




AFTER SOVEREIGNTY

ON THE QUESTION OF POLITICAL BEGINNINGS

 GlassHouse book

EDITED BY
CHARLES BARBOUR AND GEORGE PAVLICH

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After Sovereignty

After Sovereignty addresses the vexed question of sovereignty in contemporary social, political, and legal theory. The emergence, and now apparent implosion, of international capital exceeding the borders of known political entities; the continued expansion of a potentially endless ‘war on terror’; the often predicted, but still uncertain, establishment of either a new international American Empire or a new era of International Law; the proliferation of social and political struggles among stateless refugees, migrant workers, and partial citizens; the resurgence of religion as a dominant source of political identification among people all over the globe – these developments and others have thrown into crisis the modern concept of sovereignty, and the notions of statehood and citizenship that rest upon it.

Drawing on classical sources and more contemporary speculations, and developing a range of arguments concerning the possibility of political beginnings in the current moment, the papers collected in *After Sovereignty* contribute to a renewed interest in the problem of sovereignty in theoretical and political debate. They also provide a multitude of resources for the urgent, if necessarily fractured and diffuse, effort to reconfigure sovereignty today. Whilst it has regularly been suggested that the sovereignty of the nation-state is in crisis, the exact reasons for, and exact implications of, this crisis have rarely been so intensively examined.

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Introduction

George Pavlich and Charles Barbour

Conceiving the sovereign

The emergence – and, most recently, sudden implosion – of capitalist economies far exceeding the influence of known political entities, the apparent continuation of a potentially endless ‘war on terror’, the often predicted but still uncertain establishment of either a new international American Empire or a new era of International Law, the proliferation of social and political struggles among stateless refugees, migrant workers, and partial citizens of various kinds, the resurgence of religion as a potent source of political identification among people all over the globe – these developments and others have thrown into crisis the modern concept of sovereignty, as well as the notions of statehood and citizenship that rest upon it. The papers collected together in this volume contribute to a renewed interest in the problem of sovereignty in theoretical debates, drawing on classical and contemporary sources alike. They also provide a multitude of resources for the urgent, if necessarily complex and diffuse, effort to rethink the idea of sovereignty in the fracturing political terrains of our world.

The very attempt is bound to be challenging. Consider the sort of questions referenced by the following chapters. Is the concept of sovereignty indistinguishable from that of social and political order, or would it be possible to conceive of human relations outside of its domain? How might we historically locate a term that has, arguably since ancient times, altered so dramatically in both its definition and its instantiation? Why has this question reasserted itself with such force in recent years, and why did it seemingly remain so dormant for so long? What does it mean to be ‘after sovereignty’ – in the sense of both pursuing and succeeding it, both desiring and relinquishing it? Are we, in fact, after sovereignty at all? If this miscellany of questions gestures towards a multifaceted set of problems, it also betrays founding attachments to some conception of sovereignty, even when considering the prospect of political forms without it.

As is well known, a deep ambiguity surrounds the term ‘sovereignty’, and the related idea of a ‘sovereign’. Veitch, Christodoulidis, and Farmer explain:

Sovereignty, like so many terms that straddle the boundary between law and politics, is a concept denoting a cluster of related ideas rather than one single clearly defined one. Moreover, in nearly all its clustered elements, it is a contested concept, in the sense that different theoretical approaches dispute over its correct explanation or definition, usually also disagreeing about its practical relevance.

(2007: 10–11)

Worse, the term denotes many things, from the ‘untrammelled power of rulers’ to the ‘highest possible legal authority’ to specific powers of agents (sovereigns) such as monarchs, states, dictators, parliaments, and the people. Given this heterogeneous assortment, and by way of introduction, we suggest the value of distinguishing several influential *conceptualizations* of sovereignty, all of which are assumed by the chapters that follow. These conceptualizations, it should be noted, reverberate with traces of erstwhile characterizations of proper rule, and the fascination with the ‘statesman’, the ‘ruler’, the ‘shepherd’, the ‘divine leader’, and so on, in Greek, Hebrew, Roman, and Christian political traditions. However, as our departure point, we turn to an early modern series of debates that isolated the concept of sovereignty as worthy of autochthonous discussion.

