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# *What Use for Sovereignty Today?*

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To suggest that there might be good use for state sovereignty sounds counter-intuitive. After all, at least since the time of the League of Nations, we international lawyers have been critical of sovereignty. We have thought it a narrow, ethnocentric way to think about the relations of human beings. We have rehearsed a *moral* case against it. Sovereignty, we say, upholds egoistic interests of limited communities against the world at large, providing unlimited opportunities for oppression at home. It is, we sometimes say, "organized hypocrisy".[1] If a country claims that a matter is under its "domestic jurisdiction", and refers to Article 2(7) of the UN Charter, we are inclined to think of this as an effort by its leaders to hide from well-founded international criticism. From a *sociological* perspective, we have attacked it because it fails to articulate the economic, environmental, technological, and ideological inter-dependencies that link humans all across the globe, giving a mistaken description of the reality of human relationships across the world. And from a *functional* perspective, we have observed its failure to deal with global threats such as climate change, criminality, or terrorism, while obstructing such beneficial projects as furthering free trade and protecting human rights. Therefore, we have wanted to replace it with *international* or *global* approaches, working across "artificial" national boundaries in pursuit of objectives that have nothing territorially limited about them.[2]

For this purpose, we have tamed down sovereignty. In a famous case from 1923, the Permanent Court of International Justice had already defined sovereignty as a "relative matter", dependent on the state of international relations.[3] The Court suggested—or at least we read it that way—that what a country's "sovereignty" means is its negative freedom, the freedom of action left to public officials by a state's

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1. Stephen D. KRASNER, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).
2. See my "The Wonderful Artificiality of States" (1994) 88 American Society of International Law Proceedings 1 at 22–9. For a general discussion, Jens BARTELSON, *The Critique of the State* (Cambridge: Cambridge University Press, 2001), especially at 77ff. (stressing the way critiques of the state have been invariably accompanied by efforts at reproducing statehood in some other vocabulary).
3. *Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921*, Advisory Opinion, [1922] P.C.I.J. 3 at 23–4. See further Martti KOSKENNIEMI, *From Apology to Utopia. The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005), especially at 258–72.

international obligations, or a shorthand for the "bundle of rights, powers and privileges" that a state has at any moment, and each traceable to a distinct legislative source.[4] And those rights, powers, and privileges, we have tended to hope, are constantly diminishing. After all, states everywhere are being bound to networks of norms and institutions—from the way they treat their citizens to the way their competition or intellectual property laws are formulated, from the way their law-enforcement officials behave, to how they plan their industrial projects. While political theorists address this through the vocabulary of "legalization" of international politics, lawyers are more inclined to resort to the twin thematic of "fragmentation" and "constitutionalization".[5] At our most eloquent, we have interpreted these developments by taking up Immanuel Kant's project for perpetual peace to point to the philosophical weight of our assumption that "universal history" has a "cosmopolitan purpose" and that the direction is towards some form of world unity beyond formal statehood.[6]

In practice, we have used sovereignty to limit sovereignty. For example, in a series of recent arbitrations, we learn that the Argentine government had violated the private rights of foreign companies under the bilateral investment treaties it had concluded as it devaluated the peso during the financial crisis of 1999–2002. Argentina, these awards were saying, was no longer free to direct its economic policy in accordance with how its government saw fit. Even as there now are awards going in the opposite direction, possibly creating a "legitimacy crisis" in the field,[7] it is good to recall that the earlier awards followed closely the jurisprudence on "permanent sovereignty over natural resources" from the 1970s and 1980s. States are bound by the agreements they have made not as a *derogation* of their sovereignty but as an *effect* of it.[8] They had been able to bind themselves *because they were sovereigns*.[9] If they were not able to bind themselves—and thus receive the benefits they were looking for—well, then they could not really be sovereigns, could they?

As a result, "sovereignty" has lost much of its normative or descriptive meaning. All over the world, states are bound by an increasingly dense network of formal and informal rules and regimes. As Europeans know, formal sovereignty may today co-exist

4. This is typically the view by liberal legal theorists such as Hans Kelsen or H.L.A. Hart.

5. Out of a burgeoning literature, see, e.g., Judith L. GOLDSTEIN, Miles KAHLER, Robert O. KEOHANE, and Anne-Marie SLAUGHTER, *Legalization and World Politics* (Cambridge, MA: MIT Press, 2001) and Jan KLABBERS, Anne PETERS, and Ulf GEIRSTEIN, *The Constitutionalization of International Law* (Oxford: Oxford University Press, 2009).

