Henry I.” (This charter of the early twelfth century was taken as a precedent by the authors of Magna Charta, and Bodin seems to have run the two together in the French.)
‡Lo9, A8 adds “sometimes.”
On sovereignty

Here someone may object that the Estates of England have the power to punish. Thus Thomas and Henry Howard were condemned by the Estates at the indictment (poursuite) of King Henry VIII of England, and, even more remarkable, King Henry VI was sentenced by the Estates to be imprisoned in the Tower of London.¹ But I answer that this was done by the ordinary judges of England [seated] in the upper house of Parliament at the request of the lower house, which also presented a request to the upper house in 1271 for a determination that the Counts of Northumberland, Westmorland, and other conspirators had incurred the penalties established by the law of the land for the crime of treason. This clearly shows that the Estates, as a body, have neither power nor jurisdiction, but that the power lies in the judges of the upper house.² It would be as if the Parlement of Paris, assisted by the princes and the peers, were present as a separate body in the Estates to judge great cases.

One difficulty concerning the Estates of England still remains to be resolved [141], in that they seem to be empowered to command, resolve, and decide in great affairs of state. For when Queen Mary had them assembled to verify (faire passer) the articles dealing with her marriage to King Philip [of Spain], many disputes and difficulties were raised before the treaty was finally verified on 2 April 1554. The verification was in the form of a decree issued in the name of the Estates and in these words:

The above articles and that which depends on them having been examined by the Estates assembled in the Parliament met at Westminster Palace, it is declared: As for the disposition and conveyance of all benefices and offices, they are reserved to the queen, as also all the fruits, profits, rents, and revenues of her countries, lands, and lordships (seigneuries); and the queen alone and of herself shall enjoy the sovereignty of the said kingdoms, countries, lands, and subjects, absolutely after the consummation of the marriage: without the said prince being able to pretend, by the form of the courtesy of England,³ to the crown and sovereignty of the kingdom, or to any other right, preeminence, or authority. [It is also declared] that all mandates and letters patent shall pass under the name of the said prince and the queen conjointly; which letters signed by the hand of the

¹ Leis, 331, calls these "extraordinary judges appointed by the king."
² Bodin, note to p. 141, "by which the husband is usufructuary of his wife's goods if he survives her."
³ "certain general customs," Bodin, p. 141, "by which the husband is usufructuary of his wife's goods if he survives her."
On sovereignty

Estates. For a sovereign prince has to have the laws in his power in order to change and correct them according to the circumstances; just as the master pilot, said the jurist Sextus Caecilius, ought to have the rudder in his hand to move at his discretion if the ship is not to go down while waiting on the opinion of its passengers.

This is necessary not only for the sovereign prince, but sometimes also for the magistrate, as we have said of Pompey and the Decemvirs. That is why Augustus, after the battle of Actium, was exempted from the laws by the Senate, even though he was only the chief person of the state rather than a sovereign prince, as we shall explain in due course. After Vespasian, furthermore, the emperor was also exempted from the laws by what many think was an express law of the people that is still to be found at Rome engraved in stone and is called the royal law (lex regia) by the jurists. But it is not very likely that the people, who had lost all their power long before, now gave it to the stronger party.*

But if it is useful for a sovereign prince to have power over the laws in order to govern well, it is even more expedient for the governing body in an aristocracy; while for the people in a democracy, it is a logical necessity (necessaire). For the monarch is separate from the people, and in an aristocracy the nobles are separate from the commons. Hence in the one as in the other there are two parties — the person or persons that have the sovereignty on the one side, and the people on the other — which causes the difficulties that arise between them on the rights of sovereignty. But these disappear in a democracy. For if the prince or the nobles (seigneurs) who are in possession of the state are obligated to keep the laws, as many think, and cannot make law without the permission of the people or the Senate, then a law can also not be changed, legally speaking, without the consent of both parties — which cannot happen in a democracy since the people is but one body and cannot oblige itself.

Why then, it will be asked, did the Roman people swear to keep the

[*] "After Vespasian... stronger party." Lq2, C5-9 is more precise and coherent. "Later on, Vespasian is said to have been exempted from the laws not only by the Senate, but also by the people, and sovereign power to have been transferred to him in its entirety by the royal law (lege regia) which is mentioned in the Digest as having been passed concerning his authority (imperio) and which, inscribed in marble, is still extant at Rome.

Yet it seems ridiculous to speak of the people passing a royal law since Tiberius had completely removed the rights of assembly and of voting that had been left to the commoners (plebs) by Augustus."

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laws? Dio [Cassius] writes that this was a new custom introduced at the request of a tribune (Saturninus), and then continued for all laws even when they were unjust and absurd. But this does not resolve the difficulty. I would say that each person took the oath as an individual, something which all collectively could not have done since an oath, properly speaking, is rendered only by a lesser to a greater. In a monarchy, on the contrary, each individual and the entire people as a body must swear to keep the laws and take an oath of loyalty to the sovereign monarch, who does not himself owe any oath except to God alone, of whom he holds his scepter and his power. For an oath always implies reverence towards the person to whom it is given or in whose name it is taken, which is the only reason why a lord does not take an oath to his vassal even though the obligation between them is mutual.

But if it is true that a sovereign prince owes no oath except to God, why did Trajan take an oath to keep the laws before a consul who remained seated while he stood? The answer is twofold. In the first place, he swore an oath only when he took the consulsiphip and, like every magistrate newly entering an office, swore it on the first day of the new year, after making a sacrifice in the Campidoglio, before the highest magistrate to be found [144] in the city. And Trajan sometimes took the consulsiphip in addition to his imperial title, as the other emperors also did. In the second place, the early Roman emperors were not sovereign, but only chiefs and first citizens, who were called principes. This form of state, in appearance aristocratic but monarchical in practice, was called a principatus. The emperor's [only] prerogative was to be the first in dignity, honor, and precedence, although in fact the majority of emperors were tyrants. Indeed, one day, when some foreign kings were arguing about their nobility and grandeur at his table, Calligula quoted the verse from Homer, Ouk agathon he polukoiranien eis koironos esti basilon — that is to say, "It is not expedient to have many rulers, and there is need for but one king," and he was not very far, says Suetonius, from taking the diadem and changing the form of state, which was a principate, into a kingdom. Now it is clear that in a principate, the captain or prince is

* The definition of a principate is run together in this sentence with a critique of its practice as a sham. The confusion is removed at Lq3, B2-3 which substitutes, "A principate is understood to be a form of aristocracy in which one person has precedence over all the rest in dignity, as at Venice." The Latin fails, however, to include the possibility that, technically at least, a principate, as Bodin defines it, could also be a form of democracy.
On sovereignty

not sovereign, any more than is the duke at Venice, as we shall explain in due course.

But even when one acknowledges that the emperors had effectively usurped sovereignty, as they surely had, it is no surprise that Trajan, who was one of the best princes that ever existed in this world, swore to keep the laws, even though he was exempt in his capacity as prince. It was to provide his subjects with an example of scrupulous observance. And previous to him no emperor had ever done this. This is why Pliny the Younger, speaking of Trajan’s oath, exclaimed, “Behold something strange and never seen before: the emperor swearing to keep the laws . . . !” – which shows that it was very new. Theodoricus, later, wishing to gain the favor of the Senate and the Roman people, followed Trajan’s example, as we read in Cassiodorus. Ece, says Theodoricus, Traiani nostri clarum seculis repansom exemplum: iurat tibi; per quem iuratis.* And it is likely that other princes have turned this into a custom, and take an oath at their coronation, even when they have the sovereignty of right by succession.**

It is true [145] no doubt that the kings of northern peoples³⁶ take oaths that detract from their sovereignty. In fact, the nobility of Denmark held up the coronation of King Frederick II in August 1559 until he had solemnly sworn that he would not execute a nobleman or confiscate his property unless the accused had been tried by the Senate; that all gentlemen would have jurisdiction and the power of capital punishment over their subjects without appeal and without the king having any share of fines and confiscations; and that the king would have no power to bestow any office without the consent of the Senate.† All of these are arguments showing that the [present] king of Denmark is not a sovereign. But this is an oath that was initially forced from the lips of Frederick, grandfather of the present Frederick, during his war against King Christian of Denmark, who died in prison at the age of twenty-five; and it was confirmed by Christian, Frederick’s father, who took the same oath. And so that he

would not be able to break his oath, the nobility concluded an alliance with the city of Lubeck, and also with King Sigismund Augustus of Poland, who had hardly anything more in the way of sovereignty than the king of Denmark.

But it has to be one way or the other. The prince who swears to keep the civil laws either is not sovereign or else becomes a perjuror if he violates his oath, which a sovereign prince will have to do in order to annul, change, or correct the laws according to the exigencies of situations, times, and persons. Or else, if we say that the prince, without ceasing to be sovereign, is still bound to take the advice of the Senate or the people, he will also have to be dispensed by his subjects from the oath he took to keep the laws inviolate; and the subjects who are bound and obligated to the laws, both individually and collectively, will also need a dispensation from the prince on pain of being perjured. Sovereignty will thus be tossed up and back between two parties, and sometimes the people, sometimes the prince will be the master – which are egregious absurdities and utterly incompatible with absolute sovereignty, as well as contrary to the laws and to natural reason.

Nevertheless, we see highly knowledgeable commentators maintaining that princes should be required to take an oath to keep the laws and customs of the land. [146] By doing this they weaken and degrade sovereign majesty, which should be sacred, and produce an aristocracy, or even a democracy. It also happens that the sovereign prince, seeing that they would steal what is his and subject him to his own laws, exempts himself at last not only from the civil laws, but also from the laws of God and of nature, treating them as all the same.

It is especially important, therefore, to clarify this point. For someone could still object that by the law of the Medes and the Persians, edicts of the king were irrevocable. Even though the king of the Medes wished to exempt Daniel from the capital punishment mandated by the edict he had violated, the princes demonstrated that an edict could not be revoked since that was not permitted by the law of the land. And Daniel was in fact thrown to the lions. If, then, the greatest monarch on earth could not abrogate the edicts he had made, our positions on sovereign power are ill founded. Furthermore, the limitation in question can occur not only in monarchies, but also in a democracy like Athens. Thucydides shows that the Peloponnesian War began because of an edict made by the Athenian people which
removed the right of landing at the port of Athens from the Megarians. After they [the Megarians] lodged a complaint with the allies over this outrage to the law of nations, the Spartans dispatched an embassy to the Athenians to ask them to revoke the edict. Pericles, who was then all-powerful in Athens, replied to the ambassadors that the laws of the Athenians expressly provided that edicts published and hung up on the pillars could never be repealed. If that is true, the people was bound not only by its own laws, but also by the laws of its predecessors.

