Sovereignty: Change and Continuity in a Fundamental Institution

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Only a few years ago, sovereignty used to be taken for granted in the study of world politics. J. D. B. Miller expressed the prevailing opinion in simple, but clear terms: ‘Just as we know a camel or a chair when we see one, so we know a sovereign state. It is a political entity which is treated as a sovereign state by other sovereign states’. Today, few would be satisfied with Miller’s summation. Sovereignty is being intensely debated among scholars and practitioners of world politics. For example, the most recent International Studies Association meeting had ‘The Westphalian System’ as its overarching theme; the programme chair explicitly emphasized that ‘traditional touchstones’ such as sovereignty must now be ‘open to question’.

In July 1998, a large conference took place in Munster in celebration of the 350 years birthday of the Westphalian treaties and discussing current interpretations of sovereignty.

There are several reasons for the renewed interest in sovereignty. Processes of globalization making the world hang closer together; humanitarian intervention in weak states and attempts to promote democracy and human rights on a global scale; new forms of intense cooperation in Europe and fresh attempts at regional integration elsewhere; the emergence of a large number of newly independent states; all these developments have helped spark new considerations about the possible implications for sovereignty. At the same time, both the end of the Cold War and the approach of a new millennium have boosted interest in the long lines of world politics. Real or perceived, such moments of transitions are watersheds which invite stocktaking. To know where we are going from here, we need to know where we came from.

The intense scholarly interest in sovereignty is most clearly evidenced in the spate of recent books and articles on the subject. A central issue in most of


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these contributions concerns the question of change. Is sovereignty a stable and unchanging institution or has it undergone dramatic change, both in present times and in earlier periods? If there is dramatic change, is the institution in the process of disappearing or at least losing much of its significance? Should we consequently talk about ‘the end of sovereignty’ or ‘the illusion of sovereignty’ as many analysts indeed propose to do? The debate about change and continuity is also apparent in the contributions to the present issue of Political Studies with some arguing in favour of continuity (e.g. Alan James) and others (e.g. Paul Taylor) arguing in favour of change.

This article makes an attempt at resolving the continuity versus change debate by arguing in favour of both positions; there are core aspects of the institution of sovereignty which remain unchanged and there are other aspects of the institution which have changed dramatically over time. In making that argument, I employ a distinction between constitutive rules of sovereignty (which remain unchanged) and regulatory rules of sovereignty (which have changed in several ways), and I introduce the notion of different sovereignty games played by different types of sovereign states.

Sovereignty: Continuity of Constitutive Rules

If institutions are defined as ‘persistent and connected sets of rules, formal and informal, that prescribe behavioural roles, constrain activity, and shape expectations’ then sovereignty is an institution. It is common to tie the emergence of that institution in with the peace of Westphalia in 1648 which undermined the power of the church and strengthened secular power. The choice between Catholicism and Protestantism became the privilege of local rulers; that is the principle of *cujus regio ejus religio*. The corresponding secular principle gives the King authority over his own realm: *Rex in regno suo est Imperator regni sui*. Dispersed medieval authority was replaced by centralized modern authority, the King and his government. The world did not change overnight at a specific point in time; elements of the old system remained in place for a long period. There was no momentous change from one day to the next in 1648. Still it is justified to look at 1648 as a crucial point in the transition from feudal to modern authority. The old system was decaying; a new system, with sovereign statehood as its basic principle of political organization was growing ever stronger. In 1648 we could, to borrow a phrase from Sir Ernest Barker, ‘hear the cracking of the Middle Ages’.

In order to find out whether the institution of sovereignty is changing dramatically, we have to know what it was and is. It is helpful to look at the rules of sovereignty as making up a special kind of game played by a special type of player, the sovereign state. We may distinguish between two qualitatively different kinds of rules in the sovereignty game: constitutive rules and regulative rules.

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5 The game metaphor is also employed in Jackson, *Quasi-states*, p. 34. My reflections on sovereignty games in this paper is greatly indebted to intense discussions with Robert Jackson.
Constitutive rules are foundational, they define the core features of what sovereignty is. Constitutive rules ‘do not merely regulate, they also create the very possibility of certain activities’. This type of foundational rules, says Searle, comes in systems which characteristically have the form: ‘X counts as Y in context C’.