6. See Immanuel KANT, "Idea for a Universal History with a Cosmopolitan Purpose" in Hans REISS, ed., *Political Writings*, 2nd ed. (Cambridge: Cambridge University Press, 1991) at 41–53. I have commented on this in "On the Idea and Practice for Universal History with a Cosmopolitan Purpose" in Bindu PURI and Heiko SIEVERS, eds., *Terror, Peace and Universalism: Essays on the Philosophy of Immanuel Kant* (Oxford: Oxford University Press, 2007) at 122–48; For a recent discussion of the way the thematic of the state and the "international" directs and limits the imagination of political (and legal) thought, see R.B.J. WALKER, *After the Globe, Before the World* (London: Routledge, 2010).

7. See, e.g., Michael WEIBEL, "Two Worlds of Necessity in ICSID Arbitration: GMS and LG&E" (2007) 20 Leiden Journal of International Law 637.

8. "[A] sovereign state must be sovereign enough to make a binding promise both under international and municipal law", Case No. 2321 (1974), 65 I.L.R. 1984 at 452 (International Chamber of Commerce).

9. See further *Case of the SS Wimbledon*, Judgment, [1923] P.C.I.J. Ser A/1., at 25.

even with a situation where state organs have almost fully given up their decision-making powers in some area—economic or energy policy for example—to an international organization. Members of the European Union may still speak of themselves in the language of sovereignty; as a description of the actual powers of their governments, however, that language tells us very little. The pattern of influence and decision-making that rules the world has an increasingly marginal connection with sovereignty. Networks of experts whose expertise is in no way dependent on formal statehood rule an expanding sector of our lives, sometimes with the assent of the state, more often in complete independence. Corporate executives and hedge fund managers do not consult the populations whose fate they determine. Where national governments intervene, they do this on the basis of advice from essentially non-national networks of financial, military, or environmental expertise. Even the domestic government may be a coalition not so much of domestic parties but of local representatives of intrinsically global financial, environmental, or security interests—a forum within which human rights and security experts, say, or representatives of trade and health interests, conclude bargains about the allocation of social resources. This is global governance: rule by preferences and norms, regimes and practices that have no localizable centre or ethos and constantly penetrate and define what the "sovereignty" of our states is allowed to mean, what room for action there is for public power. To this extent, international lawyers seem to have won.

And is the world the better for it? Many will not think so. So where is the problem? And what ought international lawyers to do with it?

## I.

To start with an analysis, we no longer see any magic in sovereignty. It is merely a functional power possessed by a ruler or a government to rule a population for its own good. In the *Island of Palmas* case from 1928, Max Huber had already linked sovereignty with the exercise of effective power because this enabled the protection of the rights of the inhabitants and the interests of the other states.[10] The development has since peaked in the debates after 2001 on the "Responsibility to Protect"—the initiative to redefine sovereignty as responsibility to the population. It is now commonplace to say that sovereignty ought not to shield tyrannical governments. We respect it if it brings us valuable objectives—security, welfare, human rights, "good governance", and the "rule of law".[11] If sovereignty were to endanger these, then as Western interveners in Kosovo in 1999 argued, why respect it?[12] Wars—especially Western wars—are no longer for annexation but for protecting human rights, saving failed states and undertaking "regime change"—the cases of Afghanistan and Iraq

10. *Island of Palmas Case (Netherlands v. United States)*, [1928] 2 R.I.A.A. 829 at 869–70.

11. For recent analysis, see Pekka NIEMELÉ, *The Politics of Responsibility to Protect—Legal, Conceptual, Institutional and Practical Considerations* (Helsinki: Erik Castrén Institute Research Reports, 2008) and Anne ORFORD, "Jurisdiction Without Territory: From the Holy Roman Empire to the Responsibility to Protect" (2009) 30 Michigan Journal of International Law 981.

