SHIBBOLETHS AND SLOGANS
SOVEREIGNTY, SUBSIDIARITY AND CONSTITUTIONAL DEBATE

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Introduction

The revival of the Scottish Question has been signalled in recent years by meetings of the Constitutional Convention, the 1988 Govan by-election and opinion poll evidence showing unprecedented support for some measure of Scottish self-government. At the same time the Eurosclerosis which afflicted the European Community after the oil crisis of the 1970s has given way to Euro-optimism witnessed by the Community’s 1992 programme, prospects of greater integration and enlargement. These developments have brought constitutional questions to the fore once more.

The issues involved are similar, and key concepts are relevant to both Scottish and European arenas. This paper explores two of these concepts – sovereignty and subsidiarity – and discusses them in the context of the ongoing debates. The manner in which these terms take on an importance of their own has been a phenomenon of these debates. Subsidiarity, like sovereignty, is becoming a shibboleth whose importance lies more in its incantation than its application to the serious discussion of constitutional structures. It will be argued that a healthy scepticism is required when listening to debates couched in such terms. This is not to deny their importance, only to suggest a note of caution.

The discussion which follows is concerned with governmental power, not the community power structure. This is not to deny the importance of the latter. Political power is not the exclusive property of governmental institutions, or any institutions for that matter. The community power structure’s relationship to the governmental power structure is complex. The first note of warning must be, therefore, that in discussing levels of government we may well be leaving out of account some of the most important questions regarding the distribution of political power. It is important in discussions of constitutional change to question how any proposals will affect, if at all, the underlying power structure.1)

These are not debates exclusive to the United Kingdom. Each member, and potential member, of the EC will have its own traditions, but if such terms as sovereignty and subsidiarity are to be of value, recognition that a multitude of meanings exist is necessary.

Contested Meanings

Sovereignty and subsidiary are concepts which have a number of things in common: both have meanings rooted in theology; both currently have a variety of different, often contradictory, usages; and both are central to contemporary constitutional debates. It is not possible to provide a definitive meaning for either term, but it is important to identify which meaning is being used by protagonists in constitutional debates. The fact that Margaret Thatcher and Jacques Delors were impassioned advocates of the principle of subsidiarity, for example, does not mean that they had a shared understanding of its application to the future of the European Community. It is therefore necessary to dissect terms which might be used in quite different if not contradictory ways by different people.

The relationship between political theory and theology has always been close; theomorphic politics and anthropomorphic deities are probably never less obvious than in the concept of sovereignty. Its translation from theology into politics has been a lesson in the manipulation of language. It is tempting to suggest that such terms as sovereignty and subsidiarity should be avoided in constitutional debates given the wide variety of meanings that exist. This would be naive, if only because such a suggestion would be ignored by politicians, but also because political debate involves contesting the meaning of terms. Terms will have gained some meaning or meanings and thus cannot simply be abandoned. The most that can probably be hoped for is to identify which meaning is being used at any given time.

Sovereignty as absolute power

Definitions of sovereignty are concerned with questions of power and authority. In its original usage in political theory the concepts of power and authority were reliant on or heavily influenced by religious claims to the existence of a supreme being in whom all power and authority resided. This idea of absolute power has continued to be voiced in contemporary political debates.

Jean Bodin, in France in the sixteenth century, is generally credited with the first translation of such absolute ideas of sovereignty into a developed political theory, though the idea had long existed. A similar translation occurred a century later in England when Thomas Hobbes wrote his Leviathan. He was, like Bodin, concerned with the political disorder of his times. The desire to answer the question as to who would ultimately decide in times of crisis was for them of paramount importance. The transfer of monarchical sovereignty into popular sovereignty in France during the course of the French Revolution, with Rousseau’s Social Contract providing the intellectual backing, did not alter the absolute nature of the idea, any more than the translation from monarchical sovereignty into Parliamentary sovereignty in England failed to affect the absolute nature of the doctrine there.
It was this notion of sovereignty which alarmed Harold Laski who argued that it would be beneficial to abandon the concept of sovereignty as it is 'at least probable that it has dangerous moral consequences' and is of 'dubious correctness in fact'.

Bernard Crick's view of sovereignty as implying the existence of some absolute power of final decision 'exercised by some person or body recognized both as competent to decide and as able to enforce the decision' is one which, he argued, has relevance to emergency situations. In 'normal political conditions', on the other hand, power is recognised as divided and the business of government is 'creative conciliation'. There will be the 'time of sovereignty and the time of politics'.