A founding example, from mid-sixteenth-century debates, can be located in Bodin and Franklin’s (1992) influential and systematic analysis of sovereignty. Without any pretence at covering the depth of that analysis here, we simply note his commitment to a secular version of sovereignty as a political form that should always serve a ‘nation’, above and beyond any religious or personal inclinations a ruler may harbour. He conceived of the sovereign as an ‘absolute’, continuous, and independent ruler, not bound by the dictates of positive law. Moreover, he understood sovereignty to be an indivisible power, and the sovereign to be the sole authority for positing human law, regardless of the consent of subjects. In this sense, he defined human or positive laws – foreshadowing later command theories of law (e.g. Bentham, Austin) – as a sovereign command. Yet, as much as Bodin emphasized the indivisible power of an independent sovereign, he also championed a view that aligned closely with a pervasive ‘natural law’ milieu of his day. In particular, he argued that sovereigns could not do simply as they please, but rather were bound to higher divine and natural laws, as well as certain laws of ‘nations’ – perhaps checking common characterizations of Bodin as an uncomplicated absolutist.

Even so, contemporary critics (and followers thereof) may have agreed with his attempts to limit sovereigns to higher laws of God, nature or nations, but challenged what they took to be a key omission. For example, a reformist (mostly Huguenot) group, the ‘monarchomachs’, decried his failure to locate the ‘real’ origin of all government; namely, the immutable sovereignty of ‘the people’. A prominent member of this group, Johannes Althusius (Althusius and Carney 1964), provided an ardent defence of the fiduciary responsibilities of all sovereigns,

and the consent – implicit or otherwise – required through a contract (covenant) between sovereign and subjects. From his perspective, the ‘unmoved mover’ of any sovereignty is not a sovereign, but the *collective* power of subjects as members of a social body. Thus Althusius was not claiming that sovereign power simply originates from ‘the people’; instead, he proposed, it resides continuously and eternally in this collective being that outlives any mortal authority. Sovereign rulers are thus always beholden to the collective body that grants them political authority; by implication, what is yielded can be rescinded.

This debate has spawned, through later interpretations and attribution (justified or not), at least four conceptualizations of sovereignty. First, there is the idea that sovereignty is ultimately derivable from divine or natural orders. In this formulation, sovereigns may indeed be, as Hobbes put it, ‘mortal Gods’ but they are ultimately beholden to higher, immortal or natural laws. Although vestiges of various political theologies are detectable in more recent natural law theories of law and sovereignty (e.g. Finnis, 1980), or less straightforwardly in Rousseau’s (1997) *The Social Contract*, a conventional interpretation of Hobbes’ *Leviathan* may suffice to outline the main idea here. As we shall see in several contributions to the collection, no one interpretation of Hobbes can claim to be definitive. However, a conventional reading posits the *Leviathan* as an absolute entity constituted as a result of the natural constitution (laws) of human nature.

Put simply and briefly, Hobbes (1985) argues that human beings are naturally attracted by pleasure that increases ‘vital motions’ around the heart, and repulsed by pain that slows such motions down. The fear of pain and death, which naturally slows the heart, entices subjects to yield certain freedoms and power to a sovereign being, through a social covenant (contract), in return for civil peace. This peace necessarily limits the absolute freedom of each subject and prevents an imaginary, but universally feared, ‘state of nature’ from being realized. The sovereign embodies the rights, powers, and freedoms so yielded, and uses that awe-inspiring power to rule over subjects in a terrifyingly majestic and almost unfettered fashion. On this limited reading – which may not be the most compelling – one detects a logic that ties the unfettered power of a ‘mortal god’ to underlying natural laws of human nature. Interestingly, this interpretation suggests a simultaneous emergence of both subject and sovereign that occurs ‘naturally’ out of a social contract of the kind Hobbes describes. The logic of sovereignty here involves, therefore, the simultaneous creation of individual subjects and a sovereign, where the latter emerges as a singular being comprising the power of plural subjects. As well, there are no abstract subjects independent of this power play; one cannot therefore easily speak of the ‘people’ as initiating agents of sovereignty. Rather, it seems, there is no subject, or social grouping, in advance of the constitution of sovereignty.

