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Source: *The American Historical Review*, Vol. 111, No. 1 (February 2006), pp. 1-15

Published by: Oxford University Press on behalf of the American Historical Association

Stable URL: <https://www.jstor.org/stable/10.1086/ahr.111.1.1>

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Presidential Address
The Problem of Sovereignty in European History

JAMES J. SHEEHAN

The law of the modern world, that power tends to expand indefinitely, and will transcend all barriers, abroad and at home, until met by superior forces, produces the rhythmic movement of history.

Lord Acton (1906)¹

MORE THAN A CENTURY AGO, James Bryce began his essay on “The Nature of Sovereignty” by admitting that “the reader may feel alarmed at being invited to enter once again that dusty desert of abstractions through which successive generations of political philosophers have thought it necessary to lead their disciples.” I wish that I could assure you, as Bryce went on to assure his audience, “that my aim is to avoid the desert altogether, and approach the question from the concrete side.”² Unfortunately, it seems to me that in order to understand sovereignty we have to examine the relationship between the abstract and the concrete, that is, between sovereign theory and sovereign practice, between sovereignty as a way of thinking and sovereignty as a way of acting. The best I can promise is that I shall try to make our sojourn in the desert as brief as possible.

The issue of sovereignty provides a useful perspective from which to view the history of European politics in the modern era. I am not suggesting that it is the *only* perspective—there is no one way to tell Europe’s story—but that it has some notable advantages over its chief competitor, which is to view the history of European politics as the history of the rise of *the* state, which usually means the combined histories of a few major Western European states.³

It would, of course, be foolish to deny the importance of states in the history of European politics. But *the* state was and is not history’s natural telos. The emergence

I am grateful to Tom and Kathy Brady and to Keith Baker for their extraordinarily helpful comments on an earlier draft. As usual, Margaret Lavinia Anderson is my most astute—although not always most gentle—critic.

¹ Lord Acton, “Beginning of the Modern State” (1906), in Acton, *Essays in the Liberal Interpretation of History: Selected Papers*, ed. William H. McNeill (Chicago, 1967), 419.

² James Bryce, “The Nature of Sovereignty,” in *Studies in History and Jurisprudence* (Oxford, 1901), 2: 50.

³ Two influential examples of this view: “By 1300,” Joseph Strayer wrote, “it was evident that the dominant political form in western Europe was going to be the sovereign state.” Strayer, *On the Medieval Origins of the Modern State* (Princeton, N.J., 1970), 57. “All evolution from primitive pre-state methods has been inexorably towards the establishment and consolidation of the state.” F. H. Hinsley, *Sovereignty*, 2nd ed. (Cambridge, 1986), 219.

of states was neither inevitable nor uniform nor irreversible. I hope that by disentangling the history of sovereignty from the history of states and by focusing on sovereignty as a problem, we can avoid the distortions and restrictions that the “rise of the state” narrative imposes on the European past. Undermining this narrative extends our vision of European politics in space and time: geographically, we can move beyond the handful of Western European states whose quite exceptional experience provides both our political vocabulary and our historiographical models; chronologically, we can reconnect the evolution of politics since 1945 with some central themes in European history. If we consider sovereignty as a problem, therefore, we will be able to acknowledge the abiding importance of the state without losing sight of the complex, uneven, and unfinished aspects of state making.⁴

WHAT IS THE PROBLEM OF SOVEREIGNTY? It is, first of all, a problem of definition. *Sovereignty* is obviously a political concept, but unlike political concepts such as *democracy* or *monarchy*, it is not about the location of power (the sovereign, Hobbes wrote, can be “the one or the many”); unlike *parliament* or *bureaucracy*, it does not describe institutions that exercise power; and unlike *order* or *justice*, it does not define the purposes of power. The concept of sovereignty has to do with the relationship of political power to other forms of authority. Sovereignty assumes, first of all, that political power is distinct from other organizations in the community—religious, familial, economic. Second, sovereignty asserts that this public authority is preeminent and autonomous, that is, superior to institutions within the community and independent from those outside. In theory, the sovereign can be no one’s vassal: at home, sovereigns are masters; abroad, they are the equals of other sovereigns.⁵

Although commentators sometimes succeed in making the definition of sovereignty complicated, the *concept* of sovereignty is deceptively easy to define. The problem of sovereignty resides in the relationship between sovereign theory and practice. To perceive this problem, we must avoid what Quentin Skinner called the “reification of doctrine,” that is, the tendency to turn ideas into things, concepts into conditions, norms into descriptions. Overcoming this tendency—and it is especially prevalent in writings about sovereignty—requires that we understand sovereignty as both a doctrine and a set of activities, a way of thinking about politics and a form of political action.⁶ As a doctrine, sovereignty is usually regarded as unified and inseparable; as an activity, however, it is plural and divisible. To borrow Inis Claude’s vivid distinction, in theory, sovereignty might seem like a “chunk”—that is, a solid,

⁴ For a critique of the concept of the state, see Timothy Mitchell, “Society, Economy, and the State Effect,” in George Steinmetz, ed., *State/Culture: State Formation after the Cultural Turn* (Ithaca, N.Y., 1999), 76–97.

⁵ Hinsley, *Sovereignty*, remains the best introduction to the problem. I am also indebted to the work of my colleague Steven Krasner, especially *Sovereignty: Organized Hypocrisy* (Princeton, N.J., 1999). I am not convinced that “hypocrisy” is quite the right word to use, but the tension I see between sovereign theory and practice is obviously related to Krasner’s argument, which, unlike mine, concentrates on the international dimensions of sovereign claims.

