

Raymond Carré de Malberg and the interpretation of sovereignty in the Belgian constitution

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1. *Introduction*

The constitution of Belgium that established parliamentary monarchy with bicameral representation was accepted in 1831. The drafters of the constitution sought to found its legitimacy in Belgian society itself which was expressed in the formulation of article 33 (originally article 25): «tous les pouvoirs émanent de la Nation. Ils sont exercés de la manière établie par la Constitution». This particular formulation has since become the basis for a specific understanding of the meaning of sovereignty in the Belgian constitution that can be found in practically all available public law textbooks. The interpretation that is predominant in current Belgian legal discourse is that the Belgian constitution is founded on the principle of national sovereignty which is radically opposed to popular sovereignty. This fact implies that sovereignty is attributed not to the Belgian people, but to the Belgian nation, an enti-

ty deliberately considered as fictitious and unable to manifest itself as an independent political subject. This conceptual choice of national over popular sovereignty bears a number of practical repercussions. It restricts the means of popular self-expression to elected representative organs, and consequently, it rigidly boycotts all forms of direct citizen participation, including referendums. Binding referendums on any level in Belgium are deemed unconstitutional based on the specific reference to the national sovereignty principle that allegedly lies at the foundation of Belgian legal order.

Recently, this prevalent interpretation of the meaning of sovereignty in the Belgian constitution has been called into question. In their article *Sovereignty and Direct Democracy: Lessons from Constant and the Belgian Constitution*, Raf Geenens and Stefan Sottiaux explain that apart from the predominant national sovereignty framework, some contemporary scholars are inclined towards the popular sovereignty

explanation, while some question whether the Belgian founding fathers had any particular definitive conception of sovereignty in mind¹. However, Geenens and Sottiaux stress that the interpretation of the Belgian constitution in the vein of national sovereignty is incomparably prevalent both in Dutch and French language literature, but it might not have always been this way. Indeed, the sources from the late-19th and early-20th century do not make a particular distinction between popular and national sovereignty². While they acknowledge that the meaning of sovereignty should be deduced from the phrase «tous les pouvoirs émanent de la Nation», they do not make any distinction between the terms “nation” and “people”³. They think of national sovereignty as a mechanism either to oppose the theocratic way of legitimizing state power⁴ or to ensure the individual and political rights of Belgian citizens⁵. The course of the interpretation starts to change around the 1950s. In 1950, André Mast, a professor of public law in the University of Ghent and eventually one of the most influential constitutional scholars in Belgium, published the first edition of his textbook *Overzicht van het grondwettelijk recht* [Overview of Constitutional Law], in later editions *Overzicht van het Belgisch grondwettelijk recht*, that sets the canon for the majority of subsequent interpretations of sovereignty in the Belgian constitution.

As to the sources of his national sovereignty theory, André Mast references Raymond Carré de Malberg, Julien Laferrière and Georges Vedel. Raymond Carré de Malberg is the earliest of the mentioned sources who is cited extensively by both Laferrière and Vedel, and moreover, appears in most subsequent Belgian public law textbooks

after Mast. Carré de Malberg’s theory of sovereignty and the reasons why his theory became so influential in Belgium is the topic of the analysis that follows. In this article, I want to look at Carré de Malberg’s own reasoning in establishing the distinction between popular and national sovereignty that continues to exert its influence over Belgian legal thinking. In order to do that, I will situate Carré de Malberg’s theory in the context of his influences and explain the key concepts that structure his theory of sovereignty, i.e. legal person of the state, organs of the state, national will, etc. I will show how his formulation of the idea of national sovereignty allows him to make a strong case against direct citizen participation in his earlier writings, but how later, he drastically shifts his position to endorsing the sovereignty of the general will and referendums as the only appropriate way of limiting parliamentary power. Returning to the question of the interpretation of sovereignty in the Belgian constitution, I will raise the question which, if either, of Carré de Malberg’s takes on sovereignty still remains valid for understanding sovereignty in Belgium.

2. Carré de Malberg on sovereignty

Raymond Carré de Malberg, a professor of public law at the University of Strasbourg, was one of the most influential constitutional lawyers in 20th-century France. His thought has significantly shaped political and juridical ideas of a variety of prominent French politicians and lawyers including René Capitant, Georges Burdeau,

Paul Bastid, etc. Via René Capitant, once Carré de Malberg's younger colleague in Strasbourg, and Michel Debré, who became acquainted with Carré de Malberg through the work of Capitant and later became the primary drafter of the constitution under Charles de Gaulle, Carré de Malberg held sway in the writing of the Constitution of the 5th Republic⁶. Carré de Malberg's work belongs to a short-lived genre of the general theory of state which is a part of a larger post-Hegelian German and French discourse developed over the course of the 19th century. Three major concerns shape Carré de Malberg's reasoning about the state and sovereignty: 1) political and geo-political changes brought about by WWI and the transformation of the role of the state in the allegedly globalizing and democratizing world; 2) the German occupation of the Alsace-Lorraine region and Carré de Malberg's corresponding attempt to formulate a theory of the strong French state capable of counter-balancing German expansionism; 3) tendencies towards mass democratization, social unrest and questioning of old representative institutions.

Publishing his work in the aftermath of World War I (the two volumes of his *Contribution à la théorie générale de l'Etat* were published in 1920 and 1922), Carré de Malberg questions whether the discussion of the state as an independent sovereign entity is still timely. The world had changed and the German model of the state had resulted in too many unfortunate outcomes: from 1871 to 1914, the world witnessed the unprecedented rise of German hegemony and aggression. Its precept of domination over its own population and over other states had not only manifested in international relations, but had also made its

way into the core of German legal theory⁷. In order to establish his own approach to the state that was appropriate for the new world order, Carré de Malberg wondered which principle could be the basis of State existence in the future – power and domination or free cooperation («Domination ou collaboration: dans lequel de ces deux sens se formera le droit de l'avenir?»⁸). One could see that pure state domination had become outdated and people strove to collaborate freely in political matters. The 'popular sentiment' was acquiring more and more weight in France and abroad. This permitted one to conclude that the old regime of state domination was transforming into the regime of collaboration⁹. In this respect, French theory was more accommodating to the challenges of the time than German *Staatslehre*. German theory conceptualizes the state and its power in terms of *Herrschaftsgewalt*, or ultimate power, the existence of which is guaranteed by the figure of the *Herrscher*. This theory, according to Carré de Malberg, is based solely on the tenet of domination and commandment, while the French tradition endorses cooperation. «Ce qui se trouve exclu aussi dans le régime de la collaboration, c'est la théorie du *Herrscher*, de ce dominateur, qui apparaissait, dans la littérature allemande, comme situé en dehors et au-dessus de la nation et vis-à-vis de qui les membres du corps national n'avaient plus, dès lors, que le caractère de purs sujets»¹⁰.

