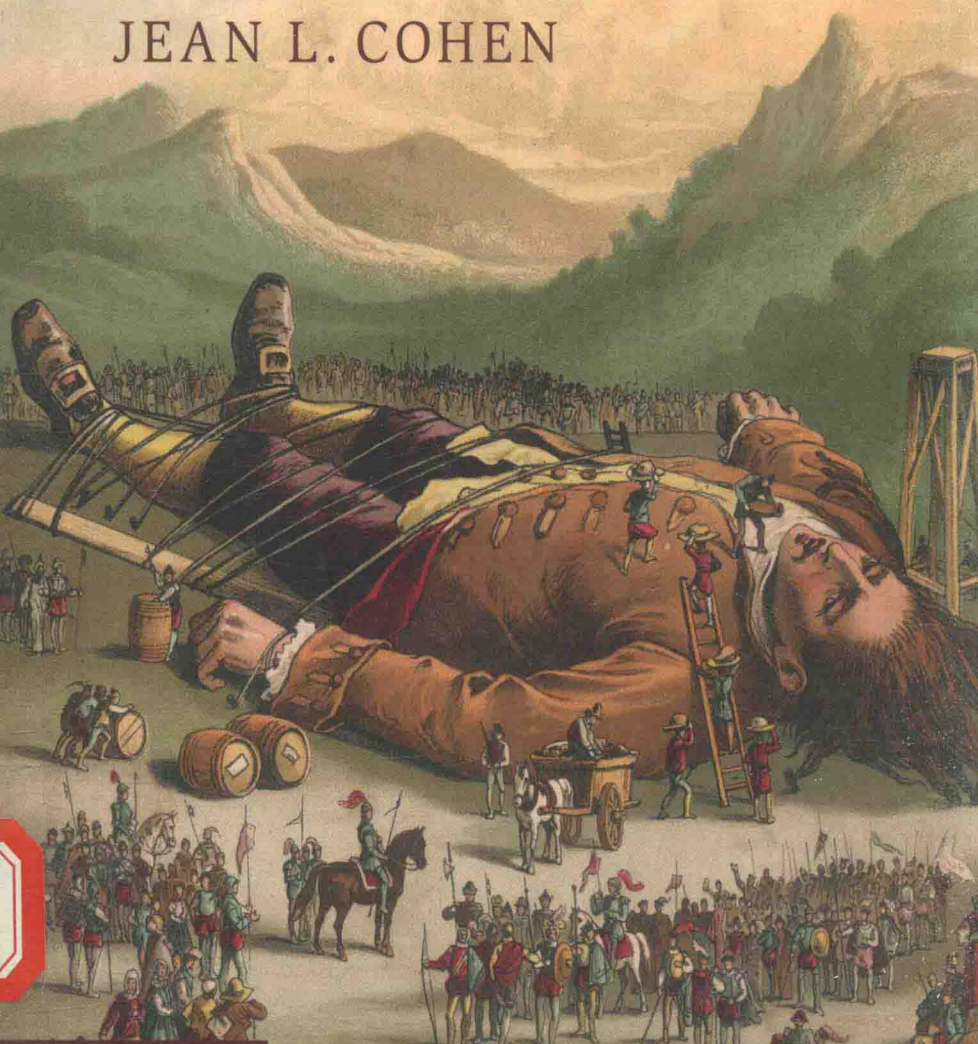
Globalization and Sovereignty

Rethinking Legality, Legitimacy, and Constitutionalism

JEAN L. COHEN



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PREFACE

I was motivated to write this book by two contradictory trends beginning in the second half of the twentieth century. The first is the growing importance of the discourses of human rights, cosmopolitanism, global constitutionalism, and democracy, along with the proliferation of international covenants, United Nations (UN) resolutions and international courts focused on promoting and enforcing them. The second is the use of these discourses and institutions to legitimate (or spur) the development of novel forms of hegemonic international law, new imperial formations, global hierarchies, and transgressions of existing international law by the powerful. Since the early 1990s the Janus-faced nature of humanitarian and "democratic" interventions, transformative occupations, and increasingly activist, intrusive, legislative, and at times rights-violating resolutions of the United Nations Security Council (UNSC) in the "war on terror," has become evident. The intervention in Kosovo and the American war in Iraq are the two most obvious early examples. These events triggered my interest in international political and legal theory along with my determination to decode the ideological discourses on both sides of the conundrum just described.