A second conceptualization follows from the monarchomachs’ objection that ‘the people’ comprise the ultimate source of sovereignty. Only when the

people embrace someone does a sovereign emerge. This liberal populist conception of sovereignty defines the sovereign as more or less an administrator of the will of the people. Versions of the idea are detectable in many liberal social and political theories, such as, Mill, Locke, Rousseau, Rawls, and so on. As liberal theorists, they recognize the importance of a working constitution, the preservation of human rights, the private autonomy of citizens, and so on. The point of their efforts is to ensure the continuing autonomy and independence of private individuals, collections of individuals (civil society, the public sphere, etc.), because it is these very entities that provide the foundation for any democratic polity.

Here Habermas (1986) offers an intriguingly complex version that echoes the basic thrust of this approach to sovereignty. He (1996: 454) insists, for example, that no sovereign stands over, above and against the people; on the contrary, it is the people. But unlike the political philosophies of liberalism or civic republicanism, Habermas and colleagues (Derrida and Borradori 2003) emphasize the importance of involving 'the people' actively through meaningful participation in rational decisions that guide sovereigns. Most of his theoretical treatises represent deliberate attempts to bolster 'the people' as autonomous and rational subjects capable of directing sovereigns: conceptualizing a theory of communicative action; providing a grammar of morality (discourse ethics); reinvigorating contemporary incarnations of the public sphere and life worlds; fulfilling the unfulfilled potential of modernity's enlightenment projects, etc. Regardless of the specifics of his impressive theoretical accomplishments, we might take from them a conceptualization of sovereignty which declares the people – at least when rationally oriented – as the necessary foundation of any legitimate form of sovereignty. From this perspective, Habermas seeks to institutionalize rational discourse, thereby enabling subjects collectively, autonomously and actively to participate in processes that select valued ends, which a popular sovereignty merely expresses. In this framework, echoing Althusius, sovereignty is always founded in the collective will of its subjects.

Thirdly, as problematic as it may be, some detect in Bodin and indeed Hobbes, conceptions of the sovereign as an absolute, independent and unbound entity. From this perspective, the sovereign emerges as an absolute law-making entity that does as it pleases, without restraint; until it is ousted by force, conquest, popular uprising, and so on. Echoes of Thrasymachus in Plato's *Republic*, and perhaps Machiavelli, reverberate through formulations of sovereignty that rest on versions of a 'might makes right' argument. More recently, Agamben (1998; 2005) relies on Schmitt's overworked adage, 'sovereign is he who decides on the exception', to formulate his theory of sovereignty as starting from relations of prohibition. For Agamben, the basic relation of sovereignty politics (and he borrows this term from Jean-Luc Nancy) is the 'ban' that renders something prohibited. Sovereignty here only emerges through decisions that banish, ban, declare as bandits, abandon, and so on. These decisions are constitutive of sovereignty; they generate the sovereign and

subject at the very moment of such decision. But that very moment is also paradoxically one in which a logic of exception plays itself out: the sovereign deliberately declares the universality of its laws exactly there where it excludes itself from being bound by those laws. At the instant of a successful decision, then, the sovereign as unconditional law-creating agent emerges as an absolute entity without bounds. As intricate as Agamben's theories of inclusion and exclusion may become, the key matter in the present context is this: the logic of sovereignty is one of exception – sovereigns exempt themselves from their declared laws and so become unbounded law makers with a 'natural right to do anything to anyone' (1998: 106). Sovereignty therefore emerges, if at all, out of force, and more particularly out of the actions of the strongest who are able to declare law for all others while simultaneously – and through that (most violent) act – exempt themselves therefrom. The preserved strength of the sovereign, in this scenario, is vital to its ongoing existence.