Furthermore, the emperor Theodosius decided that edicts should be made with the consent of all the Senators. And in the ordinance of King Louis XI of France concerning the creation of an order of knights, Article 8 expressly states that the king will not undertake wars or any other momentous and dangerous enterprises without informing the knights of the order so that they might hear and make use of their counsel and advice. This also is why the edicts of our kings have no effect unless they are published, verified, and registered in the Parliament* with the consent of the procour general and the approval of the [high] court. It is also a maxim of English law, invariably observed, that all ordinances affecting the foundations of the state (portans coup à l’estat) will be questioned, unless they are authorized by the Parliament of England.

I answer that these objections do not invalidate the rule of public law that we have postulated. As to the [supposed] law of the Medes, it was purely a malicious falsehood (pure calomnie) raised against Daniel by courtiers who were offended by the sight of a foreign prince raised up so high in their land and to a rank not far from the king’s own majesty. The king went along with it only to see whether the God of Daniel would protect him from the sentence, which He did; whereupon the king had Daniel’s enemies thrown into the den of hungry lions, which shows that he was not subject to the civil laws of his country. We can also see this in the fact that Darius Mmemon, acting at the request of a young Jewish lady (Esther), repealed an edict in which he had ordered the extermination of the Jewish people.

As for Pericles, he was seeking to start a war so that he could escape indictment by his enemies, for so Theopompus and Timaeus attested, and Plutarch did not deny it. That is why he told the Spartan ambassadors that edicts once hung on the pillars could not be removed. But they paid him back in true Laconic fashion, saying that they did not want the edict to be taken down but only to have the tablet turned around.

If the edicts of the Athenians were irrevocable, why do we see an endless train of laws which they made in and out of season to bring in innovations? To prove that Pericles was imposing on the ambassadors, we need only look at the speech delivered by Demosthenes against Leptines, who had laid a proposal before the people asking for a perpetual and irrevocable edict thenceforth forbidding, on pain of death, the presentation of a request to the people for any privilege or exemption, with the same punishment for anyone who should speak in favor of repealing the edict. Demosthenes blocked his proposal on the spot by showing that the people, in granting this edict, would obviously strip itself not only of its prerogative of conferring exemptions and privileges, but also of its power to make and repeal laws as the need arose. In Athens there was also a people’s action against infringement of the laws that could be brought against anyone who tried to get the people to pass an edict contrary to the laws already received, as we know from Demosthenes’ speeches. But that never prevented good and advantageous new laws from being preferred over old, unjust ones. Similarly, the general edict providing that a fine once adjudged by the people should never be reduced was revoked many times — once, notably, in favor of Pericles, and again in favor of Cleomedon and Demosthenes, each of whom had been condemned by different judgments of the people to a fine of thirty thousand crowns (escus). It is also said that in this kingdom a fine once paid, whether justified or not, is never remitted, and yet one often sees the contrary.

It is a mere manner of proceeding, always found in every state, that those who make the laws add such words as “by perpetual and irrevocable edict,” in order to give them greater weight and authority. In this kingdom the phrase “to all persons present and future” is put at the beginning of important edicts to indicate their continuing character to posterity. To make the difference even clearer between these edicts and others that are meant to be temporary, they seal the former in green wax with green and red silk ties, the latter [only] in yellow wax.

Nevertheless, none of these edicts are perpetual, any more than
On sovereignty

they were at Rome, where whoever published a law added at the end that it could not be altered either by the Senate or the people. If that was really effective, why did the people repeal laws from one day to the next? Cicero says:

You know that the tribune Clodius, in the law that he has published, had it state at the end that neither the Senate nor the people could detract from it in any way. But it is well known that no one has ever paid attention to the clause, ut nec per Senatum, nec per populum lex infrimiari possit.* Were it otherwise, no law would ever be repealed, since there is none that does not bear that clause, which, however, is regularly set aside.†

This is even better stated in the speech of Fabius Ambustus against [149] a veto by the tribunes, who maintained that the people could not choose two nobles as consuls in defiance of the law that required one of them to be a commoner. Fabius said that by the law of the Twelve Tables,‡ the last decree of the people was the strongest.†

It is thus evident that the Persians, Medes, Greeks, and Latins use the same formula to validate their edicts and ordinances as do our kings, who sometimes affix the clause, "without it being possible hereafter for us or our successors to detract from it," or "without regard to any [future] abrogation which from this time forth we have declared void." Nevertheless, there is simply no way, as we have said, to give one's self a law that one cannot get out of. For the edict made later always bears an express abrogation of the [clause forbidding] abrogations. Solon, not wanting to make the Athenians keep his laws forever, was content to order them to be kept for a hundred years. Yet soon afterwards, while he was still alive and present, he was to see most of them altered.

As for the verification of edicts on the part of the Estates or the Parliament, it is of great importance for making sure that they are kept.

*"that this law cannot be annulled either by the Senate or by the people."
†"Were it otherwise ... set aside." Ly6, C3-10, which gives Cicero's language exactly, is more pointed: "nam ex id esse, nulla esse abrogatur posset, saepe enim silla est, quae non ipsa se suscipiat difficultate abrogationis. Sed ex ilium abrogatur. Ille ipsum abrogaturistic (For if this were so, almost no law could be repealed since there is none that does not formally itself by putting up some obstacle to repeal. But when the law is repealed that clause is repealed as well)."
‡"the last decree of the people was the strongest." Ly6, D3-4 directly quotes the law as it is given in Dig., I, 3 (de legis), 28: "Quod postremum suisset populus id natum esto (What the people has decreed last, let it be valid)."
§"It is more capricious and foolish to repeal your own decrees than those of others." Ly7, B3-6 adds: "Yet it is one thing to do something of one's own accord, quite another to be bound to do it out of obligation."

Book I, chapter 8

But this is not to say that a sovereign prince cannot make law without it. And so Theodosius [II] says _humanum esse_ (it is the civilized thing)* to indicate that the consent of the Senate _non tam necessitatis est, quam humanitatis_. † And the same applies to the saying that it is seemly for a sovereign prince to keep his own law,‡ for there is nothing that makes him more feared and revered by his subjects, whereas, on the contrary, there is nothing that more abases the authority of his law than his own contempt for it. As an ancient Roman senator said, _Lexius est, et vanius sua decreta tollere quam illam._§

But if the prince forbids killing on penalty of death, is he not then bound by his own law? I say that this law is not his law but the law of God and of nature, to which he is more strictly bound than any of his subjects, from which he cannot be dispensed either by the Senate or the people, and for which he is always answerable to the judgment of God, whose inquiry, said Solomon, is very rigorous; and this is why Marcus Aurelius said that magistrates judge private persons; princes, magistrates; and God, princes. Such is the opinion of two princes who have [150] always been estimated as among the wisest ever, and I shall add this remark of Antigonus, king of Asia, who hearing a sycophant say that everything is justified for kings, said "Yes! For kings who are barbarians and tyrants." The first to practice this kind of flattery was Anarchus towards Alexander the Great, whom he led to believe that the goddess Justice sat on the right hand of Jupiter in order to show that everything princes do is just. But soon afterwards he had occasion to experience that justice, having fallen into the hands of his enemy, the king of Cyprus, who had him broken on an anvil. Seneca said just the opposite: _Caesar cum omnia licet, proprius hoc minus licet._¶

Hence those who state it as a general rule that princes are not subject to their laws, or even to their contracts, give offense to God

*Refers to the opening words of Cod. I, 14, 8, which Bodin cites.
†"is not so much of necessity as civility." Ly7, A7 notes that this remark is an interpretation by Baldus in his commentary, In omnem Codicis libros, in I, humanum, de legisbus (Cod., I, 14, 8).
‡"it is seemly for a sovereign prince to keep his own law" paraphrases a celebrated line in Cod., I, 14 (de legis. et const. prince.), 4, called _digna voto_, which Bodin cites in the French and quotes verbatim at Ly7, A3-4: "Digna voto maiestate, regionis legisbus aliquotum principiis se profici (It is an expression worthy of a ruler's majesty for the prince to profess that he is bound by the laws)."
§"It is more capricious and foolish to repeal your own decrees than those of others." Ly7, B3-6 adds: "Yet it is one thing to do something of one's own accord, quite another to be bound to do it out of obligation."
¶"Cesar, permitted all, is on that account permitted less."
BOOK I, CHAPTER 10
On the true marks of sovereignty*

[211] Since there is nothing greater on earth, after God, than sovereign princes, and since they have been established by Him as His lieutenants for commanding other men, we need to be precise about their status (qualité) so that we may respect and revere their majesty in complete [212] obedience, and do them honor in our thoughts and in our speech. Contempt for one’s sovereign prince is contempt toward God, of whom he is the earthly image. That is why God, speaking to Samuel, from whom the people had demanded a different prince, said "It is me that they have wronged."

(478)

To be able to recognize such a person – that is, a sovereign – we have to know his attributes (marques, nota), which are properties not shared by subjects. For if they were shared, there would be no sovereign prince. Yet the best writers on this subject have not treated this point with the clarity it deserves, whether from flattery, fear, hatred, or forgetfulness.

We read that Samuel, after consecrating the king that God had designated, wrote a book about the rights of majesty. But the Hebrews have written that the kings suppressed his book so that they could tyrannize their subjects. Melancthon thus went astray in thinking that the rights of majesty were the abuses and tyrannical practices that Samuel pointed out to the people in a speech.¹ "Do you wish to know," said Samuel, "the ways of tyrants?* It is to seize the goods of subjects to dispose of at his pleasure, and to seize their women and their children in order to abuse them and to make them slaves." The word mishpaim [Hebrew] as it is used in this passage does not mean rights, but rather practices and ways of doing things. Otherwise this good prince, Samuel, would have contradicted himself. For when accounting to the people for the stewardship that God had given him, he said, "Is there anyone among you who can say that I ever took gold or silver from him, or any present whatsoever?" And thereupon the whole people loudly praised him for never having done a wrong or taken anything from anyone no matter who.