⁶ Quentin Skinner, “Meaning and Understanding in the History of Ideas,” *History and Theory* 8 (1969): 11. A good example of what I mean by reification is the role played by “Westphalian Sovereignty” in the study of international relations. See Andreas Osiander, “Sovereignty, International Relations, and the Westphalian Myth,” *International Organization* 55 (2001): 251–287.

monolithic condition—but in practice it turns out to be a “basket”—that is, a collection of different rights, powers, and aspirations.⁷ The problem of sovereignty is the enduring tension between the order and unity promised by sovereign theory and the compromises and negotiations imposed by political practice.

Politics, Keith Baker has written, is “about making claims.” It is “the activity through which individuals and groups in any society articulate, negotiate, implement, and enforce the competing claims they make upon one another and upon the whole.”⁸ Sovereignty is best understood as a set of claims made by those seeking or wielding power, claims about the superiority and autonomy of their authority. State making, therefore, is the ongoing process of making, unmaking, and revising sovereign claims. The nature of this process constantly changes; what it means to be a state varies from time to time and from place to place. Moreover, the history of state making has neither a necessary direction nor a set destination. States are made and unmade; some succeed, many fail. The only way the history of state making can ever end is badly, with the defeat and dissolution of the state. In fact, throughout European history, this has been the fate of the overwhelming majority of states. States can survive only as long as they retain the ability to keep on making claims.⁹

Thinking about sovereignty as a basket of claims reminds us that claims are always made with reference to someone else. Claims imply counterclaims or contestation; otherwise there would be no point in making them. This is why we do not find a concept of sovereignty in tribal societies or ancient empires—in neither one is political power clearly separate from other forms of authority. Sovereignty involves not only asserting power but also constantly testing, extending, and sometimes accepting power’s limitation.

The problem of sovereignty is closely tied to the establishment of boundaries. Boundaries measure how far a sovereign’s power extends, and also, by definition, where it stops. Initially, sovereign boundaries were jurisdictional and personal, marking the extent of sovereigns’ authority over their subjects. Over time, these boundaries became increasingly spatial, marking the territorial limits within which sovereign power could be exercised. The history of the problem of sovereignty is, in large measure, the history of how these boundaries—both institutional and territorial—are defined and defended.

A claim is neither a request nor a demand. We would not say that a charity “claimed” a donation from us or that a robber “claimed” our wallet. To make a claim is to appeal to some standard of justice, some sort of right, but it is also to assert a willingness to back up this appeal with some sort of action. In ordinary language, we use the word to mean a variety of practices, from the claims we file with our insurance companies to the mining rights that prospectors staked during the gold rush. Sovereign claims can resemble either of these examples, the one legal and contractual, the other direct and potentially violent. But in all sovereign claims, there

⁷ Quoted by Antonio Perez, “Who Killed Sovereignty? Or: Changing Norms Concerning Sovereignty in International Law,” *Wisconsin International Law Journal* 20 (1996): 467.

⁸ Keith Michael Baker, *Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century* (Cambridge, 1990), 4.

⁹ Charles Tilly points out that only a couple dozen of the five hundred entities present in 1500 survived into the twentieth century. Tilly, ed., *The Formation of National States in Western Europe* (Princeton, N.J., 1975), 24.

is a blend of legitimacy and efficacy, legality and force. Max Weber captured the essence of this when he defined as sovereign those organizations that can successfully maintain a monopoly of *legitimate* violence: that is, organizations that have the capacity to back up their claims with the lawful use of force.¹⁰

Thus, the concept of sovereignty asserts the domestic primacy and international autonomy of political authority. The problem of sovereignty is the relationship between this way of thinking about politics and the world of political action. The best way to understand this relationship is to see the practice of sovereignty as a collection of claims and counterclaims. The history of European politics is the history of the changing nature of these claims, of the shifting boundaries along which they are made, and of the unstable blend of law and violence with which they are settled. The state is an important part of this history, but not its natural or inevitable culmination.

“THE DEVELOPMENT OF PARTICULAR NOTIONS OF SOVEREIGNTY,” Jeffrey Herbst reminds us, “is highly dependent on a particular political geography.” The most salient characteristic of the political geography of medieval Europe, where the first sovereign claims were made, was the fact that it already contained a number of well-established institutions. As Charles Tilly pointed out in his “Reflections on the History of European State-Making,” European state makers, unlike their counterparts in China or Rome—or, for that matter, North America—did not expand from an organized center into a “weakly organized periphery.”¹¹ This meant that European state makers could not simply overrun and destroy their rivals; they had to absorb, subdue, or learn to live with them. From the start, therefore, establishing boundaries that defined and delimited spheres of power was a central part of the problem of sovereignty.

Throughout much of European history, the most important rival to sovereign claimants was, of course, the Church. The political authorities’ efforts to collect taxes, make rules, and appoint officials were continually checked by religious institutions, which made rival claims to sovereign power or sought to protect their resources and jurisdictions from external interference. The history of sovereignty thus provides powerful support for Leopold von Ranke’s insight that the separation of Church and state was “the greatest, most deeply significant characteristic of the Christian era.” The complex, unstable, and deeply contentious relationship of secular and religious power was, he believed, “one of the most important factors in all of history.”¹² Beginning with the medieval conflict between pope and emperor, Eu-

¹⁰ Weber’s definition can be found in several places in this work: for example, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley, Calif., 1978), 904. By using words such as “successfully,” Weber introduced into his definition the same sort of limitation that I try to capture with the notion of “claim.” For Weber, being sovereign is not a condition but the ability to do something. Every sovereign claim need not succeed, but if enough claims fail, then sovereignty is lost or at least fatally compromised.

