

Critical Dialogue

Divided Sovereignty: International Institutions and the Limits of State Authority. By Carmen E. Pavel. Oxford and New York: Oxford University Press, 2014. 211p. \$78 cloth.
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— Joan Cocks, *Mount Holyoke College*

Divided Sovereignty pivots on the following conundrum. On the one hand, the coercive capacities of states allow them to protect their citizens from harm by other citizens, while the sovereign integrity of states gives them the right to protect their citizens from harm by other states. On the other hand, states can redirect their coercive capacities against their citizens, either by actively attacking them or by passively refusing to protect them when they come under attack by other members of society. In such cases, the non-interference principle that governs international relations morphs from a benefit into a drawback, at least if one looks at politics from a moral point of view. Carmen Pavel's solution to this conundrum is a division of sovereign power both *between* states and international institutions with the muscle to put a stop to egregious human rights abuses, and *among* international institutions of a variety of types, with the International Criminal Court in the lead.

While lucidly defending this complex division, Pavel puts warranted pressure on three intellectual postures at odds with her own. First, she chastises political theorists who float in a heavenly sphere of "oughts" without attending to the earthly sphere of "is" or, more specifically, without thinking about the institutions that would align reality with some approximation of their ideals. In insisting that political theorists focus on, not pure abstractions, but regulative ideals that make sense in established contexts and are plausible for institutions to actualize, Pavel displays a certain affinity with the critical realist school of political thought, which contends that political theory should consider ideals not in the abstract but as those ideals are intimated in and enabled by concrete political actualities. Second, in viewing fundamental human rights violations as cause for international intervention in state affairs, Pavel pits herself against classical IR realists who take an absolutist view of the sovereign independence principle and mistrust international cooperation for being either utopian or a cover-up for the pursuit of big-power interests. Third, Pavel's pitch for institutional pluralism without the

umbrella of a higher authority or master plan challenges global governance advocates who see a world state and cosmopolitan demos as antidotes to regional economic inequality, border-crossing ecological disasters, and the difference in luck between those born in liberal democracies and those living under repressive regimes or in conflict zones.

Pavel comes out for and against modern states when she opposes both sacrosanct sovereign state power and the subordination of the state inside a hierarchical governance structure. On the plus side, states are our political "facts on the ground"—*and* they are good facts when they protect individual citizens from harm and support the national self-determination of peoples. Thus, as long as they respect *jus cogens* norms of justice against genocide, slavery, race discrimination, human trafficking, torture, and the targeting of civilians in civil war, their right to non-interference is legitimate. On the minus side, states sometimes *don't* respect these norms, the cruelest states are least likely to submit to the authority of international institutions, and individuals trapped inside those states usually aren't free to request outside help. International institutions and the states that have established them thus are justified in imputing consent for outside intervention to citizens suffering in silence from state brutalities.

As much as her call for coercive international institutions and her notion of imputed consent will put off classical IR realists, Pavel proposes a more modest revision of institutional realities than those who would ratchet up sovereign power from the national to the global level. She prefers divided sovereignty to a centralized world state because she rightly suspects that global governance would simply turn external conflicts into internal ones, and because, as alienated as many people feel from their own national authorities for being distant and bureaucratic or obtuse to local contexts or beholden to metropolitan elites, a global state would increase that alienation immeasurably. To fracture sovereign power among multiple institutions at multiple levels is, as Pavel declares, more conducive than centralized sovereignty to democratic self-government, even if Friedrich Hayek, whom she cites as a forerunner of her cause, is in fact more of a market-fundamentalist than a true fan of democratic pluralism and experimentation. Pavel is refreshingly relaxed about the messiness that institutional pluralism entails. She sees overlapping jurisdictions and

redundancies of function among different “semi-sovereign” institutions as more beneficial than one supreme authority with every other element of life under its command. As to the identity of the beneficiaries—while she alludes occasionally to national peoples, collective identity and collective action don’t get much airtime here. The principals that concern her are primarily individuals and their rights, conceived of in prototypically liberal terms.