Among the best known Greek writers, there is not one who has written anything on this subject except for Aristotle, Polybius, and Dionysius of Halicarnassus. But they have been so brief that one can see at a glance that they offer no clear resolution of this question. I will repeat the words of Aristotle. "There are," he says, "three parts of a state, one in deliberating and taking counsel; another in creating officers and establishing the duties of each; and the third in rendering justice." Even though he says "parts of the state," we must take him to be speaking of the rights of sovereignty, unless we are to admit that he never spoke of sovereignty at all, for there is only [213] this passage. Polybius too fails to define the rights and marks of sovereignty. But he does say, speaking of the Romans, that their state was a mixture of royal power, aristocratic lordship, and popular liberty, because the people makes the laws and elects the officers; the Senate makes arrangements for the provinces, administers the finances, receives ambassadors, and deals with all the highest matters; and the consuls have a prerogative of honor that is royal in form and dignity, especially in wartime when they are all-powerful.† It thus appears that he touched on all the principal points of sovereignty since he is saying that those who hold them have sovereignty. But on this subject Dionysius of Halicarnassus seems to have written better and more clearly than all the others. For he says that King Servius, wishing to strip the Senate of its power, gave the people the power to

*The French speaks of marks (marques) of sovereignty as though the problem was to show the ordinary subject how to discern which of the many authorities placed over him was entitled to ultimate obedience. But since the distinctive marks of a sovereign in Bodin's account are a state of juridical prerogatives (and not force or ceremonial honors per se), the idea perhaps is better expressed by the Latin (L. 147, C2) iura (rights or prerogatives).

*For "tyrants" L.147, L7 substitutes "princes," which makes much better sense.
†Bodin refers generally to Histories, Book VI. L.148, C1 adds that the consuls have the power "to convene the Senate and the people and to conduct warfare (Bellum...generi) at their own discretion."
On sovereignty

make and repeal laws, to declare war and make peace, to appoint and remove officers, and to take appeals from all the magistrates. In another place, speaking of the third conflict at Rome between the nobility and the people, he says that the consul M. Valerius told the people that it ought to be content with having the power of making laws, appointing officers, and hearing cases as the court of last resort, and that the rest belonged to the Senate.*

Subsequently, the jurists expanded this list of rights (the modern much more than the ancient) in treatises which they call "Regalian Rights," and which they have filled with an infinity of minutiae that are shared by dukes, counts, barons, bishops, officers, and other subjects of sovereign princes.† This results in their using the term "sovereign prince" for dukes like those of Milan, Mantua, Ferrara, and Savoy, and indeed even for various counts. All of them have made this error, which is, no doubt, very easily mistaken for the truth. For who would not deem someone sovereign who gives law to all his subjects, makes peace and declares war, provides (jouant) all the officers and magistrates of the land, levies taxes and exempts whom he pleases, and pardons persons who deserve to die? What more could one desire in a sovereign prince?

Such persons thus have all the indicia (marques) of sovereignty, and yet we have shown above‡ that the dukes of Milan, Savoy, Ferrara, Florence, and Mantua hold [214] of the Empire, and that the most honorable titles they can take are those of princes and vicars of the Empire. We have shown that they receive their investiture from the Empire and that they render fealty and homage to it – in short, that they are natural subjects of the Empire, being natives of lands subject to it. How then could they be sovereign absolutely? How indeed can someone be sovereign who recognizes the jurisdiction (justice) of someone greater than himself – of someone who quashes his verdicts and corrects his laws, and punishes him if he behaves abusively? We have shown that Galeazzo I, the viscount of Milan, was accused of

*†‡L.48, C.1 adds, "He thus appears to have touched on the chief heads of sovereignty."

† For "Subsequently the jurists expanded ... sovereignty princes" L.48, C.1–D.3 substitutes, "This appears to have touched upon the chief heads of sovereignty which modern jurists, in their rambling disquisitions, have confused with the duties of magistrates and made into powers shared with dukes, counts, bishops, and provincial governors." The French thus objects to the triviality of the minor rights taken up in these treatises, the Latin to confusion about the central rights of sovereignty. The latter seems more appropriate in context.

48

Book I, chapter 10

treason, found guilty in fact and law, and condemned by the emperor for having levied taxes (tailles) on his subjects without permission, and died in prison. And if some by permission, others by sufferance, and still others by usurpation, do things that go beyond the power they were given, does it follow that they are sovereigns, seeing that they themselves admit that they are vicars and princes of the Empire?* They would rather have to cast out these titles as well as the title of duke and the rank of "highness," and, calling themselves kings, employ the title of "majesty," which cannot be done without disavowing the Empire, as did Galvagno, viscount of Milan, who was severely punished for it. We have also shown that, by the treaty of Constance [1183], the cities of Lombardy remained subject to the Empire. In short, we have shown how intolerable absurdities would follow if vassals were sovereigns, especially when they have nothing that is not held of someone else. For this is to equate the lord and the subject, the master and the servant, him who gives the law and him who receives it, him who commands and him who owes obedience.

Since this is impossible, we have to conclude that dukes, counts, and all of those who hold of another or receive laws or commands from another, whether by force or legal obligation, are not sovereign. And we will say the same of the highest magistrates, lieutenants-generals of kings, governors, regents, dictators. No matter how much power they have, if they are bound to the laws, jurisdiction, and command of someone else, they are not sovereign. For the prerogatives of sovereignty have to be of such a sort that they apply only to a sovereign prince. If, on the contrary, [215] they can be shared with subjects, one cannot say that they are marks of sovereignty. For just as a crown no longer has that name if it is breached, or if its rosettes are torn away, so sovereign majesty loses its greatness if someone makes a breach in it and encroaches on a part of its domain. This is why, in the exchange of the lands of Mantes and Meulan for Montpellier between King Charles V and the king of Navarre, the rights of the crown (droits Royaux) are articulated [in the contract] and are said to belong to the king in their entirety, and to him alone.

By the same reasoning all [the jurists] agree that the rights of the crown (droits Royaux) cannot be relinquished or alienated, and cannot be prescribed by any period of time.* And if it should happen that a

*†‡L.49, D.6–7 adds, "which is why Baldus calls them the holy of holies (sacra sacraeum) and Cyno [da Pistoia] inseparable entities (individual)." For an extended list of legal
On sovereignty

sovereign prince does share them with a subject, he would make a companion of his servant and, in so doing, would cease to be sovereign. For the notion of a sovereign (that is to say, of someone who is above all subjects) cannot apply to someone who has made a subject his companion. Just as God, the great sovereign, cannot make a God equal to Himself because He is infinite and by logical necessity (par demonstration necessaire) two infinites cannot exist, so we can say that the prince, whom we have taken as the image of God, cannot make a subject equal to himself without annihilation of his power.

This being so, it follows that the [distinctive] mark of sovereignty is not to do justice, because that is shared by prince and subject, nor is it to establish or remove all officers, because both the prince and subject have that power too. This applies not only to officers serving in the administration of justice, police, war, or finance, but also to those who have command in peace or war. For we read that the consuls in the early days of the Republic appointed military tribunes who were like marshals in the army, and that the person whom they called the interrex appointed the dictator while the dictator appointed the master of the horse. And in every state where the administration of justice goes with fiefs, the feudal lord appoints officers and can remove them without cause unless they have received their offices by way of compensation. Our verdict is the same as to the rewards and punishments that magistrates and captains, quite as much as a sovereign prince, give to those who have earned or incurred them. Giving rewards or punishments [216] according to desert is not a mark of sovereignty since it is common to the prince and to the magistrate, even though the magistrate has this power from the prince. Taking counsel on affairs of state is also not a mark of sovereignty. It is properly the task of the privy council, or senate, of the commonwealth, which is always kept distinct from the sovereign, especially in a democracy, where sovereignty resides in the assembly of the people. Far from being appropriate for the people, deliberation on affairs ought not to be allowed to it at all, as we shall explain in due course.

We can thus conclude that not one of the three points laid down by Aristotle is a distinctive mark of sovereignty. And as for what Dionysius of Halicarnassus and Book I, chapter 10 of M. Valerius, in the speech he made to the Roman people to calm their discontents, argued that the people ought to be content with the power to make the laws and create the magistrates – that does not go far enough to make us understand what the rights of sovereignty are, as I have pointed out above in discussing the creation of magistrates. For we would say the same of the laws that a magistrate can give to persons within his jurisdiction, provided that he does nothing contrary to the edicts and ordinances of his sovereign prince. To clarify this point, we must assume that the term "law," used without qualification, signifies the just command of the person or persons who have full power over everyone else without excepting anybody, and no matter whether the command affects subjects collectively or as individuals, and excepting only the person or persons who made the law.

To speak more strictly, law is the command of the sovereign affecting all the subjects in general, or dealing with general interests, as Festus Pompeius said, whereas privilege is directed to a few individuals. If it [the measure] is from the privy council, or senate, of a commonwealth, it is called a senatusconsulium – a decree of the privy council or ordinance of the Senate. If the common people at Rome (plebs) issued a command, they called it a plebiscitum, or command of the commons, although it was ultimately called a law after a number of struggles between the commoners and the nobility. In order to settle these conflicts, the entire people, meeting in the comitia centuriata (l'assemblee des grands etats),7 passed a law at the request of M. Hortatus, the consul, that the nobility and the Senate as a whole, and each one of the people taken individually [217], should be bound to keep the ordinances of the commons without appeal and without permitting the nobility to have a voice. And since the nobility and the Senate paid no attention to this, the same law was renewed and published again and yet again at the request of Quintus Hortensius

*"And as for what Dionysius of Halicarnassus said . . . person or persons who made the law." L.150, Bp-C8 is somewhat clearer: "And as for what Dionysius of Halicarnassus wrote of the consul, M. Valerius, [who said] that the power of making laws and creating magistrates was in the people – even that, as we have said, is not enough for identifying the rights of sovereignty. For the power of making law is not truly sovereign unless we mean the prince's law, since magistrates also have laws of their own, which they can make for persons within their jurisdiction so long as they contain nothing in conflict with the prince's laws. To make this even clearer, let us define laws in the strict sense as just commands of the sovereign power, whether it be in the hands of one, of all, or of a few."
and Publilius Philo, both dictators, and from then on, they no longer said *plebiscitum*, or ordinance of the common people, but used the term “law” without qualification for any of the commoners’ commands. Whether the scope was public or particular, or whether the commoners were convened to appoint judges or themselves to judge, what they did was spoken of as law.