¹¹ Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (Princeton, N.J., 2000), 41. Tilly, *The Formation of National States in Western Europe*, 24. The concept of sovereignty did not exist in the ancient world, Georg Jellinek argued, “because it lacked what is necessary to make this concept manifest, the conflict between political power and other forces.” *Allgemeine Staatslehre*, 3rd ed. (Berlin, 1922), 440.

¹² Leopold von Ranke, *Die römischen Päpste in den letzten vier Jahrhunderten*, 3rd ed. (Cologne, 1962), 16–17.

Europeans' efforts to determine what belonged to God and what belonged to Caesar powerfully and persistently shaped the sovereign's claims to domestic authority and international autonomy.¹³

As a competitor, but also as a model and a collaborator, the Church played a critical role in the evolution of sovereignty, not only during the Middle Ages but for centuries thereafter. One of the many disadvantages of seeing the history of European politics in terms of the state's inexorable triumph is that this narrative encourages us to overlook how long the Church challenged state makers' sovereign claims. In 1790, for instance, the conflict over the civil constitution of the clergy became a pivotal moment in the evolution of the French Revolution. For more than a century thereafter, boundary disputes between Church and state played a prominent role in French politics. Culture wars between religious and secular authorities helped to shape German politics throughout the nineteenth century. And in Britain, distrust of Catholic influence lingered even after the issue of legal emancipation had been resolved. William Gladstone, for instance, was concerned that the declaration of Papal Infallibility in 1870 might challenge British Catholics' loyalty to the state.¹⁴ "If the papacy," wrote Harold Laski in 1916, "as Thomas Hobbes so scornfully remarked, be no more than 'the ghost of the Holy Roman Empire sitting crowned on the ruins thereof,' it has not seldom possessed sufficient substantiality to cause Englishmen some vigorous tremors."¹⁵

The development of sovereignty was also affected by other aspects of Europe's geography. The first sovereign claims were made within a relatively contained, densely populated area, inhabited largely by people who cultivated the land.¹⁶ In contrast to much of Eastern Europe, Africa, and the Americas, wealth and power in this setting meant controlling territory and denying its use to others, the form of property that the Romans called *dominium*.¹⁷ Gradually sovereigns transferred the idea of *dominium* from private to public law, turning it into claims to make and enforce the rules over a group of people and, increasingly, over a bounded territory. This required thinking about and organizing political space in a radically new way.¹⁸ As the theory and practice of sovereignty slowly and unevenly took hold, Western Europe was divided into territorial units, each subject to a sovereign's exclusive au-

¹³ For an introduction to the problem, see the documents in Brian Tierney, ed., *The Crisis of Church and State, 1050–1300: With Selected Documents* (Toronto, 1988). See also Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists* (Cambridge, 1963).

¹⁴ See Margaret Lavinia Anderson, "The Divisions of the Pope: The Catholic Revival and Europe's Transition to Democracy," in Austen Ivereigh, ed., *The Politics of Religion in an Age of Revival: Studies in Nineteenth-Century Europe and Latin America* (London, 2000), 22–42. Gladstone is quoted in J. F. Maclear, ed., *Church and State in the Modern Age: A Documentary History* (New York, 1995), 177–180. For a recent survey of these issues, see Michael Burleigh, *Earthly Powers: Religion and Politics from the French Revolution to the Great War* (London, 2005).

¹⁵ Harold Laski, *Studies in the Problem of Sovereignty* (New Haven, Conn., 1917), 137.

¹⁶ Herbst, *States and Power in Africa*, 16, has some comparative data on population density.

¹⁷ On *dominium*, see Peter Birks, "Roman Law Concept of Dominium and the Idea of Absolute Ownership," *Acta Juridica* 7 (1985): 1–37.

¹⁸ Although the Romans recognized that their public authority (*imperium*) had a spatial dimension, this authority was marked by frontiers rather than boundaries. The Roman *limes* measured how far Rome's power reached, not where another's power began. See Friedrich Kratochwil, "Of System, Boundaries, and Territoriality: An Inquiry into the Formation of the State System," *World Politics* 29 (1986): 36, and James Muldoon, *Empire and Order* (New York, 1999), 18–19.

thority.¹⁹ Wars among European states were characteristically fought to defend or acquire territory, not, as in many other parts of the world, to obtain treasure, livestock, or slaves.²⁰

We should not overestimate the speed or comprehensiveness of sovereign claimants' ability to acquire territorial dominion. Even the most cohesive Western European states needed centuries to define clear boundaries and to move from jurisdictional to territorial authority. Consider, for example, the conflicts that arose in August 1789 over the French state's relationship to imperial territories within its eastern boundaries. In much of Europe, autonomous enclaves—cities, the estates of imperial nobles, ecclesiastical domains—remained within territorial units until the nineteenth century.²¹ And even when states consolidated their territories, they shared their space with institutions that, in Edward Fox's words, lacked a territorial base but maintained themselves "by an active exchange of goods and messages as well as a highly developed sense of common purpose."²² Like property, territorial sovereignty is never as solid and simple as it sometimes appears. Property and sovereignty are both baskets of claims, whose extent is continually being tested and limited by competing claims.²³

Violence was—and remains—an important part of sovereignty's history. From the start, state makers used force to press their claims against domestic competitors and foreign rivals. All too often, the boundaries marking the limits of sovereign power were drawn with blood.²⁴ Nevertheless, sovereignty is never merely a matter of force. State makers are always more than what Lenin cynically called "bands of armed men"—even if some of them (like Lenin) did start out that way. Sovereignty blends coercion and compliance, brute force and legal obligation. As Jean-Jacques Rousseau noted, even "the strongest is never strong enough to remain forever master unless he transforms force into law and obedience into duty." That is why the key word in Weber's concept of the state's "monopoly of violence" is the modifier *legitimate*. "We should not assume that we have fully unraveled the notion of the state," Alessandro Passerin d'Entrèves pointed out, "unless we are able to explain how force, first legalized as power, becomes in turn legitimate as authority."²⁵

