

# Sovereignty and Heresy

## *Constantin Fasolt*

Sovereignty is normally thought to be a principle of secular truth that is diametrically opposed to religious faith. More rarely it is itself thought to be a religious principle. But given its early modern origins it is perhaps best regarded as a peculiar kind of heresy that opposes only the reach of religious dogma, not its content. That may help to understand three things: first, why religion was successfully expelled from the realm of politics (neutralization of religion); second, why it was reintroduced in the realm of nature (naturalization of religion); and third, why the political consequences of the naturalization of religion have been largely invisible (blinding of the faithful). The chief article of the modern faith defines the boundary between nature and culture. A modern heretic is someone who doubts or violates that boundary against the wishes of the sovereign. If the invention of sovereignty thus put an end to wars of religion, it also made wars of nature conceivable.

HERESY CAN BE DEFINED as “adherence to a religious opinion that is contrary to an established dogma of a church” or, more technically, as “a deliberate and obstinate denial of a revealed truth by a baptized member of the Roman Catholic Church.” Sovereignty, on the other hand, can be defined as “supreme power, especially over a body politic.”<sup>1</sup>

Heresy and sovereignty thus seem to belong to mutually exclusive spheres. Heresy is a matter of religion. Sovereignty is a matter of state. Heresy exists where people believe that religious truths can be grasped with enough certainty to make it worth their while to suppress whoever denies those truths. People like that do not have much use for the concept of sovereignty because they are not normally inclined to consider anyone as holding supreme power over anything, unless it is God’s holding supreme power over the world. Sovereignty, on the other hand, exists where people believe that positive laws and standing armies make a better foundation for a body politic than do reli-

<sup>1</sup>See *Webster’s Third New International Dictionary of the English Language* (1961).

gious truths. People like that do not have much use for the concept of heresy because they are not normally inclined to include religious truths among the proper business of a sovereign ruler. At first sight, there does not appear to be much of a relationship between heresy and sovereignty at all.

That is one of the reasons why historians like to divide the history of Europe into a medieval and a modern part. In the medieval part, they say, people did include religious truths among the proper business of rulers and preferred the rule of God over the rule of man. Hence the Middle Ages were dominated by the church and full of heretics as well as their persecutors. But in the early modern period people began to have differences of opinion about religious truths that they found impossible to settle by violent or peaceful means. Hence faith in the rule of God collapsed and heresy disappeared along with the persecution of heresy. Instead, there emerged sovereignty. That is to say, there emerged a kind of public authority that refrained from all attempts to read the mind of God and devoted itself all the more effectively to stopping individuals who believed that they had read the mind of God from knocking their differently minded neighbors over the head. As a result the modern period has been dominated by the state, reason, and a gratifying tolerance for diversity of opinion, combined with an equally gratifying ability to suppress wrongdoing, which all right-thinking people realize deserves to be suppressed, as opposed to mere wrong thinking, which all right-thinking people will leave the wrong thinkers to practice as they please. That, in a nutshell, is the standard account of the history of European political thought.<sup>2</sup>

There is, as far as I can see, only one real alternative to the standard account. It is held by a minority of historians, but the minority is rapidly gaining ground.<sup>3</sup> It seems to be inspired by suspicion of a

<sup>2</sup>More precisely, it is the underlying assumption that frames standard accounts of the history of political thought. As such, it is present in works like George H. Sabine, *A History of Political Theory*, 4th ed. (Hinsdale, Ill.: Dryden Press, 1973), or Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy*, 3d ed. (Chicago: University of Chicago Press, 1987). It is similarly present in classics with a sharper focus, like John William Allen, *A History of Political Thought in the Sixteenth Century* (London: Methuen, 1928), and Pierre Mesnard, *L'Essor de la philosophie politique au XVIe siècle* (Paris: Boivin & Cie, 1936). But most commonly historians of political thought holding such views act on them by paying little or no attention to the Middle Ages.

