

INTRODUCTION. PERSPECTIVES ON THE SOVEREIGNTY

The Board of the *Italian Review of Legal History* meant in this issue of the review to contribute to the debate on the topic of the sovereignty, in a historical perspective or with regard to current events in Europe and outside Europe.

The concept of sovereignty has been at the center of legal, political, philosophical and economic debate for centuries and few terms concerning institutions have taken on such a wide range of meanings in history. In different cultural spheres and from a variety of perspectives, the reflection on the polysemic content and on the various declinations of this concept in the diverse areas of the world, not only between past and present, but also regarding the possible frameworks that it could assume in the more or less near future, continues.

In order to encourage the debate between scholars, the Board suggests, in counterpoint, two reflection schemes.

SOVEREIGNTY AND FEUDALITY

Alberto Sciumè

University of Brescia

The charm and at the same time the drama of the current era, now identified with the status of postmodern, can be summed up in the term crisis. This term represents the present time in a synthetic form: crisis of knowledge, crisis of certainties, even crisis of the parameters of the daily life development of existence, that man thought he had protected from profound alterations, through the neutralization of the unexpected in the path between the alpha and the omega of individual and collective life (Hartmut Rosa).

A consolidated historical interpretation of the relationship between Sovereignty and Feudality, places one in relationship with the other in a diachronic perspective, so that the first appears as the result of the progressive abandonment of the second form of relationship between subjects and between subjects and goods, that took place between the end of the medieval age and the modern age, to allow Sovereignty to become the exclusive paradigm of ownership of power and the forms of its exercise, destined to give society a very different order from the feudal one (Montesquieu).

❖ Italian Review of Legal History, 8 (2022), n. 1, pagg. 1-5

❖ <https://riviste.unimi.it/index.php/irlh/index>

❖ ISSN 2464-8914 – DOI 10.54103/2464-8914/19246. Articolo pubblicato sotto Licenza CC-BY.

In this direction, Sovereignty asserts itself as the pivot of a political and juridical system together (until the age of revolutions the two terms proceed side by side) “that allows the modern state to assert itself on the medieval organization of power” based on particular/universal dialectic. By freeing itself from the intertwining of mutual dependencies, which made it a relative power in an essentially pluralistic context, the sovereign eliminates thus feudal powers, the privileges of the classes and of the local autonomies, to reduce their role of mediation between state and individual. Between the end of the modern era and the beginning of the contemporary one, absolute and original character thus become the foundations of Sovereignty, destined to be declined in inalienability, imprescriptibility, perpetuity. (Matteucci).

All this, even though attempts to identify escape routes from it are not absent in the contemporary age (triumphal era to the category of state sovereignty), in the form of exceptional solutions (Carl Schmitt).

The exclusively diachronic perspective of reading the dialectic between Sovereignty and Feudality now appears questioned by the consideration of the forms assumed by certain social and political phenomena of the present time. It seems to orient the reflection on the relationship between the two categories unfolded through their simultaneous presence on of a synchronic plane, so that the current society, the political strategies and the juridical architectures that distinguish it seem to see Sovereignty and Feudalism intertwined without interruption, in the construction of intersubjective relationships and of relationships between subjects and goods (Guido Rossi, 2015, Ricolfi, 2019).

On the law terrain then, the effect could be that of the affirmation of a “polycentric system”, with an order characterized by the presence, alongside the equal law of revolutionary origin, of an “additional unequal law”, able to coexist with the first. According to this interpretation, the current time would then be marked by a complete replacement also of a similar plural order with a dynamic dominated by contingency: a phase of decadence that “seems to overwhelm the same conceivability order “, producing “equilibriums that are always provisional and unstable and that respond, from time to time, to equally temporary and unstable compatibilities” (Mario Barcellona).

All this leads to a renewed attention to the Sovereignty and Feudal categories on a historical level, to verify, in particular, the levels of intersection between one and the other category, both on the level of the history of law and on that of institutional history, and finally on the level of the history of thought. In conclusion, here are some issues which, obviously without exhausting the panorama of problematic issues attributable to the Sovereignty / Feudal dialectic, represent the proposal of many suggestive lines of the development of reflection:

- The relationship between the two models of power management and the secularization process achieved between the Middle Ages and the Contemporary Age;

- The influence of the two categories on the articulation of public/private law between the Modern Age and the Contemporary Age;
- Sovereignty, Feudality and pluralistic forms of institutions between the Middle Ages and the Contemporary Age;
- Sovereignty and Feudality in front of the law ordering function (security and legal certainty in front of the dialectic between Sovereignty and Feudality);
- Sovereignty, Feudality, universalization and globalization. (Bauman, Luhmann, Ratzinger, Habermas).