Let us try to apply this reasoning to sovereignty. First, what are the features of the entities which satisfy the X term in the game of sovereignty? Not any association can become sovereign; transnational corporations, churches, or football clubs do not satisfy the X term. Only a certain type of player does, the one we label ‘state’. Which features must the state have to satisfy the X term? It is commonly agreed that three elements are necessary: territory, people, and government. Georg Schwarzenberger and E. D. Brown put it in the following way:

The State in quest of recognition must have a stable government . . . it must rule supreme within a territory – with more or less settled frontiers – and it must exercise control over a certain number of people. These features have come to be taken as the essential characteristics of independent states.

That is to say, the emergence of the constitutive rules of sovereignty (the Y term) is predicated upon the previous existence of states with a delimited territory, a stable population, and a government. A well-known study of international law published in 1968 makes the point in the following way: ‘The international legal order does not provide foundation for the State; it presupposes the State’s existence. Recognizing the appearance on a territory of a political entity showing the characteristics generally attributed to the State, it merely invests it with personality in the law of nations’. Robert Jackson concludes: ‘Classical international law is therefore the child and not the parent of states’.

Once we have the X term we can proceed to the constitutive rule of sovereignty (the Y term). What is the definitorial content of sovereignty that is bestowed on some (but not all) states? It is recognition of the fact that the state entity possesses constitutional independence. As emphasized by Alan James, sovereignty ‘in this fundamental sense, amounts to constitutional independence’. Constitutional independence, according to James, is ‘a legal, an absolute, and a unitary condition’. That it is a legal condition means that sovereignty is a juridical arrangement under international law. The sovereign state stands apart from other all other sovereign entities, it is ‘constitutionally apart’. That means the sovereign state is legally equal to all other sovereign states. Irrespective of the substantial differences between sovereign states in economic, political, social, and other respects, sovereignty entails equal membership of the international society of states, with similar rights and

For a similar point, see D. Philpott, ‘Westphalia, authority, and international society’, Political Studies, 47 (1999), 566–89, p.567 (this issue).

Searle, The Construction of Social Reality, p. 27.


Quoted from Jackson, Quasi-states, p. 53.


Jackson, Quasi-states, p. 53.

obligations. The fact that every sovereign member state, irrespective of differences in substantial powers, has one vote in the UN general assembly is a concrete expression of this legal equality.

Constitutional independence is also an absolute condition; it is either present or absent. Other juridical categories share that quality; a person is either married or not, there is no legal status of being 75% married. A person is either a citizen of a particular country or not, there is no legal status of being 75% Dane. The same goes for sovereignty; a state does either have sovereignty in the sense of constitutional independence or it does not have it. There is no half-way house, no legal in-between. (Some will object that the EU is exactly such an in-between condition, but that is misleading as will be argued below).

Finally, sovereignty as constitutional independence is a unitary condition. That means that the sovereign state is of one piece; there is one supreme authority deciding over internal as well as external affairs. Such is the case even in federal states or states with a high degree of political decentralization; powers may have been delegated, but there is one supreme authority.

To sum up so far: the constitutive content of sovereignty can be seen as a foundational rule in the form of 'X counts as Y in context C'. The X term are states with territory, people, and government. The Y term is constitutional independence which is a legal, absolute, and unitary condition. Context C is of course the international society of states. It has been customary in the neorealist tradition to talk of an international system, invoking the image of states as billiard balls. The above discussion of sovereignty immediately reveals why this image is misleading. Relations between sovereign states involve social acts of recognition and of mutual obligations between states. Hedley Bull and Adam Watson made the distinction between system and society clear in their definition of international society: 'a group of states (or more generally, a group of independent political communities) which not merely form a system, in the sense that the behaviour of each is a necessary factor in the calculation of others, but also have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognize their common interest in maintaining these arrangements'. Note that the act of recognition confers a special status on states. The sheer physical features of the X term (territory, people, government) are not in themselves sufficient to guarantee the status and function specified by the Y term; as emphasized by Searle, ‘collective agreement about the possession of the status is constitutive of having the status, and having the status is essential to the performance of the function assigned to that status’. 