12. See further my "The Lady Doth Protest too Much: Kosovo, and the Turn to Ethics in International Law" (2002) 65 Modern Law Review 159.

par excellence.[13] Under this view, sovereignty has no intrinsic sense beyond the objectives it is supposed to serve. It may then be set aside as the de facto occupant imagines itself as a trustee of the population, transforming the constitutional order in view of the common good. Or think of the territorial authority set up by the United Nations or other international organizations, such as the European Union, in order to oversee the orderly management of a territory: the cases of the UN Special Representative in Kosovo and in East Timor. The authorization by the Security Council does not, of course, refer to taking over "sovereignty" but to (mere) temporary exercise of certain sovereign "functions".[14] But the ideological implications are huge. As a recent study of the international administration of territory from Versailles to Iraq and beyond puts it, there now is a "pool of international governance obligations" that are neutral of their origin and thus, wiping away the difference between "sovereignty" and "governance", work so as to justify "cosmopolitan governance" by whomsoever is in a position to exercise it.[15]

Such a "functional" notion of sovereignty is nowhere more visible than in the application of human rights under military occupation. In a series of recent judgments, the Israeli Supreme Court, for example, has defined the military authority as in part a trustee of the local (Arab) population, highlighting the need to balance the security of Israeli forces with the rights of Palestinian civilians.[16] The same approach has also been taken by the International Court of Justice and the European Court of Human Rights, that recently affirmed that the Convention will apply to military activities "where, as a consequence of military action—whether lawful or unlawful—that State in practice exercises effective control of an area outside its national territory".[17] Through this means, the distinction between "military occupation" and formal sovereignty is being erased. Whatever the origin of the power, the main thing is that it is exercised *in the interests of the population*.

One need not be a militarist to think in this way. Functional interventionism underlies all human rights law, trade law, and environmental law so that lawyers in all of these fields are in the business of lifting the veil of sovereignty so as to grasp

13. For two useful assessments but on completely opposing sides, see Grant T. HARRIS, "The Era of Multilateral Occupation"(2006) 24 Berkeley Journal of International Law 1, and Nehal BHUTA, "The Antinomies of Transformative Occupation" (2005) 16 European Journal of International Law 721.

14. See SC Res. 1244, UN Doc. S/RES/1244 (1999) (Kosovo), and SC Res. 1272, UN Doc. S/RES/1272 (1999) (East Timor). See also Anne ORFORD, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), especially at 126–43.

15. Carsten STAHN, *The Law and Practice of International Territorial Administration. Versailles to Iraq and Beyond* (Cambridge: Cambridge University Press, 2008) at 760–2, and for those ideological implications, see Anne ORFORD, "Book Review Article: International Territorial Administration and the Management of Decolonization" (2010) 59 International and Comparative Law Quarterly 227.

16. See Martti KOSKENNIEMI, "Occupied Zone—a Zone of Reasonableness" (2008) 41 Israeli Law Review 13.

17. *Issa and Others v. Turkey* [2005] 41 EHRR 27, at para. 69 (Judgment of 30 March 2005). But see also *R. (on the application of Al-Skeini) v. Secretary of State for Defence* [2004] EWHC (QB) 2911, [2005] 2 W.L.R. 1401. See also *Legality of the Threat and Use of Nuclear Weapons*, Advisory Opinion, [1996] I.C.J. Rep. 226 at 239, para. 24; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] I.C.J. Rep. 136, para. 106 and *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda),* [2005] I.C.J. Rep. 116, paras. 215–21.

international problems by the skin.[18] All of this receives its plausibility from the critique of sovereignty, the sense that for populations to live happily, the process of ruling them ought now to take place by global systems of management that do not respect the old and "artificial" boundaries that exist between states. Hence, there has emerged a complex managerial vocabulary that speaks neither about sovereignty nor about co-ordinating the activities of states by formal rules but about functionally oriented "regimes", "objectives", and "values", replacing questions of "law" with questions about "legitimacy", binding force with empirical "compliance". It has taken seriously the critiques of sovereignty and has transferred the power of ruling from the hands of states to global systems of knowledge and expertise. Only the optimal functioning of these systems may produce happiness and safety for global populations. The role of the law is to facilitate their operation, not to protect formal sovereignty. And if these systems point in differing directions—as the systems of trade and environment, or those of security and human rights do—then one should simply bargain to balance the stakes, to compromise, and to allocate jurisdiction in the most effective manner. Figure out the costs and benefits. Streamline, balance, optimize, calculate. When the social is fluid, a social concept of law—that is, a "realist" or "pragmatic" concept—must become fluid as well. Everything must become negotiable, revisable in view of attaining the right outcome.[19]