**Sovereignty as illimitable power**

The classic statement of sovereignty's illimitable nature is found in A V Dicey's work:

> A sovereign power cannot, whilst retaining its sovereign character, restrict its own powers by any particular enactment. 'Limited Sovereignty', in short, is in the case of a Parliamentary, as of every other sovereign, a contradiction in terms.

The illimitability of sovereignty can take different forms. It might mean illimitable in space or illimitable in time.

The notion that Westminster might pass legislation banning smoking in France is an example of the former. There may not be any constitutional or legal impediment preventing Westminster legislating in such a manner though its implementation would, to put it mildly, cause problems. Thus, for illimitability to be meaningful a measure must be carried through the various stages of the policy-making process up to and including implementation.

The second form of illimitability is that of time. James Bryce argued in 1886 that Parliament was completely sovereign except in one respect—that it could not bind its successors. This principle, as Geoffrey Marshall has remarked, 'appears rather unhappily in the text books both as an exemplification of the omnicompetence of the sovereign and as the sole exception to or "limitation" upon the extent of the principle of omnicompetence.'

This is a paradox which would arise with any absolute conception of sovereignty, whether the doctrine was that of popular or Parliamentary sovereignty with an ultimate or absolute basis. The question might equally be posed: can a people (nation) bind succeeding generations?

**Pooling and sharing sovereignty**

In recent debates on the European Community there has been much talk of pooling or sharing sovereignty. Sovereignty in this sense is being used in a different way once more. Such use sees sovereignty as a resource, rather than a doctrine, which can be broken up and divided amongst different political actors. It has provoked the wrath of those who view sovereignty in monistic and indivisible terms. Certain members of the Bruges Group—who oppose closer integration of Europe, see sovereignty resting with the Crown in Parliament, and oppose encroachments on it from Brussels—would strongly challenge the view that sovereignty can be shared.

Federalism and confederalism are possible results of pooling or sharing sovereignty. A fear which is often expressed by opponents of such constitutional orders is that neither federalism nor confederalism can be permanent, that they must lead towards a centralized super-state or break up into separate component parts. Those who take this view have a monistic conception of sovereignty.

In the case of pooling sovereignty, the question arises as to how power should be distributed. A written constitution may ascribe certain functions and powers to levels of government or institutions but offers only a framework. The balance of institutional power within any polity is not static. Federations are marked by periods of federal ascendancy which can alternate with periods of state ascendancy.

**Sovereign statehood**

The concept of sovereignty has been used in other ways. In international relations theory, sovereignty is the term used to describe the characteristic which gives a territorially based entity the legal capacity to appear regularly on the international stage. Of course, as with every definition of sovereignty, this one is problematic. California might not exhibit sovereign status but the activities of California will have a far greater impact on the international community than the activities of most sovereign states with seats at the United Nations. The position of the European Community also causes difficulty. The Community participates in a number of international organisations with full authority vested in it by the Treaty of Rome. The Community is viewed as a significant actor for purposes of international trade. This would suggest that the EC has achieved sovereign status in a limited way. The activities of Jordi Pujol, President of the Catalan Generalitat, suggests that Catalonia has done so too.

Such suggestions might be countered with reference to the earlier discussion of sovereignty which stressed the ultimate resting place of power and authority. But the main point is that sovereign statehood is a concept of limited value in describing certain legalistic and formalistic qualities of a political actor. Increasingly, territorial units which are not recognised as possessing legal sovereignty in international affairs are, nonetheless, playing a direct role at that level.
Ivo Duchacek has referred to ‘percolated sovereign bodies’ (7) and ‘perforated sovereignties’ (9) in his study of the role of sub-state units in international relations. Duchacek’s work led him to view sovereign state boundaries as porous with initiatives and responses from sub-state units such as states within federations percolating through the mythically impregnable boundaries of sovereign states.

