From Empire to Sovereignty—and Back?

Jens Bartelson

Foundations of Modern International Thought, David Armitage (Cambridge: Cambridge University Press, 2013), 300 pp., $85 cloth, $27.99 paper.

A Search for Sovereignty: Law and Geography in European Empires 1400–1900, Lauren Benton (Cambridge: Cambridge University Press, 2010), 340 pp., $94 cloth, $28.99 paper.

Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism, Jean L. Cohen (Cambridge: Cambridge University Press, 2012), 442 pp., $103 cloth, $37.99 paper.

Sovereignty apparently never ceases to attract scholarly attention. Long gone are the days when its meaning was uncontested and its essential attributes could be safely taken for granted by international theorists. During the past decades international relations scholars have increasingly emphasized the historical contingency of sovereignty and the mutability of its corresponding institutions and practices, yet these accounts have been limited to the changing meaning and function of sovereignty within the international system.[1] This focus has served to reinforce some of the most persistent myths about the origin of sovereignty, and has obscured questions about the diffusion of sovereignty outside the European context.

At the same time, many historians of political and legal thought have devoted attention to the ideological foundations of European imperialism and the structure of imperial rule. Yet, in so doing, they have assumed that empires either represent a *sui generis* form of rule, sufficiently distinct from sovereign states to be treated in isolation, or, in an analysis more consonant with theories of state formation, that European empires were but territorial states writ large, but whose authority was diluted in the process of expansion.[2] As several pioneering studies of

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the relations between the European states and their outside holdings have made plain, while international society was premised on equality and nonintervention, non-European peoples were excluded on the grounds that they were uncivilized, or that their political institutions did not fulfill the requirements of sovereign statehood. Hence, they could be legitimately subjected to imperial rule by European powers.[3]

But how do empires and sovereign states relate, conceptually as well as historically? More recent scholarship has started to address this question in greater detail. Given that empires long constituted the default mode of political organization on a planetary scale, when and how did a recognizably modern notion of sovereignty emerge, and how was the transition from a world of empires to a world of states carried out? Furthermore, given the distinctive territorial connotations of modern sovereignty, how could claims to such sovereignty be reconciled with geographically expansive forms of rule and the claims to universal and boundless authority that they implied? Finally, given that, in a globalized world, a fair share of political and legal authority has recently been relocated to actors other than states, does sovereignty still have any analytical and normative purchase?

Although attempts to answer these questions have resulted in little agreement about the origins of sovereignty, about the mechanisms of its subsequent global diffusion, or about its future prospects, there is a growing awareness that the questions—and the answers we provide to them—necessarily hang together. It is no coincidence that many historians of political thought are in the process of rewriting the history of sovereignty in light of its changing status, and that political and legal theorists are revisiting the history of sovereignty in the hope of making better sense of its meaning and function today.

This connection between past and present is nicely reflected in the three books under discussion here. David Armitage's *Foundations of Modern International Thought*, although not primarily concerned with the history of sovereignty, but rather with the emergency and preconditions of international thought in general, does a great job in dispelling some of the most persistent myths about the origins of sovereignty, and also provides us with an alternative account of its emergence. He notes how international theorists have been prone to saddle dead philosophers with conceptions that hardly would have made sense to the latter in order to garner support for their own theoretical positions and ideological commitments. While a recognizably modern notion of domestic sovereignty can be traced at least back to Hobbes, international theorists have long assumed that, by spelling

out the implications of domestic sovereignty, Hobbes was also the first to theorize the international system as anarchic. But as Armitage shows in great detail, no such view of the international system can be inferred from the scattered remarks that Hobbes actually made on the relations between states. Although Hobbes saw the law of nations as a mere extension of the laws of nature that hold between individuals in a state of nature, Armitage argues that the widespread view—wherein Hobbes is seen as a theorist of international anarchy—is the result of later appropriations of his work by modern political realists and their desire to locate the origin of a world of mutually recognizing sovereign states in the Peace of Westphalia.

