Among the theories prevalent in the middle ages was one that mankind formed a unity, with the pope and the emperor at the head of it: the universal Church and the universal emperor ruled the world (Rehm, *Geschichte der Rechtswissenschaft*, p. 198.) Even to Leibnitz, writing in the 17th century, it seemed that “totam Christianitatem unam velut Rempublicam componere, in qua Caesari auctoritas aliqua competit ” *(Opera,* 4. 330). When the power of the emperor was weakened, and the idea of a universal ruler was gone, a new test of sovereignty was applied —that of external independence; the true sovereign states were *universitates superiorem non recognoscentes.* There were times and countries in the middle ages in which the collective power of the community was small: many of the great corporations were virtually autonomous; the central authority was weak; the matters as to which it could count upon universal obedience were few. In such circumstances the conception of sovereignty was imperfect. It has been suggested that the modern conception of it was evolved from the contest between three powers: the Church, the Roman Empire, of which the individual states in Europe were theoretically provinces, and the great landowners and corporations. Whatever may be the truth as to this, the modem theory is first clearly stated in Jean Bodin’s book *On the Commonwealth* (French ed., 1576; Latin version, 1586), which was the first systematic study of sove­reignty. Bodin defines the state thus: “ Respublica est famili- arum rerumque inter ipsas cornmunium, summa potestate ac ratione moderata multitudo.” His theory, which corresponded on the whole to the state of things in France in the time of Louis XI., was a theory of despotism. It may be also described as a type of the mechanical or juridical theory of sovereignty. According to Bodin, there is in the state unlimited one power: “ Majestas est summa in cives ac subditos legibusque soluta potestas ” (i. 8). There exists a central force from which are derived all the powers which make or give effect to laws; a power which he describes sometimes as “ majestas summa potestas summum imperium.” This was the conception expressed by Bossuet, “ Tout l’état est en la personne du prince,” or in Louis XIV.’s saying, “ L’état c’est moi.”

One favourite theory was that sovereignty originated in a social contract. It was assumed that the individual members of society, by express or implied pact, agree to obey some person or persons; sometimes it is described as an unqualified handing over; sometimes it is a transfer subject to qualifications, and with notice that in certain contingencies this will be withdrawn. Gierke, in his book *Johannes Althusius und die Entwickelung der naturrechtlichen Staatstheorie,* shows (p. 76) that the conception of a treaty or agreement as the basis of the state was in the middle ages a dogma which passed almost unchallenged, and that this theory was maintained up to a late period. It is to be found in the writings of Thomas Aquinas *(De Regimine principum,* 266), Marsilius of Padua, Buchanan, J. de Mariana, and F. Suarez. It is the kernel of the theories of Hobbes, Rousseau, Filmer and Locke. Among the clearest and most logical exponents of this theory was Hobbes, who in his *Leviathan* expounded his notion of an agreement by which absolute power was irrevocably transferred to the ruler. Pufendorf, with some variations, states the same theory. In his view there is a *pactum unionis,* followed by a *pactum subjectionis.* The best-known exponent of this theory of the source of sovereignty is Rousseau, who assumes the exist- ence of a *pacte social,* the terms of which are: “ Chacun de nous met en commun sa personne et toute sa puissance sous la suprême direction de la volonté générale; et nous reçevons encore chaque membre comme partie indivisible de tout ” *(Du Contrat social,* i. c. 6).

It is convenient for the jurist to assume that in every state is one determined or determinable authority in which is vested sovereignty, and from which all other authorities derive their power. The assumption is not true of some states; the legal authority is divided among several persons or bodies. It is at best an unfruitful assumption; and the tendency of students of sociology is to treat discussions as to sovereignty much as modern physiologists treat discussions as to “ vital force ” or “ vital principle.” Comte, Spencer, Bagehot, Durkheim and Giddings, for example, refer to it, if at all, only briefly and incidentally; they conceive society as an organism, or at all events as a growing whole, no one part or force being the cause of all others, and all interacting; society is not the product of any agreement or of force alone, but of a vast variety of interests, desires and needs. Now the state or government comes at a certain stage of organization: small groups are drawn together; powerful corporations fall into fine; a national feeling develops; eventu­ally the state as we know it is formed. Sovereignty is a resultant of many forces. It may not exist as to some regions of conduct; as to others it may be weak and mutable; only in certain conditions is the sovereign power supreme as to all matters of conduct.

Among the different senses in which “ sovereign ” has been used are the following:—

*a.* “ Sovereign ” may mean titular sovereign—the king in the United Kingdom, the kaiser in Germany.

*b.* The legal sovereign: the person or persons who, according to the law of the land, legislate or administer the government.

c. The political or constitutional sovereign: the body of persons in whom the actual power at any moment or ultimately resides. Sometimes this is designated “ the collective sovereignty.”

*d.* Sovereignty is also used in a wider sense, as the equivalent of the power, actual or potential, of the whole nation or society (Gierke, 3. 568).

The distinction between real and nominal sovereignty was familiar to medieval writers, who recognized a double sovereignty, and distinguished between (1) the real or practical sovereignty resident in the people, and (2) the personal sovereignty of the ruler (Adolf Dock, *Der Sauveranitatsbegrifl,* &c., p. 13). By many writers sovereignty is regarded as resident not in any one organ, but in the *Gesammtperson* of the community (Maitland, *Political Theories of the Middle Ages,* xliii.).

Sometimes sovereignty is defined as the organized or general will of the community (Combothecra, *Conception juridique de Fétat,* p. 96). “ Sovereignty is the organized will of an organized

independent community. . . . The kings and parliaments who serve, as its vehicles.” “ Sovereignty resides in the community ” (Woodrow Wilson, p. 1448). The same theory is often expressed by saying that the majority in a community, or a particular group, in fact, rules (Guizot, *Representative Government,* i. 167). This was the doctrine of the’ French Revolution. “ Sachez que vous êtes rois et plus des rois,” said a revolutionary orator cited by Taine. It was the language of the founders of the American constitution and contemporary political writers; the language, for example, of Paine: “ In republics such as there are estab­lished in America the sovereign power, or the power over which there is no control and which controls all others, remains where nature placed it—in the people ” *(Dissertations on Government,* i.6).

The same theory assumes a more subtle form, especially in the writings of Hegelians. Sovereignty is with them a term descriptive of the real will of the community, which is not necessarily that of the majority. “ If the sovereign power is to be understood in this fuller, less abstract sense, if we mean by it the real determinant of the habitual obedience of the people, we must look for its sources much more widely and deeply than the analytical jurists do; it can no longer be said to reside in a deter­minate person or persons, but in that impalpable congeries of the hopes and fears of a people bound together by common interest and sympathy, which we call the common will ” (Green’s *Works,* 2. 404). “ Though it may be misleading to speak of the

general will as anywhere, either actually or properly, sovereign . . . yet it is true that the institutions of political society are an expression of, and are maintained by, the general will ” (2. 409).

Sovereignty is used in a further sense when Plato and Aristotle speak of the sovereignty of the laws *(Laws,* 4. 715; *Politics,* 4. 4; 3. 15). Thus Plato remarks: “ I see that the state in which the law is above the rulers, and the rulers are the inferiors of the law, has salvation.” (See also Gierke, *Genossenschaftsrecht,* 3. 8.) Even in medieval writers, such as Bracton, is found the notion