İSTANBUL
UNIVERSITY
P R E S S

Annales de la Faculté de Droit d'Istanbul

RESEARCH ARTICLE

What Is Wrong With Sovereignty? A Critical Approach Through the Limitations of Legal Violence

Doğukan Bingöl[*]

Abstract

This article provides a critical perspective on current debates about sovereignty through the structural limitations of legal violence. A central discussion revolves around the question of whether the disaggregation of sovereignty as a result of international and global developments should be welcomed or resisted. While some argue that this provides better protection for human rights and international cooperation, others defend sovereignty as it ultimately means self-determination and democratic rule. However, being able to evaluate these arguments and developments requires an understanding of how sovereignty functions and what is problematic with it. To achieve this, the article grasps sovereignty from its two interrelated facets: Sovereignty signifies, on the one hand, that the legitimacy of law and political power comes from a popular source. On the other hand, it points to the supremacy of the authority that creates and enforces law through violence if necessary. Hence, the instrumentalization of violence is integral to its functioning. However, this method has structural drawbacks as the legal order built by violence requires its further instrumentalization, compelling the sovereign to compete with the people as the constituent source rather than just representing it. This endangers the promises of sovereignty, such as self-determination and democracy, and the article maps out these drawbacks by following Walter Benjamin's analysis of legal violence. Hence, the real problem of sovereignty lies in its functioning rather than its territorial configurations. This awareness of the problem inherent in sovereignty provides critical guidance in evaluating the arguments and developments about the concept's future.

Keywords

Sovereignty, Legal violence, Self-determination, Walter Benjamin, International law, Critical perspectives

* **Corresponding Author:** Doğukan Bingöl (PhD, Res. Ass.), Kadir Has University, Faculty of Law, Istanbul, Turkiye. E-mail: dogukan. bingol@khas.edu.tr ORCID: 0000-0002-1573-319X

Introduction

This article aims to contribute to contemporary debates about sovereignty from a critical perspective through the limits of the relationship between law and violence. Sovereignty, as one of the fundamental concepts of modern legal-political thought, has been under discussion since World War I, and it has undergone many changes up to our day. These changes were welcomed and doubted from varying perspectives by various theoretical and political standpoints, and the discussions about the concept even reached the point of whether the concept has a future or not. An important portion of these discussions revolves around the transformations of the national or popular expressions of the concept. However, sovereignty is also being criticised from other angles. One critical approach examines how sovereignty functions through violence and whether this method of operation aligns with the political promises it is supposed to uphold. Hence, these critiques are concerned more with how the concrete institutionalizations of the concept operate and how this mode of operation relates to other legal-political projects of modern thought, such as human rights, self-determination, democracy, justice, etc. Since such a perspective questions the structural limits of the concept by identifying the paradoxes inherent in sovereignty, it offers valuable insights when it comes to discussing the promises, shortcomings, and future of the concept. Hence, I create a synthesis by asking the question of how these critical approaches to sovereignty can contribute to the ongoing discussions about sovereignty.

In the first section of the article, I present an overview of the current debates on sovereignty, especially on the question of whether sovereignty is transforming into something new in the face of international/global mobilizations and, if so, whether these transformations should be welcomed. In my view, the main contenders can be summarised as a) those who welcome the dissolution of the concept because this signifies better and expansive protection for human rights, the expansion of cosmopolitan norms and values, etc.; b) those who are disturbed by the dissolution of the concept because the concept was a tool for collective autonomy and self-determination. Some authors question the accuracy of this opposition and the clash of arguments, showing that these views may be based on different conceptualizations of sovereignty. I conclude this section by highlighting that it is difficult to weigh these arguments against each other because the sovereignty they speak of may vary. After all, sovereignty itself is a historical-theoretical compound, and different readers can focus on its different elements.

Therefore, in the second section, I sketch two interrelated facets of sovereignty as a central concept in modern legal-political thought. On the one hand, sovereignty inescapably implies that the legal and political authority is referred back to the people through various conceptual designs such as social contract theory, consent, etc. since

the transcendental, religious grounds of legitimacy become unfeasible with modern transformations. On the other hand, sovereignty also signifies a supreme power that can overawe all, create laws, and enforce them. Hence, the correspondence between law and violence is integral to the concept since it connects the source of law to the assumption that law will be backed up by a mechanism of violence when necessary. This also summarises the attitude of modern legal-political thought towards violence as a political problem, unifying it in the hands of a sovereign who will supposedly give order to society and protect it from the chaos of the state of nature. Hence, this logic assumes that using violence is a necessary and inevitable moment of founding a legal-political order and it backs up the coerciveness of the legal system with its legitimate monopolisation by sovereignty.

Next, I try to analyse the structural limitations of this strategy of using violence in the legal sphere to provide efficacy and obedience so that we can better map out the paradoxes of sovereignty. Following Walter Benjamin's fundamental analysis of the effects of legal violence, I argue that this violent method, which is integral to sovereignty, binds the legal system to seek more violence to guarantee its further existence. This dependence on violence requires state 1) to prioritise the mission of empowering and maintaining its monopoly of violence, trivialising the other normative content. Hence, political and legal promises of the legal order, such as the protection of human rights, providing welfare and justice, etc., fall back against this structural necessity. 2) Since the very existence of the legal order depends on this, sovereignty competes with other constituent forces that may appear in society, which leads the state to either capture or smother these so that it stays in power. From this perspective, the very functioning of the concept points to a narcissistic, insecure bind on society, and even the supposed bare minimum that is expected from sovereignty, such as security or collective autonomy, seems doubtful.

Finally, I try to interpret the arguments we encounter in current debates over these insights. My first question is to what extent internationalisation and/or globalisation transforms this violent mode of operation. Here, however, it is essential to note that the changes in the territorial scope of the sovereign entity do not necessarily alter its operational logic. Answering this question requires that we realise the central role of sovereign states in both the formation and implementation of the process of internationalisation/globalisation. My second question is to what extent the defence of sovereignty over self-determination is viable. Especially reviewed from the critical perspective outlined above, such an argument may ignore the paradoxes of sovereignty and risk overturning the gradual progress achieved by global or local human rights movements. However, the argument is not without merit, and its essence should not be mixed with the pathologies of sovereignty.

I. Sovereignty under Continuous Discussion

Sovereignty is one of the central concepts of modern legal-political thought. Since Bodin, it is argued that sovereignty defines and determines the differing constellations of modern politics and law. For centuries, it has remained a key concept and evolved through contributions from many theorists, politicians, and through social and cultural transformations from varying contexts. As a result, different genealogies to the concept are possible, even though it is argued that sovereignty generally refers to similar legal-political constellations. It possessed and still possesses many qualities and traits that, in various ways, constitute our conception of modern legal and political phenomena: It distinguishes between domestic and international; it solves the issues of jurisdiction and order; it is through sovereignty that the question of who has the authority to create and enforce laws is answered; the independence and freedom of peoples and nations depend upon it, and so forth.[1]

However, the 20th century witnessed various institutional and organisational developments nourished by theoretical doubts towards the concept, especially over some of its qualities that are deemed destructive towards "human values".[2] Since the League of Nations experiment, international lawyers have highlighted how sovereignty has been used to pit the selfish interests of certain communities against the global world. It is used to justify oppression and to hide it under the veil of non-intervention principle.[3] In this vein, and especially after World War II, the concept is associated with the moral bankruptcy of the war, and it is criticised as far as it represents states' insistence on their isolationist attitudes against international cooperation.[4] The idea that sovereignty means the ultimate, irresponsible authority has also undergone a critical consideration. Hence, the period of reconstruction after the Second War was marked by an effort to transcend this antiquated concept with international cooperation, as it always signified political violence and imperialistic desires.[5] The ideas of better protection of human rights, holding the perpetrator states accountable, and safeguarding peace and democracy all depended upon international cooperation, which could only happen if the sovereignty of the individual states were limited.

