

# Reclaiming Sovereignty: Constituted and Constituent Power in Political Theory

Written by Christian Pfenninger

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### Crisis and Genesis: The Rise of State Sovereignty

The institution of sovereignty – that is, the assumption that legitimacy in international affairs is denoted by an assemblage of territorially defined authority structures, supreme internally and autonomous internationally – can be traced back to the crisis of religious authority during the Renaissance. Up until then, political authority in Europe was characterized by a hierarchical and vertically organized imperial structure, co-headed by emperor and pope, both representing supreme political and supreme clerical authority, respectively. In the medieval *Respublica Christiana*, secular discourses of authority overlapped significantly with theological notions of redemption and salvation within a universal Christian commonwealth (Jackson 2007, 33). From the 14<sup>th</sup> century onwards, wealthy and powerful Italian city states, most notably Florence, Venice, and Siena, began dismantling the straightjacket of theological determinisms that captured the political by means of making it answerable to a sacred, extra-political, godly source of legitimacy (ibid., 41 f.). Sovereignty was not part of the political vocabulary of the time yet, but the “autonomy of the political sphere” (Morgenthau 2006, 13), as Morgenthau put it, has been eclipsed and the *raison d'état* began to assert itself against sacred rationalities and god's will. Born out of a dialectic between sacred and secular assumptions of authority, the institution of sovereignty continued to be shaped by crisis: the Peace of Augsburg (1555 – affirming the king's supreme authority in religious matters, the *cuius regio, eius religio*), the Peace of Westphalia (1648 – introducing the removal of the papacy's political authority from the domestic realm), and the Peace of Utrecht (1713 – confirmed the balance of power among European states), to name just a few, forged a specifically political notion of sovereignty that was inextricably tied to the rise of the modern territorial state (Jackson 2007, 49 f.). Fast forwarding into the 20<sup>th</sup> century, one cannot but notice that even the emergence of what has grown into the European Union fits into the pattern of crisis that continues to mold the institution of sovereignty. Confronted with the devastating effects of two consecutive world wars, the European society of states decided, once again, to renegotiate the terms of political authority upon which it is founded. The result is a partly intergovernmental, partly supranational political entity in which traditional multilateralism coexists with emerging patterns of supranational sovereignty (Sørensen 1999, 180 f.).

### Political Sovereignty As Hypothetical Authority

In the contemporary study of international politics, sovereignty is regarded as one of the *Grundnormen* of international affairs and as an institution upon which the society of states ultimately rests (Jackson 1999, 432). The concept is, despite its centrality to the study of international affairs, not free from ambiguity and changes its appearance and meaning depending on the specific analytical context into which it is inserted: comparative politics defines sovereignty as a degree of absolute or nearly absolute control within a given territory; liberal perspectives highlight the ability of the sovereign to exercise control over trans-border movements; for international legal scholars, it bestows agents, particularly states, with the ability to enter reciprocally binding agreements; and IR theorists highlight its Westphalian interpretation and the attached right of states to territorial autonomy (Krasner 1995, 118).

Its ambiguous appearance aside, sovereignty is inseparably tied to the existence of authority structures in international affairs. Political sovereignty in general, and state sovereignty in particular, is widely conceived of as a

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hypothetical form of authority (ideational) vis-à-vis actual capacities of power (material). Only the confluence of power and legitimacy characterizes the modern notion of state sovereignty. Sovereignty as an institution always remains an assumption, “an assumption about authority” (Jackson 1999, 433) that denotes a “distinctive way of arranging the contacts and relations of political communities” (ibid., 434). Understanding sovereignty as a hypothetical form of authority instead of an actual capacity to power reveals its sociological, constitutive, and, most importantly, legitimizing effect on international affairs: the practice of defining who does and doesn’t count as ‘sovereign’ explicitly confers legitimacy to some actors and polities while deliberately and explicitly withholding it from others (Philpott 2000, 150). It defines, furthermore, the conditions for membership: what requirements must be fulfilled by aspiring polities if they want to become ‘sovereign’ (ibid., 147 f.). Last but not least, sovereignty also grants certain privileges to actors and polities that have already acquired this status, i.e. the exclusive right to wage war and to exercise other forms of physical violence; the right to send diplomatic envoys and set up missions at international organization; the right to enter reciprocally binding international agreements; and so forth (ibid., 151). In short: sovereignty as a form of hypothetical authority (or legitimate power) produces and establishes, in the widest sense, a very specific, state-based form of legal and contractual capability in international affairs that is, qua necessity and per definition, *legal*, *absolute*, and *unitary* in nature (James 2000, 40 ff.).

