

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

Introduction: a concept in fragments

Hent Kalmo and Quentin Skinner

I

The status of sovereignty as a highly ambiguous concept is well established. Pointing out, or deploring, the ambiguity of the idea has itself become a recurring motif in the literature on sovereignty. As the legal theorist and international lawyer Alf Ross put it, ‘there is hardly any domain in which the obscurity and confusion are as great as here’.¹ The concept of sovereignty is often seen as a downright obstacle to fruitful conceptual analysis, carried over from its proper setting in history to ‘plague and befog contemporary thought’.² It seems to bring with it so many hidden meanings and connotations of absolutist forms of government that a more moderate age, committed to international law and increasingly enmeshed in the web of global interdependence, simply has no use for it. So contested is the concept that, rather than pursuing the contestation, many political theorists think we should give up so protean a notion. Granting that the debate on the relevance of sovereignty frustratingly oscillates between claims that it will either continue to exist or that it is about to disappear, forgetting it altogether, and thereby escaping this seemingly endless argument, can easily appear as the most urgent task for political theory. ‘In order to think in a consistent manner in political philosophy’, wrote Jacques Maritain between the two World Wars, ‘we have to discard the concept of sovereignty’.³ Almost a century ago, when these words were written, such recommendations ran against the tide and had an air of Utopia about them. But today, with the flow of investments, information, crime, pollution and entertainment across state borders reaching levels that some theorists see as nothing short of torrential, the tide seems to have turned. The claim that sovereignty is long overdue to be given up can now, in the view of many, be made to rest on firm descriptive ground by pointing to its ‘obsolescence’. And good riddance, too. Some authors even perceive

¹ Ross 1947, p. 34. ² Ward 1928, p. 178. ³ Maritain 1969, p. 61.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)2 *H. Kalmo and Q. Skinner*

an enormous emancipatory potential in the demise of a concept that is not only fatally riddled by vicious ambivalence, but in reality does nothing but mask the crudely egoistical motives of nation-states. 'For at the "end" of sovereignty, and the emaciated legalism which it has sought to legitimize for much of the past three centuries, lies the hope of a resurrected sense of justice and humanity'.⁴

Unfortunately or not, such liberating calls 'to ring finally the knell of sovereignty'⁵ have not been heeded. Although a whole vocabulary of evasion has developed, composed of numerous periphrases and adjectives attached to the term sovereignty to re-qualify it for post-modern times, by this very evasion the endeavour has (somewhat paradoxically, but no less inevitably) been destined to remain indebted to the original idea. Regular waves of criticism have, if anything, conspired to keep the concept of sovereignty at the centre of theoretical debates. It is still with us, to the point of obsession for all brands of political philosophy, however discordant their theoretical interests in other respects. Indeed, the omnipresence of the term can perhaps go a long way to explaining its notoriously slippery character. As Jens Bartelson has written, sovereignty is a 'sponge-concept' whose very ambiguity is conditioned by its centrality.⁶ The gist of this argument is easy to grasp. If sovereignty is made to accommodate the length and breadth of political theory and practice, how could it ever be unequivocal? Pinning it down one way or another turns out to be itself a politically contestable choice. Getting rid of it, on the other hand, would amount to renouncing politics altogether. 'Sovereignty is merely a name for political activity', wrote the philosopher and historian R.G. Collingwood, 'and those who would banish sovereignty as an outworn fiction are really only trying to shirk the whole problem of politics'.⁷

Not that attempts to wrap up the idea of sovereignty in a short sentence have been lacking. On the contrary, innumerable definitions have been put forward over the centuries. F.H. Hinsley, for example, has influentially written that 'the term sovereignty originally and for a long time expressed the idea that there is a final and absolute authority in the political community'.⁸ Although this is the kind of definition that is still likely to command the widest approval, many find it outmoded in an era of ever-growing fragmentation that has engendered limits to even the most absolute of authorities. Taking note of these developments, James Tully has attempted to model a concept of sovereignty that accords with