Fourthly, the debate suggests another conceptualization that posits any sovereign as fully dependent upon the historical context from which it emerges. Here, various configurations of sovereignty may be possible depending on historical conditions. The logic implied is not so much internal to a given form of sovereignty; rather, the contours of given arrangements of sovereignty are shaped by historical circumstances – whether Bodin responding to religious upheavals in France, Althusius in defence of 'the people' (such as Huguenots) against persecuting states, the wars that culminated in the Peace of Westphalia (1648), or Hobbes's response to the English Civil War. In all cases, the contours and understandings of sovereignty are formulated in a given political context. In that sense sovereignty is a variable idea that adapts itself to circumstance. Swimming in such theoretical currents, Foucault (1978, 1979, 2005) approaches sovereignty not as an abstract, universal concept, but as the product of historically specific and local power relations. The latter contingently consolidate in strategic envelopes that coalesce transiently into diverse models of power that nominally may be described by such terms as sovereignty, discipline, governmentality, and biopower.

In this scheme, diverse political models relate and intersect, sustaining different versions of 'law and sovereign' relations. So, for example, Foucault (2003: 37) describes the mediaeval lineage of sovereignty politics as being utterly transformed by modern political technologies of discipline and biopower. He (2007) even goes as far as to suggest that one might reasonably have expected the concept of sovereignty to disappear in modern political horizons, but for the role that it played inadvertently in assisting with the deployment of extensive disciplinary and biopolitical mechanisms. It is the afterlife of sovereignty that enables it to become a visible 'cover' for more invisible disciplinary techniques and provide a democratic 'vener' for biopower. Such functions give mediaeval sovereignty pretexts to survive in the modern context, but any semblance of independence associated with concepts of sovereignty are relegated to serving the emerging strategic power complexes of the day. Of

course, Foucault's (2008) analysis of sovereign power relations is much wider than this, but these brief indications suggest an approach that considers sovereignty to have an extraneous logic directly embedded in historical circumstance.

By no means exhaustive, these four conceptualizations of sovereignty – as oriented towards the natural or the divine, as anchored in the people, as the effect of sheer force, and as one historically contingent expression of much more complex networks of power relations – provide a tentative framework for approaching the papers collected together in this volume. At the same time, no single author defends one or the other of these models. Rather, and with almost no exceptions, each essay presented here refers in its own manner to all four, occasionally privileging a particular paradigm, but never accepting it *holus bolus*. Indeed, despite their considerable differences, and occasionally even polemical oppositions, what unifies all contributions to the *After Sovereignty* project is a refusal to adopt an established attitude. While there can be no question of escaping every one of the many shadows cast by past understandings of the sovereign, each author nonetheless takes seriously the task of beginning anew, which may be the task of politics as such, and which is certainly the task of any thought worthy of the name.

Synopsis of chapters

Responding to the 'after sovereignty' theme, Fitzpatrick's opening chapter proposes a compelling reinterpretation of Hobbes's sovereign Leviathan, emphasizing the 'sociality' reflected by its constitutive dependence upon subjects. Through a series of deliberately discordant beginnings (an ostensive allusion to the 'compositional' practice of sovereignty) Fitzpatrick highlights various ways by which the sovereign emerges as 'the creation of people covenanting with each other'. Yet, Hobbes fails to resolve the singularity of Leviathan's subjects and the espousal of their collective existence, thus leaving open the prospect of formulating a 'sociologic' that 'intimates the dependence of singular being on being-in-common', or what we might call a 'generalized *ipseity*'. While sovereignty has at times emerged as a fixed 'idol', to quiet – disastrously – Hobbes's irresolution, Fitzpatrick refers to Socrates's evocation of Diotima in *The Symposium* to understand the sovereign as 'composer'. If we are, following Bataille, 'doomed to seek' sovereignty, Fitzpatrick finds it 'as neither a surpassing determinacy nor a responsive dissipation but as both, and at the same time – always a beginning, but never just that'. What comes after sovereignty? 'Sovereignty', Fitzpatrick avers, but reconceived.