As for commands of magistrates, they are not called laws, but edicts only. *Est enim edictum issum magistratus,* says Varro. These bind only those who are within his jurisdiction, provided that the commands do not conflict with the ordinances of higher magistrates or with the laws and commands of the sovereign prince. These commands, moreover, remain in force only as long as the magistrate continues in office, and since all magistrates were annual in the Roman Republic, edicts were valid for a year at most. This is why Cicero, indicting Verres, said, *qui plurimum edicto tribunui, legem annuam appelluit, tu plus edicto completeris quam lege.* And because the emperor Augustus styled himself only *imperator*, or commander-in-chief, and tribune of the people, he called his own ordinances edicts, but those made by the people at his request were called *leges Iulii.* Since other emperors adopted this way of speaking, the word edict was gradually taken to mean law when it came from the mouth of the person who had sovereign power, no matter whether it was for everyone or a single individual, or whether the edict was continuing or temporary. It is thus an abuse of words to call a law an edict. However, this may be, it is only sovereign princes who can make law for all subjects without exception, both collectively and individually.

Objection will be made that the Roman Senate had power to make law and that most of the great affairs of state, in peace as well as war, were in its hands. We shall speak later on of the power of the senate, or privy council, of a commonwealth — as it ought to be and as it was at Rome. But to reply in passing to the objection I have mentioned, I say that the Roman Senate, from the expulsion of the

*An edict is the command of a magistrate.*

†L. 151. A1 adds, “or Senate decree.”
‡L. 151. As-8 adds, “And so successors in a given office were expected to approve or disapprove previous edicts, and if there was anything in conflict with the laws or beyond the jurisdiction of the incumbent who had ordered it, it was not ratified.”
§ “Those who attribute the most to an edict call it a law lasting for a year, but with you an edict goes even further than a law.”
* Book III, chapter 1 (not translated here).

kings up to the emperors,* never had the power to make law, but merely certain ordinances that were valid only for a year and did not bind the assembly of the commoners, much less the assembly of the entire people. Many commentators are mistaken on this point, including even Conon, who says that the senate had the power to make permanent laws. For Dionysius of Halicarnassus, who had diligently studied the commentaries of Marcus Varro, wrote that decrees of the Senate no force at all if the people did not authorize them, and that even if they were authorized, they were valid only for a year unless they were published in the form of a law. Nor was it any different at Athens, where decrees of the senate were [also] annual, as Demosthenes says in his speech against Aristocrates. And if it was an affair of great consequence, they brought it to the people to dispose of as it saw fit, which led (the philosopher) Anarchus to observe that “at Athens the wise propose, and fools dispose.”

Thus the Senate only deliberated; the people gave commands — as one can see in Livy, who so often uses the formula *Senatus decretit, populus iussit.*† This holds even though the magistrates, and even the tribunes, usually accepted what the Senate did on sufferance if it did not strike at the power of the common people (*plebis*) or the sovereignty of the Estates (*populi*). The ancient Romans put it clearly when they said *Imperium in magistratibus, auctoritatem in Senatu, potestate in plebe, maiestatem in populo.*‡ For the term “majesty” is appropriate only for the person whose hand is on the rudder of sovereignty.

Although the *lex Iulia de maiestate*, made by the people at the request of the Emperor Augustus, held that anyone who struck a magistrate while performing the duties of his office was guilty of *lèse majesté*, and although in Latin histories, and even in the jurists, one constantly encounters phrases such as *maiestatem Consulis, maiestatem Praetoris,*§ this is nevertheless an improper way of speaking. In our [French] laws and ordinances, the crime of *lèse majesté* does not apply to dukes, princes, or magistrates of any sort, but only to the sovereign

*For “up to the emperors” L. 151, C4–5 substitutes, “up to the dominate of Tiberius Caesar.” (At one point, Tiberius did in fact make a show of enhancing the force of Senate decrees.)
† “The Senate decreed, the people ordered.”
‡ “Command [is] in the magistrates, authority in the Senate, power in the common, and sovereignty in the people.”
§ “The majesty of the Consul, the majesty of the Praetor.”
prince. And the ordinance of King Sigismund [219] of Poland, issued in 1538, states that the crime of _lœse majesté_ will not apply beyond his person, which is in accord with the true and proper signification of the term _lœse majesté_. This is also the reason, it seems, why the dukes of Saxony, Bavaria, Savoy, Lorraine, Ferrara, and Mantua do not include the term “majesty” among their titles, but rather “highness,” and the duke of Venice, “serenity.”

This last, by the way, is a prince (princeps) properly so called, which is to say “the first.” For he is nothing but the first among the gentlemen of Venice, and has no more than the privilege of speaking last when decisions are made in any council at which he is present. And just as at Rome the edicts of magistrates obligated every private individual provided that they did not conflict with Senate decrees; and decrees of the Senate did not bind the magistrates if contrary to the ordinances of the commoners; and ordinances of the commoners were above decrees of the Senate; and a law of the assembly of all the people was above everything – so at Venice the ordinances of magistrates obligate private individuals according to the scope and jurisdiction of each magistrate, but the corporation or college of the

Ten is above the individual magistrates, the senate is above the Ten, and the Great Council, which is the assembly of all the gentlemen of Venice above the age of twenty, has sovereignty above the senate, such that, if the Ten are divided,* they appeal to the Council of Sages, which numbers twenty-two, and if these cannot agree, the Senate is assembled, although if the affair involves high prerogatives of sovereignty, they convene the Great Council. Accordingly, when the Ten pass an ordinance, the words _In Consiglio Di Diari_ are used, and if the Sages were present, _Con La Giunta_ is added. If the ordinance is by the senate, the formula is _In Pregadi_; if the assembly of Venetian gentlemen, _In Consiglio Maggiore_. All their laws and statutes are made in these three† corporations or colleges. But ordinary affairs of state are dealt with by the Seven, which they call the governing body (segnorit).†

It is thus by sufferance only that the Ten or the senate make ordinances, and these obtain the force of law only in so far as they are

*For “divided” L.152, C.2 substitutes, “equally divided.”
†For “But ordinary affairs . . . governing body” L.152, D.2 substitutes, “except for the matters that the Seven (which is the most secret council of the state) have customarily decided on their own.”

found just and reasonable, just as the edicts of the ancient Roman praetors, if they were equitable [220] and just, were renewed by their successors and over time received as laws, although new praetors were not obligated to keep them and were always empowered to make others. But the jurist Julian decided to collect a goodly number of what he thought were the best of these edicts, and after interpreting and editing them in ninety books, he presented them to the emperor Hadrian as a gift. As a reward, the emperor made him the high prefect of Rome; subsequently his [grand]son became emperor. Hadrian also had these edicts ratified (homologues) by the Senate, and added his own authority to give them the force of laws. Nevertheless, the name “edict” persisted, and that has led many [jurists] to make the mistake of regarding these edicts as ordinances made by the praetors.* Justinian did pretty much the same with the edicts collected and interpreted by the other jurists, ratifying those he liked and rejecting the rest, the name “edict” still remaining. Yet it is no more an edict than if a sovereign prince should ratify the opinions of Bartolus or the ordinances of his magistrates. That sort of thing has been done many times in this kingdom when our kings, finding various ordinances and decrees of the Parliament especially equitable and just, have ratified them and caused them to be published with the force of laws.

This shows that the power of the law lies in him who has the sovereignty and who gives force to the law through the words, “we have said and have ordained, we do say and ordain, etc.,” and who adds the charge at the end with the words, “and so we lay this command upon all etc.” This is what the [Roman] emperors expressed when they said _Sanctus_ (we enact), which was the word belonging to majesty. Thus the consul Posthumius, in a speech that he delivered to the people, said _Nego iniussu populi quiquam sancti posse, quod populum teneat._† Also the magistrate putting a request before the people began with the words, _Quod bonum, faustum, felixque sit vobis ac republibae velitis, inbeatis._‡ And at the end of the law came the words

*For “these edicts as ordinances made by the praetors” L.152, A.3 substitutes, “these laws as edicts of the praetor.” (The French appears to be superior.)
†“I deny that any enactment can be made without the order of the people that would be binding on the people.”
‡“May you wish and may you command what is good, auspicious, and favorable for yourselves and for the commonwealth.”
On sovereignty

*Sic quis adversus ea fecerit, etc.*, which was called the sanctio (enactment) and contained the rewards and punishments of those who should fulfill or violate the law respectively. [221] These are special formulae that went with the majesty of those who had the power to make law, and were not to be found in the edicts of magistrates or in the decrees of the Senate. In addition, the penalty attached to the laws of a sovereign prince is very different from that found in the ordinances of magistrates or of guilds and corporations. These can inflict penalties and fines within certain limits. But only a sovereign prince can attach the death penalty to his edicts, which was forbidden to the former by an ancient decree of the Parlement. The clause on arbitrary punishment affixed to the ordinances of magistrates and governors never goes so far as to include the death penalty.

We may thus conclude that the first prerogative (marque) of a sovereign prince is to give law to all in general and each in particular. But this is not sufficient. We have to add “without the consent of any other, whether greater, equal, or below him.” For if the prince is obligated to make no law without the consent of a superior, he is clearly a subject; if of an equal, he has an associate; if of subjects, such as the senate or the people, he is not sovereign.† The names of grandees (seigneurs) that one finds affixed to edicts are not put there to give the law its force, but to witness it and to add weight to it so that the enactment will be more acceptable. For there are very ancient edicts, extant at Saint Denys in France, issued by Philip I and Louis the Fat in 1060 and 1129 respectively, to which the seals of their queens Anne and Aïx [Adelaide of Savoy], and of Robert and Hugh, were affixed. For Louis the Fat, it was year twelve of his reign; for Adelaide, year six.

When I say that the first prerogative of sovereignty is to give law to all in general and to each in particular, the latter part refers to privileges, which are in the jurisdiction of sovereign princes to the exclusion of all others. I call it a privilege when a law is made for one or a few private individuals, no matter whether it is for the profit or the loss of the person with respect to whom it is decreed. Thus Cicero said, Privilegium de meo capite latum est. “They have passed,” he said, “a capital privilege against me.” He is referring to the authorization to put him on trial deceed against him by the commoners at the request of the tribune Clodius. He calls this the lex Clodia in many places, and he bitterly protests that privileges could be decreed only by the great Estates of the people (the comitia centuriata, that is, the entire people) as it was laid down by the laws of the Twelve Tables in the words: Privilegia, nisi comitii centuriatis irrogant, qui secus fami capital esin.* And all those who have written of regalian rights agree that only the sovereign can grant privileges, exemptions, and immunities, and grant dispensations from edicts and ordinances. In monarchies, however, privileges last only for the lifetime of the monarchs, as the emperor Tiberius, Suetonius reports, informed all those who had received privileges from Augustus.†

Someone may object not only that magistrates have the power of making edicts and ordinances, each within his competence and jurisdiction, but also that private persons make the customs, which can be as general as well as local. Custom, surely, has no less power than law, and as the prince is master of the law [it is objected], private persons are masters of the customs. I answer that custom acquires its force little by little and by the common consent of all, or most, over many years, while law appears suddenly, and gets its strength from one person who has the power of commanding all. Custom slips in softly and without violence; law is commanded and promulgated by power, very often against the subjects’ wishes; and for that reason Dio Chrysostom compares custom to a king, law to a tyrant. Law, furthermore, can repeal customs, while if custom should detract from law, the magistrate, and those who are charged with making sure the laws are kept, can have the law enforced whenever they see fit. Custom carries neither rewards nor penalties; law always attaches rewards or penalties, unless it is a permissive law that removes the prohibitions of another law. To put it briefly, custom has no force but

*“Let no privileges be imposed except in the comitia centuriata; let him who has done otherwise be put to death.”* L.154, A2–3 adds, “Privileges that confer an advantage, however, are more correctly spoken of as benefits (beneficia).”