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1 Christian Volk, 'The Problem of Sovereignty in Globalized Times' (2019) 18 Law, Culture and the Humanities 716, 716–719; Dieter Grimm, *Sovereignty. The Origin and Future of a Political and Legal Concept* (Belinda Cooper tr, Columbia University Press 2015) 3–4; Alexander P d'Entreves, *The Notion of the State* (Oxford University Press 1967) 96; Quentin Skinner, 'The Sovereign State: A Genealogy' in Hent Kalmo and Quentin Skinner (eds), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge University Press 2010) 27, 29.

2 Louis Henkin, 'That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera' (1999) 68 Fordham Law Review 1, 1.

3 Martti Koskenniemi, 'The Many Faces of Sovereignty. Introduction To Critical Legal Thinking' (2017) 2 Kutafin University Law Review 282, 283, 288.

4 Henkin (n 2) 2–3.

5 Christopher Bickerton and others, 'Conflicts of Sovereignty in Contemporary Europe: A Framework of Analysis' (2022) 20 Comparative European Politics 257, 258.

In the second half of the 20th century, these political aims and institutional endeavours, along with other commercial, social and technical developments with overarching effects, did indeed transform the concept or the reality to which it refers. Skinner reports that some authors even go so far as to claim that sovereignty is no more.[6] This might be deemed as a hasty conclusion, of course, and there are more mitigated formulations to describe the *status quo*. Benhabib, among others, claims that there is a shift from classical Westphalian sovereignty, where states exercised absolute and arbitrary power over a particular territory, to a liberal international understanding of the concept, where equality of states is derived from the adherence to shared principles and values, like the observance of human rights standards, the rule of law, etc.[7] For instance, it is generally accepted that international mechanisms for enforcing human rights gain a gradual priority over the sovereigntist answers, which iterate absolute internal authority. Therefore, in this respect, it is considered that state sovereignty has eroded: Apart from allowing the use of force only in the cases where it is justified with self-defence, the current international order does not leave the human rights of individuals unattended. Many global and regional international human rights protection mechanisms now possess legal-institutional positions that may override and/or penetrate national jurisdiction. It would not be wrong to say that, as far as these changes represent better protection for human rights, democracy, and the rule of law, they are welcomed. In this sense, at the very least, the disaggregation in sovereignty is considered as a move forward since it helps to envisage a new global community, normative dialogues between different cultures, and better-coordinated protection for human rights.[8]

However, one must note that not all developments that lead to the weakening of sovereignty are celebrated in this manner. Sharing or delegation of sovereign powers may seem doubtful or concerning in the cases where they are bargained out by the demands of global circulations of the capital. Rather than empowering human rights norms, the effects of these developments on sovereignty can be seen as a strain on the independence and self-determination. So, as Benhabib puts it, they may collide rather than coincide with the efforts of international human rights movements.[9] This is because nation-states and their sovereign actions are still the primary elements in protecting and implementing international human rights law. After all, as Jack Donnelly describes, the nation-state is still both the "principal violator and essential protector" of international human rights law.[10] Thus, the regulative and executive powers of sovereignty are still needed as far as they are essential in the protection of human rights, and they are considered to be helpful in holding giant transnational

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6   Skinner, 'The Sovereign State: A Genealogy' (n 1) 43.

7   Seyla Benhabib and others, *Another Cosmopolitanism* (Robert Post ed, Oxford University Press 2006) 23–24.

8   Grimm (n 1) 85; Henkin (n 2) 3–4, 7.

9   Seyla Benhabib, 'Twilight of Sovereignty or the Emergence of Cosmopolitan Norms?' Rethinking Citizenship in Volatile Times', *Dignity in Adversity: Human Rights in Troubled Times* (Polity 2011) 97, 106.

10   Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press 2013) 25.

corporations and companies accountable for their conduct in violation of human rights standards.[11]

On the other hand, states' share of sovereign powers with an international web of global governance is also considered to be doubtful because the latter cannot sufficiently carry and institutionalise popular sovereignty.[12] This also applies to regional organisations that are rather more aligned both culturally and economically, like the EU, than others might be. Authors who question the contemporary inclinations from this perspective argue that the bare minimum of sovereignty is that it functions as a vessel for the collective autonomy and self-understanding of communities. In this sense, sovereignty means that the rules that govern the people come from the people themselves and not from an unidentifiable or imperial source. So, the peoples can rule themselves through the imagination of sovereignty, and this collective consciousness should not be easily abandoned.[13] Hence, as far as they undermine sovereignty, contemporary developments run the risk of trivialising the potentials and procedures of collective action both at institutional and practical levels. Since the delegation of a sovereign power to decide on, say, a market or economy issue ultimately means that some other person or persons, possibly from a web of experts or technocrats, will decide upon that, this may, in effect, decrease the impact of public deliberations about the issue. The same could be argued for the representative capacity of parliaments, legislative campaigns, democratically held elections, etc.[14]

Koskenniemi vocalises this concern in a more theoretically aware manner: The issue with the boom in transnational/global governance is that the more penetrative it becomes, the more depoliticising it may become. When policies and decisions that might be a subject of public discussion and political preference are outsourced to an international agency that may or may not be an expert on the issue, what really happens is that the political is replaced with a supposedly technical one. This, in turn, is a very political attitude, as the questions of who makes the decisions and how they are taken are crucial when it comes to politics and law, especially when the alternative is not supplanted with mechanisms for accountability. Since legal and political authority means much more than simply the cumulative benefit of managerial decisions but also includes how a specific decision is taken and will be concretised or implemented, peoples and intellectuals concerned with this loss or weakening of sovereignty cannot be blamed.[15] After all, it is not outright nonsense to doubt that international law and regulations may sometimes be employed to disguise

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11 Henkin (n 2) 7–9.

12 As an example of the legitimacy problems that occur in the contemporary EU, see Bickerton and others (n 5) 265. See also Grimm (n 1) 117–118, 128.

13 Raf Geneens, 'Sovereignty, Action, Autonomy' in Bas Leijssenaar and Neil Walker (eds), *Sovereignty in Action* (Cambridge University Press 2019) 96–7, 108–19.

14 Benhabib (n 9) 97–98.

15 Martti Koskenniemi, 'What Use for Sovereignty Today?' (2011) 1 Asian Journal of International Law 61, 66–69. On this, see also Neil Walker, 'When Sovereigns Stir' in Bas Leijssenaar and Neil Walker (eds), *Sovereignty in Action* (1st edn, Cambridge University Press 2019) 45.

the selfish interests of imperial powers, and sovereignty can at least be considered as a defence against this.[16]

Which is it, then? Should we welcome and encourage the disaggregation of sovereignty, or should it be resisted and lamented? Can the same set of changes to the institutional form of our modern legal-political world be both progressive for the protection of human rights and disruptive for self-determination and democracy at the same time? If so, what are the duties of legal theorists and lawyers? Should one simply pick a side and theorise accordingly?