It is striking that irrespective of whether one's focus is on the first or the second trend, many analysts of legal and political globalization assume that the rules of international law based on the principles of sovereign equality, non-intervention, self-determination, and domestic jurisdiction are anachronistic today, as is the frame of an international society of sovereign states. Indeed it is claimed that both the concept of sovereignty and the ideal of the sovereign state should be abandoned. The task today, apparently, is to constitutionalize or fight institutional expressions of global right depending on one's diagnosis and point of view, not to defend rules and concepts that allegedly no longer fit the contemporary constellation.

Such claims are useful to those seeking to do an end-run around restrictions on the international use of force. But they are also invoked by people deeply concerned with human rights, the rule of law, constitutionalism, and with what is now called the state's and the international community's "responsibility to protect." Indeed, juridification and "constitutionalization" in the international/global domain are also Janus-faced processes and

discourses: both enabling (by helping constitute) and limiting new and older global powers and new freedoms and counter-powers. At the heart of these conflicting and ambiguous trends and projects lies a paradox: the sovereign state form has been globalized, but the international organizations (IOs) states have created in part to secure non-aggression and sovereign equality are morphing into global governance institutions (GGIs) whose expanding scope and reach, in conjunction with human rights discourses and law, seem to place the very ideal of the sovereign state and the principles of sovereign equality, self-determination, and non-intervention into question. So do the geopolitical and socio-economic imperatives of size facing twenty-first-century polities. The international legal rules and principles devised to minimize the aggressive use of force and ensure domestic political autonomy are under threat while global decision-makers and the new forms of collectively authorized intervention in the name of humanitarian justice do not seem to be under any legal restraints or democratic controls. These developments spurred the emergence of the discourse and project of the constitutionalization of international law. But if constitutionalism entails hierarchy of norms, legal sources, and institutional authority, then the constitutionalization of international law and international organizations seems incompatible with state sovereignty. This is the conundrum my book addresses.

I try to move between ideological and infeasible utopian positions on both sides of the statist/cosmopolitan divide. I do so by rethinking the concepts of sovereignty and constitutionalism so as to come up with a workable conception of each, and by reflecting on the issues of legality and legitimacy that sovereignty, global governance, and human rights claims pose in the epoch of globalization. Thus this book does not fall neatly into any camp, be it statist or cosmopolitan, pluralist or monist, sovereigntist or global-constitutionalist. I turn to the more basic questions that these divides gloss over. Are human rights and sovereign equality really antithetical? Should the discourse of sovereignty (popular or state) be abandoned and replaced by global governance talk? Or is the latter simply the new hegemonic discourse of emergent imperial formations? Must the project of global constitutionalism entail the demise of the sovereign state, replacing a pluralist international system with a monistic, cosmopolitan world order? Or is there a coherent way to understand our epoch as permanently and productively dualistic: as undergoing a transition to a new sovereignty regime in which sovereign states (in a plural international society) and global governance institutions (referencing the international community) coexist, and in which constitutionalism and democracy on both domestic and international levels have an important role to play? And why does this matter?

This book tries to answer these questions by developing a theoretical framework based on the core intuition that human rights and sovereign equality are two key principles of our current dualistic international political

system and that both are needed for a better, more just, and more effective version of that system. The hope is that with an adequate conception of sovereignty, constitutionalism, and of international human rights discourses and practices, we can develop feasible projects to render global governance institutions and all states more rights-respecting, democratic, and fair. The discourse of constitutionalization is, in my view, appropriate to this context. But it is time to soften the rigid hierarchical Kelsenian approach, and to develop a conception that acknowledges constitutionalism's inherently pluralistic dimensions as well as its requirement of unity and coherence: both are needed for any legal system to merit the label "constitutionalist." I thus embrace the novel idea of constitutional pluralism but see it as quite compatible with the principle of political autonomy of self-governing political communities at the heart of sovereignty, and with the principle of sovereign equality that still structures our international order. I argue that ours is a dualistic world order, comprised of an international society of sovereign states and a globalizing political system referencing an international community populated by global governance institutions, transnational actors, and courts as well as states. The question facing us is how to order and reform this dualistic system so that the achievements of democracy, constitutionalism, and justice are not lost, but rather, made available to everyone. The focus of this book is the conundrum of legality and legitimacy facing the premier GGI in the world today: the UN Charter system.