⁴ Ward 2003, p. 2112. ⁵ Leibholz 1965, p. 234.⁶ Bartelson 1995a, p. 237. ⁷ Collingwood 1989, p. 106.⁸ Hinsley 1986, p. 1.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

the ‘overlapping and interdependent terrain’ of contemporary constitutionalism. ‘Sovereignty in this non-absolute sense means the authority of a culturally diverse people or association of peoples to govern themselves by their own laws and ways free from external subordination’.⁹ Both of the above definitions, however, hide rather than define away disagreement. In a way that can seem frustrating, all definitions of sovereignty inevitably turn out, depending on one’s point of view, to be either over- or under-inclusive. This is what long ago provoked the despair of G.C. Lewis who wrote in his *Remarks on the Use and Abuse of Some Political Terms* that:

the strict and scientific meaning of sovereignty appears to be so well ascertained, and to admit of so little doubt, that political writers might have been expected to agree on this point, if they agreed on no other. Nevertheless, explanations of sovereignty have been proposed which sin, both in excess and defect, by including what ought to be excluded, and excluding what ought to be included.¹⁰

Things have not changed. Tully, for example, thinks that ‘states’ and ‘nations’ can today be considered sovereign only when these views come with an implicit proviso ‘that the exercise of political power in them has the consent of the people’.¹¹ Others would certainly wish to add different provisos, qualifications, distinctions and caveats. Therefore, once we expand any given definition, spelling out its implications and amplifying its meaning within various political theories, what first seemed like convergence explodes into an irreconcilable disagreement. Widely accepted definitions of sovereignty thus have the character of what Cass Sunstein has called ‘incompletely theorized agreements’ – people who accept the definition need not agree on what it entails in particular cases.¹²

To start with, what is the nature of the authority invoked in the name of sovereignty? Is it legal or political in nature? No agreement is forthcoming on this crucial point. Some have thought that ‘while it belongs to the field of politics, sovereignty is properly, and can only be, a legal conception’.¹³ Others have insisted that ‘sovereignty is essentially a political and not a legal concept’.¹⁴ According to still another view ‘it is part of the very concept of sovereignty itself to hold together that sovereignty is political but also outside politics’.¹⁵ Naming ‘the mystical foundation of authority’ or the liminal sphere of indistinction between might and right, sovereignty appears as the very guarantor of the unstable union of politics and law – the afterlife of the original

⁹ Tully 1995, p. 195. ¹⁰ Lewis 1898, p. 48. ¹¹ Tully 1995, p. 194.

¹² Sunstein 1996, p. 35. ¹³ Middleton 1952, p. 136. ¹⁴ Leibholz 1965, p. 217.

¹⁵ Prokhovnik 2007, p. 155.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)4 *H. Kalmo and Q. Skinner*

coup de droit that grounds every legal order. Not only that, but ‘the distinction between legal and political sovereignty is political in being in principle contestable’.¹⁶ Giving a more general twist to these observations, Martti Koskenniemi’s book *From Apology to Utopia* has offered an analysis of how sovereignty is necessarily torn between what he calls the ‘legal approach’ and the ‘pure fact approach’. The first perspective seeks to bring sovereignty under the umbrella of international law as a higher normative code that has the mission of taming states’ subjective politics. The concept is here equated with the set of rights and duties granted to states, similar to the limited autonomy of sub-state bodies. This is sovereignty within the law. The second view conceives of sovereignty as being external to international law and a means to fulfil the inherent, pre-legal liberty of states. What causes sovereignty to remain contested is that a choice between these two positions cannot be made. Koskenniemi claims that it is in the very nature of the sovereignty discourse that ‘arguments will arrange themselves so as to manifest the opposition between the legal and the pure fact views. Because a preference cannot be made, however, arguments have to proceed so as to make the initial opposition disappear’.¹⁷ In his contribution to the present volume, Koskenniemi also argues that, although much of the literature on sovereignty claims a distinction between the ‘political’ and ‘legal’ uses of the notion, there are no such different uses but that, on the contrary, the mutability of sovereignty will explain why any attempt to distinguish between ‘politics’ and ‘law’ will ultimately be futile.

These problems, according to Koskenniemi, suggest a need to rethink the history of sovereignty speech and who should be identified as its native speakers today. This is what the present volume aims to offer. The rapidity with which the political constellation of the contemporary world changes is such that there have been few occasions for a careful consideration of the nature and descriptive usefulness of the concept of sovereignty. What exactly is meant when one speaks about the acquisition, preservation, infringement or loss of sovereignty? What does the specificity of sovereignty as an argumentative claim consist of? Who can today invoke it plausibly? Although Stakhanovite efforts have been made in recent years to bring about some conceptual clarity, there still is a ‘disconcerting uncertainty about what sovereignty is, where it is to be found, where it came from in the first place, and what is happening to it now’.¹⁸ This volume is guided by the idea that all these questions belong together. Answering the question as to what sovereignty