Following those who have labored hard to demolish the myth of Westphalia, such as Derek Croxton, Andreas Osiander, and Benno Teschke, Armitage instead traces the origin of the modern international system to the nineteenth-century transition from a world of empires to a world of states. Highlighting the fact that most of humanity inhabited hierarchical and heterogeneous empires until the end of that century, he describes the most puzzling fact of sovereignty to be its contagious global spread; and for Armitage, the receptivity of large parts of the world to this contagion still requires careful historical explanation. To account for this swift and curious transition, Armitage focuses on the role of declarations of independence and pleas for self-determination in the waning of empires and the emergence of sovereign states outside Europe. While declarations of independence assumed different forms in different contexts, their performative effects were similar insofar as they provided a way of contesting imperial rule by claiming sovereignty and gaining international recognition in accordance with then prevalent standards of international law. But since that sovereignty "was less a source of jurisdictional certainty than a site of ferocious contestation" (p. 217), the transition from empires to states was an uneven process rather than the cumulative outcome of a series of singular events. One of the most important sources for these declarations was *Le Droit de Gens* (1758), by Emmerich de Vattel, which provided them with legal and political legitimacy. By reconceptualizing state sovereignty in terms of independence from other actors, Vattel implied that states coexisted within an international system devoid of overarching political and legal authority. Thus, Armitage argues, a recognizably modern international system composed of sovereign and mutually recognizing states is a more recent invention than we have been led to believe.

Lauren Benton's *A Search for Sovereignty* is animated by similar concerns about the dissemination of sovereignty. Benton's rich account is focused on the tensions between the principles of territorial sovereignty and the practices of imperial rule from the fifteenth to the nineteenth century. It seems paradoxical that during the same period when international lawyers increasingly emphasized territorial sovereignty as the foundation of an international society of equals, imperial forms of rule were instead premised on its divisibility and the geographical unevenness of its exercise. Benton describes how, against the widespread tendency to equate domestic sovereignty with supreme authority over a given territory and to consider empires but anomalous and transitory formations in the march toward territorial sovereignty, imperial authority "did not cover space evenly but composed a fabric that was full of holes, stitched together out of pieces, a tangle of strings" (p. 2). To her, imperial rule displayed a layered quality that allowed for considerable differentiation between formally controlled colonial territories and semiautonomous spaces. Imperial claims to sovereignty were based on what she aptly terms "the portability of subjecthood": individual subjects were bound to their sovereigns irrespective of where they happened to find themselves within the empire. Yet the actual exercise of imperial authority depended on the sharing of sovereignty and the delegation of legal authority to local actors; these "layers of authority thickened and thinned as one traveled between enclaves and through the territories at their margins" (p. 32).

In contrast to geographers such as Jerry Brotton and Denis Cosgrove, who have emphasized how the projection of imperial authority claims were premised on the prior rationalization of global space made possible by advances in cartography, Benton makes a compelling case in favor of the view that such projections were marked by indeterminacy, and that the coupling of empire and global space is historically misleading. Instead, she pays careful attention to how attempts to project and demarcate imperial authority blended with indigenous cartographic traditions and geographic categories into regionalized apprehensions of the increasingly fragmented and uneven spaces of empire as consisting of singular yet interconnected places.

In the world of empires, sovereignty could never be taken for granted and was almost always divided between different authorities. Its successful assertion "would depend on recurring proofs, including mapping, description, the founding

of political communities, ceremonies recognizing new vassals, and administrative acts designed to support claims to discovery and possession" (p. 23). Through fascinating case studies of riverine geographies, early attempts to assert sovereignty at sea, and the establishment of penal colonies on islands and colonial enclaves on land, Benton shows that imperial legal order was anything but homogeneous and allowed for a variety of exceptions to the norm of territorial sovereignty. Europeans who traveled on rivers into unchartered lands entered ambiguous legal spaces, yet to the extent they remained royal subjects, this made them vulnerable to allegations of treason by their competitors. Early attempts to claim sovereignty over the seas established corridors of maritime control and put constraints on the pervasive practices of privateering and piracy, developments that would greatly facilitate later imperial exploits. Penal colonies were hybrid legal regimes that "depended on an understanding of sovereignty that authorized spatial exceptions to institutionalized restraints on the exercise of delegated legal authority" (p. 221). Finally, Benton reconstructs the prehistory of what we today call "quasi-sovereignty" during the second half of the nineteenth century. While international lawyers reserved full sovereignty for imperial governments, they often granted local polities considerable independence within the empire. It was left to imperial administrators to tinker continually with legal typologies in order to fit those enclaves into the wider legal framework of imperial rule; and although such entities might enjoy a range of sovereign prerogatives, conflicts over jurisdiction sometimes prompted imperial intervention to restore order.

So while international lawyers were busy articulating notions of territorial sovereignty during this period, they were also "forced to recognize that imperial sovereignties preserved and created highly variegated legal geographies" (p. 36) that could not easily be assimilated into the model of the territorial sovereign state. Nor could they fit their ideas about "composite forms of rule and layered systems of sovereignty" (p. 282) into an emergent international society of sovereign states. Thus, given the many difficulties in reconciling imperial and international law, "divided sovereignty appears less as a temporary concession to particular challenges of administrating empire and more as a central premise of rule with an enduring influence on both imperial geographies and global regulation" (p. 297).