†L.154, A6–B1 adds, “If someone should object against me that magistrates often grant exemptions from the law, and that at Rome the Senate did so very frequently, I will answer him with the saying of Papinius: ‘We should look not to what is done at Rome but to what ought to be done (Non quid Romanis fiat, sed quod fieri debuit, spectandum esse). Yet by the lex Cornelia urbana, the Roman Senate was forbidden to grant anyone exemption from the laws unless two hundred senators were present, an exception that seems to have been conceded to the Senate because assembling the entire people was so difficult.”

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*†For “idem” L.123, C substitutes, “law.”
‡For “he is not sovereign.” L.153, C6–9 substitutes, “he has given up supreme authority.”

56
by sufferance, and only in so far as it pleases the sovereign prince, who can make it a law by giving it his ratification. Hence the entire force of civil law and custom lies in the power of the sovereign prince.

So much, then, for the first prerogative of sovereignty, which is the power of giving law or issuing commands to all in general and to each in particular. It cannot be shared with subjects, for even if a sovereign prince [223] should give certain individuals the power to make laws having the same force as if he had made them himself, as did the people of Athens for Solon and the Spartans for Lycurgus, still the laws were not the laws of Solon or of Lycurgus, who were only the commissioners and agents of those who had given them this office, but were the laws of the Athenian and Spartan peoples. In aristocratic and democratic states, a law ordinarily bears the name of the person who has prepared and drafted it, but who is nonetheless a mere agent, the ratification of it belonging to whoever has the sovereignty. Thus we see in Livy that the entire people was assembled to ratify the laws drawn up in twelve tables by the ten commissioners appointed as agents for that purpose.

Also comprised in this power of making and repealing law is its clarification and correction when it is so obscure that the magistrates find it perverse or intolerably absurd for the cases brought before them. The magistrate, however, can bend the law and its interpretation, either to soften or to toughen it, provided that in bending it he takes good care not to break it, even if it seems very harsh. If he does otherwise, the law condemns him to infamy. It is in this sense that we ought to understand the law called *Laetoria* that Papinian reports without naming its author, which permitted the great praetor* to supplement and correct the laws, for if one understands this otherwise, it would follow that a simple magistrate was above the laws and that he could obligate the people to obey his edicts, which we have shown to be impossible.

This same power of making and repealing law includes all the other rights and prerogatives of sovereignty, so that strictly speaking we can say that there is only this one prerogative of sovereignty, inasmuch as all the other rights are comprehended in it — such as declaring war or making peace; hearing appeals in last instance from the judgments of any magistrate; instituting and removing the highest officers; impos-

* *Boedon apparently means the praetor urbicus. See L.155, B1.*
On sovereignty

So much then concerning the principal points of sovereign majesty, on which I have been as brief as possible, having treated this subject more amply in my book, De imperio. And since the form and state of a commonwealth depend on who holds the sovereignty, let us see how many sorts of commonwealth there are.

BOOK II, CHAPTER 1

Of the kinds of state in general and whether there are more than three

Now that we have spoken of sovereignty, and of the rights and marks thereof, we have to see, in any given commonwealth, who has sovereignty in order to determine what its state is. If sovereignty lies in a single prince, we will call it monarchy; if all of the people have a share, we will say that the state is democratic (populaire); if it is only the lesser part of the people, we will hold that the state is aristocratic. We will employ [only] these terms in order to avoid the confusion and obscurity arising from the variety of good or bad rulers which has prompted many to distinguish more than three kinds of state. For if that opinion prevailed, and the state of a commonwealth were determined by some standard of virtue or vice, there would be a world of them. But it is clear that to have true definitions and resolutions in any subject matter, one must fix not on accidents, which are innumerable, but on essential differences of form. Otherwise one could fall into an infinite labyrinth which does not admit of scientific knowledge. One would be coining types of state not only from the whole range of virtues and vices, but also from things that are morally indifferent, such as whether the monarch was chosen for his strength, or for his good looks, or for his height, or for his nobility [of birth], or for his wealth, which are all indifferent things. Or one could ask whether he was chosen king for being the most warlike, or the most peaceable, or the wisest, or the most just, or the most magnificent, or the most learned, or the soberest, or the humblest, or the simplest, or the most chaste; and so, going on this way with all the other qualities, one would arrive at an infinity of monarchies. And the same would be true of the aristocratic state, depending on whether the lesser part of
On sovereignty

the people held sovereignty as the richest, or the noblest, or the wisest, or the most just, or the most warlike; or held for a corresponding range of vices or other (moral) indifferent qualities—which is absurd. Hence the opinion that gives rise to such absurdity should be rejected.

Since, therefore, an [accidental] quality does not alter the [essential] nature of things, we shall say that there are only three states, or three kinds, of commonwealth—monarchy, aristocracy, and democracy. The term “monarchy,” as we have said, applies when a single individual has the sovereignty and the rest of the people have only to look on; “democracy,” or popular state, when the whole people, or the greater part thereof, have sovereign power as a body; an “aristocracy,” when the lesser part of the people has sovereignty as a body and gives law to the rest of the people both collectively and individually.

The ancients all agreed that there were three forms at a minimum; but some added a [253] fourth compounded of these three. Plato, to be sure, added a fourth form in which the good were sovereign, which properly speaking is a pure aristocracy, but did not accept the mixture of the three [basic types] as a form of state. Aristotle accepted Plato’s [additional form] and also the mixture of the basic three; and thus arrives at five forms. Polybius has seven forms—three commendable, three perverted, and one compounded of the first three. Dionysius of Halicarnassus, along with Polybius’ first three, has a fourth compounded of those three, and around the same time Cicero and, after him, Thomas More in his Utopia, Contarini, Machiavelli, and many other authors have held the same opinion. This opinion, however, is very old, and does not begin with Polybius, who nevertheless gets credit for it, or with Aristotle, because four hundred years earlier it was brought to light by Herodotus, who said that many took it for the best form of state, even though he holds that there are only three and that all the others are imperfect.

And were it not that reason has forced me to maintain the contrary, the authority of such great figures might have overwhelmed me. Strong reasons must be given, therefore, to show that their opinion is mistaken, and that is best accomplished by refuting their own reasonings and examples. They state it as a fact that the Spartan, Roman, and Venetian states were compounds in which royal, aristocratic, and democratic power were subtly blended with each other. Indeed, when Plato wrote that the best form of state was a compound of democracy and tyranny, he was abruptly repudiated by his disciple Aristotle, who said that nothing solid could come of that, and that it is better to construct a state compounded of all three together. Here, however Aristotle contradicts himself. For if the mixture of two states is bad—that is, the mixture of two extremes (which, in every other domain, combine to form a mean)—the mixture of three would be even worse. And inasmuch as this notion [of a mixed state] can incite great troubles in commonwealths and have extraordinary consequences, it has to be examined closely. For when states are contrary to each other, as are monarchy and democracy, contrary laws and ordinances must be established in consideration of the form of state.

The wisest and best informed citizens of Florence had accepted [254] the opinion of the ancients and believed that the best state was a mixture of the three basic forms. When it was decided, on the advice of Pier Soderini, to give control of the state to the people, they did not want the dregs of the commons to have a share of sovereignty, but only the [descendants of the] oldest houses, as they called the residents of the first and second circles of the town walls, and the richest class of citizens. They would not [even] allow the great council of those who were to share in sovereignty to have cognizance of all the state’s affairs, but only the power to make laws, create officers, and dispose of the resources of the public treasury; everything else was to be managed by the privy council and the magistrates. This they thought was to mix the three kinds of state. But if a single state could thus be compounded of all three, it would surely have to be wholly different from any one of them, just as we can see that the harmonic proportion, which is composed of the arithmetic and geometric, is entirely different from either of these. The same holds for the mixture of natural substances, where the combination of two simple elements has a special virtue of its own completely different from the simple elements of which it is composed. But the mixture of the three
basic forms of state does not produce a different kind. The combination of royal, aristocratic, and democratic power makes only a democracy.3

This outcome might appear to be avoided if sovereignty were given to the monarch on day one, and the lesser part of the people had power on the day following, and after that the entire people. Each one of the three would thus have its turn at being sovereign, just as the senators of [early] Rome, on the death of a king, had sovereign power for a certain number of days, each one in turn. Yet even so, there would be only three kinds of state. And they would not last long, any more than a badly organized household where the wife commands the husband as the head and then each of the servants in succession.

But [really] to combine monarchy with democracy and with aristocracy is impossible and contradictory, and cannot even be imagined. For if sovereignty is indivisible, as we have shown, how could it be shared by a prince, the nobles, and the people at the same time? The first prerogative of sovereignty is to give the law to [255] subjects. But who will be the subjects and who will obey if they also have the power to make law? And who will be able to make a law if he is himself constrained to receive it from those to whom he gives it? But if no one in particular has the power to make law, and the power resides in all together, then it follows of necessity that the state is democratic.4 Or if we give the people power to make the laws and create the officers, and forbid it to meddle in the rest, we would still have to admit that the power granted to the officers belongs to the people, and is conceded to the magistrates only as a trust, which the people is as much entitled to end as to create, so that the state will always be democratic.