Thus the shift from civil society (the focus of my first two books), and privacy and equality law in the domain of intimacy (the focus of the third) to issues surrounding sovereignty and the state is not so terribly odd. One has to follow the path that new forms of power and injustice and new possibilities for freedom and fairness take, in order to intervene productively in the important debates and conflicts of our time. No one book can do everything, however, so this book leaves to the side the issues and injustices generated by contemporary forms of capitalist globalization as well as the challenges posed by increasingly powerful transnational and domestic religious organizations, to the secular liberal-democratic constitutional welfare state. Domestic legal and political sovereignty is certainly at stake in both, and I have already begun to work on the latter problematic. But this book lays the groundwork by focusing on rethinking the concept of sovereignty in analytic and normative terms, and assessing the fate of the sovereign state in the context of globalization.

Like all of my books, this one, too, was long in the making. I began working on sovereignty at the turn of this century, teaching courses on related topics at Columbia University and abroad. I thank my graduate students in those early seminars, for being wonderful and inspiring interlocutors and for their insights and questions, which helped me develop my ideas. Among those

who participated and whose patience and intelligence are well worth commending are Adam Branch, Axel Domeyer, Alex Gourevitch, Jennifer Hudson, Ronald Jennings, Hanna Lerner, Raider Maliks, Bajeera McCorkle, Christian Rostboll, and Ian Zuckerman.

My first article on the topic, "Whose Sovereignty? Empire Versus International Law," appeared in *Ethics and International Affairs* in 2004, and I thank Christian Barry, at the time the editor of the journal, for encouraging me and for featuring the piece so centrally. I am also grateful for the terrific response I received from so many readers. This inspired me to pursue my interest in the field. But many colleagues and friends heard me present or commented on earlier drafts of various chapters whom I want very much to thank. Among these are Jose Alvarez, Eyal Benvenisti, Samantha Besson, Nehal Bhuta, Hauke Brunkhorst, Hubertus Buchstein, Mary Dietz, Andreas Fischer-Lescano, Rainer Forst, Robert Howse, Andreas Kalyvas, Regina Kreide, Claude Lefort, Frank Michelman, Terry Nardin, Yoav Peled, Pierre Rosanvallon, Michel Rosenfeld, Kim Scheppele, Ann Stoler, John Tasioulas, Ruti Teitel, Gunther Teubner, and Alain Touraine.

Many conferences (too many to provide a full list) and institutional affiliations helped me to refine and develop my ideas. I presented versions of various chapters at several American Political Science Association meetings, at three sessions of the yearly conference, "Philosophy and the Social Sciences," held in Prague, the Czech Republic, and at various conferences on sovereignty at Columbia University, including two organized by myself: "Rethinking Sovereignty" in 2003, and "Republic and Empire" in 2009, where the discussions with the conference participants were truly first-rate and enormously helpful. I benefited greatly by participating in a conference organized by Ruti Teitel on "Post Conflict Constitution-Making" at New York Law School in 2006, where I presented an early version of Chapter 4 on occupation law. I presented a very early version of the first part of Chapter 5 at the 2007 workshop of the journal *Constellations*, and another version at the international workshop on "Democratic Citizenship and War" organized by Noah Lewin-Epstein, Guy Mundlak, and Yoav Peled at Tel Aviv University in 2007. I presented the second part of Chapter 5, on the Kadi case, at a subsequent conference on "Constitution-Making in Deeply Divided Societies" organized by Amal Jamal and Hanna Lerner, also at Tel Aviv University and also at Sciences Po in Paris, France. I thank the organizers of these conferences for the opportunity to present and discuss my ideas with first-rate international scholars. The feedback by Eyal Benvenisti at the latter conference was invaluable. I wish also to mention the RECON working group in Norway for inviting me to give the plenary lecture at its conference on "Constitutionalism Beyond the State" in October, 2010, where I engaged in fruitful conversations with John Erik Fossum and Erik Eriksen, among others, on yet another version of portions of Chapter 5. I presented versions of

Chapter 3 on human rights at the President's Conference of the American University in Paris to which Richard Beardsworth invited me, in spring 2009; to the Istanbul Seminars organized by Reset Dialogues also in spring 2009; and at the Carnegie Council in fall 2009. On all of these occasions the discussion was first-rate and very helpful.