Both the Armitage and Brenton books speak to our present predicament, in which state independence is compromised by the aspirations of global governance institutions and powerful states. By showing how modern notions of sovereignty

emerged as a result of successful declarations of independence among peoples subjected to imperial rule, Armitage makes the compelling case that any history of the theory and practice of sovereignty must take the global context of its emergence and diffusion into consideration. Although Benton is mainly concerned with the anomalous expressions of sovereignty in early-modern European empires, her book can be read as a genealogy of contemporary practices of intervention and incarceration in the context of American imperialism.

Indeed, there are some striking similarities between earlier forms of imperial rule and that of contemporary global governance institutions. Both raise claims to boundless authority that are justified with reference to universal values. Both are based on systematic interference in the internal affairs of other political communities while allowing these communities formal autonomy. The contemporary tension between state sovereignty and global governance is at the very center of Jean L. Cohen's book *Globalization and Sovereignty*, in which she proposes to reconcile the authority of global governance institutions with what remains of state sovereignty. The prime target of reform is the United Nations, and especially the Security Council. Cohen notes how—by backing humanitarian interventions, by erecting interim institutions on occupied territories, by imposing sanctions against individuals in the war on terror, and by issuing a stream of binding resolutions—the Council has expanded the scope of its authority during the past two decades. While these measures were intended to alleviate human suffering and protect human rights, they have also violated the autonomy of states, suspended constitutional arrangements, and in some cases also infringed on individual rights. According to Cohen, the broad tendency on behalf of global governance institutions to interfere in the domestic affairs of target states has undermined the norm of equality among states, and given rise to new forms of hierarchical rule on a global scale.

To amend this situation, Cohen proposes a reconceptualization of sovereignty and reform of the United Nations. Contrary to the tendency in the literature to view state sovereignty and global governance as inherently opposed forms of authority, Cohen wants to reconcile them within a broader constitutionalist framework. While states remain subjects of international law, they are no longer the sole source of that law: the rise and proliferation of global governance institutions has already profoundly changed the character of international society. Yet, as long as

we take sovereignty to mean "a claim to supremacy of the authority and exclusive jurisdiction of the state within a territory, and over a population, signifying the coherence, unity and independence of a territorially-based legal system and political community" (p. 8)—and the enjoyment of political autonomy and self-determination in relation to other, similar entities—then state sovereignty becomes difficult to reconcile with almost any global political and legal authority claiming to regulate the same territory, subject matters, or persons. Since global governance institutions already regulate vast areas previously thought to be within the exclusive purview of states, this raises the question whether the territorially segmented international society of states is in the process of being replaced by a functionally differentiated world society. While global constitutionalists celebrate the apparent demise of sovereignty in favor of a unitary constitutional order and the emergence of such a world society, legal pluralists challenge this view on the grounds that it merely transposes a statist normative framework to the global domain regardless of the distinctive characteristics of this domain.

Although both these views hold state sovereignty to be redundant in a globalized world, they differ profoundly about the prospects of a global political and legal order in its absence. Whereas global constitutionalism is premised on the possibility of a monistic order based on norms shared by members of the international community, legal pluralists maintain that since law emanates from a multiplicity of sources, conflicts between legal orders cannot be resolved with reference to any overarching legal authority. Such aspirations only serve to make global constitutionalism but an imperial ideology in disguise, deeply at odds with the actual diversity of legal orders in international society. Legal pluralists instead maintain that the conflicts that ensue between such orders should be resolved through different forms of political contestation that preserve the relative autonomy of these orders. To this, monists object that since legal pluralism offers no way of distinguishing between legitimate and illegitimate forms of normative diversity, and hence provides "no antidote to increasingly intrusive and disturbingly unaccountable global governance institutions" (p. 63), pluralism is a recipe for global disorder that will only entrench existing power structures.

To Cohen, in order to avoid this false choice between monism and pluralism, we should reconceptualize state sovereignty so as to make it compatible with those autonomous supranational legal orders that claim supremacy, and whose jurisdictional reach already penetrates deep into the prerogatives and competences traditionally associated with state sovereignty. In order to safeguard what remains

of state sovereignty, sovereignty should be redefined to accommodate the rise of supranational authority and universal human rights, but without sacrificing its characteristics of autonomy, nonintervention, and sovereign equality in the process: "What is required is formal legal reform and the creation of a global rule of law that protects both the sovereign equality of states based on a revised conception of sovereignty, and human rights" (p. 25). As Cohen goes on to argue, it is fully possible to envisage a global order in which states give up their right to war, accept that they are bound by human rights norms, and open themselves to jurisdiction by a supranational legal order and still remain sovereign as long as they retain their political self-determination and the right of noninterference in their domestic affairs. Hence, she holds that "functionally delimited supranational jurisdictional claims in the global political system can thus supplement and overlap without abolishing the autonomy of territorial sovereign state" (p. 68). Different legal orders—such as those represented by states as well as global and regional institutions—should be able to retain their autonomy within an overarching constitutional order that puts effective constraints on the abuse of power at all levels.