## The Right to Death: State Sovereignty, Coercion, Legalism

Krasner remarks that the contemporary practice of sovereignty in international affairs can be parsed into four analytically distinct categories: domestic, interdependence or trans-border, international legal, and, last but not least, Westphalian (Krasner 2009, 180). This particular notion of political authority in world politics generates two specific problems for the study of global political dynamics: one empirical, the other conceptual.

From an *empirical* perspective, one must acknowledge that the ‘sovereign’ has never been sovereign, at least not in an absolute sense. As remarked earlier, sovereignty should be understood as hypothetical and as an assumption of how legitimate international political conduct is supposed to look like. Sovereignty reflects, first and foremost, reality as practice, not reality as actual power. Yet even as a ‘practice’, sovereignty has always been subject to contestation, precariousness, and porosity. Westphalia was, and is, compromised repeatedly and routinely, i.e. by conventions and contracts, but also by means of coercion and imposition (Krasner 1995, 123). Rosenberg acknowledges the vulnerability of the sovereign and alludes to the structural relationship between the public political and the private political sphere. In this narrative, sovereignty can never be absolute, but is conditionally depended on the synchronous co-constitution of state and market (Rosenberg 1994, 123). Certain strands of classical realism, structural realism, and constructivism treat sovereignty *as if* it reflected a corresponding political reality. The empirical fallacy committed by these approaches is that they fail to grasp the essential difference between sovereignty as a hypothesis (‘practice’) and sovereignty as actual capacity (‘power’).

Another, much more severe problem is of a *conceptual* nature. Sovereignty has been monopolized by the state, from which sustains a striking complicity between the two concepts: states are regarded as supreme and autonomous political arrangements, hence they are acting under the premise of being sovereign. Vice versa, the sovereign can only appear in the form of the state. Other political actors might wield considerable power, i.e. economic capacity or the ability to decisively influence public discourses (Holzscheiter 2005, 738), but they can’t be bestowed upon with the title ‘sovereign’. The effect of this intimate relation between the state form and the practice of sovereignty is twofold:

Firstly, the sovereign state is regarded as virtually the only polity that possesses both the power and the legitimacy to provide certain kinds of political goods, most notably democracy. Some commentators even go as far as to announce that sovereignty and the state are the precondition for any form of modern democratic life (Tansey 2010, 1526). Attempts of escaping the statist logic by means of transnationalizing democratic politics have proven to be unsuccessful in that regard. For example, Held’s model of cosmopolitan democracy rests heavily on the notion of the liberal legal state as the locus for democratic conduct. The envisaged cosmopolitan community projects this vision onto the global political plane and delineates a *Rechtsstaat* of global proportions (Held 1995, 222) – a change in size, not in quality.

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Secondly, under the auspices of the state-sovereignty-cartel, meaningful global political activity is reduced to, and descends into, foreign policy. International politics is confined to movements on a spectrum whose opposing poles are constituted by *legality* (international legal and Westphalian sovereignty) and *coercion* (trans-border and domestic sovereignty). International political action appears as an instrumental choice between the logic of appropriateness and the logic of consequences, and turns into organized hypocrisy (Krasner 1999, 19 & 180 f.).

## Force and Genesis: Productive Sovereignty as Constituent Power

This diagnosis begs the question of whether the concept of sovereignty is perhaps inevitably lost in these extreme quarters of coercion and legalism. Is it possible to conceive of a sovereign political momentum beyond the conceptually hegemonic horizon of the modern territorial state? Can one circumvent the structural complicity of appropriateness and necessity? Any answer to these questions must inevitably take into account the transitory relation between framings of power in international affairs, the deriving assumptions of authority and sovereignty, and finally the existence of the state form as the hegemonic polity. Rethinking sovereignty in world politics requires reassessing power in international affairs by means of traversing the coercion-legalism-axis. The conception of a principal polity constituted primarily by coercive and juridical efficacy derives from an image of sovereignty that is co-constituted by these very same attributes; furthermore, it rests fundamentally on the assumption that political capacity only emerges in the context of either power politics or international law. Exposing the structural relation between sovereignty and power, as well as offering a narrative that conceptualizes the latter devoid of coercion and prior to law, is paramount for recovering sovereignty as an active political property.