<sup>3</sup>Good examples are Ernest Gellner, *Nations and Nationalism* (Ithaca: Cornell University Press, 1983), R. I. Moore, *The Formation of a Persecuting Society: Power and Devi-*

historical narrative that makes us moderns look so much better than our medieval forebears, and perhaps by a certain respect for the principle that no one ought to be a judge in his own cause. According to the nonstandard account, the disjunction between the spheres of sovereignty and heresy is an illusion. We may call ourselves tolerant and enlightened, but in reality we are just as intolerant and superstitious as our medieval ancestors—if not more so. We no longer persecute heretics, but that is only because we persecute them without calling them heretics. Anyone with eyes to see and ears to hear ought to be able to tell that modern people have practiced persecutions no less, and recently much more, horrible than any practiced by medieval people. What is the nation state if not a church? What does that church aspire to, if not universal dominion? And what are the rights of man if not the articles of a modern faith on whose authority modern inquisitors have sought out, tried, convicted, sentenced, and killed thousands and millions of innocent victims both at home and abroad? In the light of such views the boundary between the Middle Ages and modernity is nothing but a semantic veil by which we try to hide our shame over having made no progress at all from medieval barbarism.<sup>4</sup>

---

*ance in Western Europe, 950–1250* (Oxford: Blackwell, 1987), and perhaps Edward W. Said, *Orientalism* (New York: Vintage Books, 1979), though I am not at all sure that any of these authors would agree with my characterization. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Pantheon Books, 1977), also deserves mention. Farther back there are Carl L. Becker, *The Heavenly City of the Eighteenth Century Philosophers* (New Haven: Yale University Press, 1932), and Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, Mass.: MIT Press, 1985; German original published in 1922). Still farther back lurks Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufmann and R. J. Hollingdale (New York: Random House, 1967).

<sup>4</sup>There is yet another possibility that was popular among Catholic and romantically inspired historians during the nineteenth century, then fell out of fashion, but has recently had a revival: instead of blaming modern people for being just as barbaric as medieval people, you can praise medieval people for being just as enlightened as modern people. Look, for example, at Kenneth Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993), and Pennington's teacher Brian Tierney, "Origins of Natural Rights Language: Texts and Contexts, 1150–1250," *History of Political Thought*, 10 (1989): 615–46. This is an interesting reversal of what I have just called the nonstandard account. Conceptually, however, the problems it poses are very similar to those of the nonstandard account itself. Like the nonstandard account, it erases the boundary between the middle and the modern period of history that is so crucial to the standard account.

There is something badly wrong with both of these views. On the surface, they may look very different from each other. But in fact they are not. They are diametrically opposed to each other, and as is often the case with things that are diametrically opposed, the similarities are greater than the differences. Both accounts reduce the range of possible relationships between heresy and sovereignty to two: either the spheres of heresy and sovereignty are mutually exclusive, or they overlap. Either there is a real boundary between medieval religious thinking and modern secular thinking, or there is not. In the first case, sovereignty is seen to be a principle of secular truth that is diametrically opposed to religious faith. Hence there can be no heresies in the modern world. In the second case, sovereignty is seen to be identical with a religious principle. Hence there are heresies in the modern world. The difference is that the standard account says “yes” where the nonstandard one says “no.” But the conceptual instrument on which they rely is the same. And because it is a blunt instrument, it produces the same kind of misjudgments and the same kind of inability to account for the difference between medieval and modern political thought.

If you should object that this is a caricature of existing views of the relationship between heresy and sovereignty, I would agree. Of course it is a caricature. Every sensible person I know has doubts about the simple story of progress from the barbaric persecutions practiced by the medieval church in the name of faith to the enlightened forbearance of the modern state. And no sensible person I know maintains that heresies in the modern world cannot be distinguished from heresies in the Middle Ages.

Nonetheless, the caricature is justified. We may all know that it is a caricature. But I am not at all sure that we know how to replace it. One could add many finer points to the picture. One could soften the contrasts, expand the size of this essay to that of a book—or even many books—and transform it into something that could be called a history with more justice than the sketch I have just offered. But I doubt that any of that would replace the contrast between religious faith and secular truth as the chief means at our disposal for explaining what happened to political thought in the transition from the Middle Ages to modernity—and if it did, it would produce confusion. That seems to be our quandary: either we are stuck with caricature, or we reap confusion.