Global law today is anti-formalist. It tells us: "Never mind status. All that counts is the existence of de facto power, whatever its origin or objectives. Only such power can bring about the common good of all." This is no post-modern extravaganza, however, but respectful of the Western political tradition since Jean Bodin and the rise of natural jurisprudence, the Hobbesian dialectic of protection and obedience. Sovereignty did not arise as a philosophical invention but out of Europe's exhaustion from religious conflict. It was meant to serve the practical purpose of doing away with papal and imperial power and pacifying European societies.[20] One need not go further than Samuel Pufendorf's *On the Law of Nations and of Nature* of 1672 to find the unexceptional statement—"The general law for supreme sovereigns is this: 'Let the people's welfare be the supreme law'."[21] Sovereignty did not seem valuable at that point of Europe's history because of some transcendental ideal embodied in it. On the contrary, its point was to look *away* from anything transcendental, into the power of the secular ruler that was to be harnessed for the benefit of the population. Without power, neither security nor welfare could exist. Without power, the bond between protection and obedience is broken and "anarchy" will re-emerge.

18. For the argument in environmental law, see Franz Xaver PERREZ, *Cooperative Sovereignty: From Independence to Interdependence in the Structure of International Environmental Law* (The Hague/ Boston: Kluwer Law International, 2000).

19. I have discussed this "new natural law" further in my "Miserable Comforters: International Relations as a New Natural Law" (2009) 15 European Journal of International Relations 395.

20. For a brief but effective summary of the conventional account, see Martin van GELDEREN, "The State and its Rivals in early-Modern Europe" in Quentin SKINNER and Bo STRÅTH, eds., *States and Citizens* (Cambridge: Cambridge University Press, 2003) at 83–93.

21. Samuel PUFENDORF, "On the Law of Nature and of Nations", in Craig CARR and Michael SEIDL, eds., *Political Writings* (Oxford: Oxford University Press, 1994) at 242.

From this perspective, sovereignty appears only as a glorified form of power, a power that has begun to seem stable and natural so that we have forgotten how it consolidated itself. Yet, analytical thought insists, why take for granted something for the sole reason that it has become habitual? Even the most stable sovereignty must have its dark side: which sovereignty did not begin its career in blood? In a time of calling for accountability for past wrongs, why should sovereignty be shielded? Surely there is reason to judge the sovereign by the merits of its rule instead of being enchanted by its myths.

Once we part with the formal mystique of sovereignty there is no reason not to judge any use of power, any government, any rule, by its merits: its effectiveness in producing what Pufendorf called "the people's welfare". This is what the practice of transformative occupation—Iraq and Afghanistan—claim for their justification. Why should sovereign power not be put at the same level as its contenders, occupying forces, power wielded by an imperial capital, power exercised by a transnational corporation, a local warlord, or an international body of environmental or human rights experts? What other criterion is there to judge them than how they can provide protection to the people, or look after their welfare?

## II.

These arguments emerge from what could be called "reduction to purpose", the view according to which the criterion whereby political authority ought to be judged lies in how well it fulfils its purpose. That purpose, again, is understood to reside in the fulfilment of the wishes, desires, or preferences of the people. From such a perspective, the conventional international law distinction between sovereignty and other forms of power would appear as a kind of ideological smokescreen, capitulation to a single word—a myth, a taboo. This, I suppose, is the heart of the critiques of sovereignty.

But what if the reduction to purpose were itself an ideology that relied on a myth—namely the myth of the transparency of the "purpose"? It assumes that we have a more or less unproblematic access to what it "really" is that territorial rule ought to achieve and that once we know this, realizing that stated purpose is a relatively straightforward matter, best carried out by technical experts. I cannot here go into a fundamental critique of what I have elsewhere called the "managerial mindset".[22] Let me just sketch two sets of difficulties that highlight the political instead of technical nature of territorial rule.

A first relates to the difficulty of clearly seeing what the "purpose" of a particular regime of territorial authority might be. Even if we agree that it ought to be formulated in terms of the provision of "security and welfare", this leaves completely open what we might mean by those expressions. They have no automatic meaning. What they signify in particular situations refers back to assessments that are bound to differ between individuals and social groups. Some might think of "security" in terms of security of ownership rights or the stability of a country's investment system,

22. I have begun such a critique, for example, in my "Constitutionalism, Managerialism and the Ethos of Legal Education" (2007) 1 European Journal of Legal Studies 1.

while for others it may mean guarantees for the maintenance of basic social welfare services. That "security" is a contested concept has, of course, become evident in the assessment of the tightening security controls that are part of the "fight against terrorism". Is "security" better described as protection against terrorism, or the undisturbed exercise of individual rights and freedoms? That the "welfare" or "security" of one may be attainable only by encroaching on the "welfare" or "security" of another is simply a truism. But it is one that fundamentally complicates the assessment of any regime: whose "security" and whose "welfare" do we have in mind?