Law has always been a prominent feature of Europe's political landscape. In

¹⁹ On boundaries, see Malcolm Anderson, *Frontiers: Territory and State Formation in the Modern World* (Oxford, 1996); Ainslie Embree, "Frontiers and Boundaries: The Evolution of the Modern State," in *Imagining India: Essays in Indian History* (New Delhi, 1989), 67–84; Lucien Febvre, "Frontière: The Word and the Concept," in Febvre, *A New Kind of History: From the Writings of Lucien Febvre*, ed. Peter Burke (London, 1973), 208–218; Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley, Calif., 1989).

²⁰ A point made by Herbst, *States and Power in Africa*, 20–21.

²¹ For some German examples, see James Sheehan, *German History, 1770–1866* (Oxford, 1989), chap. 1.

²² Edward Fox, *History in Geographic Perspective: The Other France* (New York, 1971), 56.

²³ For a comparison of property and sovereignty, see Kratochwil, "Of System, Boundaries, and Territoriality."

²⁴ As Hendrik Spruyt has persuasively argued, the most important reason why the territorial state prevailed over alternative forms of political organization was its superior ability to use violence. Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton, N.J., 1994). For a brilliant synthesis of the role of violence in the history of states, see Wolfgang Reinhard, *Geschichte der Staatsgewalt: Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (Beck, 1999).

²⁵ Jean-Jacques Rousseau, *The Social Contract*, Book I, chap. 3. Andreas Anter called Weber's concept of legitimacy "the Archimedian point of his political sociology." See Anter, *Max Webers Theorie des*

Rome, law was the foundation of the political order, “the sole guarantor of the continuity of ‘civilization.’”²⁶ In the medieval period, when the first sovereign claims were made, the legacy of Roman law coexisted with the Church’s canon law and a variety of other legal systems.²⁷ Sovereigns drew upon all of these traditions, weaving them into a body of legal theory and practice that justified and advanced their claims to power. The theoretical crystallization of this long process can be seen in the ideas of Jean Bodin, who gave the doctrine of sovereignty its foundational expression in the late sixteenth century. Bodin regarded the sovereign as the primary lawgiver, a source of authority who is at once above earthly rules and enmeshed in a divinely ordained legal hierarchy.²⁸

In both theory and practice, law was of central importance for the history of sovereign claims. The legal system brings together norms and violence, the general and the particular, values and experience. Laws attempt to draw the boundaries between public and private institutions, to negotiate the needs of the community and the rights of individuals, to determine where legitimate power begins and ends. By defining what political authorities can and cannot do, the law engages the tension between the application and the restraint of power that lies at the core of sovereignty. “The very nature of political law,” Robert M. MacIver wrote, “sets effective limits to its sphere of operation.”²⁹

In the second half of the eighteenth century, the role of law in the making of sovereign claims significantly increased. Beginning with the appearance of the first volume of Sir William Blackstone’s *Commentaries on the Laws of England* in 1765, codifications and compendia of the law were published in a series of European states, of which the most significant and influential was the French Civil Code, first proclaimed in 1804.³⁰ Overlapping these codification projects was the spread of written constitutions, beginning in Sweden in 1772, followed by the revolutionary governments of the United States and France, then by the newly created states of Central Europe. In the course of the nineteenth century, a constitution came to be regarded as the prerequisite for an orderly public life virtually everywhere. Constitutions crystallized the legal dimensions of the problem of sovereignty. We usually think of constitutions as setting limits to the government’s power by creating the checks and

modernen Staates: Herkunft, Struktur und Bedeutung (Berlin, 1995), 64ff. Alessandro Passerin d’Entrèves, *The Notion of the State: An Introduction to Political Theory* (Oxford, 1967), 8.

²⁶ Anthony Pagden, “Europe: Conceptualizing a Continent,” in *The Idea of Europe: From Antiquity to the European Union* (Cambridge, 2002), 42–43.

²⁷ On canon law, see R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens, Ga., 1996). William Bouwsma, “Lawyers and Early Modern Culture,” in *A Usable Past: Essays in European Culture and History* (Berkeley, Calif., 1990), 129–156, emphasized the significance of law, lawyers, and legal education for European political thought. See also Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, 1983), and J. M. Kelly, *A Short History of Western Legal Theory* (Oxford, 1992).

²⁸ There is a convenient edition of Bodin’s *Six Books of the Commonwealth*, edited by M. J. Tooley (Oxford, 1955). Julian Franklin’s *Jean Bodin and the Rise of Absolutist Theory* (Cambridge, 1973) remains indispensable. See also chap. 4 of Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago, 1995).

²⁹ Robert M. MacIver, *The Modern State* (Oxford, 1926), 149.

³⁰ Donald Kelley examines the movement toward codification in the context of his rich and subtle history of legal thought in modern Europe: *The Human Measure: Social Thought in the Western Legal Tradition* (Cambridge, 1990), 222ff.

balances that discourage arbitrary rule. But constitutions also consolidate power by defining what the sovereign authority can do, which of its claims are legal, and how they can be made. Because codes and constitutions both defined and limited sovereign powers, they were eventually supported by a broad spectrum of political opinion.