To verify what I have said, let us take the very examples that Polybius, Contrarini, and others have left us. They say that the Spartan state was compounded of three because there were two kings, the senate of twenty-eight which embodied aristocracy, and the five ephors which represented democracy. But how would they answer...41

"But who will be the subjects ... state is democratic." L176, C11-D4 comes to a conclusion more consistent with the premises of Bodin's example: "But what citizens would allow themselves to be bound by a command against their will if they at the same time had the power to coerce its maker? Indeed if they do obey willingly, their own sovereignty is lost. But if both parties refuse to take commands, and no one obeys or commands, it will be not commonwealth but anarchy, which is worse than the cruellest tyranny."
On sovereignty

expelled. They left the name of king to a priest whom they called the king of sacrifices because he was charged with performing certain sacrifices which the king alone used to perform before. But even then he was subject to the high priest, and he cold not, as Plutarch tells us, have any office or magistracy, something which was possible for all the other priests. The same was done by Lycurgus with the two kings of Sparta, who were no more than senators, having only the right to vote without any power of command. On the contrary, they were required to obey the orders of the ephors, who often condemned them to monetary fines, and sometimes even to death, as they did kings Agis and Pausanias. Hence sovereignty lay in the people who had full power to confirm or invalidate the decrees and counsels of the senate. Thucydides, furthermore, refutes the error of those who thought that the kings had two votes each.

But a hundred years later the state as Lycurgus had reformed it was altered by kings Polydorus and Theopompus because the people were difficult to assemble, and too often reversed the most solemn decrees of the senate. They changed [557] the democratic state into an aristocracy by craftily exploiting an oracle of Apollo which they twisted to support the project. It was inferred from the oracle that the Senate of the Thirty should henceforth be all-powerful in affairs of state, so that the senators became sovereign lords. To appease the people and make it forget what was being taken from it, the kings proposed that the five ephors, who were chosen from the people, should act like tribunes for the purpose of preventing tyranny. Every nine years, in fact, the ephors scanned a clear sky if they saw a shooting star, says Plutarch, they put their kings in prison and did not let them out until the oracle of Apollo said they should. This is what was done with the king of Cuma by the phylactes, or jailer, who put him in prison every year and did not let him out until the senate ordered it, as we read in [Plutarch's] Aphorisms of the Greeks. The Spartan state lasted thus for five hundred years until the time of Cleomenes, who killed the ephors and removed power from the thirty nobles. Although Antigonus, king of Macedonia, took over the state

*"To appease the people... preventing tyranny." L178, A10-84 elaborates and modifies this. "That the people should not grieve for the power taken from it, it was decided that five ephors taken from the commoners should be created who would examine the statements, acts, and projects of the kings and do anything they had to do in order to prevent them from slipping into tyranny." (The Latin makes it clear that the ephors could control the kings but, unlike the tribunes at Rome, could not control the Senate.)

Book II, chapter 1

after defeating Cleomenes and quickly restored it to what it had been before, twenty years afterwards it fell into the hands of Nabis the tyrant. After he was killed by Philopomen, the commonwealth was annexed to the Achaean state until it was liberated by the Romans thirty years later.

This in a few words is the true history of the Spartan state, which Plutarch put together by going through all the local archives. It is a story that has not been properly understood before - not by Plato, nor by Aristotle, nor by Polybius, nor by Xenophon; and that is the reason why many commentators mistakenly thought that it was a mixture of the three forms of state. The reality is evident from the reply that Nabis the First, tyrant of Sparta, gave to Q. Flaminius: Noster legumator Lycurgus, non in paeorum manu rempublicam esse voluit, quem vos senatum appellatis, ne enim reum aut alterum ordinem in civitate, sed per acquationem fortunae ac dignitatis fore credidit, ut multi essent, qui pro patria arma ferrent.* Ever though he was trying to disguise a tyranny that was completely contrary to what he said, he was nevertheless telling the truth as to what Lycurgus had done. But let us go on.

The partisans of the mixed constitution have also [258] adduced the Roman state as an example, which they say was a mixture of the royal, democratic, and aristocratic states. The proof thereof, says Polybius, is that one sees royal power in the consuls, aristocracy in the Senate, and democracy in the Estates of the people. Dionysius of Halicarnassus, Cicero, Contarini, and various others have followed this opinion, which is nonetheless implausible. In the first place, royal power cannot exist in two individuals; monarchy, being something unified in its very nature, can never have an associate, or else, as we have shown, it is a kingdom and a monarchy no longer. Indeed, it would make better sense to attribute the status of a monarch to the duke of Genoa or the doge of Venice. And what royal power could there have been in two consuls who had no power to make law, or peace, or war, or to create a magistrate, to grant a pardon, to spend a single penny of the public treasury, or even to condemn a citizen to be whipped unless in time of war? Since this last was always given to every captain-in-chief, they too would have to be called kings, and with more plausibility than the consuls who held power only by turns

*"Our lawgiver, Lycurgus, did not want the commonwealth to be in the hands of a few, which you call a senate, nor did he want one or the other order to stand higher in the citizen body, but believed that by equalizing fortunes and honors there would be a large number of people who would bear arms for their country."
and for a year.* The constable in this kingdom, the first pasha in Turkey,† the bethuda in Ethiopia, and the edegnar in the kingdoms of Africa have ten times more power than the two consuls together, and yet they are the slaves and subjects of their princes, just as the consuls were the servants and subjects of the people. And how can anyone say that the consuls had royal authority in view of the fact that the least tribune of the people could throw them into prison? Thus the tribune Drusus had the consul Philippos seized by the collar and thrown into prison for interrupting his speech to the people.

The power of the consuls was to lead the armies, to convene the Senate, to receive the letters of captains and allies and transmit them to the Senate, to provide ambassadors with an audience before the people or the Senate, to convene the great Estates [comitia centuriata], and to ask the opinion of the people on the creation of officers or publication of laws. Yet they always remained standing as they spoke, with their maces (masses, fascet) lowered to indicate subjection, as they faced the people who were seated. In the absence of the consuls, furthermore, the highest magistrate who was present at Rome had the same power. In addition, the consuls had power only for a year. But I shall pass over [259] the opinion [that the consuls were royal] since it is hardly worth refuting.

As for the Senate, which they say had a species of aristocratic power, it had so little that almost every privy council† that ever existed had more. It had no power of issuing commands either to private individuals or to magistrates, and could not even assemble legitimately unless at the pleasure of the consuls. During the year of his consulate, Caesar assembled the Senate only once or twice, and went to the people for everything he wanted; and it was not at all uncommon for the consul to act as he pleased, against the Senate's advice. Even when the authority (auctoritas) of the Senate was at its highest point ever, the consuls, so we read, refused to act when the Senate, finding a public emergency, petitioned them to name a dictator. The Senate, without the power to command and having neither serjeant nor licor, which are the true marks of those having power to

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**For “Since this last ... and for a year” L.779, AK-Bt substitutes, “As for Polybius’ point, that consuls had the power of capital punishment (pudicit ius) over soldiers, it is no wonder, since this right is and always has been shared by praetors, military tribunes, and every legion commander in order to maintain military discipline. In addition, the consuls had power only for a year and on alternate days.”**

**“Tribunes of the people, the Senate calls upon you in this time of great danger to the commonwealth to invoke your power and compel the consuls to appoint a dictator.” The tribunes, speaking as a body, declared that the consuls would pay heed to the Senate’s request or they would have them led away in chains.”**

**‘If he was unwilling, then the tribunes. The consul said he would not ask the people; the praetor he forbade to ask; and so the tribunes asked it.”**

**‘I do not see how the Senate can act on the Campanians without an order from the people.”**

**‘Let a proposal be put before the people by which the Senate would be empowered to decide on the Campanians.”’**

**‘Our will and our command is whatever the majority of those present in the Senate shall decide.”’**
On sovereignty

Tum Flavius, a vobis peto Tribuniplebes, ut mihi auxilio sitis.* This makes it very clear that the Senate had no power except by sufferance of the tribunes and the people. And he who has nothing but by sufferance, as we said above, does not have anything at all. To sum it up: there is no decision on affairs of state, and especially no advice or decision of the Senate, that had any force or strength whatsoever if the people did not order it, or the tribunes of the people did not consent to it. This is something that we have touched upon above and which we will treat more elaborately in our chapter on the Senate.

There is thus no doubt whatever that, after the expulsion of the kings, the Roman state was democratic except for a period of two years when the ten commissioners (decemviri), created to reform the customs, changed the democracy into an aristocracy — or, to put it more accurately, into an oligarchy, which was then overthrown by a conspiracy. I said above that the power of magistrates, no matter how great it might be, does not belong to them and that they have it only in trust. Well, it is certain that at the beginning the people elected the senators and then, to relieve themselves of the trouble, gave a commission for this purpose to the censors, who were also elected by the people, so that the entire authority of the Senate was held of the people (dependoit du peuple), which was accustomed to confirm or disallow, ratify or set aside the decrees of the Senate at its pleasure.

Contarini passed the same judgment on the Venetian state, saying that it is a mixture of the three forms of state just like Rome and Sparta. For the royal power, he says, is in the duke of Venice, the aristocratic in the senate, and the democratic in the Great Council. Since then, however, Giannotti has cast light on the true state of the Venetian commonwealth and has given clear evidence, drawn from the ancient archives of Venice, that [261] Contarini was very much mistaken. Giannotti shows that the Venetian state was a pure monarchy only during the three hundred years previous to Sebastian Ciano's becoming duke, whereas Contarini holds that it was established as we now find it eight hundred years ago, and Paolo Manuzio says twelve hundred years. However this may be, it is certain that at present it is a true aristocracy. For of the fifty-nine thousand

three hundred and forty-nine Venetians who were counted twenty years ago (not including children under the age of six or those who ranked as gentlemen of Venice), it was only [these] four or five thousand gentlemen, young and old, who had a share in public life. Of this number, clerics and youths under twenty-five years of age were only onlookers and could not enter the Great Council, except that some juniors, who requested it, might be admitted at the age of twenty if they seemed to be more mature in judgment than the others. For a hundred years the Great Council, assembled to decide on important affairs, has not numbered more than fifteen hundred, with all the rest left out, as one can see from the histories of Sabellio and Cardinal Bembo. Sovereignty thus lies in a minority of the Venetians belonging to a particular group of noble families. For not all native-born gentlemen of Venice are admitted; among those of the same stock, the same race, the same name, some are citizens who do not attend the Great Council, while others do. I will not give the reason for this here since anyone can find it in Sabellio.*