But even if there were no problem in determining what the right purpose of territorial government was, this in itself provides no clue as to how to attain it and what, out of a number of alternative policies, might lead us there. Eradication of poverty is undoubtedly a widely agreed objective and a criterion by which to judge a regime. But how should this be translated into particular measures? Is a restructuring operation under the World Bank the right way to go about it? Or should we instead regulate the economy, nationalize key industries, and limit foreign trade in view of domestic concerns? Does democracy further a stable economic environment or does it, instead, provoke attacks on economic structures and operators?[23] Should one integrate in a global economy or refrain from integration and create industries for import substitution? Even if we agree on the need for social peace, we remain completely divided on how that should be attained—by tightening social controls or by increasing political freedoms?

My point is not that such questions are impossible to solve. Their resolution is part of everyday political debate and action. The point is that this is not "simply" about the use of technical expertise but involves political assessment, typically assessment that would seek to put in some hierarchical order the various conflicting purposes that exist in a community, and the conflicting ways in which scarce resources ought to be allocated. This, again, requires the use of political imagination without a guarantee that everybody would agree in the end. Such decision-making cannot be oblivious to the conditions under which it takes place: Who is entitled to participate and how, under what rules and what regime of accountability? In the ideal world of the global managerialist, reserves of the world's best technical experts would always be available to be called upon to address problems irrespective of when and where they arise. In this world, standard solutions and universal criteria of measurement would apply and what would be required of populations is "faith" in the experts—invariably Western experts—in possession of them.[24] In the real world, however, problems are "political" in the specific sense that there is no technical, scientific, juridical, or other language in which they would have "already" been resolved so that the only questions would be limited to those of technical application. Hence it is far from irrelevant *who* the decision-makers are and how their decisions can be contested.

23. Cf. Amy CHUA, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Doubleday, 2003).

24. Recourse to expertise as a way of resolving the problems of the Third World as an act of faith is usefully discussed in Jennifer L. BEARD, *The Political Economy of Desire: International Law, Development and the Nation State* (Abingdon: Routledge, 2007), especially at 157–81.

## III.

So what use is there for "sovereignty" today? Many people worry that the informal management of an increasing number of significant social problems within global expert regimes and outside the structures of formal statehood undermines the ability of human groups to constitute themselves and to live as "political communities". When questions of economic distribution, environmental protection, security, or human rights are conceived of as essentially global, best dealt with by the best forms of functional expertise available globally, then no room is left for communities to decide on their preferences. Globalization means the increasing authority of technical and scientific languages—languages whose native speakers are situated almost exclusively in the West—for which human beings appear as objects of "protection" or charity but rarely as masters of their own lives. It puts forward new types of value and preference that accompany the rise of new professional classes and present themselves in neutral, scientific, non-political terms. What is needed of international law therefore is the politicization of this process—the creation of platforms and vocabularies that highlight the contested nature of the choices that globalization poses.[25] International law can do this only if, instead of becoming one more technical vocabulary of global governance among others, it would seek to become a platform on which to make transparent existing global decision-making and to enhance the accountability of the professional classes to the communities affected by their (contentious) choices. International law does not contain ready-made answers to problems about how the world should be governed. But it could be used as a vocabulary for articulating alternative preferences and for carrying out (strategic) manoeuvres in order to limit the powers of global executive classes and expert groups. This would mean, inevitably, highlighting the importance of the vocabulary of political sovereignty as the expression of local values and preferences as well as traditions of self-rule, autonomy, and continuous political contestation. In a word, it should contribute to the re-imaging of what international politics could mean today.

Imagine that a global corporation called "Supernova" developed the highest quality technologies of security- and welfare-production in the world (whatever that might mean) and that anything produced in national universities or think tanks could come nowhere near those technologies. Imagine then that Supernova agreed to raise the standard of life and security in, say, Africa, or Japan, to levels that could not even be imagined if they were left under the status quo, but only on condition of attaining "sovereignty" over Africa and Japan. Would this be sufficient to draw the ultimate conclusion of the critiques of sovereignty—if you were measurably better off under Supernova than under your quarrelling governments, then why should you not choose that option? What should the law say? Should it just take the bargain offered by Supernova as the only *rational* solution and apply it over the heads of the Africans and the Japanese for their own good?