At the same time, Carré de Malberg does not think that a regime purely based on collaboration is conceivable either. While the state cannot be grounded on domination only, it cannot exist completely without its own dominating power. However, instead of domination being the *raison d'être* of the

state, it needs to be produced through collaboration («la collaboration ne constitue qu'un moyen; le but reste la puissance d'État»¹¹). People need to want to submit to state supremacy and those who refuse to collaborate are forced to obey. This is a peculiar way that Carré de Malberg claims to reconcile democratic tendencies with state organization. As I show in what follows, his further investigation is informed by this double bind of collaboration and domination: he wants to ensure democratic legitimacy, but he reduces citizen participation to the bare minimum. He wants to outline the regime of political collaboration, but he refuses the nation any subjectivity outside of the state. Although Carré de Malberg starts off by emphasizing the unique rootedness of French state tradition in political collaboration, one can say that he fails to incorporate it in his theory of the state and national sovereignty.

2.1. *State as a legal person vis-à-vis the nation*

Many researchers emphasize that the originality of Carré de Malberg's project consists in his combination of the French constitutional tradition and German *Staatslehre*¹². Éric Maulin notes that the idea of the combination of German and French traditions is, at first glance, controversial. On one hand, the legitimacy of the German Reich was founded on the right of force which allowed German jurists to formulate their positivist project as the theory of public law sanctioned by state power. On the other hand, French constitutionalism inherited its core from the French Revolution which

grounded legitimacy on the principles of equality, individual rights and separation of powers¹³. Carré de Malberg borrows his essential terminology from German positivists: legal person of the state, organs of the state are concepts that were developed systematically by Gerber, Laband, Jellinek, et al. However, German state theory is inseparably connected with the principle of monarchy that allows one to think of the state, in the first place, as having a legal personality. There, the monarch is considered to be the highest organ of state power that embodies and represents the state. The monarch who has the ultimate power to sanction all laws proposed by the legislative assembly performs the act of auto-limitation by submitting himself to the laws that he sanctions. The person of the state in the German version of *Rechtstaat* is unthinkable without the person of the monarch¹⁴.

Pierre Brunet remarks that Carré de Malberg's reason for marrying the German principle of the legal personality of the state with national sovereignty that he ascribes uniquely to the French legal tradition is double. On one hand, Carré de Malberg thinks of the idea of legal personality and its organs as the best way to give a juridical explanation to collective subjectivity. On the other hand, he strives to demonstrate that German jurists are not pioneers in their organ theory. Instead, its origins can be found in the French revolutionary tradition¹⁵. The way that Carré de Malberg approaches the question of the state and sovereignty is by establishing a connection between the state and the nation and by introducing the notion of the legal personality of the state. The state, being a type of a social group, forms a special kind of collectivity that functions according to its rules and organizes its

members in a certain way. The «human substance» that constitutes the state is the nation which is understood in a specific sense: «le mot "nation" désigne non pas une masse amorphe d'individus, mais bien la collectivité organisée des nationaux, en tant que cette collectivité se trouve constituée par le fait même de son organisation en une unité indivisible. En ce sens juridique, la nation n'est plus seulement un des éléments constitutifs de l'État, mais elle est, par excellence, l'élément constitutif de l'État en tant qu'elle s'identifie avec lui»¹⁶. The state, as a collective person, cannot be identified simply with the mass of individuals that compose it¹⁷. Instead, its members are marked by a distinct organization by means of which they first turn from an 'amorphous mass of individuals' into a collective subject.

L'essence propre de toute communauté étatique consiste d'abord en ceci que, malgré la pluralité de ses membres et malgré les changements qui s'opèrent parmi eux, elle se trouve ramenée à l'unité par le fait de son organisation: en effet, par suite de l'ordre juridique statutaire établi dans l'État, la communauté nationale, envisagée soit dans la collection de ses membres présentement en vie, soit même dans la série successive des générations nationales, est organisée de telle façon que les nationaux forment à eux tous un sujet juridique unique et invariable, comme aussi ils n'ont à eux tous qu'une volonté unique, celle qui est exprimée par les organes réguliers de la nation et qui est la volonté collective de la communauté¹⁸.

Carré de Malberg describes the collection in terms of its established organization as well as the unity of its will which are defined in a purely juridical way. This creates a vicious circle in which the nation, being a constitutive element of the state, only acquires its subjectivity through the state

organization while the state, being the form of the nation, ends up being the only legal subject. Carré de Malberg is aware of this conundrum and, moreover, he structures his argument around the very idea of the inseparability of the nation and the state. He remarks that previous theories, both German and French, have conceptualized the personality of the state in several different manners, all of which have separated the nation from the state in one way or another. Many have claimed that the state forms a subject that is altogether different from its constitutive element – the people (Paul Laband, Georg Jellinek, Herbert Meyer, Maurice Hauriou), where some believe that the nation does not have a subjectivity of its own (Georg Jellinek, Paul Laband) and some hold that the nation forms a separate legal person alongside the state (Léon Duguit)¹⁹. For Carré de Malberg, it is essential to demonstrate that, on one hand, the state is not a subject on its own, but only insofar as it is the personification of the nation, and that, on the other hand, the nation does not have any other subjectivity than the one that it acquires through the state form.

L'État n'est autre que la nation elle-même. [...] La nation n'a de pouvoirs, elle n'est un sujet de droit, elle n'apparaît comme souveraine qu'en tant qu'elle est juridiquement organisée et qu'elle agit suivant les lois de son organisation. En d'autres termes, la nation ne devient une personne que par le fait de son organisation étatique, c'est-à-dire par le fait qu'elle est constituée en État²⁰.

Moreover, according to Carré de Malberg, all theories that separate the state and the nation contradict the principle of national sovereignty, a legal concept that is unique to the French tradition. Carré de Malberg maintains that the founding fa-

thers of French constitutionalism firmly believed in the inseparability of the nation and the state, having preserved this belief in the Constitution of 1791. «En proclamant que la souveraineté, c'est-à-dire la puissance caractéristique de l'État, réside essentiellement dans la nation, la Révolution a en effet consacré implicitement, à la base du droit français, cette idée capitale que les pouvoirs et les droits dont l'État est le sujet, ne sont pas autre chose au fond que les droits et pouvoirs de la nation elle-même»²¹. For Carré de Malberg, the only proper interpretation of articles 1 and 2 of title III of the Constitution of 1791, which hold that all powers come from the nation, is to annihilate any difference between the state and the nation, claiming that the state is the legal personification of the nation and the nation cannot manifest itself outside of state institutions.