Without Columbia University's generous leave program and supportive atmosphere it would not have been possible for me to write this book. My thanks to the Reid Hall Faculty in Residence program in Paris, France, a Columbia University affiliate, for institutional support during the summer of 2003 and the fall semester of 2004 for providing me the time, the space, and the support to work on my project. I also thank the University of Sciences Po in Paris, France for twice hosting me (2004, 2009) as a Visiting Professor and enabling me to interact with French colleagues in a productive way in discussions about international political theory. My time as a Visiting Distinguished Professor at the Johann Wolfgang Goethe Universität in Frankfurt during the winter of 2008 was very helpful in affording me the opportunity to discuss my work with German and other international colleagues and students and I thank Rainer Forst for making this possible. Finally I am most grateful for the invaluable opportunity I was given to present a version of all the chapters in the book, with the exception of Chapter 2, at the Collège de France in Paris, France. I was honored by the invitation to give a distinguished lecture series there during the month of May 2008. This was an invaluable occasion as it helped me systematize my work and my ideas and thus to develop this book project. I want to thank Pierre Rosanvallon for this wonderful opportunity. Finally I am also grateful to the University of Toronto Law School where I was a Visiting Distinguished Professor in January 2009. I received wonderful feedback from very excellent students and colleagues in a mini-seminar on related topics. I thank Nehal Bhuta and David Dyzenhaus for this.

Portions of Chapter 1 appeared as "Sovereignty in the Context of Globalization: A Constitutional Pluralist Perspective," in S. Besson and J. Tasioulas (eds.), *The Philosophy of International Law* (Oxford University Press, 2010), pp. 261–282. An early and rather different version of Chapter 3, titled "Rethinking Human Rights, Democracy and Sovereignty in the Age of Globalization," appeared in *Political Theory*, 36 (August 2008), 578–606. The basic argument of Chapter 4 appeared as "The Role of International Law in Post-Conflict Constitution-Making: Toward a *Jus Post Bellum* for 'Interim Occupations,'" in the *New York Law Review*, 51 (2006–7), 497–532. Chapter 5 is a revision and composite of three separate publications, one of which appeared in *Constellations*, 15 (2008), 456–484, under the title, "A Global State of Emergency or the Further Constitutionalisation of International Law: A Pluralist Approach"; another, "Security Council Activism in the Age of the War on Terror: Implications for Human Rights, Democracy and

Constitutionalism," appeared in Y. Peled, N. Lewin-Epstein, G. Mundlak, and J. Cohen (eds.), *Democratic Citizenship and War* (New York: Routledge, 2011, pp. 31–53); and a third, "Constitutionalism Beyond the State: Myth or Necessity?" in *Humanity*, 2 (Spring 2011), 127–158. A very small piece of Chapter 2, "Rethinking Federation," appeared in the online journal *Political Concepts: A Critical Lexicon* (Fall 2011).

Most of all, and as always, I thank my husband and my colleague Andrew Arato. Without his support, patience, advice, and brilliant insights, this book would not have been written. And now, to my great delight, I have the pleasure of thanking another family member who has become a peer and a colleague: Julian Arato. His help and advice regarding the legal material in this book has been invaluable.

The love and encouragement given to me by my husband and my son has been indispensable to me. I dedicate this book to them.

Jean L. Cohen

CONTENTS

Introduction

Developments associated with globalization challenge the way we think about sovereignty, rights, legitimacy, and international law. We have been told for quite some time that state sovereignty is being undermined. The transnational character of risks from ecological problems, economic interdependence, burgeoning illegal immigration, and terrorism, highlight the apparent loss of control by the state over its territory, borders, population, and the dangers its citizens face. The proliferation of new threats to peace and security seem increasingly to come from civil wars, failing states, grave domestic human rights violations, and the risk that private actors will acquire weapons of mass destruction (WMD). Today belligerency and violent aggression requiring international regulation appears to be caused by anarchy and tyranny within states rather than anarchy between them.[1] Global governance and global law seem to be the necessary response to the problems generated by but not resolvable within the old framework of an anarchical international society of sovereign states.[2]