SOVEREIGNTY, SUBSIDIARITY, IDENTITY

Antonio Padoa Schioppa

Professor Emeritus

University of Milan

Few words regarding institutions have known a range of meanings as wide as 'sovereignty'. Even today, on this front reality shows clear cases of transformation for which an idea that is variously declined both in a historical and in a political perspective needs to be rethought. By now, the prevailing acceptance of the idea of popular sovereignty, which has ancient and modern roots from Aristotle to Rousseau and which finds an essential anchor in the Christian idea of the equal dignity of each person, involves the fundamental principle according to which in the human world the individual is sovereign - each individual, both as a single man and as a free member of a community. Any other form of attribution and exercise of power – starting from the different models of representative democracy – has, in this sense, to be considered as deriving from it.

Even in the age of absolutism, in the presence of ecclesiastical jurisdiction, superior courts, intermediate bodies and class institutions, sovereignty was not in the hands of the sovereign alone. In the early modern period, the absolute ruler (theorized by Jean Bodin) still had natural law above him, as divine law limited medieval emperors and kings in their powers. Instead, the enlightened sovereigns exerted actual absolutism, but then, starting from the 17th-century English revolution, modern constitutionalism, had theorized the distinction and balance of powers, albeit in very different forms in Europe and in America. Later the principle of the sovereignty of the nation became manifest in 1789 and led, after the Napoleonic interlude and the Restoration, to the progressive achievement of various forms of representative democracy in 1848. In the era of Nations, the prevailing legal idea, which attributed the exclusive prerogative of sovereignty to the State – a theory shared and enhanced by the two tragic world wars and shared by modern dictatorships – was actually already outdated both theoretically and historically. In the second half of the twentieth century, a higher level than the

legislative sovereignty of the state was set by the Constitutions, whose principles were imposed by the modern constitutional courts also towards national legislators. However, in Europe and outside Europe each of these transitions has known several manifestations, which lead the historian to repeatedly research into the idea of sovereignty after the end of the ancient world.

Furthermore, the contemporary world is experiencing the transfer of functions, once considered typical of national sovereignty, to levels of government other than that of the State-nation: consider, for example, the member states of the European Union, which waived their monetary sovereignty by creating the euro; and the euro itself was legitimated by a treaty that had been democratically approved and managed. Downwards, beneath the State, in many states a share of sovereignty is democratically transferred (by constitution) to regions and municipalities. Other functions are instead transferred and carried out, although in a limited and imperfect form, at the global supranational level, including international jurisdictions authorized to adjudicate, sometimes even on the claim lodged by individuals, in the case of very serious crimes, which are not prosecuted by the State where they have been committed; so do the International Criminal Court (since 1998) and the European Court of Human Rights and other international courts.

This plurality of levels can be variously defined but are to be connected – without excluding other possible theorizations – to the idea of vertical subsidiarity between the different levels of the territory (Bartolus de Saxoferrato already defined *populus* both that of the city, that of the kingdoms and that of the Empire), which are therefore at least five, from the municipality to the region, the nation state, the federations among states and the world institutions, starting from the United Nations. It is not surprising that up to today the powers of nation states have prevailed over those wielded by the other territorial levels: suffice it to consider that the nation state is responsible for civil and criminal justice, taxes and the army, which in the event of a war can even decide over life and death of each of us. Yet, as already said, some of these powers, which are also legitimate because directly or indirectly delegated by citizens, exist within federal states as well as at supranational level, for example in the UN peacekeeping missions.

However, there are also other dimensions, which intensely complete and define the powers that individuals and communities experience and that are democratically recognized (where democratic regimes act) by the political institutions of various territorial levels. These are the prerogatives of intermediate and transversal communities, consisting of family, ethnic, religious, professional, economic, political or other affiliations. Feudal bonds also belonged to this category; they still belong to it, where they still work in the world, although in different forms; when in different contexts, including – but not only – the world of crime, someone says he is “the man of ...” (another man), feudal terminology is still used, albeit unconsciously.

As long as they are not detrimental to their own and others' rights or to constitutional principles, each of these affiliations is legitimate and is interwoven, in a deep network of relationships, rules and behaviours, with the regulations and customs in force at various territorial levels; they are collective identities, each one rooted in ancient and recent history. In every individual at least some of these different identities are present together, naturally including those of the territory; by virtue of them I am at the same time Milanese, Lombard, Italian, European, and citizen of the world. Their combination, together with the features genetically created by Mother Nature and with those deriving (by adhesion or by contrast) from one's own family and from individual experiences of life and thought, constitutes the weave and the warp of the identity of each of us, the first and last holder of sovereignty. While in the physical world the sum of colours is white, in the individual and collective human world this range of identities is visible and constitutes a very rich spectrum that makes each individual different from anyone else and each community different from any other – within each of the aforementioned territorial and not territorial dimensions.

If it is true that the monocratic idea of sovereignty is to be considered obsolete, it is interesting to investigate about the different levels – vertical and horizontal, contiguous and transversal – to which the many original and derivatives dimensions of sovereignty belong, in history as well as in theory.