It is necessary to emphasize, even if the formulation is awkward, that the constitutive rule content of sovereignty is constitutional independence in the sense discussed above. It is this constitutive content which has remained fundamentally unchanged since it became the dominant principle of political organization in the seventeenth century. In that sense there is continuity, not change, in the institution of sovereignty. The history of sovereignty from then to now is a history of the victorious expansion of the principle of political organization embodied in sovereignty: constitutional independence. Several authors have recorded the history of that expansion; Hendrik Spruyt has

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recently argued that there was nothing inevitable about the process and traces the complex interplay between actors and structures in the triumph of sovereign statehood.16 Charles Tilly also notes how the sovereign state has outcompeted a large number of rival forms of political organization since its first establishment in Europe.17 None of this can be covered here. I follow Ruggie (quoting Tilly) in emphasizing that ‘once the system of modern states was consolidated, however, the process of fundamental transformation ceased: “[states] have all remained recognizably of the same species up to our own time”’.18 The sovereign state remains the preferred form of political organization; no serious competitor has emerged.19 One simple way of gauging the popularity of sovereign statehood is the threefold increase in the number of sovereign states since 1945.

Another way of bringing home the point that constitutional independence is a permanent feature of sovereignty is to visit authors who want to discuss changes in sovereignty. Even if that is their main aim, they note the continuity in the aspect of sovereignty which is constitutional independence. Joseph Camilleri and Jim Falk, for example, discuss at great length the contemporary challenges and changes in sovereignty, but they also note how the world came to be organized in states who did not ‘acknowledge an external authority higher than their own’, and that ‘the trappings of legal sovereignty remain intact’.20 Robert Keohane analyses the changes in sovereignty in the context of EU, but also notes the stable, unchanging element in sovereignty, namely that a state has ‘independence from the authority of any other nation and equality with it under international law’.21 Robert Jackson identifies the changes in sovereignty driven by the emergence of quasi-states, but he also stresses the stable core of sovereignty: ‘constitutional independence of other states’.22 Samuel Barkin and Bruce Cronin analyse how ‘the rules of sovereignty vary’, yet they employ a fixed notion of state sovereignty: ‘institutional authority within a set of clearly demarcated boundaries’.23 Finally Cynthia Weber studies ‘various meanings of sovereignty’ but she still holds on to a constant core of that concept, namely sovereignty as the legitimate foundation of state authority.24

In sum, there is a stable element in sovereignty which marks the continuity of that institution. That stable element is the constitutive core of sovereignty: constitutional independence possessed by states which have territory, people, and government. The comprehensive talk about changes in sovereignty should not ignore this vital element of continuity. This does not mean that there have been no changes in the institution of sovereignty. There have been very

22 Jackson, Quasi-states, p. 32.

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substantial changes in sovereignty’s regulative rules, the rules that the sovereignty game is played by.

**Sovereignty: Change in Regulative Rules**

Before embarking on a discussion of the changes in sovereignty having to do with regulative rules it is helpful to introduce an important distinction. It has been emphasized several times above that sovereignty is an institution, that is, a set of rules. Those rules should not be conflated with the positive, substantial content of sovereign statehood. The fact that small or weak states were always less powerful actors does not make Denmark or Ghana less sovereign; irrespective of their substantial weakness these countries do have sovereignty in the form of constitutional independence. The fact that there is mutual dependence between countries does not annul the existence of sovereignty as constitutional independence. The substantial, positive content of sovereignty has always been contested,\(^{25}\) the rules of sovereignty exist irrespective of the fact that many sovereign states have not always actually enjoyed the autonomy implied in the notion of constitutional independence. In that sense it is misleading to talk about the ‘end of sovereignty’ with reference to such substantial features as economic globalization or the like. The institution of sovereignty and the actual degree of state autonomy are two different things. This should not be taken to mean that there is no relationship at all between the rules of the sovereignty institution and these substantial developments. To the contrary, substantial developments often trigger changes in the rules of sovereignty, as will be discussed below.