How to get out of that quandary? Consider the possibility that the spheres marked by heresy and sovereignty are neither mutually exclusive nor identical. Consider the possibility that sovereignty ought to be regarded neither as a principle of secular truth nor as a principle of religious faith, but as a kind of heresy. And then consider the implications.

That there is something heretical about sovereignty is not difficult to show. Let me give you two examples. One comes from Bartolus of Sassoferrato (1313/14–1357), perhaps the greatest medieval interpreter of Roman law. Bartolus is especially interesting because he is well known to have been in the vanguard of those who were trying to conceptualize something like sovereignty for the Italian city states and the kings of France and England as early as the first half of the fourteenth century. But there comes a moment when he confronts the question whether anyone may deny the right of the Roman emperor to rule the entire world. And his answer is that whoever did so “would be a heretic, for he speaks against the determination of the church and the text of the Holy Gospel, where it says that ‘there went out a decree from Caesar Augustus that all the world should be surveyed,’ as you can read in Luke, chapter 2. Christ himself thus recognized the emperor as lord.”<sup>5</sup>

The other example comes from Pope Innocent X. In 1648 Innocent X had to decide whether he could approve the treaty of West-

<sup>5</sup>“Et forte si quis diceret dominum Imperatorem non esse dominum et monarcham totius orbis, esset haereticus, quia diceret contra determinationem ecclesiae, contra textum S. Evangelii, dum dicit, ‘Exivit edictum a Caesare Augusto ut describeretur universus orbis,’ ut habes Luc. ii. c. Ita etiam recognovit Christus Imperatorem ut dominum.” Bartolus on Digesta 49.15.24, s.v. *hostes*, no. 7, in *Opera* (Venetiis: Apud Iuntas, 1570–71) 6:228r, col. a. I am taking the “forte” to go with “si quis diceret.” If it is taken to go with “esset haereticus,” Bartolus’ claim would be more mildly put, but no less telling. I should add that interpreters of Bartolus are deeply divided over the question how to interpret his statements in favor of the emperor’s right to rule the world, given his declarations that the Italian city states are free to publish statutes on their own and that the king of France recognizes no superior. Compare, for example, Marcel David, “Le Contenu de l’hégémonie impériale dans la doctrine de Bartole” in *Bartolo da Sassoferrato: Studi e documenti per il VI centenario* (Milan: Giuffrè, 1962), 2:199–216, and Maurice H. Keen, “The Political Thought of the Fourteenth-Century Civilians,” in *Trends in Medieval Political Thought*, ed. Beryl Smalley (Oxford: Blackwell, 1965), 105–26, esp. 115–16, with Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978), 1:10, or Kenneth Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993), 197.

phalia. That treaty gave German princes as much sovereignty as they were ever going to enjoy, and it extended the same courtesy to Protestant and Catholic princes alike. Could the pope go along with that? Pope Innocent thought not. Why not? Because Protestants were heretics. Acknowledging the sovereignty of heretics was not among the courses of action he considered safe or sound. Hence he annulled the pertinent articles, explicitly on grounds of heresy—and in so doing effectively removed the papacy from participation in the European state system for a long time to come.<sup>6</sup>

In two important cases, one at the beginning of the early modern period and one towards its end, sovereignty was thus condemned as heretical. That, it seems to me, is a decent enough reason to regard it as a kind of heresy. But not, I hasten to add, unless we immediately go on to point out that it was a very peculiar kind of heresy indeed. It was heretical in that the will of the sovereign was obstinately and deliberately opposed to the dogma of the church. But it was peculiar in that it opposed only the reach of dogma, not its content, and that it ended up by confining dogma to the sphere of what we nowadays call “the church” in contradistinction to “the state,” not at all by replacing it with an alternative dogma. Sovereignty is rather like heresy never brought to completion.