Two easy connected criticisms can be made of Pavel’s vision of coercive international institutions as guardians of fundamental human rights. One is the presumption that individual freedom and bodily security are the bedrock rights to be guarded, instead of, say, material equality, or faithfulness to religious truth, or environmental wellbeing, or the communal enjoyment of an inherited life world. The other is the danger that Western liberal democracies might forcibly impose their own schedule of values on other societies through imputing their citizens’ consent to outside intervention. However, the different question I wish to raise is whether Pavel’s rigorously institutionalist analysis takes us as far from abstract ideals to practical realities as scholars of politics need to go.

Pavel’s ideal international institutions appear to have no political agenda of their own; instead, they are antiseptic moral agents that swoop down into the checkered world of political interests when their principals’ fundamental human rights are at stake. Even the state as Pavel portrays it is almost a-political when it is acting as it should, which is to protect private individuals from harm, not to identify individuals with something larger and grander than themselves, or to mobilize them into friend/enemy relationships, or to prime them to knuckle under market dictations—all purposes that, for better or worse, have animated the life of states in modern times. Pavel’s ideal citizens, for their part, are moved by interests in their personal freedom and security rather than by fantasies, anxieties, and psychological investments in state power that sometimes can induce them to prefer, as Isaiah Berlin put it, a tyrant who is one of their own over a benevolent guardian from a foreign people and place. Finally, the oppression that international institutions are charged with counteracting is mainly that perpetrated by state institutions against citizens, or by the odd individual bad apple against good apples. What complications ensue for Pavel’s interventionist prescriptions when popular majorities or minorities are perpetrators of mass political crimes such as race domination and ethnic cleansing?

One other disturbing political reality has to do with the sheer pervasiveness of racism, human trafficking, the butchering of civilians in war, torture, and hyper-exploited labor in the world today. To halt even a small portion of all of this, international institutions would have to amass a tremendous concentration of coercive power. It follows from Pavel’s argument that supra-international institutions, with even greater coercive power, would have to be constructed to protect individual

freedom and security from the dangers of that concentration. Where is the exit from this bad infinity?

On a more concrete note, I can’t help wondering how coercive international institutions might be expected to respond to the current Syrian catastrophe. To stop the suffering of Syrian citizens, such institutions could enter the war to try to end it. However, then they would have to fight not merely *for* the human rights of Syrians but *with* or *against* Assad, ISIS, Putin, Iran, Saudi Arabia, and the United States, with “dirty” political considerations thereby infecting the “clean” project of human rights protection. Trying Assad et al. for war crimes would better safeguard the moral purpose of international institutions, but at the cost of allowing human suffering to continue until the war grinds to a halt, with leading perpetrators punished, at best, after the fact. The one task that coercive international institutions *could* undertake without forfeiting, by commission or omission, the moral mission Pavel has assigned them is to resolve the refugee crisis in a way that supports the human rights of Syrian refugees and helps them regain or acquire political rights, without which, as Hannah Arendt once lamented, refugees remain on par with the animals that societies for the prevention of cruelty to animals seek to protect. Still, even coping with the refugee crisis would require international institutions to move out of the ethereal space of pure morality into the gritty space of politics, for that is where decisions will be made about how millions of Syrians are to be dealt with, which countries will be pressed to open their doors to them, and what they will find waiting once they walk through those doors.

In conclusion, I offer these thoughts not as criticisms of this finely chiseled and deeply serious book. Instead, they are reflections provoked by its meticulous effort to reconfigure sovereign power for the sake of those exposed to the worst potentialities of exclusive state control.

Reply to Joan Cocks’s Review of *Divided Sovereignty: International Institutions and the Limits of State Authority*.

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— Carmen Pavel

Joan Cocks’s excellent review of my book raises a host of questions that anyone interested in international justice should consider. One of Cocks’s main worries is that I portray international institutions as antiseptic moral agents with no agendas of their own, which will take on humanitarian and law enforcement roles without getting mired in the dirty games of ordinary politics. If I have given this impression at all, it seems I need to work harder to dispel it. Chapter 5 called “Romanticizing Institutions” discusses extensively the shortcomings of existing international institutions, and how they develop bureaucratic

cultures and interests that are at odds with their founding mission, how goal congestion can lead to internal conflict and inconsistency, and how they are slow to learn from past mistakes. In this sense, international institutions are not that different than domestic ones. Perhaps more worryingly, if international institutions are just as prone to failure as domestic ones, can they truly offer a way out of the dilemmas of state power that can be used both to protect and harm?