Changes in sovereignty pertain to changes in sovereignty’s regulative rules. Regulative rules ‘regulate antecedently existing activities’.\(^{26}\) The freeway speed limit is an example of a regulative rule, regulating the antecedently existing activity of driving. The regulative rules of sovereignty regulate interaction between the antecedently existing entities that are sovereign states. How do states go about dealing with each other in war and peace, who gets to be a member of the society of states on what qualifications, are examples of areas of regulative rule. Such regulative rules would not be meaningful or necessary without the prior of existence of the special type of player which is subject to regulation: the sovereign state. In other words, the constitutive rules come first, the regulative rules second; without the former there would be no object of the latter.

The regulative rules of the sovereignty game have changed in several ways over time. One important area of change concerns the rules of admission. For a very long time, the sovereignty game was a European game, played by a European society of sovereign states. Other would-be members were held out because the Europeans found they did not satisfy the basic criteria for statehood: a delimited territory, a stable population, and a dependable government with the will and capacity to carry out international obligations. When non-European states eventually became members, they did so by meeting the membership criteria set up by the Europeans. Consequently, the international


\(^{26}\) Searle, *The Construction of Social Reality*, p. 27.
society of states was ‘based on a selective membership principle which discriminated between a superior class of sovereign states and an inferior class of various dependencies’.27

The precise criteria for recognition have always been a subject of debate in the society of states and for a very long period there were no clear rules supported by all sovereign states.28 This reflects a situation where countries could be players in the sovereignty game without actually having the formal recognition by all other members. Britain attempted to block the entry of the United States into the society of states by reference to the norm of mother state acceptance – i.e. the USA’s recognition by other states depended on prior acceptance of such sovereignty by Britain. France did not accept this claim and recognized the United States already in 1778; British recognition did not follow until 1783.

After the Congress of Vienna in 1815 rules of recognition became clearer, but were still subject to exemptions which reflected the specific interests of the European great powers. The emergence of nationalism and ideas about the nation were also reflected in recognition practices, but it was not until 1919 that the principle of popular sovereignty – i.e. the idea that nations have a right to self-determination – became the official basis for recognition. Yet as John Mayall emphasizes, clear guidelines for implementation of this principle were never formulated. It proved extremely difficult to answer the innocent question: Which are ‘the appropriate collective selves whose right to self-determination must be recognized as the basis of the new political order’?29

With the adoption of the Universal Declaration of Human Rights in 1948, the issue of human rights obtained a more prominent position on the international agenda. Yet human rights did not emerge in the principles of recognition until after the end of the Cold War and even in this recent period demands for certain human rights standards have not been consistently applied to the recognition of the new states emerging from the Soviet Union and Yugoslavia.

I cannot further pursue the discussion of recognition rules here. Even from these few remarks it ought to be clear that the rules of admission to the society of states have changed in several ways over time. Let me turn to the rule of the sovereignty game itself. Once the membership issue is decided, by what rules is the game played? Robert Jackson identifies a number of playing rules, among them ‘non-intervention, making and honouring of treaties, diplomacy conducted in accordance with accepted practices, and in the broadest sense a framework of international law . . . In short, the rules include every convention and practice of international life which moderate and indeed civilize the relations of states’.30

It is immediately clear that these regulative rules of the sovereignty game have changed substantially over time. The geographical expansion of the international society of states has combined with a trend towards a more dense