Seen in this light, the relationship between sovereignty and heresy is ambiguous. But I think the ambiguity can be resolved by distinguishing three consequences that followed from the invention of the peculiar kind of heresy that we call sovereignty.

The first is familiar. I would like to call it the neutralization of religion. The medieval church had been well equipped to deal with heretics who claimed to have a grasp on some alternative religious truth. Sovereigns, however, made no such claims. They simply refused to stand for battle on the grounds of religion. They stood for battle on

<sup>6</sup>Innocent X, “Zelo Domus Dei,” in *Magnum Bullarium Romanum* (Rome: Typis et sumptibus Hieronymi Mainardi, 1733–62), 6/3 (1760): 173–75. For details see Konrad Repgen, “Der päpstliche Protest gegen den Westfälischen Frieden und die Friedenspolitik Urbans VIII.,” *Historisches Jahrbuch* 75 (1956): 94–122. Repgen notes that the only major European powers not to sign the treaty of Westphalia were the two that were the fondest of universal government: the papacy and the Ottomans. He also shows in marvelous detail that Innocent X’s annulment was not at all inevitable. But even though popes more like Urban VIII could very well have postponed the day of reckoning indefinitely, I am not sure that they could have avoided it altogether. Innocent X’s action may not have been inevitable, but it was temptingly plausible.

the grounds of the particular territory they happened to control and the particular laws by which they aspired to control that territory—positive temporal laws, not eternal religious laws.<sup>7</sup> That was an enemy the church was not equipped to combat. From their point of view Bartolus and Innocent X were perfectly correct in their assessment of sovereignty. But the experience of a hundred years of religious war condemned their point of view to irrelevance. By the middle of the seventeenth century the choice seemed to be between continued support for religious truth as a foundation for politics, which meant war, and the replacement of religious truth with sovereignty, which meant peace. That choice was clear. As a result, religion was expelled from the realm of politics, and the very concept of heresy as an ingredient in the makings of political communities was effectively destroyed. By the eighteenth century, religion had been neutralized.

No one, I think, explained that kind of reasoning more succinctly than Jean-Jacques Rousseau in his *Social Contract*:

All justice comes from God, who alone is its source; and if only we knew how to receive it from that exalted fountain, we should need neither government nor laws. There is undoubtedly a universal justice which springs from reason alone, but if that justice is to be acknowledged as such it must be reciprocal. Humanly speaking, the laws of natural justice, lacking any natural sanction, are unavailing among men.... So there must be covenants and positive laws to unite rights with duties and to direct justice to its object.<sup>8</sup>

The second consequence of the invention of sovereignty is not so familiar. But I think it is more important. I would like to call it the naturalization of religion. For it seems to me that the same people who expelled religion from the sphere of politics reintroduced it in the realm of nature.

<sup>7</sup>Jean Bodin was therefore only consistent in abolishing the distinction between moral and immoral governments as meaningless for political theory and asserting that sovereigns might very well be tyrants: "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"; Jean Bodin, *On Sovereignty: Four Chapters from Six Books of the Commonwealth*, ed. and trans. Julian H. Franklin (Cambridge: Cambridge University Press, 1992), 6.

<sup>8</sup>Jean-Jacques Rousseau, *The Social Contract*, bk. 2, chap. 6, trans. Maurice Cranston (Harmondsworth: Penguin, 1968), 80–81.

For evidence, let me refer you back to the quotation from Rousseau that I just gave you. Rousseau asserts that “the laws of natural justice, lacking any natural sanction, are unavailing among men.” That assertion is an article of faith if ever I saw one. To be sure, I know of no rational proof for the proposition that the laws of natural justice do enjoy a natural sanction. But neither do I know of any rational proof for the proposition that they do not. I am not even sure what the laws of natural justice say. I am sure that Rousseau does not prove his assertion. Instead of offering proof, he offers an assumption. And the assumption is that the realm of nature and the realm of human affairs are separated from each other in such a way that the laws that obtain in the one do not carry over into the other.