The establishment of the essential link between the state and the nation is crucial for Carré de Malberg in order to talk about sovereignty. What forms the legal personality of the nation-state is its organization, the Constitution, which ensures its *modus operandi*. Although the organization is essential to describe the state, this alone is not enough. Many collectivities can have an organization, but only the state has a feature that distinguishes it from all other social groups – it is its power (*puissance étatique*), or sovereignty²². «Ce qui distingue l'Etat de tous autres groupements, c'est la puissance dont il est doué. Cette puissance, dont lui seul est capable et que par suite l'on peut déjà suffisamment caractériser en la qualifiant de puissance étatique, porte, dans la terminologie traditionnellement consacrée en France, le nom souveraineté»²³. As the nation acquires its legal sub-

jectivity only through the state structure, it can only be considered sovereign if viewed from the perspective of the state. Thus, the examination of national sovereignty and state power become for Carré de Malberg one and the same.

2.2. *National sovereignty and state sovereignty*

Carré de Malberg emphasizes that the term «sovereignty» was originally coined in French legal and political thought and only later made its way into other traditions. In French terminological practice, «souveraineté» designates the supreme power essentially characteristic of the state²⁴. Not only in French theory, but in French constitutional texts as well, sovereignty is synonymous with state power («la puissance de commander avec une force irrésistible ou – selon la terminologie française – la "souveraineté"»)»²⁵. For Carré de Malberg, all types of sovereignty – monarchic, popular, and eventually national – are ways of describing how the state functions. Carré de Malberg holds an ultimately state-centric point of view: in his opinion, the only starting point for any discussion on sovereignty is the state, while the only difference between various regimes can consist in the way that state power, or sovereignty, is established and exercised. He is convinced that this primacy of the state and the coincidence of the nation with the state in particular is something that was actively promoted by the legislators of the French Revolution. «Le principe fondamental dégagé à cet égard par la Révolution française (Déclaration de 1789, art. 3; Const. 1791, tit.

III, préambule, art. 1 et 2), c'est que la nation seule est souveraine; et par nation les fondateurs du principe de la souveraineté nationale ont entendu la collectivité "indivisible" des citoyens, c'est-à-dire une entité extra-individuelle, donc aussi un être abstrait, celui-là même en définitive qui trouve en l'État sa personnification. Seule cette personne nationale et étatique est reconnue souveraine»²⁶. Carré de Malberg sees the drastic shift from the Constitution of 1791 with its precept that «all powers come from the nation» and the Constitution of 1793 and of the year III where sovereignty is ascribed to «the universality of French citizens»²⁷.

In this respect, Carré de Malberg juxtaposes the French legal experience to the ones of Germany, Great Britain and the United States. Sovereignty of the Monarch, Parliament or popular sovereignty have something in common that is absent from French discourse, namely the figure of the original holder of the supreme power that has full right to exercise it whenever he pleases. In the model of monarchic sovereignty, the monarch is granted the supreme authority which he holds due to his divine right. Monarchic power is unlimited and is exercised according to the principle «si veut le roi, si veut la loi», as it used to be in the France of the ancien régime. In Germany, although the power of the monarch is limited by the constitution, the constitution itself is nothing but an act of auto-limitation of the sovereign who remains the personal guarantor of the constitutional regime. The British tradition ascribes sovereignty to the Parliament, while the American and Swiss traditions rely on the idea of the sovereignty of the people. The notable exceptions, according to Carré de Malberg,



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to the exclusively French character of national sovereignty, are the constitutions of Belgium (1831, art. 25) and Greece (1864, art. 31) that also ascribed sovereignty to the nation under the influence of the French experience in the aftermath of the July Revolution²⁸.

Originally directed against the royal power, the idea of national sovereignty as formulated by the authors of the Declaration of the Rights of Man and of the Citizen of 1789 and the Constitution of 1791 implies several aspects. First, national sovereignty, for Carré de Malberg, is only possible under a strong constitution. The nation, personified by the state, obtains a reality totally different from the people insofar as it is legally organized. «La nation est donc

souveraine, en tant que collectivité unifiée, c'est-à-dire en tant qu'entité collective, qui, par la même qu'elle est le sujet de la puissance et des droits étatiques, doit être reconnue comme une personne juridique, ayant une individualité et une pouvoir à la fois supérieurs aux nationaux et indépendants d'eux»²⁹. National subjectivity is intrinsically connected with the notion of the state and state constitution. Both the very existence of the nation-state as a collective subject and its essential attribute – sovereign power – find its origins in the legal order that is established by the Constitution of the state. Carré de Malberg's adherence to the written Constitution as the only source and guarantee of sovereignty and subjectivity is so strong that he refuses to take into account any other forms of legal practice, including constituent power or customary law³⁰. In an ultimately positivist fashion, Carré de Malberg refuses to recognize any other form of constitutionality except the written, rigid constitution and thus literally merges the state, the constitution and the nation. Because of Carré de Malberg's inflexibility in this respect, Olivier Beaud calls his position «the fetishism of the written constitution»³¹.

L'État résulte d'une certaine organisation de la collectivité nationale [...] Si maintenant l'on se demande d'où les détenteurs du pouvoir, quels qu'ils soient, gouvernants ou assemblée des citoyens, tirent leur qualité d'organes de l'État, et en vertu de quel droit ils ont pu acquérir cette qualité, il faut répondre, au point de vue juridique, qu'ils tiennent ce titre et qu'ils ont reçu leur vocation de l'ordre juridique établi à cet égard dans chaque État. Or, cet ordre juridique se trouve contenu dans la Constitution. Ils tirent donc leur vocation de la Constitution, et c'est en vertu de celle-ci qu'ils exercent leur compétence³².

Second, in Carré de Malberg's view, the French principle of national sovereignty grounds a regime that is altogether different from monarchy, democracy, or aristocracy – the regime of representation. In this claim, Carré de Malberg relies on title III, art. 2 of the Constitution of 1791 that proclaims that «la Nation, de qui seule émanent tous les Pouvoirs, ne peut les exercer que par délégation. La Constitution française est représentative: les représentants sont le Corps législatif et le roi». The idea of delegation is deemed central for the French revolutionary enterprise: no power can be exercised unless it has been delegated. «En raison de la souveraineté exclusive de la nation, nul corps, nul individu ne peut exercer d'autorité qu'en vertu d'une concession et délégation nationales»³³. The procedure of delegation is fixed in the Constitution and in this capacity, it constitutes the regime of representation where representatives do not pass over a pre-constituted will of their delegates (imperative mandate), but act as the organ of the national will, i.e. they produce the will for the first time themselves. This specific idea of the legitimate exercise of power (that it is only legitimate when delegated) will later lead Carré de Malberg to exclude referendums from the national sovereignty model as, to his mind, they are not based on any form of delegation («la souveraineté nationale s'oppose à la monarchie et à la démocratie pure. [...] Les citoyens dans la démocratie, ne sont pas les délégués du souverain, ils sont le souverain lui-même»³⁴).