Providing a similarly atypical approach to Hobbes's *Leviathan*, Pavlich argues 'against dismissing the legacy of sovereignty politics, even when, or especially when, reflecting on its possible dissociations'. Drawing attention to what, in a different context, Fitzpatrick calls the Leviathan's 'unexpectedly tender side', Pavlich shows how Hobbes's monumental work haunts even

those who would like to surpass it. Indeed, for Pavlich, a number of contemporary readers of Hobbes – notably Foucault and Agamben – risk reducing him to a caricature, often in order to reassert certain of his founding claims in the guise of their own. Avoiding the iconoclastic dream of a ‘politics without sovereignty’, Pavlich argues for a deconstructive approach, which seeks to reveal the abyss that generates both sovereignty and subjectivity, or both power and that which can – in the conventional as well as the legal sense – *depose* it. For every sovereignty, Pavlich has Hobbes remind us, is founded on an artificial covenant, or a historically and socially located set of practices that can, like Hobbes’s text itself, always be reassessed and rearranged in unpredictably new ways.

Joyce is similarly interested in deconstructing the concept of sovereignty, suggesting that a sovereign’s authority is intrinsically ‘auto-positioned’, rather than being grounded in either an assembled people, a promise of protection, or superior force. And yet, despite this auto-positioning or ‘ipseity’, as Joyce follows Derrida in calling it, such sovereignty is not absolute, but relative to both ‘community and law’. Without having the space here to do justice to Joyce’s intricate set of claims, especially his detailed readings of Vitoria, Bodin, and Sieyès, we can say that his most distinctive move involves proposing that law underwrites sovereignty, not only by virtue of what it provides, but also by virtue of what it lacks, or its ‘vacuity’; namely complete comprehension of an ever shifting set of social relations, as well as a future that remains yet to come. In this sense, community and law might be seen simultaneously to condition and threaten any claim on sovereignty, however it might be established or enforced.

Intensifying the lines of argument set out in Joyce, De Ville provides a masterful exegesis of Derrida’s ‘Declarations of Independence’, his essay written in celebration of the founding document of the American republic. Against the reading which claims that, in this work or any other, ‘Derrida simply points to the groundlessness or self-authorizing nature of a constitution’, De Ville leads us through Derrida’s larger understandings of ‘representation’, ‘speech acts’, and the ‘proper name’ in order to arrive at the powerful conclusion that ‘[c]onstitutional theory has no choice but to engage with the structure of language which is its very condition of possibility’, and that such an engagement represents the only manner in which it ‘stands a chance of confronting responsibly questions about its interpretation and application, its principles, values and fundamental rights’. The engagement with language that Derrida and De Ville advocate leads to a practice of ‘sovereignty without sovereignty’, and a constitutional community that repeatedly undoes its own act of foundation.

Kellogg and Barbour each approach the concept of sovereignty by way of one of its most vehement critics, Hannah Arendt, who opposes the unified and commanding sovereign will to genuine political freedom, which is concerned first of all with plurality and speech rather than violence and decision.

Articulating Arendt's thought with that of Jean-Luc Nancy, Kellogg explores the manner in which both understand politics, or rather 'the political', in terms of 'withdrawal' or 'retreat'. For Arendt, this involves a retreat from 'the social' configured as the realm of necessity, while for Nancy it is a retreat from 'the parent', and from every substantial or immanent presentation of collective life. Showing how Arendt's and Nancy's paths cross in myriad places, Kellogg ultimately sides with the latter, proposing that his treatment of 'being-in-common' loosens the rigid distinction between the social and the political on which Arendt's argument relies, and perhaps even opens politics up to what Arendt would characterize as the private, intimate experience of love.

Despite the differences that Kellogg expertly catalogues, on her account, at the core of both Arendt's and Nancy's concept of the political is the theme of 'the new', or freedom as the possibility of what remains unknown, unknowable, and yet to come. By invoking the recent work of Alain Badiou, and especially his theory of the 'truth-event', Barbour might be said to approach the same problem from a different (if by no means opposite) direction. Sovereignty, as Schmitt famously reminds us, relies on a logic of the exception, and avers a confrontation between friends and enemies. In seeking to reconstruct what, in the subtitle to his study of Saint Paul, he calls 'the foundation of universalism', Badiou gives us a new way of considering one of the most time-honoured challenges to the principle of sovereignty, which preaches the inevitability of violence and law. What would it mean, Barbour wonders, to supplement entrenched debates over human rights versus citizenship rights with Badiou's affirmation of 'the rights of the Immortal', and his privileging of the figure of 'the militant'?