Indeed, key political and legal decisions are being made beyond the purview of national legislatures. Alongside other globalizing systems, we seem to be witnessing the emergence of a global political system in which multiple supranational actors bypass the state in the generation of hard and soft law. The apparent decoupling of law from the territorial state and the proliferation of new, non-state transnational and supranational legal orders and sources of law suggest that the former has lost legal as well as political sovereignty. The general claim is that the world is witnessing a move to global (for some, cosmopolitan) law, which we will not perceive or be able to influence adequately if we do not abandon the discourse of sovereignty.[3] Apparently a new world order is emerging, in which global law based on consensus is, in key domains, replacing international law based on state consent.[4] In the twenty-first century, the very category "international" appears outdated.

Viewed from a geopolitical perspective, the imperative of size, which first triggered the emergence and expansion of the international state system, has apparently re-emerged. It seems that the nation-state, as the city-state before it, is now too small to provide security and welfare. It is ironic that as soon as the international system of sovereign nation-states was universalized in the

aftermath of decolonization and the collapse of the Soviet Empire it apparently became an anachronism. Hence, in response to geopolitical and economy-related pressures, the effort to form ever more integrated regional polities and hence the tendency of international organizations to become global governance institutions (GGIs) making binding decisions and global law that intrude deeply into what was once deemed the "domaine reserve" of states, in order to provide collective security, peace, and welfare and solve collective action problems generated by interdependence.[5] The UNSC is the key global governance institution in the global political system, and it now invokes the norms of the "international community" while drawing on its pre-existing public authority to engage in new and unanticipated forms of legislation and administration of populations and territory that directly (and at times, adversely) affect individuals and their rights yet which claim supremacy over domestic constitutional laws and other treaties.

Accordingly, the organizing principle of international society entrenched in public international law and in the UN Charter system – the sovereign equality of states – with its correlative concepts of non-intervention, domestic jurisdiction, self-determination, and so forth, seems outdated. It is alleged that the concept of sovereignty is useless as an epistemological tool for understanding the contemporary world order and that it is normatively pernicious. Indeed more than a few legal cosmopolitans argue that we are witnessing a constitutionalization of the international legal system in tandem with the replacement of the "statist" model of international society by a cosmopolitan, global political and legal community.[6] They point to the key changes in the international system mentioned above to ground their claim of a fundamental shift in its underlying principles. Cosmopolitan legal and moral theorists invoke human rights discourse as the basis for arguing that "sovereignty" as an international legal entitlement and the legitimacy of governments should be contingent on their being both non-aggressive and minimally just. A radical idea is at stake: that the international community may articulate and enforce moral principles and legal rules regulating the conduct of governments toward their own citizens (when their human rights are at stake). By implication, the neutrality of international law toward domestic principles of political legitimacy is being (or should be so the argument goes) abandoned.

Although much debated, some view the transformation of the aspirational discourse of human rights into hard international law, its apparent merger with humanitarian law, and its deployment as justification for departures from the hitherto entrenched norm of non-intervention (except as a response to aggression or threat to international peace), as an indication of the constitutionalization of international law. Similarly, the discourse of constitutionalization is being applied to the expanding reach of GGIs.[7] Since the end of the Cold War, the global political system centered in an increasingly

activist UN Security Council now identifies and responds to the proliferation of the "new" threats mentioned above. The dangers these threats pose to "human security" – the term of art meant to displace the old focus on state security – also seem to indicate the necessity to transcend the state-centric, sovereignty-oriented paradigm of international relations and international law. Indeed there are now impressive global measures backing up the increased juridification of the "international" system including UN-sponsored "humanitarian interventions," UN-authorized transformative "humanitarian" occupation regimes, UNSC terrorist blacklists and targeted sanctions against individuals whose names appear on them, among other global security measures made or authorized by an increasingly activist and legislative Security Council.[8] These developments also seem to render the idea of unitary autonomous state sovereignty in a system of sovereign states useless for understanding the new world order characterized by global risks, global politics, and global law. In its place, we are offered a functionalist conception that disaggregates "sovereignty" into a set of competences and legal prerogatives which can be granted serially by the international community, conditioned on the willingness of states to meet cosmopolitan moral standards of justice, comport with human rights law, as well as demonstrating administrative capability (control).[9] This disaggregated functionalist approach underlies the cosmopolitan notion of the international community's "responsibility to protect."[10] It also informs attempts to replace the organizing principle of the post-World War Two international legal order – the sovereign equality of states and international law based on state consent – with a new international "grundnorm" – human dignity – allegedly informing the new types of consensual global law-making by the organs of the international community.