Finally, Carré de Malberg structures his understanding of the legal person of the nation-state and national sovereignty as its essential attribute around the idea of state organs. The nation, which is personified

by the state, can only act by the means of its organs that are established by its Constitution and formed through delegation. Any regime can be conceived through the prism of state organs, but only the representative regime of national sovereignty is grounded on the precept that no organ can be the highest organ of power. Carré de Malberg explains that in monarchy or democracy, the monarch or the people are, respectively, believed to be the highest organs or ultimate holders of sovereignty. As the nation is deliberately conceived as the abstract entity, it can never exercise its sovereignty immediately and directly. The nation is not an organ itself, but a legal person acting through its organs that lack the dimension of sovereignty. As the idea of organs is central for Carré de Malberg's understanding of national sovereignty, it requires its own separate analysis.

2.3. *Organ theory in the national sovereignty model*

The constitution of the Third Republic, or rather the constitutional laws of 1875, did not provide any profound regulations on legislative power and thereby led to the increasing dominance of the Parliament through its assumption of both legislative and constituent powers. Pierre Brunet explains that two reactions have formed in dealing with the unrestricted nature of parliamentary competences: some were revisiting the arguments of the Doctrinaires denouncing representation as a fiction (e.g. Léon Duguit), others like Carré de Malberg turned to the German theory of state organs³⁵. Just like the idea of legal personality,

the framework of the theory of organs permits Carré de Malberg to describe how the national collectivity can function. He formulates the main questions that he intends to clarify by way of the theory of organs as follows: «En quelle qualité exercent-ils [divers détenteurs du pouvoir] la puissance de l'Etat?» and «D'où leur vient cette qualité? D'où tirent-ils, le pouvoir qu'ils exercent, et leur vocation à cet exercice?».

Carré de Malberg establishes that the nation is an abstract entity that, by definition, cannot form a will of its own. Consequently, this collective body requires an agency that produces its will which is conceptualized in terms of an organ. «Par elle-même, la collectivité n'a pas de volonté une. [...] C'est pourquoi l'objet essentiel de toute Constitution est de donner à la communauté nationale – qui se trouve, par la même, étatisée – une organisation qui lui permette d'avoir et d'exprimer une volonté unifiée»³⁶. Again, we see the indispensable interdependence in Carré de Malberg's thinking between the notions of the nation, the state and the constitution. In discussing the function of will formation, Carré de Malberg unites the idea of the organ of the national will and the idea of representation. Repeatedly, he claims to find the origins of his theory in the Constitution of 1791 where the principle of national representation is fully established. Having rejected the imperative mandate, French revolutionaries gave complete independence to the representatives which Carré de Malberg puts at the heart of his theory of organs. «Les personnes qui seront chargées de vouloir pour le compte de l'être collectif, [...] ne se borneront pas à énoncer une volonté collective déjà formée antérieurement, mais elles sont les organes de volonté de la personne collective»³⁷.

This move is inspired by Carré de Malberg's desire to demonstrate the novelty of the French revolutionary undertaking and to establish continuity between his project and the French constitutional tradition. However, at the same time, the equation between the concept of «organ» and the concept of «representation» is the root of Carré de Malberg's inaccuracy³⁸. When Carré de Malberg asserts that «les députés ne sont pas les représentants, mais leur assemblée est l'organe, un des organes de la nation. [...] Ce régime [le régime représentatif] ne repose pas sur une idée de conformité entre la volonté nationale et les volontés énoncées par les députés, mais il consiste en ce que les volontés exprimées par le corps des députés constituent la volonté même de la nation»³⁹, he holds that the only source of the national will is the legislative assembly. Commenting on this idea, Pierre Brunet notes that there is a significant difference between the legislative assembly formulating a will in the name of the collective subject and the legislative assembly being the only organ of the will of the collective subject (the state)⁴⁰. In the first case, representation is more of a teleological concept that can direct the will formation of the representatives. In the second case, the legislative organ claims its exclusive capacity to legally express the national will to which everybody is forced to submit. In the context of Carré de Malberg's endeavor to counteract the excessive power of the Parliament, reasoning such as this is, to say the least, peculiar.

Moreover, the specificity of Carré de Malberg's understanding of the idea of the state organ transpires in his divergence with the position of Georg Jellinek. The definition of the organ that Carré de Mal-

berg provides at first seems very similar to that of Jellinek: «il faut entendre par organes les hommes qui, soit individuellement, soit en corps, sont habilités par la Constitution à vouloir pour la collectivité et dont la volonté vaut, de par cette habilitation statuaire, comme volonté légale de la collectivité»⁴¹. The difference between Jellinek and Carré de Malberg emerges in their respective interpretations of the meaning of the legal will. For Jellinek, the legal will is any will that complies with legal norms, while for Carré de Malberg, the legal will is only that will that produces the norm⁴². That is why it is not only the legislative power that Jellinek includes in his concept of the organ of the will. Instead, he broadens the concept to incorporate the executive and the judiciary. On the contrary, Carré de Malberg thinks that the organ of national will should express its initial, primordial will (*volonté initiale, volonté primordiale et supérieure*) and charges the legislative power with this function. In this way, Carré de Malberg, on one hand, narrows down the concept of the organ that he borrows from German jurisprudence.

Following the same line of argumentation, Carré de Malberg discusses whether the people can, under any circumstance, be considered an organ of the national will. The first two options that he considers are the people as preexistent to the state and the people as the electorate body. For both of these options, he concludes that they cannot be considered an organ. For Carré de Malberg, the people on their own do not form any sort of collective subjectivity and as such are incapable of forming their will («Le peuple est une collection inorganisée d'individus, qui comme telle, est incapable de vouloir et d'agir pour l'Etat:

le peuple, envisage dans sa masse générale, ne peut donc constituer un organe»⁴³). The electorate, although it is organized and constitutionally limited, is but an organ of electing the representatives, not the organ of the national will («Les citoyens actifs n'ont qu'un pur pouvoir d'élire et qu'ils ne participent point à la formation de la volonté étatique»)⁴⁴. Furthermore, as far as the question of referendums goes, Carré de Malberg's reason for concluding that the regime of national sovereignty and referendums are incompatible is due to his conviction that when people participate in legislation through referendums, they do not act as an organ of national will, but as the subject of sovereign power. He takes issue with the position of Jellinek who believes that in both direct democracy and the representative regime, people act as the organ of state will: in the first case, they act as a «primary organ», in the second – through the «secondary organ», the Parliament⁴⁵. For Carré de Malberg, this position is an inadmissible confusion of two fundamentally different regimes.