The expansion of the legal system was not just an instrument of an expanding sovereign authority, it was the process itself. Modern European states were created on battlefields and barricades, in parliamentary debates and diplomatic negotiations; they were also made in courtrooms and bureaucratic offices by men trained in the law, who issued thousands of decrees and made tens of thousands of decisions expressing the state's claims to power. By the middle of the nineteenth century, codes and constitutions, administrative regulations, and judicial decisions had turned the making of sovereign claims into a legal process. Almost everywhere in Europe, the legal order replaced monarchical or religious authority as the most important source of political legitimacy.³¹ Political historians do not know very much about this role of law in the making of European states. We have too often been content to leave legal history to the lawyers, which, to borrow Georges Clemenceau's well-known dictum, is as unfortunate as leaving war to the generals.³²

The legalization of the state's sovereign claims was closely connected to the state's territorial consolidation. Paul Kahn's statement that "Law's space is always bordered space" may not be universally true, but it was certainly true of nineteenth-century Europe. Codes and constitutions defined the legal framework of politics and also the physical space within which this framework was valid. "The rule of law is always rule over a defined territory. Morality may be without borders, but law's rule begins only with the imagination of jurisdiction."³³

The territorial consolidation of states had both an international and a domestic dimension. Between the First Partition of Poland in 1772 and the final defeat of Napoleon in 1815, the political map of Europe was radically simplified. A large number of the sovereign state's traditional rivals were swept away, including the Holy Roman Empire, which had made it possible for hundreds of imperial cities, noble estates, and ecclesiastical domains to defend themselves from the expansionist ambitions of their neighbors. After 1815, territorial consolidation continued as Italy and Germany became national states, and the subject nationalities of the Ottoman Empire became independent. It is important not to lose sight of anomalies and inconsistencies in the process of state making: the location of sovereign power in the German Empire, for example, remained ambiguous, and the exercise of sovereign authority was distributed among its member states.³⁴ But despite these continued qualifications, in the course of the nineteenth century the territorial boundaries

³¹ The classic formulation of law and legitimacy is Weber, *Economy*, 904ff.

³² On law and state making, see Gianfranco Poggi, *The State: Its Nature, Development and Prospects* (Stanford, Calif., 1990), and of particular value, the work of Dieter Grimm, for example, *Recht und Staat in bürgerlichen Gesellschaft* (Frankfurt, 1987).

³³ Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago, 1999), 55–56.

³⁴ See the important account of Imperial Germany's divided sovereignty in Siegfried Weichlein, "Europa und der Föderalismus: Zur Begriffsgeschichte politischer Ordnungsmodelle," *Historisches Jahrbuch* 125 (2005): 133–152.

along which states claimed sovereignty became more sharply defined in both law and practice.

Territorial sovereignty was not merely a matter of drawing lines on the map; it required the consolidation of domestic power. Military service, compulsory education, and taxes intensified the sovereign's claims to control social life. At the same time, state makers in the nineteenth century used new technologies to master their territories: perhaps the most important was that quintessential nineteenth-century invention, the railroad, but also important were other technologies of communication, such as the telegraph, as well as technologies of knowledge, such as the census, and of surveillance, such as the passport and identity card.³⁵ The object of these endeavors was to create a uniform political space, open to state authority and unencumbered by competing claimants to power. "The conquerors of our day," wrote Benjamin Constant, "peoples or princes, want their empires to possess a unified surface over which the proud eye of power can wander without encountering any inequality which hurts or limits its view. The same code, the same measurements, the same regulations and, if possible, the same language will proclaim the perfection of the social organization . . . Above all else, the great word of today is uniformity."³⁶ Of course, only a very few European states were able to create anything like a unified surface unbroken by various practical or institutional impediments to their power. Nevertheless, during the nineteenth century, states' sovereign aspirations and accomplishments expanded throughout the continent. These aspirations and accomplishments were reflected in the legal and theoretical literature that continues to shape our assumptions about what it means to be a state.

AT THE SAME TIME THAT SOVEREIGN CLAIMS were becoming more deeply rooted in law codes and constitutions and more closely tied to well-defined territorial units, the problem of sovereignty was transformed by its association with the principle of national self-determination. Nationality now joined law and territory as a principal element in statehood. Authentic states were supposed to be based on national communities; authentic nations were supposed to have states of their own.

In the 1790s, when the two were first brought together by the French revolutionaries, the nation seemed to be the state's natural ally. State makers could now make their sovereign claims not on behalf of a ruler or some fictive legal entity, but in the name of a vital community that had been shaped by a common history and that shared a common destiny. The nation's collective identity marked the boundaries of the state's territory just as citizens' nationality guaranteed their membership

³⁵ For a provocative analysis of the role of territoriality in the formation of the modern state, see Charles Maier, "Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era," *AHR* 105, no. 3 (June 2000): 807–831. A model study of state making is Pierre Rosanvallon, *L'État en France de 1789 à nos jours* (Paris, 1990). For the German case, see Siegfried Weichlein, *Nation und Region: Integrationsprozesse im Bismarckreich* (Düsseldorf, 2004).

³⁶ *De l'esprit de conquête et de l'usurpation dans leurs rapports avec la civilisation européenne* (Paris, 1992), 86. Part of this passage is quoted by James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, Conn., 1998), 30.

in the political community. To its aspirants and defenders, the nation-state was the necessary amalgamation of the era's two most powerful political forces.³⁷

In practice, however, the association of sovereignty and national self-determination was a constant source of unrest and often of violence. No wonder: the two had very different theoretical roots and represented very different forms of political practice. The origins of sovereignty were in rulers' search for power and domination. While sovereignty was frequently contested, its institutional expressions could be objectively measured; sovereignty is a matter of boundary markers and legal rules. National self-determination was revolutionary in its origins and implications; it was born from people's desire for new kinds of commitment and cohesion. National identity was inherently subjective, a matter of constructed histories and shared emotions. It was clear enough who was a Prussian subject; what it meant to be a German was constantly debated and never finally settled.