25. Out of an enormous literature, see David KENNEDY, "The Mystery of Global Governance", Kormendy Lecture, Ohio Northern University, 25 January 2008, online: Watson Institute 〈http://www.watsoninstitute.org/blss/media/docs/kennedy.pdf〉.

I suppose most of us would agree in thinking that this is a nightmare solution. Why? Because there is a way of social life that cannot be reduced to the aggregate of the purposes that people may want to attain, a way in which the exercise of authority over a territory should be evaluated irrespective of its outcomes. For authority is not simply about outcomes. It is also about self-hood and relationship to others. There is an ideal of human self-hood that takes the perspective of every person's growing up and becoming part of a community that one has reason to think of as one's "own", not because that is where one has lived or because one shares the truths that its leaders propound, but because one has been a participant in its collective self-formation. This ideal of self-hood looks upon social life not just as a platform for carrying out objectives such as security and welfare, or obeying those in power—which is usually the same thing—but as participation in decision-making about matters such as what "security" and "welfare" might mean, and which of their alternative forms of realization might be appropriate, with the knowledge and resources and within structures of rules and decision-making that one is ready to think authoritative in the community of one's interlocutors, irrespective of what others might think of them.

This ideal has had many names in the history of politics: republicanism, *virtù*, self-government, citizenship, "positive freedom", autonomy, "Roman liberty", and so on. Such expressions highlight the character of collective life as a *project*—a set of rules, institutions, and practices through which the forms of collective life are constantly imagined, debated, criticized, and reformed, over and again. The wish to participate in such a project is defeated and lost in the replacement of sovereignty by management.[26] The "reduction to purpose" cannot give articulation to collective self-formation in which one's preferences and "purposes" are formed and re-formed in collective decision-making processes and in which *they are not expected to remain stable over time*. The reduction assumes that humans are born ready-made, with stable and unchanging preferences, always acting to maximize utility. This is a familiar image, of course, and powerful interests have a stake in our adopting that image of ourselves. But it is a limited, passive, and ultimately sad image.

"Sovereignty" is just a word, of course. Its meaning varies by reference to the conceptual scheme in which it is used. As such, it is no more or no less worthy of defence than any other word. In particular, we may have very good reasons to think that no *present* holder of power—a person or a group—should "have" it now so that it would not be limited by any rule, institution, or principle beyond its will or interest.[27] One of its meanings is the one it receives in polemical confrontations over

26. For the still valuable distinction between a "civil association" whose members relate to each other by reference to rules and institutions recognized by them as authoritative, and managerial "enterprise-association" whose members are united by shared purposes, in terms of philosophical abstraction and as they have appeared in the history of European states, see Michael OAKESHOTT, *On Human Conduct* (Oxford: Oxford University Press, 1975), especially at 108–326. The same theme is taken up by Michel Foucault in his discussion of the turn from sovereignty to what he calls bio-power, the power of life through technical discourses of management of populations in, e.g., Michel FOUCAULT, *"Il faut défendre la société". Cours au Collège de France. 1976.* (Paris: Seuil/Gallimard, 1997), especially at 213–35.

27. For a useful discussion of the dangers of "immanent sovereignty"—but also of the need of a "transcendental" one (such as presupposed by arguments about "constitutions" or "constitutional

the sense and direction of "globalization", over the emergence of transnational networks of private interest, and the occupation of the spheres of politics by economic and technical vocabularies with their expert systems and embedded preferences. In such contexts sovereignty expresses frustration and anger about the diminishing spaces of collective re-imagining, creation, and transformation of individual and group identities by what present themselves as the unavoidable necessities of a global modernity. Against those, sovereignty articulates the hope of experiencing the thrill of having one's life in one's own hands. This is what sovereignty meant for those who struggled against theocratic rule in early modern Europe or invoked it to fight for decolonization in the twentieth century. Today, it stands as an obscure representative of an ideal against disillusionment with global power and expert rule. In the context of war, economic collapse, and environmental destruction, in spite of all the managerial technologies, sovereignty points to the possibility, however limited or idealistic, that whatever comes to pass, one is not just a pawn in other people's games but, for better or for worse, the master of one's life.

principles"), see Lior BARSHACK, "Constituent Power as Body: Outline of a Constitutional Theology" (2006) 56 University of Toronto Law Journal 185.