There is no cause for such profound skepticism. Awareness of institutional pathologies offers reasons to be cautious, learn from sound principles of institutional design, and implement a gradual program of institutional reform, with strong revisability options built in. Such awareness cannot undermine the rationale for building more effective and muscular international institutions. If it did, it would also undermine the rationale for creating domestic institutions, since any police force, courts, or legislatures are liable to mission creep, counterproductive cultures, corruption, and petty politics. I suspect most of those skeptical of the value of international institutions would not be willing to embrace this much more subversive conclusion. Diseases affecting political institutions are pervasive, and there are better and worse ways of treating them. In building international institutions we could learn from past experience while being appropriately modest in our aspirations of what they can achieve.

Caution and modesty about institutional design will not ensure that the tens of millions of people affected by wars, human trafficking, slavery, and exploitation will be delivered from their suffering. But no possible institutional system can cure these ills in the foreseeable future. To think otherwise is to make the best enemy of the good. We should promote the improvements that are feasible from where we are now. Saving hundreds of thousands of people or a few millions is better than nothing. Strengthening the International Criminal Court and changing the decision-making structure of the Security Council will get us some of the way there. It may not bring Syria back from the brink of hell, but it may prevent future Syrias from happening.

Divided Sovereignty is not primarily concerned with individual freedom, economic development, the right to vote, or human wellbeing. While these are important goals, their prerequisite is a world in which mass extermination, slavery, and destructive, long-lasting civil wars are greatly reduced in scope or made to disappear. International institutions to enforce minimal standards of physical safety and the protection of human life are needed because when states are left alone to guarantee the protection of their citizens, Syria, Rwanda, and North Korea happen. To create a world where they are less likely is to change our understanding about the relationship between states,

international institutions, and the fundamental requirements of justice.

On Sovereignty and Other Political Delusions.

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— Carmen E. Pavel, *King's College London*

Joan Cocks's book *On Sovereignty and Other Political Delusions* encourages us to disavow the treacherous language and practice of sovereign power. She questions adeptly what my book takes for granted: that there is some value in sovereign authority. Our books pursue different targets, but we share a concern with the oppressive, destructive power of the state, whose perceived legitimacy in the eyes of its citizens and outsiders gives it the power to steamroll over masses of people in the name of self-determination or national interest. And we both seek to challenge the concept of sovereignty as it was handed down from those who first imagined it as an unmovable, fixed building block of our universe.

In some ways, Joan Cocks has her sights set much higher. Whereas I seek to constrain sovereign power to render it truer to its promise of protecting the citizens' most basic rights, Cocks recommends a complete decoupling of political autonomy and sovereign power. The book is structured into three chapters. The first is a wide-ranging reflection on the contested nature of political concepts, and sovereignty especially. The second chapter underlines the foundational violence that accompanies projects of sovereign creation by focusing on the crimes committed against native peoples by the new United States as it became independent from British rule. The final chapter discusses the complicated and ongoing struggle between Israeli Jews and Palestinian Arabs set in motion by the birth of the Israeli state.

In Cocks's view, sovereignty is troubling because it carries with it an illusion of freedom that is in fact a reality of domination, exclusion, and violence. Sovereign nations have emerged through violent take-over of groups that previously enjoyed decentralized, local rule (p. 51). Colonialism is an example of such foundational violence, but so are the French and American revolutions. For example, the self-founding myth of the United States, which tells of a people fighting to replace the constraints of absolute monarchical power with a new constitution that places freedom as its core, overlooks the obliteration of the indigenous people's way of life, mode of organization, and values. "American democracy," Cocks reminds us, "did not simply emerge on the ground from which Indians and their life world was being cleared but owed its very existence as a radical democracy to that clearance" (p. 64).