When nation and state combined, each element was significantly altered. National loyalties, which had been around for centuries, now became closely tied to institutional sources of power, which gave them new continuity and consistency. Sometimes these loyalties fulfilled their promise of cohesion; more often they were the source and subject of conflict. At the same time, when states made their sovereign claims in the name of the nation, these claims became more urgent and, as we will see in a moment, more difficult to achieve. The association with nationalism, therefore, heightened that persistent tension between sovereign theory and practice.³⁸

In a small number of powerful and cohesive Western European states, where governments had made sovereign claims long before nationalism became a political force, the state was usually able to mobilize and manage national feelings. (These are the exceptional cases on which the normative view of European history is usually based.) Yet even here we should not overlook how prolonged and often painful the fusion of state and nation turned out to be. France, for instance, had centuries in which to absorb or obliterate its national minorities, but, as Eugen Weber reminds us, the process of transforming "peasants into Frenchmen," that is, the process of creating a nation within the state, was still going on at the end of the nineteenth century. The creation of a British nation was—to put it mildly—not without its difficulties, even after the bloody subjugation of the Highland Scots.³⁹ Elsewhere in Europe, centuries of political conflict and population movement had produced a complex landscape in which states and nationalities rarely coincided. Here, as the troubled histories of "nations" such as Spain, Belgium, and Italy—not to mention the histories of the great multinational empires of the Habsburgs, Romanovs, and

³⁷ For a theoretically alert and historically rich account of the relationship between state and nation, see Istvan Hont, "Permanent Crisis of a Divided Mankind: 'Contemporary Crisis of the Nation' in Historical Perspective," *Political Studies* 42 (1994): 166–231. In my opinion, John Breuilly, *Nationalism and the State*, 2nd ed. (Manchester, 1993), remains the best book on the subject.

³⁸ Nations and national consciousness certainly have a long history. I remain convinced, however, that the blend of nationality and sovereignty that appeared at the end of the eighteenth century created two distinctively modern products, nationalism and the nation-state. For the latest on the controversy surrounding the chronology of nationalism, see the essays in Len Scales and Oliver Zimmer, eds., *Power and the Nation in European History* (Cambridge, 2005).

³⁹ Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, Calif., 1976); Michael Hechter, *Internal Colonialism: The Celtic Fringe in British National Development, 1536–1966* (Berkeley, Calif., 1975).

Ottomans—clearly demonstrate, the relationship of state and nation was always weighted with conflict.

The problem of reconciling sovereignty and self-determination dominated European politics during the first half of the twentieth century. We find versions of the problem everywhere we look in the early 1900s: in Ireland, where the Home Rule crisis caused disruptions in the House of Commons and tested the loyalty of the British army; in Scandinavia, where Norway peacefully seceded from Sweden in 1905; in Spain, where strikes and demonstrations erupted throughout Catalonia in 1909; and of course in the endemic political problems of the multinational empires. By far the most volatile and consequential tensions between states and nations were in the newly formed nation-states of southeastern Europe, where fragile governments attempted to assert their sovereign claims on a terrain filled with unassimilated minorities and unsatisfied national ambitions. All of these states—Greece, Serbia, Bulgaria, Romania—claimed territories beyond their borders; all of them interfered in the domestic politics of their neighbors and were, in turn, subject to intervention from abroad.⁴⁰ Because of their location in the fractured landscape joining Europe's last three multinational empires, the conflicts between sovereignty and nationalism in these states had a direct and deeply destabilizing impact on the international system as a whole. It was here that what Laurence Lafore called "the long fuse" leading to the conflagration of 1914 was ignited.⁴¹

This catastrophe ended with the apparent triumph of the principles of sovereignty and national self-determination. Europe's multinational empires did not survive the war. In their place, a chain of new—or newly enlarged—nation-states appeared from the Baltic Sea to the eastern Mediterranean. The Covenant of the League of Nations recognized the normative character of the sovereign state by guaranteeing its members' sovereign independence. But between the theoretical triumph of the sovereign state and the realities of political life, a great chasm opened: not since the religious wars of the sixteenth century had it been more difficult to realize sovereignty's promise of stability and order. In Ireland, a vicious civil war redefined but did not resolve the tensions between state and nation. Greece and Turkey exchanged minority populations, creating large numbers of miserable refugees in both countries. In the new states of Eastern Europe, no government was strong enough either to assimilate its national minorities or to enforce the rights they had been promised. As a result, most of these states endured—and often incited—violent ethnic and regional conflicts both within and beyond their borders.⁴² Across this troubled landscape moved a growing number of stateless people, whom Hannah Arendt called "the most symptomatic group in contemporary politics," people without a home, a protector, a

⁴⁰ There is a useful summary of this situation in Krasner, *Sovereignty*. On the internal politics of the Balkan states, see Charles and Barbara Jelavich, *The Establishment of the Balkan National States, 1804–1920* (Seattle, Wash., 1977), and Katrin Boeckh, *Von den Balkankriegen zum Ersten Weltkrieg: Kleinstaatenpolitik und ethnische Selbstbestimmung auf dem Balkan* (Munich, 1996).

⁴¹ Laurence Lafore, *The Long Fuse: An Interpretation of the Origins of World War I* (Philadelphia, Pa., 1965). Although outdated in some ways, Lafore's analysis remains instructive and stimulating.