Of course, there can and should be other formulations to the dilemma. Koskenniemi, for example, suggests that one should go beyond the duality of "bad" sovereignty versus "good" international law to better understand the problems of the contemporary legal and political world. While he admits that there may have been a justified reasoning for international lawyers to form these associations, his attitude is a nominalist one, which recognises that these concepts do not possess essential or fixed meanings. Thus, such polarizations do not remain accurate forever, and one must always consider the practical outcomes when employing a sovereigntist or internationalist language.[17] Despite being very useful in mapping out the preferable and objectionable outcomes of specific practical matters, this perspective falls short in providing a theoretical and general criterion for interpreting the above dilemma. Accepting that in a particular set of configurations, sovereignty may further the self-determination of a specific group of people better than an international governance mechanism, or vice versa, does not provide us with a conceptual tool to delineate what is problematic with the concept. What is needed here is a method that can critically answer why and how sovereignty encapsulates the idea of self-determination and collective autonomy and what gets lost in the process of internationalisation. Without first understanding what was (and is) problematic with the functioning of the sovereignty, one cannot answer whether the dissolution of it through internationalisation of law and politics can sufficiently remedy our problems with it. Similarly, when one loses sight of the institutional conditions of internationalisation-globalisation and starts out from the sovereignty-international polarisation, it becomes harder to identify the real structural-methodological paradoxes of the concept. Ultimately, it is sovereign states themselves who championed and furthered this internationalisation and/or globalisation, and the increasing activity of trans-or supranational organisations depends upon the worldwide extension of sovereignty. Thus, as Giddens puts it, rather than weakening state sovereignty, these developments rely upon it.[18]

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16 David Dyzenhaus, 'Kelsen, Heller and Schmitt: Paradigms of Sovereignty Thought' (2015) 16 Theoretical Inquiries in Law 358 <https://www.degruyter.com/document/doi/10.1515/til-2015-104/html> accessed 11 October 2021; Koskenniemi (n 3) 289.

17 Koskenniemi (n 3) 285–289.

18 Volk (n 1) 730–1; Grimm (n 1) 88–89, 97; Anthony Giddens, *The Nation-State and Violence* (Polity Press 1985) 5–6.

Procuring such a method, however, is not easy. As stated in the first paragraph of this paper, the concept's existence transcends centuries. Throughout these centuries, the concept has been developed or contributed to by different intellectual sources and legal-political transformations. Hence, the concept relates the foundational principles of modern legal-political thought to each other, and it unites different configurations of public power. On the one hand, for example, it represents the ultimate authority of the princely rulers. On the other hand, it has become a key concept for the constitutionalisation of political power and the concretisation of popular rule. Therefore, the meanings and appeals of the concepts change throughout history and in varying political topographies.[19] Despite this, however, I argue that the grasp of two facets of sovereignty allows a critical engagement with the concept, which can possibly be used to delineate the dysfunctional workings of the concept from the "good" that comes from it. 1) Sovereignty, throughout modern legal-political thought, comes forward as a new and secular source of law and political power once the divine sources or religious justifications of these latter phenomena become unfeasible. It is through this facet of sovereignty that we can infer self-determination, collective autonomy, being a vessel for democracy, etc., from the concept. From this perspective, sovereignty merges with the concepts of social contract, consent, and representation, ultimately encapsulating all the potential outcomes of modern constitutionalism. However, grasping the concept from this angle is not enough to understand its operation. Because, notwithstanding that it comes from demos, people, or nation, it is considered that every legal idea and rule requires an enforcement mechanism. Likewise, the benefits of legal orders cannot be achieved without an authority or political power to execute the law in the first place. Thus, this conception of sovereignty is inevitably interrelated with which power and how law will be concretised and implemented in real life. Hence, the idea of instituting a power that can be independent of other social relations and that can be imposed on them is also integral to the idea.[20] Therefore, 2) sovereignty inescapably implies that this authority or political power has the final say in all legal-political issues. Hence, the public institution of power has the highest and ultimate authority through sovereignty. This, of course, requires that power to channel all potential realms for social power to itself, including ultimately the means of violence.

In the next section, I will try to summarise what I make of these two facets of the concept, hopefully leading to a better understanding of how sovereignty works. Sovereignty, I argue, while being used as a reference point for the popular origins of law and political power, fundamentally impairs democracy and self-determination, for it integrally functions over the instrumentalization of violence to be the highest, ultimate authority. This legal-political method, which is centred around the use of

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19   Volk (n 1) 716–717.

20   Geneens (n 13) 96.

violence, has structural drawbacks that are difficult to remedy fully or sufficiently. Hence, I aim to show that the relationship between these two facets of sovereignty is antagonistic, and the functioning we see in the second facet is disruptive for the first. After I examine this with the help of critical literature on the relationship between law and violence, my next aim will be to discuss how this critical understanding of sovereignty may serve us to interpret the ongoing debates about the concept.

II. Sovereignty As the Source of Law Versus Sovereignty As the Method of Law's Realisation

Although there are pre-modern usages or references of the concept, conceiving sovereignty as a source of law inevitably requires a focus on what it came to signify through modern legal-political transformations, starting with Bodin.[21] Bodin's reception in literature usually focuses on how he envisioned a perpetual public authority that rule all, a power from which laws and the legal powers of lesser magistrates emanate. Despite his preference for monarchy, Bodin's theory is also remembered nowadays for providing institutional patterns that later were employed by democratic and constitutional movements. Richard Tuck, for instance, notes that despite the absolutist readings of his work, Bodin's separation of government from sovereignty may provide a theory "peculiarly appropriate for a modern democratic state", since the latter assumes a sovereign people who authorise laws and governors but do not rule itself.[22] However, the crucial idea in Bodin's theory, or rather the intellectual transformation that signified through him, lies elsewhere, albeit prototypically. Even though Bodin's theory is tinted with religious grounds, the very idea that a temporal entity can create law points to a fundamental transformation in the conception of law. Prior to the idea of sovereignty, the rules and the political power to execute them came from god, and the sheer idea that one can create laws would be to deny the status of god. Hence, laws can only be found in customs or in earlier precedents; they cannot be made by humans.[23]

The theoretical motivations for such a shift in the understanding of law are inescapably related to the religious conflicts that were enflamed by the Reformation, together with developing conceptualizations that remove the divine halo from political and legal institutions.[24] The need to surpass religious quarrels to provide order and unity requires a new approach that sees the legislation in a secular manner. In this respect, Bodin's enterprise can be seen as a step in the search for a new basis

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21 For usages of the concept before its modern understanding, see Grimm (n 1) 13; d'Entreves (n 1) 97.

22 Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge University Press 2016) 44, 49.

23 Grimm (n 1) 16, 22; d'Entreves (n 1) 89–90, 100–101.

24 Ian Hunter, 'Secularization: The Birth of a Modern Combat Concept' (2015) 12 Modern Intellectual History 1, 10; John Witte, 'Law and the Protestant Reformation' in Heikki Pihlajamäki, Markus D Dubber and Mark Godfrey (eds), *The Oxford Handbook of European Legal History* (Oxford University Press 2018) 589–590; Marcel Gauchet, 'Les Tâches de La Philosophie Politique' [2002] Revue du Mauss 275, 281.

for law and political power, which does not originate from a transcendental and/or religious source. This ultimately leads to the awakening of the idea of the social contract. Of course, as a legal-political motif that grasps political-social relations in terms of contractual patterns, this idea harkens at least back to the sophists, and it has numerous theoretical inspirations.[25] Its modern deployment, however, seeks to establish legal and political authority without any religious references.[26]

How is this achieved? Although there are different criteria to categorise even the modern versions of social contract theory, their most crucial and critical function lies in their justification of legal-political authority over human conduct or will. Naturally, different theories project different versions of the state of nature, sometimes leading to radical variations in the qualifications in the composure of legal and political authority. Yet again, they have a common goal of creating a new, immanent (that is, within reach of observable experience) source for law and political power: These phenomena now come to be considered to be based on the human will (in varying forms), and they are conceived through human conduct.[27] In Hobbes' version, for instance, sovereignty becomes much more than just an attribute of public power. Through representation derived from the social contract, the people become the existential principle and the source of legitimacy for the state and sovereignty. Thus, the state or the commonwealth becomes an artificial entity that is formed through the institution of sovereignty by the people.[28]

From then on and with further contributions from other theorists, sovereignty has always implied that the authority of law and political power comes from people, for no other source was feasible under modern conditions.[29] Hence, through authorisation and representation, it was considered that either the sovereign derived its power from the people or the people itself was the real sovereign. As long as it comes from the people, sovereignty could always be considered democratic in principle. Even though it was used by Hobbes to support monarchical rule, this theory had an explosive potential, and it is this potential that was actualised later on by quests for democratic

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25 David G Ritchie, 'Contributions to the History of the Social Contract Theory' (1891) 6 Political Science Quarterly 656, 656; Johann Sommerville, 'The Social Contract (Contract of Government)' in George Klosko (ed), *The Oxford Handbook of the History of Political Philosophy* (Oxford University Press 2011) 575–578 <https://doi.org/10.1093/oxfordhb/9780199238804.001.0001>; Harro Höpfl and Martyn P Thompson, 'The History of Contract as a Motif in Political Thought' (1979) 84 The American Historical View 919, 919–920.

