

REVIEW

Ulrich Haltern 2007. *Was bedeutet Souveränität?* Tübingen.

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Sovereignty has been considered to be a multifaceted concept in constitutional and international law since early modern times. The classic definition dates back to Jean Bodin who defined the internal dimension of sovereignty as the supreme authority to decide in the last instance, being subject only to the divine and natural law. Since Jean-Jacques Rousseau the (popular) sovereign has often been understood as the supreme lawmaking authority that cannot be bound by its own laws. Today in general, sovereignty has fallen into disrepute. The assumed presence of a pre-state, pre-constitutional and undomesticated power that is *legibus absolutus* causes unease among most of the German experts in constitutional law and many political scientists. Surely the traumatic experience of an excessive sovereignty during the National Socialist catastrophe is one of the main sources of this disapproval. In addition to the internal dimension, the external dimension of sovereignty, i.e. the independence from other states, has been undermined by the increasing importance of supranationality and international law. Therefore we are faced with a challenge when trying to determine whether sovereignty may still be considered to represent an integrated concept or whether it has become fragmented or entirely obsolete. Apparently, the idea of a supreme power, which is subject to no one is being replaced by the concept of the rule of law.

Either sovereignty or human rights – a golden mean seems to be difficult to determine.

In his new book *Was bedeutet Souveränität?* the Hanoverian constitutional lawyer Ulrich Haltern follows an entirely different approach. From his point of view sovereignty is far from being an anachronistic concept that has fulfilled its historic mission, but rather remains a key concept to describe the political and social reality. According to the author, it is naive to believe that politics can be entirely replaced with law. He considers such futile hope to be the blind spot of the liberal project. In order to underline his claim, he calls the reader's attention to the paradox that the more polished the international law has become during the last 100 years, the more violent state practices have become. Whereas the Hague Convention distinguishes between combatants and non-combatants, the states wage total wars, arm themselves with nuclear weapons and threaten the civilian population with unprecedented brutality. Despite all efforts to overcome the anarchic Hobbesian state of nature by committing the states to law, the ones who make politics are willing to undermine law enforcement, causing politics to remain violent in part. Issues of power cannot be translated one-to-one into questions of moral. Thus the idealistic belief in progress concerning international law seems to be one big illusion.

Haltern holds the view that the genealogy of the concept of sovereignty is causally linked to the current state of affairs. He argues that the idea of a supreme authority is more ancient than the enlightened differentiation between state and church. Consequentially, the religious dimension of the concept has to be taken into account. He thus explicitly refers to the political theology of the German Weimar Republic by Carl Schmitt, who attempted to use theological contents in order to legitimate certain anti-liberal and rightwing political actions. According to Schmitt all significant concepts of modern politics are secularized versions of older theological concepts – he thus considers secular sovereignty to be a copy of God's spiritual world government. Haltern believes that this religious tradition is still relevant. Whereas the predominant position – so the argument runs – is only based on a functional interpretation, the revival of political theology illustrates the symbolic meaning of state sovereignty (Ernst Cassirer). Sovereignty is an idea, not a fact, and as such it has a meaning. Hence, Haltern asks "What does sovereignty imply?", rather than asking "What is sovereignty?". The precarious normativity of international law is not

only a result of its insufficient authority, but also a consequence of its symbolic deficits.

The author refers to the work by Giorgio Agamben and Ernst Kantorowicz when stating that both the monarchic and the popular sovereign still embody the old holiness in current politics. Since everyone who is part of this eternal and holy *body politic* gets the chance to overcome his personal finiteness symbolically, the state as the upholder of sovereignty has the authority to make heavy demands on the citizens to the extreme of life and death. At the same time he offers ultimate values that make the people accept the demands as legitimate. In the past, the king embodied the state. Today, the popular sovereign embodies the essence of the state. Thus, according to Haltern, the ancient Christian willingness to make sacrifices (cp. Abraham and Isaac) has passed onto the popular sovereign's national state. Thus, an attack on the state also implies an attack on the civilian population, which makes the distinction between combatants and non-combatants counter-intuitive - a brutal, but nevertheless conclusive logic which any state and terrorist supposedly are aware of.