Dans un pays de démocratie directe, le peuple, ou plutôt le corps des citoyens actifs, est bien un organe de volonté de l'Etat, car il crée cette volonté par lui-même, en tant que l'adoption définitive des décisions étatiques dépend directement de lui. Au contraire, ce qui caractérise le régime représentatif, c'est que le peuple n'y a point la puissance de décider: le corps électoral est bien organe de création du Parlement, il n'est pas organe de volition; bien plus, le but même du régime dit représentatif est d'exclure systématiquement le peuple de la puissance de vouloir, c'est-à-dire de décider, pour l'Etat, et de réserver celle-ci aux seuls représentants⁴⁶.

Carré de Malberg, an unapologetic follower of Benjamin Constant's distinction of the liberty of ancients and that of mod-

erns, sets a strict division between direct democracy and representative regimes. Referendums for him belong to direct democracies, and even though his theory is supposed to be argued in a purely positivist manner, his argument against referendums pertains to the claim that it is against the tradition developed in France. Rejecting any form of pluralism, Carré de Malberg thinks that there should be only one organ for formulating the will of the nation-state, the choice for him is obvious: it is either the people or their representatives. The representative regime is representative insofar as there is no reason for validating the decisions of national delegates: they enjoy the complete independence of decision-making. In this capacity, they operate as substitutes for the people who delegate them. In Carré de Malberg's opinion, a referendum does nothing but demand popular validation of representative decisions, thereby destroying the whole idea of representation. Either representatives serve as the only organ of the national will and only their decisions bear legality, or the people are asked to ratify a motion of the legislative assembly and representatives' function only to prepare the proposal of a law, while the people turn into the organ of the national will. However, people turning into the organ of the national will sabotages the principle of national sovereignty according to which an organ should be formed through delegation and constituted as an organ of the will: «la volonté nationale ne consiste point originairement dans celle des membres particuliers de la nation, citoyens ou monarque, mais qu'au contraire, il est organisé dans la nation une puissance de volonté générale et supérieure, volonté nationale dont l'expression sera fournie

par ceux des membres de la nation qui sont constitués, par le statut organique de celle-ci, ses "représentants"»⁴⁷. Carré de Malberg's understanding of referendums presents itself as rather naïve and uncritical: this is where people really express their will and become sovereign and thus dismantle the constitutional guarantees of the national sovereignty system where no organ can claim supreme power. At the same time, the Parliament functioning as the only organ of the national will does not pose a problem. More than anything it seems to be an attempt, in Carré de Malberg's own words, to «systematically exclude people from the power to will» and to substitute the fictional authority of the constitution with the concrete power of the Parliament⁴⁸.

2.4. *The shift of Carré de Malberg's position*

All in all, the conclusion of *Contribution à la Théorie générale de l'État* regarding sovereignty is that the idea that popular sovereignty implies a regime where supreme power is exercised directly by its holder – the people, while national sovereignty is based on a constitutionally established delegation mechanism and thus is free from the abuses of power. This is the way the juxtaposition of popular and national sovereignty is usually understood in Belgian legal thought, which heavily relies on Carré de Malberg's framework. However, Carré de Malberg's intellectual biography does not end with *Contribution à la Théorie générale de l'État*. One can hardly ignore the fact that Carré de Malberg drastically changed his position on sovereignty and the role of referendums towards the end of his life.

At first, the change seems rather dramatic: Carré de Malberg starts defending popular sovereignty and the importance of referendums as the most accurate way of expressing the general will. What are the premises of this change and can it be instructive for the way that sovereignty should be interpreted in the Belgian legal debate?

In the concluding remarks to *Contribution*, Carré de Malberg discusses the political situation of present-day France. He acknowledges that many voice the opinion that the Constitution of the Third Republic of 1875 does not uphold the principle of national sovereignty, the position carefully devised by the Founding Fathers during the French Revolution. The parliamentary regime of the Third Republic allegedly compromises the precept of national sovereignty in two ways: it does not regulate the legislative process of the Parliament and it leaves constituent power in the hands of ordinary representatives. This purportedly results in the substitution of national sovereignty by sovereignty of the Parliament and in the submission of the French people to the regime of parliamentary oligarchy⁴⁹. Yet having recognized those criticisms, Carré de Malberg concludes that the rule of the French Parliament is still sufficiently limited by a specific power that the French people exclusively possess – the power of reelection. Moreover, he maintains that it is the only «truly effective limitation» (la seule vraie limitation effective) of parliamentary power and that the possibility of referendums as an additional form of popular participation should be ruled out⁵⁰.

However, in his work *La loi, expression de la volonté générale* (1931) and in the article *Considérations théoriques sur la question de la combinaison du referendum avec le parle-*

mentarisme (1931), both published a decade later than *Contribution*, Carré de Malberg confesses that the idea of the organ of the national will is nothing but a juridical fiction («une fiction de représentation exclut toute participation populaire autre que celle réduite à l'électorat»⁵¹), used in order to cover up the fact that Parliament usurps the totality of state power: «l'idée de souveraineté de la volonté générale a été retournée contre ceux-là mêmes de qui peut émaner l'expression de cette volonté: elle a été utilisée à l'effet de substituer la souveraineté parlementaire à la souveraineté du corps national des citoyens»⁵². More so, Carré de Malberg finds that the regime of representation produced by the French Revolution was aimed at ensuring the domination of the bourgeoisie over the popular masses («le but effectif de ce régime devait être d'établir et d'assurer la maîtrise prépondérante de la classe bourgeoise sur la masse populaire»⁵³). In Carré de Malberg's view, this became possible because of the original assumption established by the French Revolution and inherited by the latter French constitutional tradition, namely, the assumption that the idea of the general will and the idea of representation can be combined. Merging Rousseau's idea of the general will initially attributed to the people and the principle of representation, the revolutionaries set up for a dead-end situation which eventually led to parliamentary authoritarianism. Parliament can hardly be apt enough to appropriately express the general will as it is not consolidated within itself: there is no general will in the Parliament, just dispersed wills of various parties⁵⁴.