26 Antony Black, 'The Juristic Origins of Social Contract Theory' (1993) 14 History of Political Thought 57, 71–72. It should be noted that, of course, the idea of explaining political relationships over contractual, individual, and arbitrary grounds is not without opposition. Hume and Hegel are known dissenters to the idea of the social contract theory on different grounds. For more on this, see Christopher J Berry, 'From Hume to Hegel: The Case of Social Contract' (1977) 38 Journal of the History of Ideas 691, 691; Ritchie (n 25) 673, 675.

27 Franz Neumann, *The Rule of Law: Political Theory and the Legal System in Modern Society* (Berg Publishers 1986) 7–8, 28.

28 Thomas Hobbes, *Leviathan* (Crawford B Macpherson ed, Penguin Books 1985) 189–192, 227–228; d'Entreves (n 1) 105.

29 Grimm (n 1) 30–31; Skinner, 'The Sovereign State: A Genealogy' (n 1) 37; Quentin Skinner, *The Foundations of Modern Political Thought. Volume Two: The Age of Reformation* (Cambridge University Press 2004) 351. Even today, this theoretical ground is referred to in varying occasions, see Bickerton and others (n 5) 259; Koskenniemi (n 15) 65.

rule and constitutionalism.[30] Throughout constitutional history, sovereignty comes to signify that law comes from the popular elements and no power is legitimate unless it shows its constitutional origin.[31] Thus, as one moves towards late modernity, this democratic principle of sovereignty matures: The state finds its constituent element and the ultimate foundation of its authority in the people. Precisely because of that, it is claimed that the close relationship between law and political power is peculiar to the state because law is the immediate remnant of people as constituent power.[32] There are, of course, variations to the denomination of this popular and constituent element, like "people" or "nation", both with their own cultural and political implications. Each designation has its peculiarity, and they may play crucial roles in concrete legal-political arguments.[33] Nevertheless, to understand how sovereignty encapsulates self-determination and collective autonomy, these further categorizations may be overlooked. For modern states, people's participation in power and law is the "foremost ground of legitimation".[34]

Now, my argument is that all the positive contents of sovereignty, such as self-determination, the security of secular rule, collective autonomy, external protection, etc., are all further determinations of this popular principle that was always integral to the modern understanding of the concept. The argument that sovereignty protects us from imperial rule or the rule of others other than us[35] is implied in the popular origin of the concept because we, the people, and not some other popular entity, created our legal-political order. The idea that not the rules that emanate from a supernatural power or a god but the rules that our own artificial government direct our activities is also implied in the concept because it was us, and not an invisible divine entity, who built the legal order. Again, our chances of directing our social and individual lives as we deem fit and just through collective action are also implied in the principal design of sovereignty, for claiming mastery of our actions and being able to enter into covenants is essential to the idea. As far as constitutionalism means that the workings of society, law, and political power must follow a specific set of manners, procedures, and divisions whose legitimacy is owed to people as the original source of sovereignty, constitutionalism too is theoretically included in the concept. However, since we cannot infer legitimacy and justification for the political power and law from something other than human will and/or consent, these interpretative consequences

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30 David S. Grewal and Jedediah Purdy, 'The Original Theory of Constitutionalism' (2018) 127 Yale Law Journal 490, 675–677.

31 Grimm (n 1) 47–51, 68.

32 Gianfranco Poggi, *The State: Its Nature, Development and Prospects* (Polity Press 2004) 25–29.

33 Olga Bashkina, 'Nation against People: Whose Sovereign Power?' in Bas Leijssenaar and Neil Walker (eds), *Sovereignty in Action* (Cambridge University Press 2019) 164–165; Pasquale Pasquino, 'Popular Sovereignty: The People's Two Bodies' in Bas Leijssenaar and Neil Walker (eds), *Sovereignty in Action* (Cambridge University Press 2019) 144–146; Grimm (n 1) 43.

34 d'Entreves (n 1) 178–179.

35 Tuck (n 22) 279.

are just further determinations of the concept. It is usually these traits that intellectuals typically tend to be protective of in contemporary discussions about sovereignty. After all, these are the progressive elements of modernity, and they are closely knit with the promises of the Renaissance, which reiterate the creative power of human agency, its rational capacity to understand, and its power to virtuously determine its own fate.[36] Sovereignty, in this sense, is nothing other than the ontological-theoretical expression of these cumulative transformations that legal and political theory underwent and settled on popular origin as a new source. And as far as this holds to be true, it is considered, it must be protected.

However, understanding the law and political power solely through inquiries about their supposed source is helpful only to a limited extent. As mentioned before, how the assumed will of a particular people or community is realised in concrete life is also quite important. Therefore, it is important to remember that every legal and political objective requires a corresponding mechanism of coercive authority is also included in sovereignty.[37] Even though the origins of law and legal categories are now traced back to the consent or conventions of the people, Hobbes argues, for example, without a coercive power that can compel people to fulfil their covenants, there can be no talk of law.[38] Hence, as summarised as the second facet of the concept, sovereignty also signifies an overawing, supreme power that can create laws, execute them, and employ sanctions on those who violate them. The rule of law inevitably requires a mechanism of force or violence. Sovereignty also signifies this correspondence between law and violence, which is granted by the state.[39] In this sense, sovereignty is the highest legal power, but if it is not paired with a real strength to enforce the law or if this strength comes from another entity, the former is not sovereign.[40]

Schmitt's oeuvre, for example, is greatly nourished by this understanding of sovereignty. In his early writings, he argues that the state's value lies in its ability to concretise and enforce law, and the law cannot be fully understood without the sovereignty that fulfils this mission.[41] Without a concrete "pivotal authority" that creates order in the first place and guarantees the ordinary functioning of legal-political institutions, the law as an abstract system of norms cannot implement

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36 Machiavelli's impact on this trajectory should also not be forgotten; see Quentin Skinner, *The Foundations of Modern Political Thought. Volume One: The Renaissance* (Cambridge University Press 2002) 90–98, 109; Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Princeton University Press 2004) 110–111, 189.

37 Koskenniemi (n 15) 65.

38 Hobbes (n 28) 202.

39 d'Entreves (n 1) 105, 129.