That assumption, it seems to me, is the religious foundation of politics in the modern world. Perhaps it is better called a revelation than an assumption.<sup>9</sup> It underlies any number of other basic distinctions that we are accustomed to take for granted, like those between mind and body, subject and object, faith and works, morals and politics, science and history, nature and culture, male and female, public and private, self and other. It is also constitutive of sovereignty. For it is only on the assumption that the laws of nature have no effect on human society that it becomes intelligible why we might need sovereigns who make purely positive laws in order to preserve human society.<sup>10</sup> Sovereignty thus rests on foundations different from but no less religious than those of the medieval church.

<sup>9</sup>Rousseau was hardly the first or the most important recipient of this revelation. There is a famous statement in the fifteenth chapter of Machiavelli's *Prince* to rather similar effect. The categorical distinction that Luther drew between the kingdom of God and the kingdom of man belongs in the same context. And one could very well make a case for adding Marsiglio of Padua to this list. Rousseau is useful because he lived towards the end of the historical developments that transformed this assumption from the outrageous heresy that it appeared to be, to at least some of the more orthodox contemporaries of Marsiglio, into a self-evident truth. Hence he was in a better position to state it succinctly.

<sup>10</sup>It is telling, I think, that we use the same word to refer to the subject of the Cartesian *cogito*, the subject of scientific study, and the subject of a sovereign state. These are, respectively, the subject that practices science, the subject on which science is practiced, and the subject that allows itself to be kept in line by a sovereign ruler legislating rules of conduct that are, at bottom, arbitrary because science has not so far managed (and is now no longer expected) to accomplish what Descartes seems to have hoped it eventually would, namely, extend the success it enjoys in the study of nature by producing a scientifically grounded morality. Languages other than English make it more difficult to establish this point, but not at all impossible.

The third consequence follows directly from the first and the second. I would like to call it the blinding of the faithful. It is that the religious foundations of sovereignty are virtually impossible to recognize for modern people. Our historical experience has given us an example of what it means to have religion. The example is the religion we have neutralized. If you believe that you must be subject to the pope in order to go to heaven, that is religion. Or if you believe that the fundamental distinction in the world is between Christians and infidels, that is also religion. But if you believe that good citizens are subject to a sovereign state, that is not religion; that is common sense. And if you believe that the fundamental distinction in the world is between mind and body, that is also not religion; that is reason.

We remember all too well the religion we have neutralized. Therefore we have no eyes for the religion we have naturalized.<sup>11</sup> We have accepted the boundaries of nature as a matter of faith. We have not subjected them to examination, except in the narrow circles of professionals officially privileged to perform just such examinations and, of course, the not-much-wider circles of radicals, kooks, spiritualists, sectarians, anarchists, and other types of modern unbelievers whom we lack even the words to designate as anything other than dwelling beyond the limits of legitimate discourse.

Under modern circumstances it would therefore be a mistake to look for heretics in the area of religion. Religion is what we persist in calling the religion we have neutralized. But the religion that is in

<sup>11</sup>That may explain why there seems to be no good history of religion in the modern world—unless you take histories chronicling the multiplication of the several modern confessions or the history of secularization to be histories of religion. Expecting a good history of the modern religion from a modern historian is about as fair as expecting a good history of medieval Christianity from a medieval theologian. How can you write a history of “the truth”? Here we may be imitating our medieval forebears. Having neutralized paganism, they, too, were convinced that the religion to which they subscribed was actually a rational truth of nature, though they were less confident than we are about the ability of human beings to identify that rational truth without divine assistance. Thomas Aquinas, *Summa Theologiae*, I-II, q. 91, is quite clear about this. To be sure, he distinguishes divine law from eternal law. Divine law is what you find in the Bible. Eternal law is the law in the mind of God. But there is no substantial difference between them, and both are equally rational. The difference is merely that God has chosen to reveal one part of the eternal law to human beings—what he calls the divine law—but not the other part. See St. Thomas Aquinas, *The Treatise on Law [Being “Summa Theologiae”, I-II, QQ. 90 through 97]*, ed. with introd., trans., and commentary by R. J. Henle, S.J. (Notre Dame and London: University of Notre Dame Press, 1993), 148–84.