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27 Jackson, Quasi-states, p. 61.
28 Some even argue that the situation of ‘historically diffuse’ principles of recognition continue right up to the present day; see Ø. Østerud, ‘The narrow gate: entry to the club of sovereign states’, Review of International Studies, 23 (1997), 167–84. For the view that there is a detectable pattern in recognition practices, see K. Hyldebrandt, Anerkendelsesprincipper, MA thesis (Aarhus, Dept. of Political Science, 1997).
30 Jackson, Quasi-states, p. 35.
regulation of the relations between states. International regimes have been set up in a large number of areas; the size and number of international organizations has grown dramatically; after the end of the Cold War new practices of humanitarian intervention in weak or failed states have developed. In order to record such changes of regulative rules in detail, we would have to consult diplomatic history, the development of international law, the evolution of intervention practices, and so on. This is not necessary for the present argument. What must be emphasized here is the dynamic and changing content of the sovereignty institution’s regulative rules. They have developed and adapted over time in the context of a society of states which has itself undergone dramatic development and change in substantial terms: the modern state of the late twentieth century is a species quite far apart from the absolutist state of the seventeenth century. Given this high degree of dynamic development, is there any way of finding systematic patterns in the way which the institution of sovereignty confronts us today? The following section makes an attempt to do this by employing the notion of different sovereignty games.

Games of Sovereignty in Present-day International Society

The above discussion makes clear that the debate about whether sovereignty has changed in every respect or remains wholly unchanged is really not helpful. There is a stable element of continuity in sovereignty, embodied in the constitutive rule of constitutional independence. And there is a dynamic element of change in sovereignty, embodied in the institution’s regulative rules. And there is a third element of dynamic change which is often mixed up with the two others mentioned here, namely the development of substantial, empirical statehood, that is, the concrete features of statehood as they have developed from the absolutist state of the seventeenth century to the modern welfare states of this century. If we consider these three elements to be different aspects of sovereign statehood, then it is very often the case that those talking about continuity of sovereignty and those talking about change of sovereignty are really not addressing the same aspect; the ‘change people’ talk about the development and change of substantial statehood, or development and change of sovereignty’s regulative rules, or some mix of the two.1 The ‘continuity people’ most often talk about the stable rule of constitutional independence.2 Both are right, but the discussion is not very productive, because they address different aspects of the complex phenomenon that is sovereign statehood.

Is it possible to find ways of synthesizing that complex entity which is sovereign statehood in a way which respects both change and continuity and which also encompasses the three aspects of sovereign statehood discussed here? It should be clear by now that any detailed historical picture will always be flimsy instead of neat and clean, with one clear-cut sovereignty game for all states; for example, the Holy Roman Empire did not officially end until 1806, long after the Westphalian Peace; the present international system has states which have substantial statehood but no formal recognition of constitutional independence (e.g. Taiwan); the regulative rules of sovereignty, perhaps

1 See for example Camilleri and Falk, *The End of Sovereignty?*, and Weber, *Simulating Sovereignty*.
2 See for example James, ‘The Practice of Sovereign Statehood’.

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especially those concerning principles for recognition, have always been a matter of contention and debate among powerful states in the international society.

Instead of looking in vain for one synthesis which will never be empirically accurate, I suggest the use of Weberian ideal types. The ideal type is not an accurate description of historical reality; it is a construct which elucidates typical features of that reality so as to bring out their essential elements. What I propose in other words, is to construct three ideal types which bring out the different, typical ways in which the sovereignty game is played out in present-day international society. The raw material for these ideal types will be drawn from the three aspects of sovereign statehood identified above: (a) constitutive rules; (b) regulative rules; and (c) substantial, empirical statehood. I am going to identify three different ideal type sovereignty games: The Westphalian game; the Post-Colonial game; and the Postmodern game.

The first level, that of constitutive rules, is the stable element which is unvarying across the games: all three games are played by states which have constitutional independence as members of the society of states. In terms of differentiating between types of games, therefore, this first level drops out. The second level, that of regulative rules, is more difficult to handle because there are several such rules, as was demonstrated earlier. I have chosen to focus on two regulative rules which have always been considered vitally important, even ‘grundnorms’ or ‘golden rules’ of the sovereignty game: non-intervention and reciprocity. Non-intervention is the prohibition against foreign interference in the domestic affairs of other states; reciprocity is the principle of *quid pro quo*, the ‘exchange of roughly equivalent values’34 between the legally equal partners of the sovereignty game. The point is that these two ‘grundnorms’ are played out in different ways in the sovereignty games discussed below and these differences help us capture the distinct features of each game.