¹⁶ Prokhovnik 2007, p. 160. ¹⁷ Koskenniemi 2005, p. 239.¹⁸ Walker 1995, p. 27.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

is cannot be separated, for example, from the question as to who is thought to be its proper bearer. Similarly, where sovereignty is to be found is not a question that can be given a right answer, over and above its history. And perhaps most importantly of all, in order to enquire intelligently into what is happening to sovereignty now, we need to have already given some thought to all of the above. This is because sovereignty is not a property that can be analysed in the abstract, separating it from the multiple discursive contexts in which it has been invoked. By taking a ‘parallax view’ of the concept of sovereignty, this book revisits the assumptions underlying the applications of the concept, and also studies the political discourses within which it has been embedded. Offering divergent but complementary perspectives, the chapters as a whole seek to dispel the illusion that there is a single agreed-upon concept of sovereignty for which one could offer a clear definition.

II

In order to further the debate on the contemporary relevance of the concept of sovereignty, the following chapters tease out the tensions and ambiguities inherent in this central notion in political and legal philosophy, making a plea for a more discerning vocabulary to talk about it. Too many authors seek to buttress their conclusion that sovereignty is being ‘eroded’ by a motley collection of observations regarding the increasingly intertwined character of social, economic and political processes, all lumped together under the heading ‘interdependence’. This is far from being a new theme. Predictions of the demise of state sovereignty as a result of the ‘levelling effects of interdependence’¹⁹ have surfaced through the whole twentieth century and have come from all quarters. The former US Secretary of State Robert Lansing wrote at the beginning of the 1920s that what was about to convert the theory of ‘world sovereignty’ into practice was the interdependence of states.²⁰ In the mid-twentieth century, the distinguished international law scholar Georg Schwarzenberger also noted that ‘it is a fashionable and, at a first glance, persuasive proposition to argue that, on the international level, independence is increasingly giving way to interdependence’.²¹ The fashion has surely not subsided. The past decades have, on the contrary, witnessed a rapid expansion of ‘interdependence scholarship’ emphasizing the enmeshed character of international relations supposed to constrain nation-states’ manoeuvring room to an unprecedented degree.

¹⁹ Latham 2000, p. 1. ²⁰ Lansing 1921, p. 56.

²¹ Schwarzenberger 1957, p. 264.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

Some authors have even ventured the hypothesis that, by now, we have moved ‘beyond interdependence’.²²

Nonetheless, too many questions are left unanswered by short-circuiting the relationship between sovereignty and interdependence. First, the meaning of ‘interdependence’ itself is beset by confusion. To strike a mild note of scepticism about the claim that it inevitably saps state sovereignty, is not the phenomenon of ‘interdependence’, however understood, precisely made comprehensible by presupposing the existence of multiple states? Stephen Krasner, another contributor to this volume, has offered a salutary reminder that ‘interdependence is an inherent, a logically necessary, aspect of an international system composed of sovereign States’.²³ The general assumption underlying claims that sovereignty is today being whittled away tends to be that it can be equated with independence, the very opposite of interdependence, and showing that the latter has increased sufficiently proves that the former is ‘in decline’. Now, it may well be that some ideas that the notion of sovereignty used to evoke have become less helpful in describing contemporary political relations, but this can surely be established only by embarking on a more detailed analysis and, in particular, by including all the intermediate steps (but is there only one way?) from ‘interdependence’ to the reduction of sovereignty. In order to satisfy ourselves that we are witnessing the end of sovereignty rather than a deepening of its complexity,²⁴ we are badly in need of a more discriminating vocabulary.

This raises another, more fundamental, problem associated with the debate on the ramifications of interdependence, and the relevance of sovereignty in general. It concerns the relationship of the concept of sovereignty to its referent, that is, what this concept aims to capture (if, indeed, there is such a thing). Should we assume that the term ‘sovereignty’ directly names a special kind of power configuration that has stayed in equilibrium for a long time, but when various pressures induce this secular equilibrium to unravel, the concept is simply left without any referent and therefore becomes ‘obsolete’, bereft of its descriptive value? Or, alternatively, should we consider sovereignty as something of a ‘natural kind’, implying that its meaning changes in unison with changes in the reality to which it refers? The first assumption seems to underlie the proposition that the concept of sovereignty has become simplistic, the second gives sense to assertions that interdependence has brought about a marked shift in the meaning of sovereignty. If it is

²² MacNeill *et al.* 1991, p. 4; Chayes and Chayes 1995, p. 26.

²³ Krasner 1993, p. 301.