While written constitutions of sovereign states, including federal states, generally are explicit in denying relations to develop between sub-state units with external bodies – whether foreign sub-state units, foreign states or international organizations or agencies – or circumscribe the scope of such relations, these relationships have in fact developed. Relations between sub-state territories of one state and those of another are likely to be found when common interests are most obvious such as at boundaries and where relations between contiguous states are friendly. Duchacek notes that this has been a two-way process:

‘from within out’, when subnational authorities initiate trans-sovereign processes to protect or promote their domestic concerns; or ‘from without in’, when subnational governments become targets for trans-sovereign contacts (or interference) and decide to respond on their own to the lures of external opportunities (reverse investment, for example) or to some threat of damage (foreign tariffs, migrating labour, or environmental problems). (9)

**Popular sovereignty**

Another use of sovereignty is concerned with questions of legitimacy. Edmund Morgan has shown how sovereignty, and popular sovereignty in particular, has been stretched to meet the demands of different times. (10) Government, he argues, requires ‘make-believe’. The ‘fiction’ of popular sovereignty is a central need of government and no pejorative meaning is intended by Morgan in stating this. His starting point is the famous Humean observation:

> Nothing is more surprising to those, who consider human affairs with a philosophical eye, than to see the easiness with which the many are governed by the few; and to observe the implicit submission with which men resign their own sentiments and passions to those of their rulers. When we enquire by what means this wonder is brought about, we shall find, that as Force is always on the side of the governed, the governors have nothing to support them but opinion. ‘Tis therefore, on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular. (13)

Morgan’s study is concerned with the development of popular sovereignty in England from its inception in the 1640s. Apart from anything else, though this is not one of Morgan’s aims, it offers a corrective to the Scottish presumption that popular sovereignty is a peculiarly Scottish idea. Its more general and intended appeal is in its demonstration of the symbolic importance which the term sovereignty has long had and continues to have.

The idea of popular sovereignty is often seen in Scotland as having roots in an ancient order. The Declaration of Arbroath of 1320 is cited as evidence of a statement of democratic principles in as much as the King’s powers were to be circumscribed. In fact, this was not so unusual in feudal societies. The idea of the law as a pact given legitimacy by the assent of the estates was not unknown. The coronation statement of the kings of Aragon is the classic example:

> We (the Cortes) who are as good as you, swear to you who are no better than we, to accept you as our king and sovereign lord, provided you accept all our liberties and laws; but, if not, we do not. (12)

If Parliamentary sovereignty failed to take root in pre-Union Scotland it had little to do with democratic idealism. The fiction of recent times which interprets the declaration of Arbroath as a statement of democratic principles and sees Parliamentary sovereignty as alien has little foundation in historic reality.

Popular sovereignty is a fiction, in the sense of the term used by Morgan. This fiction sustains rather than threatens the human values associated with it. It has been a dynamic fiction ‘more capable of serving as a goal to be sought, never attainable, always receding, but approachable and worth approaching’. (13) The core of this fiction is democratic self-government.

**Parliamentary sovereignty**

The text-book view of the United Kingdom constitution is that sovereign power rests with the Queen (or King) in Parliament. In Scotland, Nationalists and Home Rulers frequently argue that this is a peculiarly English idea. (14) Heuston has argued that it is, in fact, a doctrine which is ‘almost entirely the work of Oxford men. (15) His list of Oxford men starts with Thomas Hobbes and includes Blackstone, Sir William Anson and A V Dicey.

The most significant figure was Dicey whose elaboration of the doctrine of Parliamentary sovereignty was motivated by his opposition to Irish Home Rule. An understanding of Dicey’s legal theory requires an understanding of his politics. Paradoxically, Dicey was an early advocate of the use of referendums in England. (16)

Students of public policy in Britain are generally dismissive of the role of
parliament in policy-making. Jordan and Richardson note that there is much interest in the working of the House of Commons but question whether the House 'contributes more to the policy process or to the tourist trade.'\(^{17}\) This is not to deny that Parliament has a role. It is that of legitimizing decisions taken elsewhere. Waldron argues that the doctrine of Parliamentary sovereignty does not indicate that Parliament is in control but that 'those who are in control must exercise certain of their powers through Parliament.'\(^{18}\)

Waldron's view is that Parliamentary sovereignty, in the final analysis, means little more than the 'expression of a certain deference to Parliament on the part of British courts.'\(^{19}\) This was also the view Marshall expressed forty years ago:

In modern times the evidence for the doctrine's existence is betrayed only by a consistent attitude of the judiciary towards the interpretation of statutes.\(^{20}\)

This has been the de facto situation throughout Britain, however much some Scots cling to the doctrine of popular sovereignty.