In sum, in a situation in which much political and legal authority has been relocated from states to global governance institutions, sovereignty should not be abolished but instead *restored* as a fundamental principle of global order. While some of the traditional meanings of this concept—such as a supreme and autonomous domestic legal order and its right to self-determination—should be retained, associated claims to exclusive jurisdiction over territories and populations ought to be abandoned in favor of more external legal regulation and equal participation in global governance arrangements. To Cohen, human rights and democratic legitimacy can only be protected through a gradual constitutionalization of the global order and a corresponding reform of global governance institutions.

These three books invite many interesting comparisons. The first of these concerns the changing conceptions of sovereignty and their relationship to the concept of empire. While Armitage contrasts empires and states and shows how the latter became the paradigmatic form of political association as a result of successful declarations of independence, he has little to say about the nature of imperial rule other than noting that empires were hierarchically organized, premised on expansion, and socioculturally heterogeneous. As such, empires

look transitory, which leaves him with the task of explaining why they were capable of enduring for so long.

Benton argues that the territorial European states-system emerged simultaneously with imperial forms of rule that extended unevenly over vast overseas spaces and heterogeneous communities. Thus, from the point of view of the territorial state, empires cannot but look anomalous. Since early modern authors did not envisage sovereignty in narrow territorial terms, they did not distinguish sharply between sovereignty and empire, but used these concepts and their cognates strategically and sometimes interchangeably. This raises the question of whether any of these forms of rule could have appeared anomalous to anyone until sovereignty eventually was territorialized. But since Benton primarily focuses on the precarious coexistence between territorial sovereignty in Europe and imperial forms of rule outside Europe, she has little to say about the transition from a world of empires to a world of states.

Finally, Cohen argues that, given the recent rise of global governance institutions and the scope of their authority claims, the triumph of the sovereign state over the empires of the past might be seen as short-lived if not illusory. But even if Cohen is mainly concerned with the present meaning of sovereignty, her various definitions of sovereignty are nevertheless based on an amalgamation of its past meanings. The persuasiveness of her attempt to rescue what remains of state sovereignty in the present depends on the possibility of disentangling the internal and external dimensions of sovereignty. But if we are to believe Armitage, this distinction evolved precisely out of successful struggles against imperial authority in the past, and was sometimes reinforced by pleas for popular sovereignty until it was eventually institutionalized in modern practices of international recognition. In many cases, the externalization and nationalization of sovereignty were two sides of the same coin. This has arguably turned sovereignty into a composite concept whose internal and external dimensions are difficult to disentangle without a loss of coherence. Hence, to redefine sovereignty so as to deny states exclusive jurisdiction over their territory and population must necessarily compromise their domestic sovereignty—as long as the latter is seen as a corollary of their right of self-determination, and as long as this right to self-determination is seen as a corollary of them being recognized as sovereign equals by other states.

What these accounts share in common is the presupposition that these forms of rule are conceptually and empirically distinct enough to warrant historical and theoretical puzzles of this kind. Yet there is much to indicate that empire and

sovereignty are but ideal types along a continuum rather than fully distinct or even inherently opposed forms of rule. And, indeed, both Armitage and Benton acknowledge that empires and states have long coexisted, and that many empires also initially were, or eventually contracted into, sovereign territorial states. But the juxtaposition of empire and territorial sovereignty might well be misleading for other reasons. Some recent studies argue that the connection—real and imagined—between political authority and territory is much more recent than we have been led to believe by lexical definitions and standard accounts of sovereignty, and that practices of territorial demarcation were conditioned and even reinforced by imperial structures of authority in Europe and elsewhere.[4] This may lead us to suspect that the dilemma Cohen poses is less sharp than she wants us to believe. If territorially unbounded and bounded forms of political authority have coexisted and conditioned each other historically, then one might wonder whether sovereign states and global governance institutions stand in a more symbiotic relationship than indicated by her account.

This brings me to my final point, which concerns the ideological functions of these accounts of sovereignty. Since all three books make a point of showing how different conceptions of sovereignty have been used to legitimize and delegitimize different forms of political authority, I think the same questions could be raised with reference to these books themselves.