effect today is the one that was naturalized in the early modern period, and we do not call it religion. Modern heretics are therefore far more likely to be found among the ranks of those who doubt or violate the boundary between nature and culture that is the chief article of faith in the modern religion. Witches were the first and may well remain the most telling example. There are good reasons why the persecution of witches overlapped with the age of religious wars; why intolerance of “unnatural” practices hardened as tolerance for religious nonconformity grew; and why persecutions of people perceived to be endangering the various manifestations of sovereignty can still be called “witch-hunts.” These are related aspects of a single process. The same Jean Bodin who invented sovereignty and redefined the relationship between history, law, and nature published one of the most astonishing attacks on witchcraft to appear in the sixteenth century.<sup>12</sup> Interpreters have commonly regarded it as puzzling that a thinker of such stature should in this instance have proved himself so sadly superstitious.<sup>13</sup> I think he merely proved himself consistent. Which may help to explain why today’s debates about homosexuality, abortion, and the relationship between race and intelligence are proving to be so peculiarly recalcitrant to any rational resolution.

We are slowly beginning to become conscious of these matters. That is a cause of some delight for an early modern historian like myself, who believes that a better understanding of early modern history cannot but increase that consciousness. But the delight is not altogether unqualified. It is worth remembering that there once were narrow circles of medieval professionals who enjoyed a privilege of examining the boundaries of the faith precisely analogous to the privilege enjoyed by their modern successors of examining the boundaries of nature. The age of religious wars began when one of those examinations (intended to deal with indulgences, announced in Wittenberg, composed in Latin) unexpectedly caught the popular imagination. The result was the violent disintegration of a social and

<sup>12</sup>Jean Bodin, *De la démonomanie des sorciers* (Paris: Jacques du Puys, 1580).

<sup>13</sup>See Stefan Janson, *Jean Bodin, Johann Fischart: De la démonomanie des sorciers (1580), vom ausgelassenen wütigen Teuffelsheer (1581) und ihre Fallberichte* (Frankfurt: Lang, 1980), and Ursula Lange, *Untersuchungen zu Bodins Demonomanie* (Frankfurt: Klostermann, 1970). Cf. Lucien Febvre, “Witchcraft: Nonsense or a Mental Revolution?” in *A New Kind of History and Other Essays*, ed. Peter Burke, trans. K. Folca (New York: Harper & Row, 1973), 185–92.

## *Sovereignty and Heresy*

political order. It is a sobering thought that something like that could happen to us. Perhaps Francis Fukuyama has a point after all.<sup>14</sup> Perhaps we are facing the end of history. Not the one he had in mind, but the one that would follow from the disintegration of the modern social and political order in wars, not of religion, but of nature.

<sup>14</sup>Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992). Briefly stated, Fukuyama argues that the modern, western, liberal state is the best form of social and political organization known to man that can actually be put into effect, and that the collapse of communism has proved it to be just that. It can therefore be expected to rule indefinitely. That would indeed put an end to history, except in the sense of working out the details. It is therefore worth pointing out that a similar position could just as plausibly have been defended by a prophet living towards the end of the fifteenth century. As Bernd Moeller, "Piety in Germany Around 1500," trans. Steven E. Ozment, *The Reformation in Medieval Perspective*, ed. Steven E. Ozment (Chicago: Quadrangle Books, 1971), 50–75, has been at pains to impress upon historians, the period just before the Reformation was not only a time when popular identification with the established church ran, by all reliable measures, at an all-time high, but also the first time in medieval history when not a single major heretical movement was threatening the established church. At that moment it could very well have seemed as though the steam had gone out of heresy and that the Roman Catholic Church had won for good. At the very same moment, however, witch trials were beginning to replace trials for heresy, and a generation later the Reformation was on the scene. There is no inherent reason to be sure that what looks to some like the decisive conquest of the world by the modern nation state could not similarly turn out to be the prelude to the disintegration of the faith by which that state is inspired.