40 Neumann (n 27) 24.

41 Carl Schmitt, 'The Value of the State and the Significance of the Individual' in Lars Vinx and Samuel Garret Zeitlin (eds), Lars Vinx and Samuel Garret Zeitlin (trs), *Carl Schmitt's Early Legal-Theoretical Writings* (Cambridge University Press 2021) 197; Carl Schmitt, 'Statute and Judgement' in Lars Vinx and Samuel Garret Zeitlin (eds), Lars Vinx and Samuel Garret Zeitlin (trs), *Carl Schmitt's Early Legal-Theoretical Writings* (Cambridge University Press 2021) 72–73, 103.

itself[42]. Of course, his focus on the decision in identifying the sovereign and the personification of sovereignty brought by this[43] can be first declined with references to the dissolution of absolutism. With the rise of constitutionalism and popular sovereignty, after all, sovereignty has become increasingly impersonal. Its absolutist and arbitrary tendencies fade away, and the concept gets abstracted into the legal order itself: If none of the constituted powers in the state can claim it fully and absolutely, and if they are all subjected to each other's supervision, then sovereignty must now be residing with the people, dormant and inactive except in the cases of constitutional activity.[44]

However, this reasoning concerns the identification of the sovereign entity. Therefore, the difficulty we encounter in answering this question under contemporary conditions does not necessarily obviate the coerciveness of sovereignty. Even though it is impossible to pinpoint a person or a body of persons with unlimited, absolute power in modern constitutional states, no one can deny that the state still depends upon a monopoly of organised force. Hence, the state claims superiority to other social and individual entities in society through this monopoly, and the maintenance of this organised force is one of its primary tasks.[45] The sovereign missions of maintaining domestic order and defending the community against both internal and external threats are closely linked with this functioning.[46]

Without a doubt, this functioning is mainly owed to the monopoly of violence. As classically put forward by Weber, violence is the peculiar means of the modern state, even though this is not its only means of influence.[47] There can, of course, be different forms of social power, but the state's political power is deemed superior because of its control over the monopoly of violence. Through this, the political power of the state gains relative control over other forms of social power, and no one is permitted to use violence unless it is allowed by the state.[48] This functioning is also very vital for the rule of law since law competes with other normative systems (religions, morality, custom, the rules of etiquette, etc.) in directing or regulating social activity. The main leverage of law against, and the ultimate point of distinction from these is that law can trigger the state's mechanisms of violence. In this respect, what state officials, including judges and courts, really do is to determine in which conditions

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42   Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press ed, University of Chicago Press 2005) 30–35. The quote is from p. 33.

43   Ibid. 5–6, 30.

44   Grimm (n 1) 48–51, 68–71.

45   AD Lindsay, 'Sovereignty' (1924) 24 Proceedings of the Aristotelian Society 235, 246–247.

46   Jens Bartelson, 'Double Binds: Sovereignty and the Just War Tradition' in Hent Kalmo and Quentin Skinner (eds), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge University Press 2010) 83.

47   Max Weber, 'Politics as a Vocation' in C Wright Mills and HH Gerth (eds), C Wright Mills and HH Gerth (trs), *From Max Weber: Essays in Sociology* (Oxford University Press 1946) 77–78.

48   Poggi (n 32) 5, 8–11, 21; Weber (n 47) 78.

and how severely this mechanism will be operated.[49] In cases where legal authority is not obeyed, this mechanism threatens individuals with violent implementation and, if necessary, enforces the decision with violent means.[50] Hence, the general coerciveness that law performs through different forms of sanctions is actually derived from the monopoly of violence, whose territorial control coincided with the formation of state sovereignty.[51] Undoubtedly, the legal order usually distinguishes its own legitimate, supposedly rational, and controlled violence from other illegitimate, chaotic uses of violence, and it labels its own violence with more sterilised names like coercion, punishment or sanctions.[52]

When the supremacy of sovereignty is united with the boundlessness of human will as its foundation, it inescapably connotes an unlimited, absolute authority to create and enforce laws. As far as this means that because of modern transformations, there can be no theoretical limits (as in transcendental boundaries) to what the people as the constituent power can will, this is accurate. People can will anything. On the other hand, this connotation is also opposed today with reference to the interdependence of contemporary nations and states in their economic, industrial, commercial, technological, etc., relationships. This interdependence, it is argued, makes it unfeasible to imagine sovereignty with its traditional absolute, supposedly uncheckable connotations.[53] As far as this signifies that no single power today can exclude itself from the rest of the world, this can be accurate.

However, when criticising sovereignty over its feasibility, another transformation should also be noted. In terms of perfecting the violent functioning of sovereignty, contemporary states surpass the traditional forms of legal-political power, such as feudal rulers, monarchies, and empires. Hence, Giddens abstains from calling these older legal-political formations as "government" per se because they could not literally govern their subjects, and they could not settle their subjects' lives in detail, as modern states can. Their rule could be severe, but because of the technical

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49 Robert Cover, 'Nomos and the Narrative' in Martha Minow, Michael Ryan and Austin Sarat (eds), *Narrative, Violence, and the Law: The Essays of Robert Cover* (The University of Michigan Press 2004) 141–144. Excluding H. L. A. Hart, throughout different generations of legal positivism, the coerciveness of legal rules has come forward as the main criterion of distinction from other types of normative systems. See, for example, John Austin, *The Province of Jurisprudence Determined* (Wilfrid E Rumble ed, Cambridge University Press 1995) 19–21, 29–30; Hans Kelsen, *General Theory of Law and State* (Anders Wedberg tr, Harvard University Press 1949) 21; Alf Ross, *On Law and Justice* (University of California Press 1959) 53–56. For Hart's objection, see Herbert LA Hart, *The Concept of Law* (Oxford University Press 2012) 26–44. For different examinations and confirmations of this argument, see Norberto Bobbio, 'Law and Force' (1965) 49 The Monist 321, 325; Frederick Schauer, *The Force of Law* (Harvard University Press 2015) 39–41, 85–87.

50 Robert Cover, 'Violence and the Word' in Martha Minow, Michael Ryan and Austin Sarat (eds), *Narrative, Violence, and the Law: The Essays of Robert Cover* (The University of Michigan Press 2004) 203.

51 Grimm (n 1) 77–78.

52 Peter Fenves, '"Out of the Order of Number": Benjamin and Irigaray toward a Politics of Pure Means' (1998) 28 Diacritics 43, 43; Austin Sarat, 'Situating Law Between the Realities of Violence and the Claims of Justice: An Introduction' in Austin Sarat and Thomas R Kearns (eds), *Law, Violence, and the Possibility of Justice* (Princeton University Press 2001) 6; Austin Sarat and Thomas R Kearns, 'Making Peace with Violence: Robert Cover on Law and Legal Theory' in Austin Sarat (ed), *Law, Violence, and the Possibility of Justice* (Princeton University Press 2001) 53–54.

53 Koskenniemi (n 15) 61; Geneens (n 13) 92.

impossibilities in transportation, communication, and, more importantly, military technology and bureaucracy, the reach of this rule was very limited and could not be spread with the same intensity.[54] On the contrary, modern states possess a much more extended and penetrative capacity on this ground than any prior legal-political formation. Modern armed forces excel prior armed forces in their destructive capacity, manoeuvrability, and organisation, providing the modern state an actual dominance over the rest of the society unlike any traditional power could imagine[55]. Hence, as warfare becomes more and more professionalized and centralised, society becomes purged of any significant means of violent resistance against the armed forces of modern states. As societies become more pacified, the means of violence become more perfected and better monopolised in the hands of the state. The efficiency of this structure is the backbone of modern legal systems, guaranteeing that the legal order is always backed by the threat or actual use of violence.[56]

Sovereignty, in conclusion, apart from its theoretical ties with popular will and collective autonomy, also represents this supremacy of the legal order over its assumed creators, that is, the people. Below, I will argue that the method of creating and maintaining this supremacy of sovereignty through the use of violence contradicts all the implied benefits of sovereignty as the source of law and political power, rendering the concept dysfunctional.

However, as a legal-political institution, how can the functioning of sovereignty be disruptive against self-determination and democracy? There are several ways to argue this, and for the sake of clarity, a point needs to be noted. It can always be argued that as a concrete determination of a theoretical potentiality, the former signifies an end for the latter. So, when the potentiality is concreted into something, it cannot be another thing. By itself, however, this does not necessarily consume the potentiality permanently. Therefore, when people form a collective will to unite and create a consent-based organisation, their potential to withdraw their consent and form another organisation does not end. Invoking this potentiality again may mean that the former organisation may dissolve, but the potentiality remains latent. Theoretically, human beings can will different things at different times, and this ultimately leads to the fundamental problem of how to grant stability to political activity itself. But this dilemma is owed to the tension between potentiality and actuality, and in this sense, it is a challenge for even the fiercest advocates of action and freedom.[57]

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54   Giddens (n 18) 56–57.