The Great Council, says Contarini, has sovereign power to make and repeal laws, to install and remove all officers, to take appeals in the last resort, to decide on peace and war, and to pardon the condemned. Contarini thus contradicts himself. For if things are as he says, no one can deny that sovereignty in that commonwealth is aristocratic. It would be so, indeed, even if the Great Council had no other power than the right of creating officers. For whatever power the officers have, they hold of the ruling body, which suffices to show that the [council of] Ten, the Senate, the [council of the] Wise, and the duke with his six counsellors have power only on sufferance and only for as long as it pleases the Great Council. As for the duke, Contarini himself admits that he does not [even] have the power to summon anyone [262] before him, which is the most basic prerogative of the power to command and is given to the lowest magistrates. The duke, furthermore, can make no decision having to do with public affairs or justice except in the assembly of his six counsellors, or of the Ten, the Wise, the senate, the forty judges for civil or criminal cases, or the Great Council. Although he has entrée to all the guilds and corporations, he has only one vote like any other member; and he

*"Q. Fulvius... say openly in the Senate whether he would permit the Senate to decide as to the provinces and stand by its determination, or whether he would take it to the people. Scipio replied that he would do what was best for the state. Fulvius then said, 'I appeal to you, tribunes, for support.'"**

**"For not all native born...Sabellio" is omitted, perhaps because repetitious, at L.81, A8.
†L.81, B1–2 adds, "the law-making power and."
On sovereignty

dares not open any letter addressed to the government except in the presence of the six counsellors or the Ten, nor does he dare to leave the city (without authorization). The duke Marin Faliero was even hanged for having married a foreign woman without the advice of the council, and twelve other dukes of Venice were put to death for abusing their power, as one can read in Sabellico. Yet the duke wears a rich headcovering and a robe made of cloth of gold; he is attended, honored, and respected like a prince; and the coinage bears his name (although it carries the corporation's stamp). All these things, I conceded, suggest the status of a prince. But in practice, the duke has nothing in the way of power or right to command.

But if we were thus to judge the state of commonwealths by clothes and outward show, there would be none that was not mixed the way they say. Thus the German Empire would be much more of a mixture than Venice. The emperor has even more numerous and more significant prerogatives than the duke of Venice; the seven prince electors, together with the other princes, are a semblance of aristocracy or oligarchy; and the ambassadors of the imperial cities resemble a democracy. Nevertheless, it is quite certain that the state of the German Empire is a pure aristocracy composed of three or four hundred persons at the most, as we have explained above. The Swiss would also hold that their state is a mixture of the three regimes, the council exhibiting an aristocratic regime; the aedile, or burgomaster, representing the royal state; and the general and local assemblies the democratic state. Nevertheless, it is well known that all their commonwealths are either aristocracies or democracies.

Some have even dared to voice and print the opinion that the French state too is compounded of the three types of commonwealth — the Parliament of Paris embodying a form of aristocracy, the Three Estates embodying democracy, and the king representing the royal state — an opinion which is not only absurd but punishable by death. For it is lose majesty to make subjects the colleagues of a sovereign prince. What semblance of a democracy is there in the assembly of the Three Estates, where each individually and all collectively bend the knee and present humble requests and petitions, which the king accepts or rejects just as he sees fit? And what democratic counterweight against the monarch's majesty can there be in the assembly of the Three Estates — or indeed in the whole people

if it could be assembled in one place — which requests, petitions, and reveres its king? So far is such an assembly from diminishing the power of a sovereign prince that his majesty is much augmented and exalted by it. He cannot be elevated to a higher degree of honor, power, and glory than to see an infinite number of princes and great lords, and an innumerable populace of all sorts and human conditions, throwing themselves at his feet and paying homage to his majesty. For the honor, glory, and power of princes lie only in the obedience, homage, and service of their subjects.

There is thus not a shadow of democratic power in the assembly of the Three Estates as it exists in this kingdom, its function being no more and even less than in Spain and England. Much less is there any suggestion of aristocracy either in the court of peers or in the assembly of all the kingdom's officers, considering, above all, that the presence of the king causes the cessation of the power and authority of all corporations and guilds, and of all officials generally and individually, such that there is not a single magistrate who has power to command when he is present, as we shall explain in due course. With the king seated on his throne of justice, the chancellor turns to him first of all to learn his pleasure, and the king then orders the chancellor to gather the counsel and opinion of the princes of the blood and of the great lords, peers, and magistrates. This is not so that judgment may be given by majority vote, but only to acquaint the king with their counsel, which he may accept or reject at his pleasure. Most often he follows the opinion of the majority. But to make it understood that he did not have to, the chancellor, in announcing the decree, does not say "the council or the court says," but rather, "the king says unto you."

We also see that the court of Parliament, when writing to the king, still preserves the ancient form. At the heading of such letters we read "To our sovereign lord, the king": at the beginning "Our sovereign lord! With all possible humility we commend ourselves to your good grace"; and in signing at the very end, "Your most humble and obedient subjects and servants, the people holding your court of Parliament." This is the speech not of aristocratic lords or colleagues in authority, but of true and humble subjects. But since I have

*L.182, C.5 adds, "as is done in judicial panels."
On sovereignty

touched on this point above, I pass over it somewhat lightly here. France, then, is a pure monarchy unmixed with democratic power and still less with aristocracy.

Indeed, such mixture is completely impossible and contradictory. Aristotle, examining that opinion more closely in Book IV, chapter 8 of his Politics, indeed says that the term polis, or commonwealth, is used for a system that is compounded of aristocracy and democracy. But he does not say how this could be accomplished and does not give an example. On the contrary, in the tenth chapter of the same book, he admits that none existed in his time and that he had not found any that had existed earlier, even though he is said to have collected one hundred constitutions in a book that has been lost. On the other hand, he does say that Plato’s state was neither aristocratic nor democratic but a third form compounded of the two, for which he uses the generic name “commonwealth” [politeia], as I have said. Aristotle, however, never reported Plato’s true opinions. On the contrary, he invariably disguised them, as the members of the Academy very rightly noted. This is especially true when he was attacking Plato’s Republic, so that many who rely on what Aristotle said have been very seriously misled. Hence I shall take just a word or two to present Plato’s true opinion, which deserves to be understood since it helps us to comprehend the present question, to which one must add that some take his opinion as divine and others treat it under foot before they have even read it.

Plato constructed two states, the first of which he attributes to Socrates, [265] who, says Xenophon, never had the thoughts that Plato puts into his mouth. In the first of these states, he removes the words “mine” and “thine” as being the source of all evil, and would have all goods, women, and children held in common. But seeing how widely he was criticized for this, he quietly pulled back from it, as though he had written it only for purposes of discussion rather than to put it into practice. The second state, which is the one attributed to Plato, removes the community of goods, women, and children. For the rest, the two states are similar. In either of them Plato wants there to be no more than five thousand and forty citizens, a number that he chose because it had fifty-nine divisors (parties entières, divisoire). He then divides them into three estates – the guardians, the warriors, and the workers – and introduces three classes of citizens, which are unequal in property. As for sovereignty, he assigns it to the assembly of the entire people, for he gives the people as a whole the power of making and repealing law. This would be sufficient to conclude that the state is democratic, even if there were nothing else. But he goes on to give the assembly of the whole people the power of installing and removing all the officers and, not content with that, he also wants the people to have full power to judge all criminal cases since all the people, he says, have an interest therein. In short, he gives the people the power of life and death, of passing condemnations, and of granting pardons, all of which are clear indications of a democratic state.

For there is no sovereign magistrate who represents the royal state; and there is no form of aristocracy, since he would have the senate, or the council on affairs of state which he calls the guardians, composed of four hundred citizens elected at the pleasure of the people. This clearly shows that Plato’s state is the most democratic ever, and more so even than his native Athens, which is said to have been the most democratic state in all the world. I am leaving out the seven hundred and twenty-six laws that he set down for the governance of his commonwealth, since it suffices for my purpose to have shown that, with respect to the form of the state, Aristotle, Cicero, Contarini, and many others were mistaken in holding that Plato’s state was tempered and compounded out of the three forms, or at least of aristocracy and democracy.∗

We [266] shall conclude, then, that there is not now, and never was, a state compounded of aristocracy and democracy, much less of the three forms of state, but that there are only three kinds of state.† Herodotus was the first to say this, and Tacitus, who put it even better, said, Cunctas nationes et urbes populus, aut primores, aut singuli regunt.‡

Someone may object, however, that it might be possible to construct a state wherein the people creates the officers, disposes of expenditures, and grants pardons – which are three prerogatives of

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∗ “Aristotle, Cicero, Contarini ... aristocracy and democracy.” L183, D6–9 lays special blame on Aristotle, “Plato’s imagined state was not compounded of aristocracy and democracy as Aristotle claimed; Cicero, Contarini, and others in their turn took over his error, and led the rest, albeit in good faith, to make the same mistake.”

† “... but that there are only three kinds of state.” L183, D11–12 is significantly more emphatic, “and (a mixture) cannot even be imagined, but only the three basic forms are possible (at no opinione quidem fingi, sed tria suntum genera constitui posse).”

‡ “All nations and cities are ruled either by the people, or the nobles, or single individuals.”
On sovereignty

sovereignty; where the nobility makes the laws, decides on peace and war, and levies duties and taxes— which are also prerogatives of sovereignty; and where there exists in addition a royal magistrate above all others to whom the people as a whole and each person in particular renders fealty and homage, and who judges in the last resort without there being any means of appealing from his decision or presenting a civil request (requête civile) for a re-hearing. This, apparently, would be a way of dividing the rights and marks of sovereignty and composing a state that was aristocratic, royal, and democratic all at once. But I answer that no such state has ever existed and that none can be made or even imagined, because the prerogatives of sovereignty are indivisible. For the part that has the power to make law for everyone—that is, to command or forbid whatever it pleases without anyone being able to appeal from, or even to oppose, its commands—that part, I say, will forbid the others to make peace or war, to levy taxes, or to render fealty and homage without its leave; and he to whom fealty and liege homage is due will obligate the nobility and the people to render obedience to no one but himself. Hence it must always come to arms until such time as sovereignty resides in a prince, in the lesser part of the people, or in all the people.*

As an example, we can see how the Danish nobility ever since the time of Christian, the great-grandfather of the present King Frederick, has attempted to subject their kings. After conspiring against King Christian, they drove him from his throne, and put his cousin in possession on condition that he would not decide war or peace without permission from the senate, and would have no power (without the senate) to inflict the death penalty on any gentleman, along with many other restrictions of a similar sort which I shall set down in due course. From that time forth, the kings have sworn to observe these restrictions; and to make sure [267] that they do not break them, the nobility prevents the king from concluding any lastings

*"Hence it must always come to arms... all the people." L.184, B.6-C1 is more expansive. "And as each part will vigorously defend its own rights without yielding the rights it has assumed, this arrangement will be at odds with the nature of authority, in that the same person who has a supreme power of command will be compelled to obey someone else who is his subject. This makes it clear that, where the rights of sovereignty are divided between a prince and his subjects, a state of confusion must result in which the issue of ultimate control will be decided by force of arms until supreme power is in one man, in a few, or in the entire body of citizens."