According to the Carré de Malberg of these later works, two alternatives present

themselves to remedy the situation. The first one is to preserve the idea of the general will, or the «sovereignty of the general will», and keep associating the law with the expressions of the general will of the people. In this case, referendums are the necessary addition to the parliamentary regime because only referendums allow the general will to be expressed in the most adequate way («les décisions adoptés par voie de votation populaire expriment la volonté générale d'une façon plus adéquate et plus effective que celles émises par des assemblées parlementaires»⁵⁵). The second alternative is to abandon the idea of the general will altogether and to exclude any potential democratic justifications of the parliamentary regime. In this case, referendums are not necessary as Parliament is legitimized solely by the Constitution and not by reference to the people⁵⁶. Considering emerging democratic tendencies and increasing popular activity, Carré de Malberg is inclined to the first alternative. Additionally, he sees several upsides to introducing referendums, i.e. drawing a sharper line between ordinary and constitutional laws, creating a better balance between the legislative and the executive powers, or limiting the role of the parties. All in all, he concludes that referendums are a necessary part of the democratic politics of the general will.

So is there indeed a drastic shift in Carré de Malberg's take on sovereignty? Yes and no. Yes, because he does change his perspective on the place that the people occupy in the process of decision-making and on the role of referendums. No, because he does not alter his interpretation of sovereignty, but abandons his earlier theory of national sovereignty altogether to substitute it with the sovereignty of the general

will. Christophe Schönberger claims that there is continuity in Carré de Malberg's project insofar as he has always been looking for a way to limit the power of Parliament and to establish the constitutional regime. The difference consists in the fact that in *Contribution à la Théorie générale de l'État*, he attempts to do by constitutional means, and in *La loi, expression de la volonté générale* he suggests to do it through the means of popular participation being under a strong impression of the Weimar constitution⁵⁷. However, what is significant is that Carré de Malberg's terminology does not deepen, but rather simply turns upside down. From rejecting the supremacy of any organ under national sovereignty, he shifts to calling the people the supreme organ under the «sovereignty of the general will», from claiming that representation is a unique activity that creates collective will for the first time rather than reproducing the delegated mandate, he shifts to asserting that the people need to verify the decisions of representatives. In other words, Carré de Malberg does not modify his doctrine of national sovereignty, but rather modifies his specific vision of popular sovereignty where he does not want to completely return to direct democracy, but still believes that decision-making should be based on the idea of the general will, and that people express their general will through a referendum better than does the multi-fractioned Parliament. What Carré de Malberg rejects in his earlier writings, he later endorses, but in the same, rather uncritical manner.

Thus, the fact that Carré de Malberg shifted his political position towards the end of his life is more of a fact of his personal biography than an actual conceptual change in his interpretation of sovereign-

ty – national or popular. He does not cease to associate national sovereignty with the representative system that excludes popular participation. While in *Contribution* he is able to justify it by calling Parliament the organ of national will, later in *La loi*, he dismisses national sovereignty entirely by substituting it with the sovereignty of the general will. Nothing about the idea of national sovereignty changes, only Carré de Malberg's assessment of this idea. Moreover, his theory of sovereignty is the epitome of the conflict between the principles of constitutionalism and democracy. Early on, he rejects democracy in order to endorse constitutional regime, while later he gives democracy primacy over constitution.

3. Summarizing remarks

Returning to the question of Carré de Malberg's influence over the Belgian constitution, one could wonder why this theory was opted for in the Belgian context? Geenens and Sottiaux note that it is significant that the first edition of Mast's textbook was published just a few months after the first and only state-wide referendum ever held in Belgium⁵⁸. The referendum concerned the question of whether the exiled king Leopold III could resume his royal powers. The referendum caused a major political crisis and a pronounced regional split between Brussels, Flanders and Wallonia. The unrest brought about by the referendum might have been a cause for André Mast and following legal scholars to strongly opt for the national sovereignty doctrine that excludes the possibility of direct popular legislation. With that being said, André Mast might

have had additional reasons in mind. Mast insists that the drafters of the Belgian constitution deliberately opted for the national sovereignty model making the nation, not the people, the subject of sovereignty⁵⁹. Mast groups sovereignty theories into two types: on one hand, there is national sovereignty that founds the classic democratic state, and on the other hand, there is popular sovereignty as described by Marxist state theory⁶⁰. Classical democracy (*klassieke democratie*) based on national sovereignty implies a constitutional limitation of powers, individual rights and the rule of law. Popular democracy (*volksdemocratie*) and popular sovereignty only in theory endorse the rule of the people, while in reality they inevitably lead to the dictatorship of the party that usurps the right to speak in the name of the people, which is evident from the Soviet Union totalitarian experience⁶¹. For Mast, Belgium as a constitutional state is founded on the idea of national sovereignty, while the classless society (based on popular sovereignty) and juridical procedures of western democracies are incompatible⁶². This argument wanders from the earliest editions of Mast's textbook in 1950 and 1953 to the very last one that was published in 1987. While, in the 1950s, Mast characterizes the Belgian system as a representative regime based on national sovereignty that is opposed to a totalitarian state, starting from the 1960s, he bluntly equates the idea of popular sovereignty with Marxist state theory and the totalitarian rule of the communist party. Thus, Mast employs a specific theoretical framework for distinguishing between popular and national sovereignty in order to combat the communist agenda that he indissolubly connects with the idea of popular sovereignty.

The binary opposition of national and popular sovereignty has been co-opted for different purposes in Carré de Malberg who aimed at providing constitutional guarantees for a strong French state and André Mast who used it as an anti-communist theory. However, a significant resemblance remains: the national sovereignty narrative is a conservative reaction to popular aspirations and social movements. Not Carré de Malberg's own invention, national sovereignty originates from the theory of the *Doctrinaires*, the group of French royalists, endorsing the theory of reason over popular sovereignty and direct democracy. The antagonism between representative government and democracy that has been a corner stone of the 19th century political debate has received its full explication in the opposition of national and popular sovereignty in Carré de Malberg's theory. This antagonism of representative government and democracy was reformulated in the post-WWII discourse as the antagonism of liberal ideology and communism (e.g. A. Mast), where liberal representative government now is given the name of representative democracy in order to defend itself against the other type of popular government, that defined itself as proper democracy, i.e. communism.