55   Samuel E Finer, 'State- and Nation-Building in Europe: The Role of the Military' in Charles Tilly (ed), *The Formation of National States in Western Europe* (Princeton University Press 1975) 155, 159.

56   Giddens (n 18) 18, 20.

57   Arendt, for example, after pointing out that the very idea of limiting the capacity to act is destructive for the action, suggests that the only way to limit power without destroying it is by multiplying it, see Hannah Arendt, *On Revolution* (Penguin Books 1990) 151–152.

Criticising a political idea over its method of realisation, however, is different from this. Criticism can be directed to the legal-political idea itself, or it can be directed to a specific method that is employed to realise the idea. As I try to explain below, the structural dictates arising from the use of violence contradict or hinder the sovereignty as the modern source of law, or rather, the legal-political promises of modernity. Hence, unlike the above dilemma, this obstruction arises from a particular method of a specific configuration of modern legal-political thought and is not a categorical problem that applies to all existence and will-formation. More importantly, if such a criticism can present how and on what grounds the method clashes with the promise, it can also provide the much-needed critical method that will allow us to delineate "the bad" sovereignty from "the good" one. This will be the task of the next section.

III. Paradoxes of the Sovereign Method: Benjamin's Account of Legal Violence

Criticising modern legal-political thought over its violent legal-political methods is not new, and it can be traced at least back to the French anarchist–Marxist thinker Georges Sorel. Dating back to 1905, one of the leading concerns of Sorel's *Reflexions on Violence* is how appropriating the method of using the coercive power of the state to build and enforce an order can become corruptive for the emancipative promises of the revolutionary movement.[58] Although quite influential, surely his is not the only account of the issue. There are and can be different accounts or approaches to understand the place of violence in legal and political theories. Since this is not the place to list them all, however, I aim to make use of Walter Benjamin's "Toward the Critique of Violence", which is one of the most fundamental texts not only in the literature on the relationship between law and violence but also in political philosophy and critical theory.[59] What makes Benjamin's account preferable is that his analysis goes beyond a simple condemnation of violence, providing us with a methodical analysis of the wider effects of the use of violence on the whole legal system. Hence, rather than merely stating that law inevitably depends on violence, Benjamin shows that this relationship of dependence cannot remain accidental and temporary in the legal-political system.

Written from the WW I era, Benjamin of "Critique" witnessed both the war and afterwards, the period of political unrest, soldier rebellions, revolutionary movements, and bloody struggles in Germany. Hence, Benjamin's focus is on the more comprehensive and inescapable consequences of using violence in the creation

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58 Georges Sorel, *Réflexions Sur La Violence* (Librairie Des Sciences Politiques et Sociales 1925) 123, 147–148, 260–263. For the history of the text, see "Note on the text" in the English translation, Georges Sorel, *Reflections on Violence* (Jeremy Jennings ed, Thomas Ernest Hulme tr, Cambridge University Press 1999) xxxv.

59 Catherine Kellogg, 'Walter Benjamin and the Ethics of Violence' (2013) 9 Law, Culture and the Humanities 71, 72; Udi Greenberg, 'Orthodox Violence: "Critique of Violence" and Walter Benjamin's Jewish Political Theology' (2008) 34 History of European Ideas 324, 324.

and maintenance of legal orders. Since even the most consistent sovereign legal order starts with bloody events[60], the question was critical. As far as modern legal theory also assumes the use of violence for the codified, legal ends of a given legal order and the constitution of such an order by violent means; if necessary, the reasoning applies.[61] If the text is interpreted from a materialistic point of view,[62] its argumentation and critical findings can be outlined in three steps.

First, by examining the cases where individuals or collectives other than the state are permitted to use violence, Benjamin concludes that the legal order tries diligently and vigorously to purge society from the spontaneous, unauthorised uses of violence.[63] Second, Benjamin points out that violence is not something completely alien to or incompatible with the law. On the contrary, he shows, through different examples such as military triumphs and workers' strikes, that violence is used in creating stable legal relations. With equal importance, it is also used to enforce individual legal rules against individual persons. Hence, legal violence is distinguished into two categories: *law-positing violence* and *law-preserving violence*.[64] Third, he connects the dots: If violence has become instrumental in the positing of a legal order as law-positing violence, then the legal order is bound to possess the capacity to employ violence more than ever. Since nobody will maintain obedience to an order to which they were subjected through violence, the maintenance of this obedience requires further capacity to employ violence. Therefore,

"… law-positing does not simply relinquish violence; rather, now in a rigorous sense and, indeed, immediately, it turns this violence into the law-positing kind by establishing not an end that would be free of, and independent from, violence but, on the contrary, an end that, under the name of power, is necessarily and intimately bound up with it."[65]

When summarised and uttered plainly, the critical finding of the text is that for a legal order established through violent means, violence can never be an accidental

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60   Koskenniemi (n 15) 66.

61   Kellogg (n 59) 74–75.

62   The question of whether one should read both Benjamin and specifically this text over the author's theological interests versus his materialist-Marxist inclinations is a massive debate in Benjamin literature. There is no victory for either side yet. For this discussion, see Judith Butler, 'Critique, Coercion, and Sacred Life in Benjamin's "Critique of Violence"' in Hent de Vries and Lawrence E Sullivan (eds), *Political Theologies: Public Religions in a Post-Secular World* (Fordham University Press 2006) 204–205; Maciej Witkowski, 'Political Violence and Instrumental Use of Religion in the Works of Carl Schmitt and Walter Benjamin' (2022) 13 Religions 917, 10; Marc De Wilde, 'Violence in the State of Exception: Reflections on Theologico-Political Motifs in Benjamin and Schmitt' in Hent de Vries and Lawrence E Sullivan (eds), *Political Theologies: Public Religions in a Post-Secular World* (Fordham University Press 2006) 191–193; Vivian Liska, 'The Legacy of Benjamin's Messianism: Giorgio Agamben and Other Contenders' in Rolf J Goebel (ed), *A Companion to the Works of Walter Benjamin* (Camden House 2009) 195–196.

63   Walter Benjamin, 'Toward the Critique of Violence' in Peter Fenves and Julia Ng (eds), Julia Ng (tr), *Toward the Critique of Violence: A Critical Edition* (Stanford University Press 2021) 42.

64   Ibid. 45.

65   Ibid. 55–56.

or subsidiary element. Since violence cannot persuade people by communicating reason and its effectivity comes from the domination of others,[66] the order built by violence requires its continuous existence for execution. Therefore, the legal system and power are necessarily and intimately, by the nature of their constitutions, bound up with violence. To maintain authority and efficacy, the legal system must possess this forever. This relationship works in both ways: On the one hand, this means that legal order and sovereignty must keep their monopoly of violence sharp, developed, and ready to strike at all times. On the other hand, it means that society needs to be prepared for the unobstructed diffusion of violence. This requires the elimination of all the spontaneous, unauthorised uses of violence. Therefore, in Benjamin's account, the preservation of the monopoly of violence becomes the secret, omnipresent goal of the legal order.[67]

Therefore, Benjamin's understanding of the problem points to a fundamental relationship of necessity between legal order and violence. To better understand how this contradiction is reflected in the concept of sovereignty, two further manifestations of this relationship can be highlighted. First, it can be said that, by the token of this relationship of necessity between law and violence, both legal order and sovereignty undergo a normative transformation. If the very execution of the normative contents of a specific legal-political order depends upon the existence of sufficient violent means, the maintenance of this latter capacity becomes the universal necessity of sovereignty. After all, all the benefits expected from law and order, such as security, welfare, equality, justice, and protection of human rights, depend upon the state's capacity to enforce the law. This leads to a structural differentiation and makes the possession and maintenance of the monopoly of violence the primary task of sovereignty. Consequently, the original aims and expectations of the normative content of the legal order become trivialised and secondary to this general mission. Thus, self-determination and the realisation of democracy too inescapably become trivialised in the process. If the outcome of a collective decision weakens the sovereign order and diminishes its power, what are the chances that this decision will be welcomed by the sovereign state?