²⁴ As submitted, among many, by Pauly and Grande 2005, p. 6.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

indeed the case that ‘the constitution of international relations defines sovereignty’,²⁵ then it should also not be surprising that the explosion of an atom bomb can make a concept plunge into crisis.²⁶ The assumption here is that the concept is so intimately tied up with its referent that, if the latter becomes more complex, the concept inevitably falls under strain.

III

But if we prefer, instead, to conceive of sovereignty as an argument, as a claim to authority, than there is no sense at all in which it can be ‘reduced’. Wouter G. Werner and Jaap H. de Wilde have convincingly argued that in order to understand the meaning of a concept such as sovereignty, it may be far more fruitful to attend to its various uses than to look for any corresponding realities.

In other words, the question as to what state of affairs corresponds to the meaning of the term ‘sovereignty’ should be replaced by questions like – In what context is a claim of sovereignty likely to occur? To whom is a sovereignty claim addressed? What normative structures are used to determine the legitimacy of a claim to sovereignty? What consequences follow from acceptance of a sovereignty claim?²⁷

All this points to a need to disentangle, as much as possible, the complex links between concepts, institutions, practices and doctrines – all of which have been seen as the true nature of sovereignty. Moreover, our account of the ups and downs of sovereignty should be informed by some understanding of conceptual change and the political life of language in general and, for this, our timeline should stretch back further than the last decades or even the last century.

All the more so given that the links described above are themselves subject to mutation. As one of the contributors to this volume has written, ‘the relationship between the very term sovereignty, the concept of sovereignty and the reality of sovereignty is historically open, contingent and unstable’.²⁸

In other words, we are sure to go astray if, in studying the nature of sovereignty, history is not given its proper weight. International relations scholars themselves have come to believe that ‘there is little to gain from research efforts that define away the rich historical contents and changing practices that are often labelled state sovereignty’.²⁹ Others

²⁵ Philpott 1997, p. 16. ²⁶ As suggested by Pasini 1965, p. 161.

²⁷ Werner and de Wilde 2001, p. 286. ²⁸ Bartelson 1995a, p. 2.

²⁹ Weber and Biersteker 1996, p. 284.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

have even set about writing histories themselves.³⁰ It is important to stress that the aim of the first chapters of this volume is not to study the history of the word ‘sovereignty’. This would certainly not be the best way to bring to light its place in a wider context of political theory. The aim is rather to make explicit the polemical dimension of a concept that has been amenable to numerous, often directly contradictory, uses. This is how Michel Foucault – with his characteristic predilection for military metaphors – describes the convoluted historical trajectory of the doctrine of sovereignty:

First, it referred to an actual power mechanism: that of the feudal monarchy. Second, it was used as an instrument to constitute and justify the great monarchical administrations. From the sixteenth and especially the seventeenth century onward, or at the time of the Wars of Religion, the theory of sovereignty then became a weapon that was in circulation on both sides, and it was both to restrict and to strengthen royal power. You find it in the hands of Catholic monarchists and Protestant antimonarchists; you also find it in the hands of Catholics who advocate regicide or a change of dynasty. You find [the juridico-political] theory of sovereignty being brought into play by aristocrats and *parlementaires*, by the representatives of royal power and by the last feudalists. It was, in a word, the great instrument of the political and theoretical struggles that took place around systems of power in the sixteenth and seventeenth centuries.³¹

What the present volume attempts to show is that various doctrines of sovereignty continue to be used in similar strategic ways. Pulling the threads together in the conclusion, Martti Koskenniemi tries to elucidate how ‘sovereignty’ has been invoked in countless contexts to support the most varied kinds of positions: to argue for independence and to argue for integration in a system of (sovereign) equals, to claim particular rights, powers and privileges as well as to deny the relevance of any rights, powers or privileges, etc.

Koskenniemi also argues that, as an eminently polemical concept, the special power of sovereignty depends on the way it simultaneously invokes the registers of both description and prescription. Other scholars have written along similar lines that the role sovereignty plays in normative discourse consists in its imaginarily bridging the gap between ‘is’ and ‘ought’ so that ‘a successful claim to sovereignty establishes a link between an institutional fact (“being” sovereign) and the rights and duties that follow from the existence of this institutional fact’.³² We find this kind of bridging from one mode to another well expressed in Rousseau’s dictum that ‘the Sovereign, by the mere fact

³⁰ See, for example, Jackson 2007. ³¹ Foucault 2003, pp. 34–5.