Carré de Malberg's state theory presents a profound conceptual apparatus for analyzing how a collective organization of people can function and legitimize itself. He offers two different accounts of how sovereignty – the supreme power of a popular association – can be manifested and exercised. While his doctrine of national sovereignty in its opposition to popular sovereignty determined the way sovereignty is understood in Belgian public law discourse,

his later theory of sovereignty of the general will never made a significant impact on the Belgian debate. The necessary consequence of Carré de Malberg's national sovereignty theory – the unconstitutional character of direct citizen interventions – is repeatedly questioned in Belgium with increasing aspirations to introduce some forms of direct or participatory democratic procedures. Does either of Carré de Malberg's takes on sovereignty pose a possible foundation for a new interpretation of sovereignty in Belgium?

Carré de Malberg's theory of national sovereignty as established in *Contribution à la Théorie générale de l'État* is grounded on several strong assumptions that can be hardly separated from his overall project. First, Carré de Malberg understands sovereignty ultimately as the power of the state and his fundamental goal is to demonstrate how the state power of domination can be established in France without having to introduce the German principle of the auto-limitation of the *Herrscher*. Although he realizes that Parliament exercises uncontrollable power in practice, he insists on employing the theory of state organs to attribute the representative assembly with the exclusive function of producing the national will. He attempts to solve a political issue using juridical theory that is meant to be explanatory rather than normative. What Carré de Malberg juridically describes as national sovereignty, politically manifests itself as the sovereignty of the Parliament. Second, in his 'fetishism of the written constitution', Carré de Malberg associates the sheer existence of the national collectivity with documented legal norms. Olivier Beaud explains how through this assumption, Carré de Malberg mixes up two

meanings of the word «constitution»: in claiming that the nation cannot exist without the state organization, Carré de Malberg confuses «constitution» as institutional design and «constitution» as a set of legal norms⁶³. This confusion leads Carré de Malberg to rule out the ideas of constituent power or customary law as unconstitutional and incompatible with national sovereignty. Finally, as the consequence of the two previous points, Carré de Malberg equates the state and the nation, the legal and the legitimate, establishing the regime of the rule of law in theory, but removing the people from obtaining political leverage as much as possible in practice.

The inconsistencies of Carré de Malberg's positivist project might have led him to switch his position from proclaiming the principle of national sovereignty in *Contribution à la Théorie générale de l'État* to advocating the sovereignty of the general will in *La loi, expression de la volonté générale*⁶⁴. However, instead of looking to amend his vision of constitutionalism or national sovereignty, Carré de Malberg puts forward an uncompromising alternative: either one continues to think in terms of constitutionality and national sovereignty and abandons all aspirations to democracy, or one introduces democratic mechanisms, such as referendums, but quits the attempts to submit France to the model of the rule of law. Having changed his personal priority, Carré de Malberg has not changed the content of his dilemma. It seems necessary that Carré de Malberg's national sovereignty alternative that was introduced into Belgian legal discourse by André Mast with his anti-communist agenda in mind is reconsidered and revised, especially considering the fact the author of this theory himself rejected it. If

a referendum is proposed, it needs a more critical and informed explanation than the one given by Carré de Malberg presenting a referendum as the only and the most accurate expression of the sovereign general will. Instead, a more progressive understanding of referendums should rely on theories presenting referendums as containing elements of representation and sovereignty as not excluding popular action and conflict.

¹ R. Geenens, S. Sottiaux, *Sovereignty and Direct Democracy: Lessons from Constant and the Belgian Constitution*, in «European Constitutional Law Review», XI, n. 2, 2015, pp. 293-320.

² H. Pirenne, *Histoire de la Belgique*, Tome VI, *La conquête française, le consulat et l'Empire, le Royaume des Pays-Bas, la Révolution belge*, Brussels, Lamertin, 1926; A. Giron, *Le droit public de la Belgique*, Brussels, Manceaux, 1884; P. Errera, *Traité de droit public belge*, Paris, V. Giard & É. Brière, 1909.

³ Giron, *Le droit public*, cit., p. 31: «La théorie de la souveraineté du peuple est expressément consacrée par l'article 25 de la Constitution belge, portant que «tous les pouvoirs émanent de la nation»».

⁴ *Ibid.*

⁵ Errera, *Traité*, cit., p. 15.

⁶ É. Maulin, *Raymond Carré de Malberg, Le Légiste de La République*, in R. Carré de Malberg, *Contribution à La Théorie Générale de l'Etat*, Dalloz, 2003, vol. 1, p. 4; S. Aromatario, *La pensée politique et constitutionnelle de Michel Debré*, Paris, L.G.D.J., 2006, p. 28.

⁷ Carré de Malberg, *Contribution cit.*, p. vi.

⁸ *Ivi*, vol. 1, p. vi.

⁹ *Ivi*, vol. 1, p. x.

¹⁰ *Ivi*, vol. 1, p. xix.

¹¹ *Ivi*, vol. 1, p. xviii.

¹² Maulin, *Raymond Carré de Malberg, Le Légiste cit.*; P. Brunet, *Entre Représentation et Nation: Le Concept D'organe Chez Carré de Malberg*, in O. Beaud, P. Wachsmann (edited by), *La Science Juridique Française et La Science Juridique Allemande de 1870 à 1918*, Annales de La Faculté de Droit de Strasbourg, Strasbourg: Presses Universitaires de Strasbourg, 1997.

¹³ Maulin, *Raymond Carré de Malberg, Le Légiste cit.*, pp. 2-3.

¹⁴ *Ivi*, p. 4.

¹⁵ Brunet, *Entre Représentation cit.*, pp. 256-259.

¹⁶ Carré de Malberg, *Contribution cit.*, vol. 1, p. 3.

¹⁷ *Ivi*, vol. 1, p. 8.

¹⁸ *Ivi*, vol. 1, p. 9.

¹⁹ *Ivi*, vol. 1, p. 12.

²⁰ *Ivi*, vol. 1, p. 15.

²¹ *Ivi*, vol. 1, p. 13.

²² B. Barraud, *Souveraineté de l'État et Puissance de l'État*, in «Revue de La Recherche Juridique - Droit Prospectif», 2017, <hal-01634256>.

²³ Carré de Malberg, *Contribution cit.*, vol. 1, p. 9.

²⁴ *Ivi*, vol. 1, p. 70.