This brings us to the second point. This violent functioning that is integral to the sovereignty as a particular historical configuration of popular source of law restricts, rather than empowers, democracy and popular will formation. To maintain a monopoly on violence, another strategy that this system employs is the prevention or diligent control of the innovative impulses that occur in society. Such a system

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66 Hannah Arendt, 'On Violence', *Crises of the Republic* (Harcourt Brace 1972) 155; Arendt, *On Revolution* (n 57) 12, 26, 202.

67 Christoph Menke, 'Law and Violence', *Law and Violence: Christoph Menke in Dialogue* (Manchester University Press 2018) 31. Hamacher's interpretation is similar too, see Werner Hamacher, 'Afformative, Strike' (1991) 13 Cardozo Law Review 1133, 1134.

inescapably behaves "in a restrictive manner toward its constitutive forces".[68] This contradiction can be best explained through what Balibar calls the "antinomic nature of sovereignty".[69] Here, the antinomy lies in establishing law and political power through the strategy of sovereignty. More specifically, this strategy ends the violence and chaos of the state of nature through the institution of a sovereign power with a monopoly on violence. While the founding act seems consensual and voluntarist, the efficacy remains dependent on a nonconsensual method; hence , anti-political — if we follow an Arendtian understanding. This strategy, which, according to Balibar, is best exemplified in Hobbes, aims to do away with the state of nature where spontaneous dispositions of violence lead to a state of war. But since this state of war is terminated only by the continuous control over and concentration of the means of violence, "(…) state power can keep the peace in the social body only if it is virtually at war with it."[70] Hence, the moment the sovereign power's claim to represent the common interest becomes doubted and the society fails to meet the expectations of the sovereign entity, the latter tends to close the gap with varying degrees of violence, starting from the legitimate uses of violence to systematic violations of human rights and more.[71] At the very least, it possesses the institutional and political means to do so. This institutional tension converts the relationship between state sovereignty and the people to a relationship of manipulation and captivity rather than a mere representation. Or, as Balibar puts it, "The state is the bosom enemy of the society it protects."[72]

Altogether, the specific determinations of this methodological necessity steer legal-political power to a "colonial expansion"[73]; through which the legal system must either capture and legalise everything or push them to a sphere of illegality to be later dealt with violence[74]. To ensure that the conditions for its own existence and execution, it has to move in an appropriative, expansive manner. The specific normative aims of the system cannot be realised fully and objectively because of the dictates of this necessity. Nor can the people, as the assumed constituent element or power, determine its fate or institutional formation without the interventions of this narcissistic need for expansion. Indubitably, developments and transformations that are brought about by constitutionalism and the rule of law can be considered as institutional checks against

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68 Hamacher (n 67) 137.

69 Etienne Balibar, *Violence and Civility: On the Limits of Political Philosophy* (GM Goshgarian tr, Columbia University Press 2015) 77.

70 Ibid. 32.

71 Ibid. 77–78.

72 Ibid. 32.

73 Antonia Birnbaum, 'Variations of Fate' in Carlo Salzani and Brendan Moran (eds), Carlo Salzani and Brendan Moran (trs), *Towards the Critique of Violence: Walter Benjamin and Giorgio Agamben* (Bloomsbury 2015) 94.

74 This makes some of the contemporary followers of Benjamin acknowledge the fact that the unchanging content of the law is ultimately violence, see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen tr, Stanford University Press 1998) 65.

the shortcomings that stem from sovereignty as a legal-political design running on violence. However, benefits of these control mechanisms themselves depend upon the "correct" functioning of the monopoly of legitimate violence, turning their operation into a paradoxical equation. Despite the achievements of constitutional democracy, the 20th century witnessed unprecedented levels of violence that were perpetrated by the sovereign states, making the efficacy of these control mechanisms even more doubtful. More importantly, such institutional designs are mostly aimed at diminishing the pathological symptoms rather than addressing the nature of the problem.[75] This requires a full-fledged interrogation of the central place of violence possessed in our understanding of law and politics, which was the very ambition of Arendt's intellectual quest. This is, of course, a topic for another paper.

Nevertheless, the analysis of the relationship between the two facets of sovereignty allows us to critically speculate on the arguments and claims in the current debates about the concept. This will be the focus of the last section.

IV. Whither Goes Sovereignty?

As brilliantly pointed out by Volk, one of the main problems we encounter in the contemporary debates on sovereignty is that most of the arguments overlook that sovereignty itself conditions our understanding of politics and law, not to mention our worldview. This leads to a circular, unproductive theorising about sovereignty, which can only further the state-centred thinking in law and politics and, through that, the history of state power.[76] A critical grasp of the concept's method of functioning, however, allows one to question what was problematic about the concept in the first place. Upon that, one can further speculate on what grounds the contemporary developments and events can be considered as ameliorative transformations. And if they are truly transformations, with which facet of the sovereignty are they concerned?

As argued above, the real problem with sovereignty was never the name or the territorial boundaries of the popular source that it was supposed to represent and concretise institutionally. Instead, the issue lied in how it did this, in the way or method it was inclined to realise its political purposes and normative ideas. Hence, after World War II, the nation-state was deemed guilty on partially mistaken reasons: States' guarantee of democracy and human rights was problematic not because states were configured on the nation and national territory; it was problematic because it depended on a violent and paradoxical functioning which could always run amok. That was the primary reason that led Arendt to analyse totalitarian governments not specifically as problems of certain nations but as the problems of modernity, tracing the totalitarian terror and violence through colonial violence back to the modern principle of "power for power's

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75   Sheldon Wolin, 'Violence and the Western Political Tradition' (1963) 33 American Journal of Orthopsychiatry 15, 20–21.

76   Volk (n 1) 728, 736.

sake".[77] Therefore, the first question must be to what extent internationalisation and/or globalisation can transform this mode of operation centred upon violence? To what extent does international cooperation displace the state institutions and their coercive mechanisms for implementation, which are widely exercised through the monopoly of legitimate violence and against pacified civil populations?

As Giddens, among many, points out, rather than weakening it, the internationalisation process and international law depend upon the existence of state sovereignty and systematisation of world order through it. Most international organisations are formed and brought to life by sovereign states, and these organisations function through them. Therefore, many of these international or global obligations can be considered as self-imposed by sovereign states.[78] Aside from that, even those abhorred impacts of globalisation, such as deregulation of economic activities, privatisation, and the sharing of sovereign powers with semi-private agents, are transformations that actually occur within/through the state, with the permission of sovereign bodies rather than being imposed upon them. From this perspective, the much-debated duality of self-sufficient sovereign states versus supranational/international organisations seems to be a fallacy.[79] Even if it were true, we would have to be doubtful whether it changes the method of sovereignty, since, as long as the instrumentalization of violence remains central, this would just be another form of sovereign order, such as an empire or a new regional legal-political order.[80] This would not be the dissolution of sovereignty, nor would it be transcending it. Because what changes here is just the territorial configuration of the concept rather than the way it functions. Therefore, there would not be any new safeguards to prevent the structural flaws arising from the instrumentalization of violence integral to the sovereignty. In conclusion, these are quite powerful reasons to doubt the progressive and emancipatory potentials of internationalisation, not to mention their durability and efficacy. Especially when the international community can be quite picky regarding which states' actions or operations will be defined as violations of this order.