⁴² The place to begin examining the role of nationalism between the wars remains C. A. Macartney, *National States and National Minorities* (London, 1934). See also Joseph Rothschild, *Ethnopolitics: A Conceptual Framework* (New York, 1981). For some recent scholarship, see the essays in Hans Knippenberg and Jan Markusse, eds., *Nationalising and Denationalising European Border Regions, 1800–2000: Views from Geography and History* (Dordrecht, 1999).

source of political identity. "With the emergence of the minorities in Eastern and Southern Europe," Arendt wrote, "and with the stateless people driven into Central and Western Europe, a completely new element of disintegration was introduced into postwar Europe."⁴³

Viewed from the perspective of the 1920s and 1930s, it is difficult to see how anyone could believe in the inexorable rise of the sovereign state. Everywhere in Europe, states were under assault, unable to defend their sovereign claims, protect their boundaries, or maintain the rule of law. Faced with this crisis of the European state, some observers decided that the root of the problem was sovereignty itself. "The great enemy of today," Bronislaw Malinowski wrote in 1941, "is the sovereign state." That same year, Harold Laski declared that "it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered," because of both its "dangerous moral consequences" and its "dubious correctness in fact." In 1942, Heinz Eulau, then at the beginning of his long and distinguished career as a political scientist, warned that the crisis in the meaning of sovereignty "is symptomatic of the universal crisis in our actual political and historical as well as intellectual and ideological situation."⁴⁴

The most toxic product of this crisis was National Socialism, which offered a radical solution to the tension between states and nations. The Nazi leadership thought in terms of races rather than states, of space rather than bounded territories, of expanding power rather than legal domination. As the leading German jurist Werner Best wrote in 1942, terms such as "expanded spatial order" and "expanded spatial administration" [*Grossraumordnung* and *Grossraumverwaltung*] reflected new political realities to which such traditional concepts as "international law" and "constitutional law" no longer applied.⁴⁵ Like the rulers of Europe's colonial empires, the Nazis wanted "the expansion of political power without the foundation of a body politic," that is, power without the limitations that had always been inherent in sovereign claims.⁴⁶ The model for Nazi rule was not the legally defined authority of the sovereign state, but the unrestricted power of the colony and the concentration camp. It was this kind of power they tried to impose on a conquered Europe between 1939 and 1945.

THE SECOND WORLD WAR, LIKE THE FIRST, ended with the apparent triumph of the sovereign state. As German military power ebbed, the satellites and semi-sovereign protectorates established in Hitler's Europe were swept away. With a few exceptions—the most significant of which was Germany itself—prewar states were restored. The Charter of the United Nations, like the League Covenant, affirmed the

⁴³ Hannah Arendt, *The Origins of Totalitarianism* (New York, 1951), 275–276, 268. On Arendt's enduring relevance, see Douglas Klusmeyer, "Hannah Arendt's Critical Realism: Power, Justice, and Responsibility," in Anthony Lang and John Williams, eds., *Hannah Arendt and International Relations: Readings across the Lines* (New York, 2005), 113–178.

⁴⁴ Bronislaw Malinowski, "War—Past, Present, and Future," in Jesse D. Clarkson and Thomas C. Cochran, eds., *War as a Social Institution: The Historian's Perspective* (New York, 1941), 30; Laski quoted in Hinsley, *Sovereignty*, 216; Heinz Eulau, "The Depersonalization of the Concept of Sovereignty," *Journal of Politics* 4 (1942): 4.

⁴⁵ Werner Best quoted in *Survey of International Affairs, 1939–1946* (London, 1954), 4: 52.

⁴⁶ Arendt, *Origins*, 135.

centrality of sovereignty as a principle of international order: Article Two of Chapter One declared that the organization “was based on the sovereign equality of all its members,” while Article Seven asserted that the U.N. would not intervene “in matters which are essentially within the jurisdiction of any state.” Once again, the sovereign state was defined as the normative way of organizing political space.

But in 1945, as in 1919, there was a wide gap between norms and practice, between what the doctrine of sovereignty promised and what the messy world of political action would allow. After the first war, this gap had been opened by Europeans’ failure to create an international order robust enough to contain the conflicts between and within nations and states; after the second, it came from imposition of a bipolar order by the world’s new superpowers, the United States and the Soviet Union. In Eastern Europe, the sovereignty of individual states was directly restrained by Soviet power. While the restraints changed over time and varied from place to place, the ability of every Eastern European state to make sovereign claims was significantly limited. In the west, the situation was more fluid and more complex. But here too the bipolar division of Europe changed the character and context of sovereignty. American influence, the Soviet threat, fears of a revitalized Germany, and the widespread desire to avoid another European war persuaded Western European states to enter into a network of multilateral arrangements that effectively limited their sovereign powers. The key players in these agreements were the Germans, who accepted unprecedented restrictions on their sovereign independence in return for their readmission into the society of European states. As what one analyst has called an “open state,” the Federal Republic of Germany became the clearest expression of sovereignty’s problematic character in the postwar era.⁴⁷

Ambiguities about sovereignty are also apparent in the European Economic Community—now the European Union. The Treaty of Rome, which established the community in 1957, was a standard international agreement designed to regulate the relationship among sovereign states. At the same time, however, the founding states agreed “to lay the foundations of an ever closer union among the peoples of Europe.” Similarly, the framers of the now defunct constitutional draft of 2004 presented their work as “reflecting the Will of the citizens and states of Europe to build a common future.” Citizens *and* states—that simple conjunction obscures the fundamental question at the heart of the European story: will Europe’s “common future” be based on an international organization of sovereign states, or will it organize Europe’s “peoples,” and thus reach across international boundaries into the domestic politics of sovereign states? The Community’s institutional structure suggests that it aspires to do both: a Council of Ministers represented the states, but the Commission and Court represented the community as a whole, and the Parliament represented the “peoples of Europe.”⁴⁸

Contrary to what some contemporaries hoped and others feared, the European

⁴⁷ Stephan Hobe, “Statehood at the End of the 20th Century: The Model of the ‘Open State’—A German Perspective,” *Austrian Review of International and European Law* 2 (1997): 127–154. For a summary of the limitations on German sovereignty before 1991, see Ludolf Herbst, “Wie souverän ist die Bundesrepublik?” in W. Benz, ed., *Sieben Fragen an die Bundesrepublik: Vorträge aus dem Institut für Zeitgeschichte* (Munich, 1989), 72–90.