The state-sovereignty nexus as discussed so far resembles a form of *constituted power*, which represents a juridical and punitive notion of force, administering and limiting, yet incapable of acting politically beyond this point: "Constituted power (...) defines the fixed order of the constitution and the stability of its social structure". And further: "History is closed by constituent power or, rather, the history it determines is restricted to a continual repetition of the same social divisions and hierarchies" (Hardt 2009, vii-viii). Incarcerating democracy in the domestic realm and reducing meaningful international political action to state led foreign policy are but two phenomena that are exemplary for the closure of history and the mechanical repetitiveness Hardt is alluding to in this definition. When eventually paired with the paradigm of sovereignty, constituent power leads inevitably into a hierarchical narrative of command and obedience in which a centralized source of supreme authority exercises its supposedly inherent 'right' of demanding allegiance from a set of politically inferior, subordinated subjects (Kalyvas 2005, 225). Constituted power is, hence, closely associated with notions of *coercive sovereignty*.

A perspective beyond the unproductive stasis of constituted power and coercive sovereignty might be provided by the complementary principle of *constituent power*, which represents the "democratic forces of social transformation, the means by which humans make their own history" (Hardt 2009, vii-viii). Hardt points out that constituent power bestows the demos with agency in the form of politically productive forces: "Machiavelli's peoples in arms (...) animated by the power not only to rebel against and overthrow the current order but also to create from below new democratic forms of social organization" (ibid.). By way of paying closer attention to the working of constituent power in global politics, a series of novel perspectives emerge that allow for the salvaging of sovereignty from the state form and for its conceptualization alongside democratic lines. Amalgamating constituent power and sovereignty draws attention to the productive and generative qualities of the modern democratic sovereign, the multitude. The hitherto dominant model of coercive sovereignty eventually gets supplemented by an alternative reading that exposes founding, positing, and constituting forces (Kalyvas 2005, 225): *productive* or *constitutive sovereignty*.

## Perspectives: Biopolitical Sovereignty and the Generative Momentum of Immanence

The literature working at this particular intersection of sovereignty and power in international affairs is still in a developing stage, but the writings of Hardt & Negri – specifically the ones in *Empire* and *Multitude* – serve as well-suited exemplifications for the dynamics unfolded by constituted power, constituent power, coercive sovereignty, and productive sovereignty in world politics. Let us briefly consider the conceptual substance of 'empire' and 'multitude' before moving on with some concluding remarks on the conceptual implications. Empire represents, first and foremost, a technique of post-modern governance (Hardt and Negri 2001, 329). In that regard, it appears as a novel

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political figure, primarily concerned with the immanent and disciplinary aspects of rule. Empire is, at least partly, an innovative political force that disturbs the conceptual and political hegemony of the state form. Westphalia has been constructed around binary oppositions, territoriality, and a pluralistic assemblage of formally equal polities (ibid., 167). For the new imperial sovereignty, political space has lost this delineating meaning: territory descends into hyperspace; ideological (liberal) and material (money and the division of labor) universalisms grind down binaries; pluralism is replaced by the various hierarchies of imperial command (ibid.). Yet, despite its ostensibly seminal and original appearance, even empire cannot but reproduce the Westphalian logic of control, command, and subordination. Due to its corrosive effect on the practice of statism, empire tends to emerge as progressive phenomenon. However, its eventual reliance on control through “the bomb”, money, and ether unmask it as an agent of the reaction (ibid., 345). Empire as a practice of governance rests primarily on constituted forms of power and inserts itself in the uniform and unbroken tradition of coercive sovereignty.

Multitude, on the contrary, represents the forces that constitute the actuality of productive sovereignty: “The multitude is the real productive force of our social world, whereas Empire is a mere apparatus of capture that lives only off the vitality of the multitude” (ibid., 62). Its strength lies in its ability to bundle a multiplicity of constituent powers and transform their various diverging momenta into forces that produce ‘the common’ (Hardt and Negri 2005, xv). Biopolitical production in form of immaterial labor, the exchange of information and knowledge, and performative communication shape the common as a socio-political space that opposes the culture of command and control (ibid., xv-xvi). While the state and empire depend on a certain degree of homogeneity in order to act as sovereign political bodies, multitude presupposes diversity for the biopolitical creation of the common. It remains “composed of innumerable internal differences that can never be reduced to a unity or a single identity” and ensures that “social differences remain different” (ibid., xiv). That means the multitude eventually manages to square a circle: it acts genuinely politically, since it represents the forces of productive and generative sovereignty, yet it bypasses, at the very same time, the logic of coercion and hierarchy, this intersection of modernity and postmodernity that is shared by the Westphalian and the imperial sovereignties alike. The multitude hence counts as a productive sovereignty that exists by virtue of constituent power.