First, even in the absence of any ideological agenda, historical accounts tend to be vaguely supportive or debunking of certain normative positions in the present, and tend to lend legitimacy to some claims to political authority while delegitimizing others. By showing how modern sovereignty first emerged and was diffused in a global context of imperial expansion and contraction, Armitage and Benton effectively debunk those Eurocentric accounts of the origins of sovereignty and the modern international system that are still widespread among international theorists. By pointing to the prior existence of a wider world with a richer past, uncontaminated by sovereignty and blissfully unaware of its perils, they strip the sovereign state and the international system of their perceived necessity and moral desirability. By doing this, however, they also sensitize us to the continuities between imperial forms of rule in the past and the challenges faced by the sovereign state in the present, but without offering us any guidance on how to handle these continuities.

Second, while providing justifications of particular claims to legal and political authority, legal and political theories of sovereignty often carry implicit

commitments to historical narratives supportive of such claims. Thus, by starting out from a definition that encapsulates many of the meanings that the concept of sovereignty has accumulated throughout its complex historical trajectory, and by emphasizing the corrosive effects of supranational legal and political authority on the international society of sovereign equals, Cohen comes dangerously close to perpetuating the myth of Westphalia, thereby inspiring nostalgia for a political order that may never have existed outside our textbooks in international relations and law.[5] Simultaneously, however, this account has the obvious virtue of problematizing what looks like a return to imperial rule in the present, and offers principled solutions to some of the dilemmas this return has given rise to.

Apart from these different normative and historiographical implications, these authors all presuppose that the meaning of sovereignty is contingent on usage and context, albeit to a varying degree. Such contingency of conceptual meaning is an indispensable starting point for Armitage's and Benton's inquiries into the history of international thought. To Cohen, it is necessary to assume that some meanings of sovereignty are contingent and therefore open to redefinition, since if the meaning of sovereignty were wholly given and immutable, her attempts at redefinition and pleas for reform would be rather futile exercises. Yet the insistence on the contingency of sovereignty is by no means innocent. If the meaning of sovereignty depends on the context of its usage, and thus is subject to significant variation across time and space, then it follows that sovereignty can be made to mean many different things by manipulating the linguistic conventions that govern its meaningful usage. But by subscribing to such a view, scholars invite licentious redefinitions that can be used to legitimize political practices that actually contribute to the relocation of political and legal authority from states to other actors. And, indeed, some authors who want to justify such relocations have done so by arguing that the relationship between sovereignty and the norm of nonintervention has always been contingent on the geopolitical context.[6] Contrary to their often critical intentions, many students of sovereignty who have taken the linguistic turn have thereby unwittingly opened the door to imperialists of different stripes.

Nevertheless, by attending to the changing meaning and function of sovereignty outside the European context, these books make very valuable contributions not only to our understanding of sovereignty but to the study of international and global political thought in general. They are symptomatic of an emergent concern with the international and global dimensions of political thought in the study of

intellectual history and political theory. While they are welcome antidotes to the methodological nationalism previously characteristic of these fields of inquiry, they are also indicative of the extent to which the preoccupation with all things global finds additional nourishment in the many contrasts that can be made between empire and sovereignty.

NOTES

[1] See, for example, Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton, N. J.: Princeton University Press, 1994); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton, N.J.: Princeton University Press, 1999); and Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton, N.J. University Press, 2001).

[2] See, for example, Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2001); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, N.J.: Princeton University Press, 2005); Jeanne Morefield, *Covenants without Swords: Liberal Idealism and the Spirit of Empire* (Princeton, N.J.: Princeton University Press, 2005); Duncan Bell, ed., *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (New York, N.J.: Cambridge University Press, 2007).

[3] Martti Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge: Cambridge University Press, 2002); Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002); and Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2007).

[4] See, for example, Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, N.J.: Princeton University Press, 2011); Stuart Elden, *The Birth of Territory* (Chicago: University of Chicago Press, 2013); Jordan Branch, "'Colonial Reflection' and Territoriality: The Peripheral Origins of Sovereign Statehood," *European Journal of International Relations* 18, no. 2 (2012), pp. 277–97; and Jordan Branch, "Mapping the Sovereign State: Technology, Authority, and Systemic Change," *International Organization* 65, no. 1 (2011), pp. 1–36.

[5] See Sebastian Schmidt, "To Order the Minds of Scholars: The Discourse of the Peace of Westphalia in International Relations Literature," *International Studies Quarterly* 55, no. 3 (2011), pp. 601–23.

[6] See, for example, Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2013).