On the other hand, the above critical understanding of sovereignty provides a better ground to critically enquire whether we should concede that sovereignty must be protected because it provided self-determination and functioned as a vessel for collective autonomy. The critical analysis presented above argues that sovereignty

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77   Margaret Canovan, *Hannah Arendt: A Reinterpretation of Her Political Thought* (Cambridge University Press 1992) 33–34; Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, Inc 1985) 136–140; Waseem Yaqoob, 'Reconciliation and Violence: Hannah Arendt on Historical Understanding' (2014) 11 Modern Intellectual History 385, 389–390.

78   Even in the European Union, as an intense example of the sharing of sovereign powers, no member state has given up the monopoly of legitimate violence, and the organisation depends upon member states' coercive means for implementation, see Giddens (n 18) 5–6; Henkin (n 2) 5; Grimm (n 1) 88–90, 97.

79   Volk (n 1) 731.

80   d'Entreves (n 1) 131.

never fulfilled this mission fully, and if it did, it did so for the efficiency reasons that are dictated by an *economy of violence*.[81] As summarised previously, the theoretical foundations of modern legal-political thought eliminate any other source for legal and political authority. Hence, concrete ambitions on this ground have only one option: They must claim that they represent people so that their coercion seems legitimate and gets responded with obedience. Sovereign states and governments will always claim this both domestically and externally. However, the sheer existence of this claim can and should never be sufficient.

Moreover, when this claim is scrutinised with a critical perspective that acknowledges the paradoxes inherent in violent means, it can be argued that sovereignty clogs the channels of self-determination more than it empowers them, structurally competing with the constituent forces of society and intervening whenever it feels threatened. When one puts aside this violent functioning together with the question of how the law is enforced, it becomes easy to focus on sovereignty as a cooperative and collectively harmonising political project, abstracting all the real conflicts away.[82] However, understanding how this process guarantees its functioning by threatening real people with concrete means of violence shows that sovereignty is not just a peaceful legal denominator of the popular agency; it is a real practice of domination. From this perspective, its constitutional expression comes forward not as a guarantee for democracy and self-determination; it is instead a political bind that rules out any non-institutionalised or extra-legal manifestation of people as constituent power.[83] Contrary to some recent readings that view sovereignty as the ultimate authority of people who can check and limit the government through constitutionalism (see Tuck's sleeping sovereign mentioned above), Vatter perfectly shows that constitutionalism can be interpreted conversely. Rather than limiting the concrete authority that operates the state machinery, constitutionalism can also be considered as a tool that is used by this concrete authority to limit the political life of citizens as the constituent force.[84] Hence, it can be concluded that sovereignty never really could whole-heartedly institutionalise self-determination, democracy, and collective autonomy. On the contrary, the structural necessity that forces it to become more powerful and expand in a colonising way leads to instability and violent clashes at both national and international levels, turning the question of self-determination into the question of who rules whom.

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81 I use Wolin's renowned expression here in a slightly different sense to explain the use of persuasive strategies by states to enhance and empower their monopoly of violence, see Wolin (n 36) 197–198; Wolin (n 75) 25.

82 Bashkina (n 33) 159–161. For such an approach, see Gunther Teubner and Gunther Teubner, 'Global Bukowina: Legal Pluralism in the World Society', *Global Law Without a State* (Dartsmouth 1997) 12–13.

83 Bashkina (n 33) 170–176.

84 Miguel Vatter, 'Liberal Governmentality and the Political Theology of Constitutionalism' in Bas Leijssenaar and Neil Walker (eds), *Sovereignty in Action* (Cambridge University Press 2019) 138–143.

So, what use does this critical grasp of sovereignty and the tension between its two facets provide us? It can be argued that it provides us a reality check: There are arguments for both sides, but to what extent do these arguments comply with the findings of critical approaches on law, and especially on the relationship between law and violence? How can one legitimise the further progress and perfection of the international/global managerial mindset when the sovereign states, as the middlemen, lack the legitimacy they claim in the first place? There is no guarantee that such organisations will be free from the structural paradoxes of legal violence and that they will perform in conformity with the "universally" acknowledged standards of human rights. The idleness of the contemporary international order in reacting to certain ongoing human rights violations and war crimes does say much about the sincerity of this supposed progress and the agility of the protection it promises. On the other hand, sovereigntist claims cannot and should not be trusted either. These are often used by states to deny responsibility for their actions. Hence, recognising the paradox that the instrumentalization of violence brings to the legal-political sphere warns us against the legitimacy-milking strategies of varying agents from both national and international levels. Insofar as these institutions depend upon the imposed impotence of the peoples whom they claim to represent[85], none of them fares better than others. Missing this point and focusing on the assumed advantages and disadvantages of either side, however, conceals the centrality of sovereignty as the instrumentalization of violence on both sides.

On the other hand, diagnosing where and how sovereignty stops being conducive to self-determination allows us to separate its core value from what corrupts it. Ultimately, we can admit that defending sovereignty through self-determination is not without merit. Sovereignty, in so far as it represents the human capacity to act and form consensual organisations, was the very promise of modern thinking and the Enlightenment. Hence, being able to communicate reason and meaning, to make and hold promises, to dare and build one's own fate and social order are all packed into the concept. When followed to its rational-logical outcomes, this implication also means being free from the rule of others and deciding the specific content of what is good, what is right, and what is true, etc., in a process through which one can become an equal and actual part. Consciousness, execution, and possession of this capacity to determine one's own fate are political questions per se, and it is reasonable to doubt their delegation to a point further from the nation-state.

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85 Etienne Balibar, 'Prolegomena to Sovereignty' in James Swenson (tr), *We, the people of Europe? Reflections on Transnational Citizenship* (Princeton University Press 2004) 135.

Conclusion

In conclusion, it can be conceded that sovereignty has many merits and shortcomings, and participants in the discussion can argue for its dissolution or maintenance according to their own political and theoretical inclinations. The possibility of a real dialog, however, starts with describing what we understand from the concept. As argued above, the concept can be presented as a historical-theoretical compound that includes social, legal, political, etc. ingredients. Therefore, we must present our theoretical ground in purporting how and why the concept should be discredited and praised. Hence, to better justify my reasoning, I attempted to grasp sovereignty from what I considered to be its two outstanding facets: sovereignty as the popular source of law and sovereignty as the method of law's realisation. My aim in doing this was to gain a sure ground in building a critical method for understanding what is wrong with sovereignty.

After all, sovereignty represents an important opportunity that is brought about through modern transformations in legal and political theory. It is a chance for humanity to grasp control of its own fate, and from that perspective, sovereignty is the product of the encounters and combinations of many factors that brought out modern thought in the first place. Therefore, it should not be put aside, since it is the symbol into which the legal and political promises of modern thought and enlightenment are consolidated. The issue, however, is being able to identify what corrupts these promises. If this can be done, it becomes easier to delineate what to keep and what to let go. In this light, channelling the inputs of a critical understanding of sovereignty to ongoing debates becomes an utmost necessity. When we deploy Benjamin's critical analysis of legal violence to the functioning of the concept, for instance, we can identify where the disruptive motivations of the concept come from. Surely, this reasoning ultimately raises the question of whether it is even possible to structure another way or configuration of the place of violence in the legal-political realm. This, however, is another question that can only be advanced after the diagnosis of the problem.

When its components can be separated through this critical intervention, sovereignty as the method of law's violent realisation appears as just a historical-territorial configuration through which people actualised their constituent capacity. Acknowledging that this capacity exists and that it is not bound up or consumed with a specific configuration of a specific mode of legal-political operation is of utmost importance. This is why breaking the circular, unproductive arguments about the future of sovereignty is vital, because the ideas that are offered around the duality of sovereignty versus international/global tend to overlook what was problematic with the sovereignty in the first place. This possibly incurs further reproduction of the problem in potentially new configurations of sovereign entities.

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