There is, however, another way of interpreting the changes in the international system since 1989. From a more disenchanted and critical political perspective, it seems that the organizing principle of sovereign equality with its correlatives of non-intervention, self-determination, domestic jurisdiction, consent-based customary and treaty law, is being replaced not by justice-oriented cosmopolitan law, but rather by a different bid, based on power politics, to restructure the international system. Relentless attacks on the principle of sovereign equality coupled with the discourse about "rogue" and "failed" states, "preventive war," the "war on terror," "unlawful enemy combatants," etc., are useful for neo-imperial projects of great- or superpowers interested in weakening the principles that constrain the use of force and deny them legal cover or political legitimacy when they violate existing international law.[11] From this optic, the discourses and practices of humanitarian or democratic intervention, transformative occupations, targeted sanctions, terrorist blacklists, and the dramatic expansion of its directive and legislative powers by the Security Council in its fight against global terrorism (all driven by the US since 1989), are mechanisms which

foster the deformalization of existing international law, and enable the very powerful (the US predominant among others) and/or those states aspiring to become twenty-first-century great powers (Russia, China), to create self-serving global rules and principles of legitimacy, instead of being new ways to limit and orient power by law.[12]

Accordingly, the morphing of international organizations into global governance institutions does not herald a global rule of law or a global constitutionalism that tames sovereignty. Rather it involves the instrumentalization of the legal medium and of the authority of existing international organizations for new power-political purposes. "Global governance" and "global law" tend, on this reading, to authorize new hierarchies and gradations of sovereignty, and to legitimate depredations of political autonomy and self-determination in ways that are distinct from but disturbingly reminiscent of those created in the heyday of nineteenth-century imperialism.[13] Sovereignty in the classic, absolutist (predatory) sense remains alive and well, but only for very powerful states – including those controlling global governance institutions (the P5: the permanent members of the UNSC) – while new technologies and practices of control are created through the innovative use of unaccountable and legally unconstrained power accumulating in those institutions – something the functionalist discourse of gradations of sovereignty and neo-trusteeship plays into. The direction of the new world order is, in other words, toward hierarchy not sovereign equality, and the appropriate concepts are not cosmopolitan constitutionalism but "grossraum," regional hegemony, neo-imperialism, or empire.

This book is meant as an intervention in the debates and politics over the nature and possible future of the current world order. The stakes are quite high and the need to rethink the concept of the sovereign state and its relation to the globalizing international legal and political system has become pressing. Although I acknowledge that there are important changes wrought by globalization, this book rejects the notion that we have entered a cosmopolitan world order without the sovereign state. I argue that we are in the presence of something new but that we should not abandon the discourse of sovereignty or the ideal of sovereign equality in order to conceptualize these changes. Yet I do not thereby embrace a "state-centric," sovereigntist or power-political reductionist conception of the shifts in the international system. Nor do I accept the futility of devising normatively compelling projects for the legal regulation of (and constitutionalization that limits) new global powers. I seek instead a middle way appropriate to the unavoidable dualisms between norms and facts, principle and power in this domain. I am critical of approaches that too quickly characterize our current world order as cosmopolitan and constitutionalist thanks to their anti-sovereigntist enthusiasm about international human rights, international juridification, and global governance. Such analyses overlook the ways global legal and political institutions can be

the creatures of imperial ambitions of powerful states. But I am also critical of those motivated solely by the hermeneutics of suspicion, and focused exclusively on providing genealogical analyses which always and only portray law as an instrument or medium of power technologies, and which aim always and only to unmask new constellations as new power relations. For these approaches overlook the ways in which law and normative order fashions and constrains power, and the ways in which new political formations, in conjunction with political struggle, can enhance and not only restrict freedom.