What the Courts would do in the event of Westminster voting to abolish a Scottish Parliament at some future date is impossible to know with any degree of certainty. Bogdanor argued in his book on devolution, published shortly before the 1979 referendum, that it was important to view questions of devolved assemblies in political rather than constitutional terms. By this he meant that however circumscribed the powers a Scottish Assembly might be, what was involved was the creation of a new locus of political power in Scotland. In practice, the powers retained at Westminster might be very difficult to exercise.\(^{21}\) In the event of a Scottish Parliament being established, the de facto situation would change:

It is then in constitutional theory alone that full legislative power remains with London; and it is only in constitutional theory that the unitary state is preserved. In practice, power will be transferred, and it cannot, except under pathological circumstances, be recovered.\(^{22}\)

This question is similar to, if not the same as, asking what the consequences would be in the event of conflict between the European Community and Westminster. Constitutional lawyers have their answers but this is a political as opposed to a legal question.

**Differences between Parliamentary and popular sovereignty**

The differences in practice between popular and Parliamentary sovereignty are less significant than the doctrines might suggest. A number of countries make explicit reference to popular sovereignty in their constitutions, usually in the opening articles. The French and Italian constitutions declare that sovereignty 'belongs to the People'.\(^{23}\) The Belgium constitution states that all power 'stems from the nation';\(^{24}\) The Irish constitution affirms the nation's 'inalienable, indefensible, and sovereign right to choose its own form of government, to determine its relations with other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and traditions.'\(^{25}\) The Spanish constitution asserts the indivisible nature of popular sovereignty: 'National sovereignty is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and solidarity amongst them.'\(^{26}\)

The German Basic Law is unusual in that the declaratory statement regarding popular sovereignty is immediately followed within the same constitutional article by an attempt to explain what this might actually mean:

All state authority emanates from the people. It shall be exercised by the people by means of elections and voting and by specific legislative, executive, and judicial organs.\(^{27}\)

The institutions through which popular sovereignty finds expression are not so very different from those of Parliamentary sovereignty.

Declarations of popular sovereignty in practice differ widely. Identifying the differences between popular and Parliamentary sovereignty is therefore difficult if a comparison of institutions is attempted. What seems much more important is the very existence of the 'fiction' of Parliamentary sovereignty in this country while the 'fiction' or, more accurately, the 'fictions' of popular sovereignty exist elsewhere. Institutionally, the lack of a written constitution and lack of entrenched rights afforded to individuals and institutions which exist in other countries is obviously lacking in the United Kingdom. However, the ratification of the European Convention on Human Rights by the UK has gone some way to narrow this difference.

The 'fiction' of Parliamentary sovereignty has a real impact, in that it is so closely associated with the Diceyan absolutist conception of sovereignty. It is this ideology rather than the position of Parliament which is most significant.

**Origins of Subsidiarity**

Subsidiarity's origins in Catholic thinking had more to do with Pope Pius XI's opposition to socialism than a belief in decentralisation as might be understood in contemporary political debates. The 1931 Papal Encyclical, Quadragesimo Anno was written, as the name suggests, forty years after the publication of Rerum Novarum, a previous papal encyclical issued by Pope Leo XIII whose 'chief enemy' had been socialism.\(^{28}\) Like the previous encyclical, Quadragesimo Anno was principally concerned with warning...
against the dangers of socialism. The 1931 statement attempted to define the role and limitations of the state and the functions of different communities within the state. As Calvez and Perrin state, the principle of subsidiarity is "concerned with the relationship of the state to other societies, not with the nature of the state itself."[29]

Subsidiarity was not the central concern of Quadragesimo Anno. In the official English version of Quadragesimo Anno the term subsidiarity does not actually appear. The translation from Latin of *sustinum* is found in the English phrase *fundamental principle of social philosophy*:

just as it is wrong to withdraw from the individual and commit to a group what private enterprise and industry can accomplish, so too it is an injustice, a grave evil and a disturbance of the right order, for a larger and a higher association to arrogate to itself functions which can be performed efficiently by smaller and lower societies. This is a fundamental principle of social philosophy, unshaken and unchangeable. Of its very nature the true aim of all social activity should be to help members of the social body, but never to destroy or absorb them.[30]

The idea of subsidiarity, then, in its original sense had little if anything to do with levels of government. According to Heinrich Rommen's The State in Catholic Thought subsidiarity is concerned with protecting the 'different natural or freely created communities in the social order'.[31] It was, therefore, far closer to traditional Conservative concerns than any socialist ideal.