²⁵ *Ivi*, vol. 1, p. 255; Olivier Beaud (O. Beaud, *La Souveraineté dans la «Contribution à La Théorie Générale de l'État» de Carré de Malberg*, in «Revue Du Droit Public»,

1994, pp. 1251-1301) explains how Carré de Malberg attempts to make a distinction between state power and sovereignty. In this attempted distinction he is influenced by the school of *Isolierung* and its founder, a German jurist Hans Gerber, who defined state power (*Staatsgewalt*) as the power of domination and commandment, and sovereignty (*Souveränität*) as independence from any other power. Beaud explains that this distinction is specific to German context as it was supposed to ideologically prove that member states of the Second Reich although dominated by Prussia still remain independent sovereign states. Although Carré de Malberg is aware of this context, he insists on the distinction claiming that what is termed as state power in Germany, is called sovereignty in France. However, he keeps using these terms interchangeably throughout the text (pp. 1256-1264).

²⁶ Carré de Malberg, *Contribution cit.*, p. 87.

²⁷ *Ivi*, vol. 1, p. 84.

²⁸ *Ivi*, vol. 2, p. 169.

²⁹ *Ivi*, vol. 2, p. 173.

³⁰ H. Dumont, *Les Coutumes Constitutionnelles. Une Source de Droit et de Controverses*, in I. Hachez, Y. Cartuyvels, Ph. Gérard, F. Ost,

M; van de Kerchove, H. Dumont (edited by), *Les Sources Du Droit Revisitées, Vol. 1: Normes Internationales et Constitutionnelles*, Limal-Bruxelles, 2013. Dumont explains (p. 585) that Carré de Malberg advocates the rigidity of the constitution in France and leaves no place for constituent power or non-written constitutional norms. Some of his contemporaries or disciples attempted to amend this rigid view of the constitution. E.g. Léon Duguit and René Capitant neglect a purely positivist view on constitutional norms and make room for other forms of constitutionality. R. Capitant: «la force constituante de la coutume n'est qu'un aspect de la souveraineté nationale. [...] Lors même qu'elle [la nation] n'a pas le droit de manifester par écrit sa volonté, elle a néanmoins une volonté et qui s'impose. Elle reste au moins maîtresse de son obéissance, et par conséquent détient la positivité du droit [...]]. Le droit peut bien recevoir son contenu du législateur, c'est de la nation qu'il tiendra toujours sa vigueur». But starting from the 1970s, Malbergian rigid view on the constitutionality returns. It is also dominant in Belgium.

- ³¹ O. Beaud, *Constitution et droit constitutionnel*, in D. Alland, S. Rials (edited by), *Dictionnaire de la culture juridique*, Paris, PUF, 2003, p. 263.
- ³² Carré de Malberg, *Contribution cit.*, vol. 2, p. 144.
- ³³ Ivi, vol. 1, p. 87.
- ³⁴ Ivi, vol. 2, p. 202.
- ³⁵ Brunet, *Entre Représentation cit.*, p. 273.
- ³⁶ Carré de Malberg, *Contribution cit.*, vol. 2, p. 286.
- ³⁷ Ivi, vol. 2, p. 286.
- ³⁸ Brunet, *Entre Représentation cit.*, p. 277.
- ³⁹ Carré de Malberg, *Contribution cit.*, vol. 2, p. 285.
- ⁴⁰ Brunet, *Entre Représentation cit.*, p. 279.
- ⁴¹ Carré de Malberg, *Contribution cit.*, vol. 2, p. 286. The definition

of the organ given by Jellinek is the following: «Les actes de volonté faits par les membres d'une collectivité unifiée en vue du but unitaire de celle-ci présentent un double aspect. Dans le monde physique, ce sont des actes de volonté d'individus; dans le monde juridique, ce sont purement des actes de volonté de la communauté. L'individu charge de vouloir déviant, au point de vue juridique, un organe de la volonté de la communauté» (as cited by Carré de Malberg, *Contribution cit.*, vol. 2, p. 296; Jellinek's original is in *System des subjectiven öffentlichen Rechte*, 2 ed., p. 30).

- ⁴² Brunet, *Entre Représentation cit.*, p. 277.
- ⁴³ Carré de Malberg, *Contribution cit.*, vol. 2, p. 334.
- ⁴⁴ Ivi, vol. 2, p. 337.
- ⁴⁵ Ivi, vol. 2, p. 346.
- ⁴⁶ *Ibidem*.
- ⁴⁷ Ivi, vol. 2, p. 355.
- ⁴⁸ As Olivier Beaud remarks (Beaud, *La Souveraineté cit.*, pp. 1300-1301): «La souveraineté nationale – la souveraineté fictive de la Constitution – est remplacée par la souveraineté bien concrète du Parlement».
- ⁴⁹ Carré de Malberg, *Contribution cit.*, vol. 2, pp. 616-618.
- ⁵⁰ Ivi, vol. 2, pp. 618-620.
- ⁵¹ R. Carré de Malberg, *Considérations Théoriques Sur La Question de La Combinaison Du Referendum Avec Le Parlementarisme*, in «Revue Du Droit Public et de La Science Politique En France et à l'Étranger», 1931, p. 15.
- ⁵² *Ibidem*.
- ⁵³ Ivi, p. 16.
- ⁵⁴ Ivi, p. 23.
- ⁵⁵ Ivi, p. 22.
- ⁵⁶ R. Carré de Malberg, *La Loi, Expression de La Volonté Générale. Étude Sur Le Concept de La Loi Dans La Constitution de 1875*, Paris, Sirey, 1931, pp. 221-222; Carré de Malberg, *Considérations cit.*, pp. 22-23.
- ⁵⁷ C. Schönberger, *De La Souveraineté Nationale à La Souveraineté Du Peuple: Mutations et Continuité*

de La Théorie de l'Etat de Carré de Malberg, in «Revue Française d'Histoire Des Idées Politiques», IV, 1996, pp. 297-316.

- ⁵⁸ Geenens, Sottiaux, *Sovereignty cit.*, p. 297.
- ⁵⁹ A. Mast, *Overzicht van het grondwettelijk recht*, Standaard, Gent, 1953, p. 72.
- ⁶⁰ Ivi, p. 19.
- ⁶¹ Mast, *Overzicht van het Belgisch grondwettelijk recht*, Ghent, E. Story-Scientia, 1967, p. 24; Mast, *Overzicht van het Belgisch grondwettelijk recht*, Ghent, E. Story-Scientia, 1981, pp. 23-24.
- ⁶² Mast, *Overzicht van het Belgisch grondwettelijk recht*, Ghent, E. Story-Scientia, 1985, pp. 24-25.
- ⁶³ Beaud, *La Souveraineté cit.*, pp. 1300-1301.
- ⁶⁴ D. Mineur, *De La Souveraineté Nationale à La Volonté Générale*, in «Jus Politicum», VIII, 2012, <<http://juspoliticum.com/article/De-la-souverainete-nationale-a-la-volonte-generale-536.html>>.