As soon as the question of sovereignty is examined through a productive lens, a lacuna emerges: transnational forms of constituent power that reach beyond the conceptual hegemony of the state have not been systematically assessed in International Relations Theory and International Political Theory yet (Patberg 2013, 225). Furthermore, a broad articulation of the structural co-constitution of constituent power and productive sovereignty is largely missing in current debates that unfold around questions of transnational democratic practices. This vast absence of the *begründende Gewalt*, the ‘founding power’ (Kalyvas 2005, 226 f.), from discourses of sovereignty and democracy alike is somewhat surprising, mainly because early modern concepts of popular rule drew extensively from constitutive forms of power and connected them to practices of popular sovereignty. Negri’s studies of the Italian, the French, the American, and the Russian revolutions serve as striking examples in that regard (Negri 2009, ch. 2 ff.). In the same vein, Kalyvas argues that the modern doctrine of popular sovereignty “coincides with the conceptual advent of constituent power” (Kalyvas 2014, 1). Any contemporary study of sovereign practices should then pay attention to this alternative reading and the attached, somewhat submerged constitutive connotation.

Comprehending the decidedly productive elements as complementary to, instead of overlain by, the much more prominent and prevalent facet of coercion serves as the key paradigmatic insight in that regard. Vice versa, any theoretical attempt to delineate a model for transnational democratic practices must be susceptible to the momentum exalted by constituent forces and the productive facet of sovereignty. Sovereignty – a practice supposedly and superficially assumed to be state-centered and coercion-based – must not be evaded and circumnavigated, but rather reinstated in its original productive guise. The multitude is important in that regard because it inserts constituent power into the context of productive sovereignty. Whereas state and empire operate on a political plane that is enclosed by force and law, multitude dislocates the distinct logic that guides these modern coercive sovereigns.

It is particularly the attached shift from *transcendence* to *immanence* that opens up possibilities for the emergence of new authority structures that generate themselves in a productive way. Classical European notions of sovereignty remove act capacity from the multitude and lock it away in a transcendental realm, eventually leading towards a

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situation in which the locus and the actuality of power no longer coincide (Hardt and Negri 2001, 161). Hobbes' Leviathan or Rousseau's *volonté générale* serve as prominent examples in that regard. Immanence remedies this shortcoming and ensures a "democratic interaction of powers linked together in networks" (ibid.). Outsourcing act capacity and hiding it away behind the veil of transcendental legitimacy is no longer applicable because any separation of the actuality of power from its locus becomes conceptually and politically unfeasible. The political space that emerges at the intersection of constituent power, productive sovereignty, and immanence displaces the conceptual hegemony of Westphalian *inter-state politics* and creates room for *biopolitical* action in international affairs (ibid., 56). The transcendence of the Westphalia agent, this mere "assumption about authority" (Jackson 1999, 433), is supplemented by the actuality of power that materializes itself in the biopolitical production of the common. The plane of politics deepens and widens as global affairs turn into a dualistic structure that harbors inter-state and biopolitical processes at the very same time: state and empire next to the multitude; transcendence and immanence as dialectical poles. Eventually the changes in 'propulsions' – from transcendence to immanence – and 'planes' – from inter-state- to biopolitics – transforms 'procedure' as well: coercive sovereignty's logic of *control, command, and hierarchy* gets supplemented by the ethico-political principle of *production*. Meaningful political action in international affairs is no longer reduced to the apparitional repetitiveness of foreign policy, but resonates in the creation of novel political goods: ideas, the exchange of knowledge, communication, etc., mobilize the immanent potential of society and facilitate the emergence of social relationships and collaborative forms of labor beyond the reach of the state form and empire (Hardt and Negri 2005, 94).

Any serious attempt to reclaim the practice of sovereignty from the state must pay attention to the transformative potential of constituent power. As demonstrated, sovereignty can be imagined beyond the dominant Westphalian moment and by means of paying attention to the question of how global political outcomes are produced through processes underlain by constituent forces. Constituent power allows for an articulation of sovereignty alongside productive lines and devoid of coercion, transcendence, inter-state politics, foreign policy, and the logics of command and hierarchy. Paying closer attention to the working of constituent power in world politics, as well as delineating the conditions for transnational democratic action that operate alongside immanent, biopolitical, and productive lines, should be the logical consequence for any future study of global democracy and sovereign practices alike.

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**Christian Pfenninger** joined the Department of Politics and International Relations of the University of Westminster as a doctoral researcher and a visiting lecturer in 2012. His current research deals with the conception of 'anarchy' within the IR discourse and the potential cross-pollination between classical anarchist thinkers and contemporary IR theory.'