**Christian Democrats, Socialists and subsidiarity**

Until the 1940s, the term was hardly used beyond the Catholic Church. During the post-war period the idea has had an influence on European Christian Democracy. The Mouvement Républicain Populaire in France, and the Dutch and West German Christian Democrats, were all influenced by Catholic social thought including the idea of subsidiarity as well as similar ideas emanating from the Protestant churches.[32] This was as might be expected. Less predictable has been the influence on parties of the left. Despite the hostility of the Catholic Church to socialism and the existence of a strong strand of anti-clericalism amongst many European Socialist parties, Catholic ideas have percolated through to influence parties of the left in Europe.

Part of the reconstruction of the Parti Socialiste in France involved an appeal to Catholic voters. This was made easier by the existence of senior figures in Mitterrand's campaigns who were practising Catholics. One prominent example was Jacques Delors. Born into a staunchly Catholic family in Paris in 1925, Delors' background was an important political influence. The Catholic thinker, Emmanuel Mounier is frequently referred to in Delors' speeches. Mounier's *personaliste* philosophy[33] opposed liberal individualism and Marxism and found echoes in Quadragesimo Anno. Personalisme, therefore, was an influence on both the right and left in parts of Europe.

A further development which helped bridge the divide between Socialism and Catholicism was provided for under the liberal Pontificate of Pope Paul VI. *Populorum Progressio* of 1967 articulated ideas favouring decentralisation and participation. These later Catholic social and political ideas emerged at a time when ideas of *autogestion* and decentralisation were finding support amongst the left in Europe. The idea of subsidiarity, if not the term, was finding support across the political and theological spectrum.

**German Federalism and Subsidiarity**

A significant aspect of the influence of subsidiarity was found in the writing of the West German constitution where it was used on the one hand to justify federal devolution, and on the other by the Bavarians to oppose the federal constitution.[34] Bulmer maintains that the principle of subsidiarity is embodied in the German Basic Law in Articles 30, 70 and 83.[35] Articles 70 and 83 consist of similar wording to that of Article 30:

The exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Länder in so far as this Basic Law does not otherwise prescribe or permit.[36]

As Bulmer suggests, this initially provided for a 'situation of Länder predominance' but one which did not continue, because of the process of centralization.[37] Bulmer outlines two different means by which this centralization has occurred: firstly, by constitutional amendment and secondly, through the increasing financial dependence of the Länder on the Bund.[38]

There have been three phases of centralization in German politics which have adversely affected the position of the Länder. The first occurred with the end of the Allies' occupation when increased responsibilities in foreign and defence affairs accrued to the Bund. Though this did not directly affect the responsibilities of the Länder, the balance of the relationship altered. The second phase of centralization came in the late 1960s with the development of macroeconomic demand management which, once more, provided the Bund with increased power and authority. It resulted in the tasks of Länder governments 'becoming more and more restricted to the mere implementation of federal laws'.[39] The important point is that new powers or functions which a policy gains may alter the existing balance in the territorial distribution of power. Constitutions may attempt to embody certain principles but other political changes can undermine these attempts.

The third phase has been due to the impact of European integration in the 1980s/90s, in particular the Single European Act (SEA). It was the Bund which...
negotiated the SEA, though the Länder were consulted, which resulted in the European level acquiring increased competence in certain fields including in those which were Länder responsibilities under the Basic Law. The Länder's concern was not simply that they were losing competences to Brussels but that they would have little direct involvement in decision-making at this level. The main decision-making institution at EC level is the Council of Ministers, and it is almost certain to remain for the foreseeable future, which would give the Bund authority over exclusively Länder competences, as it is the Bund which is represented in the Council.1(80)

The European Community and subsidiarity

Subsidiarity's application to the European Community demonstrates just how elastic the idea has become. In her article in the Financial Times on Europe at the height of the Tory leadership contest, Margaret Thatcher argued that the rest of the world was 'finding liberty in devolution of power away from the centre'.

That is why what is called subsidiarity is so important. The Community should be involved in taking action only where it is demonstrably clear that member states acting on their own cannot achieve a particular objective.4(1)

It is also a term used frequently in the speeches of Jacques Delors. Clearly, his intention is not to limit the extent of the public sector, and certainly not to place impediments in the way of European integration. Delors rarely misses an opportunity to refer to the concept of subsidiarity in his speeches. His meeting in May 1988 with the heads of government of the German Länder saw him indicate strong support for the principle of subsidiarity - meaning protection of the rights and competences of the Länder. Franz-Josef Strauss, the late Premier of Bavaria, had argued at this meeting on behalf of the Länder that European integration could be consonant with the protection of Länder rights.