104

Book II, chapter 1

peace (ne veut pas qu'il face la paix) and has formed an alliance against the king with the king of Poland and the rulers of Lubeck for the protection of their liberty. As a result, we might say that the king of Denmark and his nobility each have a share of sovereignty. But one can also say that this commonwealth has no assured reposes, any more than had the king of Sweden, who so distrusted the nobility that he had a German as his chancellor and a Norman gentleman named Varennes as his constable.*

Mixture, then, is not a state, but rather the corruption of a state. Hence Herodotus said that there are but three forms of commonwealth, and that the others are corruptions which are continually agitated by the storms of civil sedition until sovereignty is wholly lodged in one form or another.

It might still be objected that at Rome the lesser part of the people, chosen from the very rich, made the laws, elected the highest magistrates—that is, the consuls, praetors, and censors—had the sovereign power of life and death, and disposed of all matters having to do with war; that the majority of the people as a whole elected the lesser magistrates—namely, the ten tribunes of the people, the twenty-four military tribunes, the two aediles or escheuves, the treasurers, the officers of the guard and of coinage—and bestowed all vacant benefices; and that the majority of the people prior to Sulla adjudicated high criminal proceedings if they did not involve the penalty of natural or civil death. By this arrangement, it might be argued, the state was compounded of aristocracy and democracy, which is what the ancients called commonwealth [politeia, republica] in the strictest sense.

I grant that there is some semblance of truth in this, but I would still reply that the state was a proper democracy. It is true that the great Estates of the people [comitia centuriata] were divided into six classes according to personal wealth; that the equestrians,11 the majority of the senators and nobility, and the wealthiest segment of the people were all in the first class; and that, if just this class was agreed, a law that had been proposed was published and high magistrates that had stood for election were summoned to the estates

**"... king of Sweden... constable." L.84, D.6 elaborates. "The government of Sweden is tossed about by the same kind of storms and heavy seas. The king used to live in such fear of his nobility that King Henry had a French constable and a German chancellor, and yet he was finally driven from his throne and palace by the nobility and put in prison where he has now languished for seventeen years."
to take their oath. It is also true that the five remaining classes had ten
times more citizens, and in the event that the centuries in the first
class did not all agree, the second was consulted, [268] and so on
down to the sixth and last class, which contained the dregs of the
people. It is true that it did not often get to them. Yet to hold that
the state was democratic, it suffices that all the people had a share, even
though the rich and the noble were consulted first. Even so, the
ordinary people - that is, the great majority of the people not includ-
ing the nobility - seeing that its right to vote was vain, rose in so many
revolts in a span of less than twenty or thirty years after the kings were
expelled, and to ratify or annul everything that was recommended by
the Senate, as we have already said above. And it passed an ordinance
that the nobility should not attend the assemblies of the common
people, which is an indisputable argument for holding that the state
was one of the most democratic that ever existed. For once the
common people obtained the advantage of being able to make law, 13
the comitia centuriata (grands estates) made no more than a dozen laws in
four or five hundred years.*

* The version of early Roman constitutional history in this paragraph is corrected in L. 185, A 10–11: "Thus the sovereignty of the commune was in the body of the aristocrats and notables, since by far the largest part of the people was assigned to the sixth class, which was that of the poorest and the lowest. Indeed, the rest of the classes together contained barely a tenth of the citizens. Since this was the place of the commons in the assembly and since its opinion was never taken, it began to cause disturbances. The result was three secessions to the Aventine hill, to which the commons withdrew in arms in order to defend its liberty and power against the aristocrats. It could not be mollified until it was allowed to create sacred magistrates of its own, and to do so in the assembly by tribes (tribulis comitiis) from which the patricians were excluded. The commons, therefore, were quieted for a time by an arrangement in which the greater magistrates - the consuls, I say, praetors, and censors - were chosen in the assembly by centuries, that is, the aristocrats, while the lesser magistrates were chosen in the assembly by tribes, that is, by the commune. Under that arrangement, the state appears to have been in some sense mixed. But anyone who tried to understand this very brief period and the disturbances therein, which shook the foundations of the commune, would readily admit that the commune was barely able to endure twenty or thirty years of that regime, and then only in extreme wretchedness, and could not have stayed in it even that long were it not hemmed in by enemies on every side. Indeed the commons, shortly after, got hold of the power to make law, in which the sovereignty of the commune resides, and little by little they wrested control of the remaining rights of sovereignty from a reluctant and stubbornly resistant aristocracy. Yet even in the time when the people (populus) chose the greater magistrates in the assembly by centuries, the commons (plebs) was there in the assembly and was counted in the sixth class; and even though it voted only very rarely, it could do so if the previous classes were divided - which suffices to show that even at that time the state was democratic."

Someone could still object that even if the forms of state cannot be mixed, it does not follow that there are only three. For it can happen that, of sixty thousand citizens, forty thousand have a share in
sovereignty, and twenty thousand are excluded. Conversely, it can also happen that of sixty thousand, one or two hundred hold the
sovereignty, or even twenty-nine thousand, which is still the lesser part of the people. Yet there is a considerable difference between a
hundred men having power, and twenty-nine thousand; and between forty thousand and sixty thousand. My answer is that the degree of
more or less is not to be considered so long as it is more or less than
half. For if degree were used to determine the variety of states, there
would be a million of them, or rather the number would be infinite
since the increasing or decreasing number of those having a share in
the state would entail an infinite diversity. And the infinite should
always be excluded from any science or discipline.

Other objections that may be prompted by the specific nature of
each form of state will be cleared up below. With respect to the
present question, however, there is still one more objection that might
be raised: namely, that the Roman state, when Augustus was emperor
and for a long time afterwards, was called a principate, which is a
form of state that is never mentioned in Herodotus, Plato, [269]
Aristotle, or even in Polybius, who counted seven forms. We read in
Suetonius that the emperor Caligula, seeing several kings whom he
had invited to dinner getting into a debate on the honor and antiquity
of their houses, loudly repeated the verse from Homer that
Agamemnon spoke against Achilles when the latter sought to present
himself as his peer and equal. "Let there be but one king," Caligula
said. And he was not far," says Suetonius, "from taking the crown and
changing the form of the Roman principate into a kingship."†

But a principate is nothing other than a democracy or aristocracy in
which there is a chief who can give commands to every individual, and

(In the Latin, it may be noted, Bodin acknowledges that the initial concessions to the
commons created a mixed constitution which, however, did not work. He also begins
his remarks on this period by calling the earliest republican constitution an aristocracy,
only to end by calling it democratic as in the French.)

† L. 186, A 10 specifies, "up to Flavius Vespasian." IP, p. 564, n. 47 calls this an explicit allusion to the lex regia which purported to transfer complete power to the emperor from
the people, and is traditionally dated from Vespasian's reign.

‡ L. 186, B 8–8 adds, "From this it is clear that under Augustus after the battle of Actium
the state was neither a democracy, nor an aristocracy, nor yet a kingship."
On sovereignty

is no more than first collectively (et n'est que premier en nom collectif). For the word princeps, taken strictly, merely means the first.* Thus the people of Judea† complained that Aristobulus, the first prince of the house of the Asmoneans, changed the princeps, which was aristocratic, into a dyarchy (double royaume),‡ by taking one crown for himself and sending another to his brother. We find the same arrangement in the ancient towns of Tuscany, which entered into an alliance with Tarquinius Priscus, king of the Romans, on the condition that he would not have the power of life and death over them, and that he could not place garrisons in the towns, or levy taxes, or change anything in their customs and laws. Sed ut civitatum princeps penes regem Romanum esset,§ as Florus puts it. It is thus evident that the king of the Romans had no power over the towns of Tuscany except as he presided in their Estates (sinon qu'il estoit le premier aux estats). My answer to this last objection, then, is that in many aristocratic and democratic commonwealths there is one magistrate who is first among all in honor and authority – like the emperor in Germany, the duke in Venice, and the archon in ancient Athens – but that this does not change the form of state.¶

But the Roman emperors called themselves mere magistrates, commanders-in-chief, tribunes, and first citizens, even though in practice many behaved like monarchs and most of them were cruel tyrants. Moreover, they had the arms and the fortresses in their power, and in matters of state the master of brute force is the master of men, of the laws, and of the entire commonwealth.|| From a legal standpoint, says Papinian, we must look not [270] to what they do at Rome, but to what they ought to do. It thus appears that a principate (principatus) is nothing other than an aristocracy or a democracy having some one person as president or leader (premier) who is yet bound by those who have the sovereignty.

* 1.186, B8–10 expands this, "But a princeps is nothing but an aristocratic or democratic state in which one individual presides, and whom the Latins called praeceptor from processus, going in front, and princeps, that is, primus, first." (This effort to connect principate with praetor seems to have been a passing fancy. It is not followed up.)
† 1.186, B11 has "the Jews."
‡ For "dyarchy (double royaume)" 1.186, B12 substitutes, "two kingdoms (duo regna)."
§ "But the prince of the Roman king was to be that of a princeps in their commonwealths."
¶ 1.186, D1–3 adds, "If there are two magistrates who share the same power, as at Rome, or three, as in many Swiss commonwealths; or four, as at Geneva, it cannot be called a principate because no one is the first."
|| The point of this return to the Roman example is to show that it was a pseudo-principate. This is made clear in the Latin along with expanded comments at 186, D3–187, A1, "But in the Roman commonwealth, Augustus, shrewdly disguising his power, had himself named emperor – that is, supreme general of the army – as well as tribune of the people charged with protecting the people whom he had robbed of its liberty, and took a ten-year protectorship of the commonwealth that appeared to be all but forced upon him by the Senate. He thus established a principate by subterfuge and pretense. And since he had stationed forty legions throughout the provinces, kept three on hand as a bodyguard, and secured the citadels and fortresses with garrisons, in effect took royal power without scepter, diadem, or crown. His successors ruled tyrannically, with few exceptions each one more cruelly than the one before. At the beginning of his reign, says Suetonius, Tiberius rose in the presence of the consuls and made way for them, but at the end he inflicted the vilest of servitudes upon the commonwealth."