³² Werner and de Wilde 2001, p. 284.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)

that it is, is always everything it ought to be'.³³ The close association of 'is' and 'ought' within the sovereignty discourse has had the consequence that many arguments about the politically desirable have put on the clothes of some doctrine of sovereignty. For example, a demand for more direct democracy in the form of referenda and popular initiative has been presented as a simple deduction from the principle of popular sovereignty. Marcel Gauchet has analogously argued that it is the 'true nature' of popular sovereignty that requires the institution of constitutional review.³⁴ Insistence that the acquisition of sovereignty is a pure fact has often amounted to an endorsement of a declaratory theory of recognition with the concomitant requirement that, once certain facts are present, there is a duty upon the international community to recognize the new state. Another consequence frequently thought to follow from the extra-legal character of sovereignty is that states' obligations under international law ought to be construed restrictively. These examples are enough to indicate how blinkered would be our perspective if we chose to stay at the surface of sovereignty speech and ignored its argumentative context. As suggested by Michel Foucault in the passage quoted above, when it comes to sovereignty, theoretical and political battles are largely fought with the same arms.

Many of the chapters in this book conceive of sovereignty as an argumentative resource. But this is not to say that reasoning involving the concept of sovereignty should be seen as a mere smokescreen serving to cover the reality of political ambition. Admittedly, some authors, particularly those impatient with the concept, have considered it precisely in this light. 'The career of the notion of sovereignty', wrote the historian P.W. Ward, 'illustrates the general characteristics of political thinking. The various forms of the notion have been apologies for causes rather than expressions of the disinterested love of knowledge'.³⁵ In a similar effort to get to the political behind sovereignty speech, to what it 'actually refers', it has been suggested that, at least most of the time, when we encounter the word 'sovereignty', the argument is about allocating power. 'That is, when someone argues that the United States should not accept a treaty because that treaty infringes upon US sovereignty, what the person most often means is that he or she believes a certain set of decisions should be made, as a matter of good governmental policy, at the nation-state (US) level, and not at the international level'.³⁶ But is there really an available vocabulary that would allow us to keep our feet firmly planted on the ground of 'actual' disagreement,

³³ Rousseau 1997, p. 52. ³⁴ Gauchet 1995, p. 48. ³⁵ Ward 1928, p. 167.

³⁶ Jackson 2003, p. 433.

Cambridge University Press

978-1-107-00004-9 - Sovereignty in Fragments: The Past, Present and Future of a Contested Concept

Edited by Hent Kalmo and Quentin Skinner

Excerpt

[More information](#)10 *H. Kalmo and Q. Skinner*

safe from airily ambiguous concepts? Can we circumnavigate the concept of sovereignty in explaining what is the nature of the 'power' to be allocated and who is its recipient? Moreover, even if we agree for the moment that allocation of power is the substance of the argument, would we be justified in treating the rules of the language that govern this argument as a simple veneer? The chapters in the present volume attempt to tread lightly and to offer us a more fine-tuned depiction of the way in which political concepts function. The contributors do not limit themselves to taking note of the ambivalence of sovereignty; they rather attempt to explain this ambivalence by reconstructing the various strategic settings that give rise to it. The unifying theme of this volume is to take sovereignty speech seriously and to explore its specific grammar. The more historical chapters study the changing nature of this grammar; others point to the complex, often contradictory, ways in which it is today practised and how it adapts itself to evolving circumstances. The final chapters enquire into the prospects for relying on this grammar in order to achieve 'optimal' sovereignty or, indeed, optimal allocation of power.

IV

The need for a more historically informed analysis becomes particularly clear when, taking a cue from Hinsley, we consider the concept of sovereignty expansively as 'a restatement of the permanent problem of deciding the basis of government and obligation within a political community'.³⁷ It is precisely when various doctrines of sovereignty are construed as a set of questions and answers, rather than immutable propositions, that we cannot afford to ignore its history. This is because those questions and answers can themselves hardly be eternal, brooding above the fray of history. As the international relations theorist R.B.J. Walker puts it, 'the principle of state sovereignty codifies a historically specific answer to historically specific questions about political community'.³⁸ It is not that we already know what is around us and what is the nature of the concepts we possess, but that it would also be useful to educate ourselves about where it all came from. History can illuminate the present not only by yielding similarities and revealing the continuous roots of our conceptual make-up, but also, and perhaps even more importantly, by its very strangeness, by making us attend to the multiplicity of paths we did not follow. The literature, in fact, abounds in calls for a more historical approach to sovereignty, and

³⁷ Hinsley 1986, p. 26. ³⁸ Walker 1990, p. 173.