After sovereign power is established, groups that are dominated, oppressed, and mutilated seek to reenact sovereign power on their behalf, perpetuating the cycle of concentrating the power that ultimately leads to more harm, and further demands for sovereign recognition. Cocks claims that one can see this cycle clearly in the struggle between the Israeli and Palestinians. The Israeli state was instigated by crimes against European Jews, and has in turn led to the dispossession and marginalization of Palestinian Arabs who now look for state recognition as a way to protect themselves against Israeli overreach (p. 87).

But is sovereign autonomy truly a delusion? Are those who look to it as a liberating political practice and those who speak on its behalf so irretrievably mistaken to consider sovereign authority to be the expression of a self-governing political community? Are they wrong to imagine that its constitution, political institutions, the array of rights and duties for its citizens are an expression of the community's values? That these can be protected from outside meddling as well as internal collapse through the instruments of sovereign power such as law and order, national security, and international law? Cocks believes the answer is yes. Sovereignty amasses power on behalf of oppressed minorities but it transforms them in turn into oppressors of their internal groups. Unlike autonomous self-rule, sovereignty "signals the presence of a master" and a subjected population (p. 78).

Such a stance is bound to invite dissent. Those that believe that states can be a vehicle for justice, equality, and inclusion will point to the many instances in which minorities have been uplifted from positions of marginalization, rights protections have strengthened over time, and ever widening circles of citizens have benefited from equality of treatment and extended opportunities, especially in western, liberal, democratic states. Resisting Cocks's account is not to reject her vivid portrayal of the ills of political sovereignty. But it is to acknowledge that sovereign power has a positive, transformative potential that has been realized, albeit incompletely and variably, across the landscape of sovereign states asserting their authority today. By portraying this potential as an illusion, Cocks denies successful democracies their real achievements that are rightfully objects of emulation elsewhere.

For example, she agrees with her intellectual hero Hannah Arendt that there is much that is extraordinary about the American founding (p. 59), but declines to follow the implications of such uniqueness for her understanding of sovereignty. Can sovereignty ever be emancipatory, rights enhancing, protective, and inclusive? One can't help but think there is another side to the story of sovereignty, and however much one might want to challenge it once it is told, it would be great to allow it to unfold.

Perhaps part of Cocks's skepticism of sovereignty as a political form comes from a slight idealization of pre-political societies, where she claims authority is decentral-ized, there is much less group distinction or conflict, and individuals see themselves as members of one human race. For example, take her belief that before they had access to the violent tools of sovereign power, Native American tribes relied on "persuasion, example, consensus" to communicate with each other (pp. 77, 49). Such contrast is bound to make sovereign power look like the inferior option, but only if the idealization holds true.

Another similar assumption is that before sovereign states, communities were more inclusive, more accepting of difference, and more disposed to live and let live. In contrast, sovereignty is a "negative, exclusivist ideal" (p. 23). It not only does violence to people's pre-existing ways of life, but differentiates between insiders and outsiders, "us" and "them," allies and enemies (p. 49). But the disparity dissolves once we accept the idea that people crave meaningful communities, with strong bonds and shared practices, and forging such bonds is destined to create insiders and outsiders regardless of whether they take the form of sovereign states or tribes.

Cocks argues that sovereign power is under increasing pressure from contemporary social and economic forces that may render it outdated as a mode of political organization. She makes common ground with a growing chorus of observers concerned that states are losing "even the semblance of mastery" over their internal affairs due to the pressures of globalization, natural resource exploitation, mass migration, and terrorism (p. 22–24). Yet states never had total control over their territory or the economic forces that shaped the lives of their citizens. Even their monopoly on violence has always been under pressure. We see those pressures taking different shapes nowadays, but we also see states retaining real mastery, including their ability to preserve order and peace, and to provide important public goods for their citizens. We are also able to discern state mastery in the harms they are able to inflict within and across their borders. States which lose mastery look more like failed states—Somalia, Honduras, and DR Congo—and many states are not like that. Moreover, these are failed or weak states precisely because they have never been strong to begin with.