The reference to this symbolic dimension of politics clearly outlines the relation between power and law in the concept of sovereignty. In this respect - taking Haltern by his word - every state has to represent a kind of religious denomination following the example of the Catholic Church. In a strict sense this is not about secularization, but sacralization of the state. However, this idea of political identity, the so-called *Catholic sovereignty*, was strongly criticized in Protestant countries, especially in Germany, where the representatives of the liberal project of rational discourse were distrustful of any kind of sacredness in the political realm. Haltern claims that a kind of anaemic constitutional patriotism focusing on the content of the constitution nowadays constitutes the centre of politics instead of the inexpressible, which is beyond the text. He admits that this kind of so-called *Protestant sovereignty* which seeks to pacify the violent core of politics suited Germany after the Second World War, but it has apparently lost its persuasiveness.

Haltern expects immediate consequences in the field of international relations. Thus, from his point of view the conflict between Germany and the USA after 9/11 and connected with Gulf War results from the fact that the United States' interpretation of politics is still based on a non-reformed Catholic understanding of sovereignty,

which provides easy access to the mystic rituals of violence and sacrifice, whereas Germany too optimistically relies on overcoming the friend-enemy-dichotomy by using non-hierarchical communication. According to Haltern this incompetence to understand the Catholic idea of politics causes us to wrongly believe that there is no longer a difference between the logic of national and supranational law.

Ulrich Haltern has written an interesting, comprehensible and intellectually stimulating book that impresses by both its brilliant style and the originality of its ideas. The genealogical distinction between Catholic and Protestant sovereignty is new and considerably contributes to the debate on sovereignty. His comments on the paradoxes that go along with international law are just as astute, for example when he describes the fact that increasing violence in state practices simultaneously occurs with the refinement of law. Furthermore he correctly questions a development that weakens the concept of sovereignty at the cost of a growing interdependency between the states. Actually the external dimension of sovereignty was merely thought to be an assurance against the non-interference in the states' domestic affairs. Nowadays things appear to develop contradictory to this principle. It comes as a surprise that of all people a jurist calls attention to a process that might lead to a hegemony of law over politics. One may agree with Haltern when he argues that politics cannot be entirely substituted by law. There may be questions that call for political – or should we say sovereign – decisions. But why should this more or less technical necessity be related to a religious dimension?

Historically the idea of sovereignty made political compromises possible by simply excluding religious questions of truth. Good examples for this pacifying and overall successful strategy are the Peace of Augsburg and the Peace of Westphalia. Compared to this background, Haltern's approach seems to be a theoretical step backwards, even more so, he appears to support a highly dubious and dangerous agenda of theological reinforcement in the realm of politics. The text does not contain any reference to the problem of how politics, which are based on concepts such as belief, violence, death, sacrifice or holiness could be moderated in a way that the programme of mystic – or even erotic – identity of the state and its citizens does not end up in a physical and ethical disaster. The author should have taken a firm stand with regard to this question, because it is very obvious that he clearly prefers the Catholic kind of sovereignty. Haltern repu-

diates his critics and maintains that he has written a descriptive, not a normative book. According to his self-image he is simply a neutral observer of reality. One may like his findings or not. Indeed, wondering about sacrifice in politics does not necessarily mean that someone is in favour of more sacrifice in politics. But then, those who merely describe the world as it *is* and not as it *should* be in his own opinion, do not have to justify their research results and assure the reader of their personal pacifist attitude as Haltern does again and again. Although he emphasizes the fact that his analysis is not written in polemic faith against democracy and liberalism, he sometimes speaks of constitutional patriotism and the principle of rational discourse in derogatory terms due to their lack of symbols. The structural characteristics or practices of the Protestant sovereignty are denounced as being anaemic and too slack to preserve the political body. So be it by intention or not, Ulrich Haltern supports the old conservative stereotypes against liberalism that have been well known since Ernst Jünger and Carl Schmitt.

To sum up, the critical comments do not make reading this controversial book redundant. Once again it shows that those who hastily dismiss the concept of sovereignty and support constitutionalism and supranationality instead, are wrong. The idea of sovereignty is still "intellectual dynamite" and remains a relevant concept which serves to describe political and social reality. Nevertheless, it seems more than questionable, whether Haltern's revival of political theology is an adequate method for reviving the concept of sovereignty.