To confuse matters, subsidiarity is referred to in an 'opinion' provided by the European Parliament's Committee on Youth, Culture, Education, the Media and Sport. The committee was concerned that the development of integration in fields with which it is concerned might be impeded. It argued that:

the principle of subsidiarity must not lead to a reinforcement of the separateness of educational systems - if education is to be provided first and foremost by the Member States or by their subdivisions, it is equally true that this exclusive responsibility must not impede dialogue between the authorities responsible for education, in the interest of creating 'a People's Europe'. The principle of subsidiarity must therefore be given a dynamic and positive interpretation.6(2)

In its only justiciable form, Article 130R of the Single European Act dealing with environmental matters, subsidiarity explicitly refers to member states and not sub-state levels of government:

The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of individual member states. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measure.4(4)

The European Parliament in 1984 agreed a Draft Treaty for European Union with a statement in its preamble which referred to member states:

Intending to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the States acting independently.4(3)

The main debate concerning the application of the idea has revolved around whether it should be written into Community Treaties. The Committee on Institutional Affairs of the European Parliament recommended that the principle of subsidiarity should be:

enshrined in the Treaties in such a way as to permit challenges in the Court of Justice of the European Communities, either as a precautionary step, at the time of the Commission's first proposal or that of other Institutions using the power of initiative, or retrospectively, by the Member States, the Community Institutions or the supreme courts of the Member States.4(6)

The influential House of Lords Select Committee on the European Communities considered the term in a report published in October 1990.4(7)

They recommended against giving power to the European Court of Justice to interpret the principle of subsidiarity, as it cannot be used as a 'precise measure against which to judge legislation' and the test 'can never be wholly objective or consistent over time'.6(8) This partly reflects the British/English distaste for.
constitutritional courts. A justified fear which opponents of further integration might have would be the Count’s tendency throughout his history for siding with the cause of integration against the member states. Opponents of further integration in the Bruges Group are divided as to the desirability of writing the principle of subsidiarity into the Treaties. (49)

Essentially, ‘subsidiarity’ is just as imprecise as ‘sovereignty’ as regards its definition, its appearance as a slogan and its growing use as a shibboleth. One difference between the uses of ‘sovereignty’ and ‘subsidiarity’ is that the former causes more awkwardness amongst proponents of greater European integration and is the shibboleth of opponents, whereas the latter seems to be a term fought over by all-comers. In the sense that it means decentralisation, subsidiarity is a fine slogan but its vagueness makes it inadequate for any other purpose. Once more, its translation in institutional terms will be the test.

Conclusion

In its dynamism and idealism, popular sovereignty has much in common with a tradition in European political culture which, it is claimed, has often been wanting in British politics. Malcolm Rifkind’s comments when Minister of State at the Foreign Office on the British predilection for a more pragmatic style of policy-making makes this point:

We would take the view, if you tried to identify on tablets of stone exactly what the final objective is, then you will spend an enormous amount of time discussing it and you will be unlikely to agree. If you concentrated on what are the measures that will make sense and will be helpful and useful, their achievement will be a very important and vital contribution to European Union. (50)

It might well be argued that a great weakness of the entire European project has been a lack of a popular base. Translating the idealism of popular sovereignty into institutional structures is the difficult part. Arguably, to be at all meaningful, this must be combined with the principle of subsidiarity or decentralisation. Laski maintained that the French Constitution of 1791, which originally enshrined the idea of popular sovereignty, reduced it to a metaphor. (51) Constitutional debate requires tools which are more analytically sophisticated than concepts such as sovereignty.

One aspect of the use of ‘sovereignty’ in the context of EC debates transcending its different meanings is its quality as a shibboleth. There appears to be no need to refer to sovereignty in constitutional debate however irrelevant the original meaning of the term now is, if it ever was relevant, or however confusing its continued use appears to be.

Given the different uses to which these terms are put, and the variety of
23. French Constitution, Article 3; the Italian Constitution Article 1.
27. German Basic Law, Article 20(2).
34. Andrew Adonis *Subsidiarity: Myth,Reality and the Community’s Future* London, IEA Inquiry No. 19, p. 3.
35. S Bulmer, ‘Efficiency, democracy and West German federalism: a critical analysis’ in C Jeffrey and P Savigear (editors), *German Federalism Today* p. 104.
36. German Basic Law, Article 30.
37. Simon Bulmer, *op cit*.
47. House of Lords, Select Committee on European Communities, ‘Economic and Monetary Union and Political Union’, vol. 1, HL Paper 88-I.