This is of course, in a way, one of the main worries of the book. Sovereign power neither performs well the functions it is entrusted with, nor can be limited in its ability to harm the very people it is meant to protect. This alone is a valuable contribution, and it is a truth that is worth repeating. The reader will however want to learn more about possible alternatives to sovereign states as modes of political organization. The fundamental distrust of sovereign power that permeates the book could make common cause with either that of anarchists of various stripes, who imagine communities along more voluntarist

lines, or with those who, like James Bohman (*Democracy Across Borders*, 2007), reimagine democratic life around communities that span national borders—an overlapping, decentralized system of networks with individuals organized around shared interests rather than shared territory. It would be illuminating to see where Cocks places herself on this spectrum of alternative possibilities.

On Sovereignty and Other Political Delusions exposes eloquently the dark side of sovereign power, and does so with well-developed examples, skillful questioning of political dogma, and arresting insight. Scholars and students of politics alike will be enriched by reading it, but most of all made to question deeply held views that masquerade as immutable features of our political life.

Response to Carmen Pavel's review of *On Sovereignty and Other Political Delusions*

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— Joan Cocks

Carmen Pavel has put her finger on what other readers, too, may see as the three sins of *On Sovereignty and Other Political Delusions*. First, the book is thought to reduce popular sovereignty—an ideal that has propelled so many collective struggles against oppressive political regimes—to its dark underside. Second, it recuperates tribal communities and classical empires despite the fact that the former were at least as exclusivist as modern nation-states (if also less inclined to top-down impositions of power), while the latter were more internally hierarchical and externally expansionist (if also more hospitable to ethnic and cultural heterogeneity). Third, it fails to provide a blueprint for organizing political power along non-sovereign lines.

Ironically, one might see Pavel as providing an antidote to Sin #3 in her recipe for dividing sovereign power between national and international institutions, as well as among international institutions of different types. My own approach to posing alternatives to sovereign nation-states is admittedly more gestural. At the micro level, I pursue intimations in the present of politics played in a new key, by highlighting exceptions to sovereign power in the cracks and crevices of the life of states today. At the macro level, I suggest that the world may be inching towards sovereignty-fracturing syntheses of multi-cultural heterogeneity (the positive moment of classical empires)

and citizen equality (the positive moment of modern nation-states), even if it also often seems to be lurching in the opposite direction, towards reasserting the cultural homogeneity of the people as the bedrock of political order, or reinstating the domination of one ethnic or racial or religious group over other groups, and/or re-entrenching strongman rule over anxious or cowed individual subjects.

With respect to Sin # 2, my intention was not to romanticize tribal orders or classical empires but to puncture the conceit that the modern nation-state is the apex of political possibility and an unqualified advance on previously prevailing socio-political organizations. Politically, I mean to make the case that losses are involved in the triumph of the modern sovereign state form as well as gains, and that some of those losses might be retrievable under not yet fully imaginable but emergent modalities of political life. Philosophically, I mean to show how not merely the idea of the popular sovereign state but also the ideas of the sovereign ethnos, sovereign individual, and sovereign species are deeply problematic for resting on rigid distinctions between self and other, and for encouraging the subjects in question to seek freedom through controlling everything outside or beneath themselves that otherwise could impinge on them against their will. I illustrate this dynamic by turning to two pursuits of sovereign freedom—one civic-national and one ethno-national—that ineluctably became domination projects. Finally, I note the ecological reasons for rejecting the dominative impulse implicit in the idea of the sovereign freedom of humanity as a whole.

That leaves Sin #1, reducing sovereign freedom to its dark underside. As my above comments indicate, I mean to say something much more fundamental than the word “underside” conveys. In a nutshell, if monarchical *sovereign power* is delusional in that no prince can control subjects without their consent over the long run, a state operating under that delusion nonetheless may provide those subjects with a degree of security by restraining lesser concentrations of power inside and combatting equal concentrations of power outside its borders. *Sovereign freedom* is more delusional than that, for attempting to combine domination and freedom into a single couplet.