McVeigh and Pahuja begin their detailed historical discussion of 'the Third World claim for Permanent Sovereignty over Natural Resources (PSNR)' by proposing to treat sovereignty, not as an abstract concept or principle of law, but as a collection of practices or, more accurately, actions. They suggest that international law need not be rigidly grounded in a fully formed juridical reason, but can be understood as something more 'mythopoetic', and as a 'space of encounter' that then becomes a grounding for 'jurisdiction' (in the etymological sense of 'speaking the law'). To focus exclusively on the collapse or the preservation of the Westphalian model of sovereign nation-state is, McVeigh and Pahuja maintain, to miss the sense in which all such sovereignty already finds its basis in international 'jurisdiction', or an open and incommensurable 'middle ground' existing prior to, and making possible, any sovereign bodies whatsoever.

While their contributions to *After Sovereignty* are very different from one another, Hogeveen, Guardiola-Rivera, and Humphreys all approach the issue lyrically, with as much attention to their own language as to that of others, providing fresh air in a collection that otherwise – if also of necessity – contains a great deal of commentary. Hogeveen's essay in particular seems haunted by the spectres it invokes, coupling an impassioned defence of the struggles

of indigenous peoples against the violence that founds so-called ‘Canadian sovereignty’ with a sophisticated, perhaps slightly concealed, reflection on Derrida’s notion that all politics, and especially a messianic politics directed towards the future, involves the work of mourning and an encounter with ghosts. Guardiola-Rivera is similarly interested in the relations between the sovereign and the indigenous. But, in contrast to Hogeveen’s recollection of selected forgotten voices, he composes a labyrinthine and intricate genealogy of countless figures – some past, some present, some friends, others enemies. While it deliberately defies anything as comforting as a summary, there is, I think, one issue at the heart of Guardiola-Rivera’s piece, and that is the issue of ‘the object’. More accurately: how is it decided what counts as an object, and by extension what does not? Anyone who thinks this question is not deeply political should be referred immediately to Guardiola-Rivera’s work. Here revolution becomes the revolution of objects as much as subjects, and entails a new way of seeing, not just human relations, but the world of things as well.

Where would a collection on sovereignty, especially ‘after sovereignty’, be without some consideration of Georges Bataille, who seemed to take a tortured delight in exposing the unimaginably violent – and unimaginably absurd – conditions of both the concept and the practices of the sovereign? To be sovereign, Humphreys reminds us, here ventriloquizing Bataille, is to come from and return to nothing, to have no home and no cause, and thus to live ‘without reserve’. One might say that Humphreys writes as a sovereign in this sense, wandering, unmoored, and free. And yet, to make such a claim would be to risk overlooking the manner in which his paper is grounded historically and politically in its detailed assessment of the 1885 ‘General Act of Berlin’, which opened the way for the parcelling out the continent of Africa (the completely disastrous consequences of which remain perfectly apparent to this day), but through which, Humphreys maintains, the very meaning of sovereignty in international law had to shift shape in unexpected ways. It is for the, as he calls it, ‘fungibility’ of sovereignty that Humphreys ultimately argues, suggesting that we have always been, and will always be, ‘after’ it in both senses of the term, as it has never been one thing, but always already polymorphous.

No less necessary than some consideration of Bataille in this context is a sustained engagement with the thinker who can most obviously be credited with reigniting interest in the paradox of sovereignty, Giorgio Agamben. Accepting this task, Swiffen examines what Antonio Negri calls the ‘two Agambens’ – one concerned with the possibility of political redemption, another engaging in a moribund confrontation with violence and death. She argues that these two – one messianic, the other melancholic – cannot be separated as easily as Negri and others might hope, especially when we locate Agamben’s work on politics alongside his Benjamin-inspired reflections on language. That is to say, for Swiffen ‘Agamben’s understanding of politics is parallel to his conception of language’. And it is in his work on language that we can expect to find what many commentators take to be Agamben’s