⁴⁸ For an introduction to European institutions, see Neill Nugent, *The Government and Politics of the European Union*, 4th ed. (Durham, N.C., 1999).

community has not become a superstate. As we approach the fiftieth anniversary of the Treaty of Rome, Europe lacks both the will and the capacity to make many of the sovereign claims—especially in the realm of security and foreign policy—that have always been associated with statehood. At the same time, individual states have not disappeared from Europe: they continue to collect taxes, hold elections, conduct foreign policy, and maintain Weber’s “monopoly of legitimate violence.” Some analysts have insisted that far from threatening the existence of states, European integration has strengthened their capacity and insured their persistence.⁴⁹

And yet while states have not disappeared, the nature of sovereignty in postwar Europe has been transformed. Consider, for example, what has happened to states’ traditional claim to control a clearly defined territory. Within the European Union, goods, people, and capital move freely. Those intra-European boundaries that were once so essential to the meaning of sovereignty have lost much of their practical and symbolic power. European states are now open in other ways as well—to a monetary system determined by a central bank, to restraints on budgetary authority, and to a vast collection of binding agreements.⁵⁰

Perhaps the best place to observe this transformation of sovereignty is in the realm of law. Much more effectively than the Parliament of the European Union, its Court has become the chief organ of integration, successfully managing the Union’s claims, sometimes in competition, more often in collaboration, with national courts.⁵¹ In addition to the European Court’s decisions, integration is also expressed through thousands of other rules and regulations that impose common standards and procedures throughout the Union. As in the great age of European state making, the expansion of the Union’s laws is not an instrument of political change; it is the process itself. More than anything else, Europe is a legal community.

Joseph Weiler, one of the most astute students of the role of law in the new Europe, has noted that “the constitutional theory [of this legal order] . . . has not been worked out, its long-term transcendent values not sufficiently elaborated, its ontological elements misunderstood, its social rootedness and legitimacy highly contingent.”⁵² The most important reason why the constitutional theory of contemporary Europe has been so poorly articulated is that we continue to view European politics in terms of the state’s rise (or fall). At the beginning of the twenty-first century, the European Union is not a “state” in the nineteenth-century sense, and it is not, I suspect, likely to become one. But the Union is also not merely an international organization of autonomous states, each jealously guarding its own par-

⁴⁹ See, for example, Alan Milward, *The European Rescue of the Nation-State* (London, 1992). For a recent summary of the debate, see William Wallace, “Rescue or Retreat? The Nation State in Western Europe, 1945–1993,” *Political Studies* 42 (1994): 57–76, and the essays in T. V. Paul, G. John Ikenberry, and John A. Hall, eds., *The Nation-State in Question* (Princeton, N.J., 2005). Glyn Morgan, *The Idea of a European Superstate: Public Justification and European Integration* (Princeton, N.J., 2005), makes a strong, but to my mind not totally convincing, case for European statehood.

⁵⁰ On the changing meaning of territoriality, see Maier, “Consigning.” In “Statehood at the End of the 20th Century,” Hobe argues that “the closed state model in the sense of closed borders, a population restricted to nationals and a concept of government in the sense of *suprema potestas* is no longer an adequate definition of statehood.”

⁵¹ See the essays in Anne Marie Slaughter, Alec Stone Sweet, and Joseph Weiler, eds., *The European Court and National Courts: Doctrine and Jurisprudence* (Evanston, Ill., 1998).

⁵² Joseph Weiler, *The Constitution of Europe: “Do the New Clothes Have an Emperor?” and Other Essays on European Integration* (Cambridge, 1999), 8.

ticular interests. To understand contemporary Europe, we must set aside the teleological narrative of state making and see the Union as the latest, and in many ways the most remarkable, chapter in Europeans' continuing efforts to imagine and organize political space, define and limit political power, calibrate and contest political boundaries. In these efforts, sovereignty remains, but with new meaning.

IN *A NEW WORLD ORDER*, Anne Marie Slaughter argues that sovereignty in the contemporary world has become "relational rather than insular, in the sense that it describes a capacity to engage rather than a right to resist."⁵³ Slaughter is right to emphasize how European states' claims to participate in the Union's institutions have become an essential element in their sovereignty, even though she may underestimate the persistence of their insularity, that is, of their claims to resist external influence. The balance between what she calls the "relational" and "insular" aspects of sovereignty has changed, but both elements remain. As has been the case throughout sovereignty's long and complex history, the makers of sovereign claims both assert their authority *and* accept its limitations, defend their terrain *and* acknowledge where it ends. And as always, there is a distance between sovereign theory and practice, between the order and stability promised by the doctrine and the compromises and unresolved conflicts imposed in the realm of political action. Sovereignty, in other words, continues to be a problem and thus helps us to recognize the lines of continuity that join Europe's present to its past.

⁵³ Anne Marie Slaughter, *A New World Order* (Princeton, N.J., 2004), 268. See also Neil MacCormick, *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford, 1999).

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