In contrast to both approaches, this book will defend three theses. The first is that it is empirically more accurate and normatively preferable to construe the changes in the international system as involving the emergence of a *dualistic world order.* Its core remains the pluralistic segmentally differentiated international society of sovereign states creating consent-based international law (via custom and treaties). Superimposed on this are the legal and political regimes and GGIs of the functionally differentiated global subsystems of world society, whose institutional structures, decision-making bodies, and binding rules have acquired an impressive autonomy with respect to their member states and one another.[14] My focus is the relation of the international society of sovereign states to the global political and legal subsystem with its referent, the "international community," of which states are, along with the UN, the key organs. My second thesis is that within this dualistic structure, a *new sovereignty regime* is emerging, redefining the legal prerogatives of sovereign states.[15] It is true that states no longer have the monopoly of the production of international/global law, and consensus operates on key levels of this system (regarding *jus cogens* norms in international society and within key global governance institutions such as the UN Charter organs, based on forms of majority voting). But states continue to play the key role in the production of international law. Moreover, the jury is still out on the nature and legal source of sovereign prerogatives and on the appropriate way to reconceive sovereignty, not to mention the prerogatives GGIs ascribe to themselves. On the one hand, the post-World War Two commitment of the international legal order to sovereign equality, territorial integrity, self-determination, and the non-use of force, is still very powerful. On the other hand, the increased commitment to human rights, and since the 1990s, to their global enforcement, as well as to the creation of global law and global governance informed by cosmopolitan principles, is also striking. I argue that the concept of changing sovereignty regimes is preferable to the discourse of a cosmopolitan world order for the former allows one to see the complexity, messiness, power relations, and contested character of the contemporary dualistic system. But I also argue that it is time to reflect anew on the concept of sovereignty itself. The functionalist approach to reconceptualizing (disaggregating) sovereignty is only one highly contested political alternative and I shall present another one in the first chapter of this book.

My third thesis is that the "further constitutionalization" of international law and global governance is the right approach but much depends on how this project is construed. The idea of the progressive constitutionalization of international law gained a foothold in theoretical discussions thanks to the new willingness of the Security Council to sanction grave domestic human rights breaches and the development of supranational courts to enforce the "values of the international community" regarding international criminal law – thus apparently indicating that the basic rights of all individuals would be protected even if their own states fail to do so. But the somewhat arbitrary and selective framing of certain domestic rights violations as threats to international peace and security meriting outside intervention, and the self-ascription by the UNSC of deeply intrusive legislative and quasi-judicial "global" governance functions unforeseen by the Charter and apparently not subject to judicial oversight or legal restrictions (some of which can themselves be rights violating such as the SC's terrorist blacklists), have created a new legitimation problematic. Loose talk about "constitutional moments" is irresponsible in such a context.

The assumption of certain "global governance" functions by the UN, the premier GGI in the global political system, is unavoidable. Its further constitutionalization must be guided in part by cosmopolitan principles. In this book I will restrict my discussion of global constitutionalism to the UN Charter system. However, and this is crucial, unlike most theorists of global constitutionalism I argue that this project must be conceived on the basis of a *constitutional pluralist* rather than a legal monist perspective. Indeed, I will argue for the constitutional pluralist approach as the theoretical analogue of the sociological concept of a dualistic sovereignty regime. There now exists alongside the domestic constitutional law of each sovereign state an increasingly autonomous legal order coupled to the global political system. The constitutionalist character of the global political system in general, and of the UN Charter system in particular, however, is rudimentary, to say the least. It is a vérité à faire rather than a fait accompli. But given the heterogeneous character of a still pluralist and deeply divided international society of sovereign states, a monistic conception of the project of constitutionalization of the global legal order, whether one locates it in the UN Charter or not, is a bad idea. The risk is "symbolic constitutionalism" – the invocation of the core values and legal discourse of the international community to dress up self-serving regulations, strategic geopolitical power plays, and morally ambivalent military interventions and impositions, in universalistic garb.

This does not mean we must abandon the concept of global constitutionalism in favor of a disordered global pluralism of normative, legal, and political orders. I will argue instead, that the concept of a dualistic sovereignty regime based on the principles of sovereign equality and human rights, and the stance