The third level concerns substantial statehood. All participants in the three games satisfy the X-term of sovereign statehood discussed earlier, even if one category of players does it only just barely: there is a territory, a population and some form of government. But beyond these basic aspects, the players of the three games differ substantially in their empirical statehood, on the following dimensions: structure and content of the economy, structure and content of the polity, and the relationship between nation and state, that is, the issue of nationhood.

We now have the necessary tools for identifying the different ideal types of sovereignty games.

**The Westphalian Sovereignty Game**

This first ideal type is a stylized version of the sovereignty game that developed after the peace of Westphalia. Let me begin with the substantial statehood profile in the Westphalian game. Between the seventeenth and the twentieth

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33 See Jackson, *Quasi-states*.

34 R. O. Keohane, ‘Reciprocity in international relations’, *International Organization*, 40 (1986), 1–27; the full definition offered by Keohane runs: ‘Reciprocity refers to exchanges of roughly equivalent values in which the actions of each party are contingent on the prior actions of the others in such a way that good is returned for good, and bad for bad’, p. 8.
century, states became modern, that is, they developed their substantial statehood in a variety of ways. In ideal type terms, the Westphalian game is played by a modern state. As regards the economy, the modern state is based on a self-sustaining national economy which is the result of the interplay between industrial and technological modernization and state regulation and intervention. The national economy is not self-sustaining in the sense that it is autarchic; it is rather what some development theorists call auto-centric, meaning that the decisive intra- and inter-sectoral links in the economy are domestic. It could be labelled a mercantilist national economy, containing sectors for means of production as well as consumption. It is a homogenous economy with sectors at similar, high levels of development. There can be a high level of foreign trade, but the external linkages are less important than the internal; the economic structure is introvert rather than extrovert.

At the political level, the modern state is governed by an effective institutional machinery based on the rule of law and on popular legitimacy. Compared to earlier types of state in history, the modern state has vastly expanded its regulative powers and its capacity for control and surveillance of the population. Yet even if the modern state controls the means of violence, its rule is based less on coercion than on consent and legitimacy. In other words, the modern state possesses what Michael Mann calls infrastructural as opposed to despotic power. The power of the state is matched by the civil and political rights of citizens. In that sense, the modern state is both strong and weak: strong in regulative, control, and surveillance capacities; weak in that it depends on the legitimacy stemming from popular support.

The modern state is a nation-state. Political community was created in modern states over an extended period of time. Territory came first; the state building elites first consolidated control over a territory and only in a later phase came the construction of a nation. This building of a national community was helped by two factors, one material, the other non-material. The material factor was the welfare, security, and order provided by the state; the non-material factor was the idea of a national community provided by mythology, interpretations of history, and ideology. Put differently, political community is based on two types of legitimacy: vertical legitimacy (the connection between state and society, the notion that the state elite and its institutions have a right to rule); and horizontal legitimacy, defining the membership and the boundaries of the political community of people. The nationalism of the nation-state thus contains two different elements which exist in harmony: a territorially based idea of *Gesellschaft*, the community of citizens within defined borders; and the ethnic idea of *Gemeinschaft*, the community of people defined by the nation.

36 “Infrastructural Power is the institutional capacity of a central state … to penetrate its territories and logically implement decisions. This is collective power, ‘power through’ society … Infrastructural power is a two-way street: It also enables civil society parties to control the state . . .”, M. Mann, *The Sources of Social Power, Vol. II* (Cambridge, Cambridge University Press, 1993), p. 59.
37 The historical development of this whole interplay between state and society is analysed in A. Giddens, *The Nation-State and Violence* (Cambridge, Polity, 1985), especially p. 205–6.
It should be clear that modern Westphalian states embody a well-developed substantial statehood in both economic, political, and socio-cultural terms. Let me turn to the sovereignty-game that they play, based on non-intervention and reciprocity. For modern, Westphalian states, non-intervention is the right of state-leaders to conduct their affairs without outside interference. The reverse side of that right is the duty to refrain from interfering in the domestic affairs of other countries. The modern, Westphalian sovereignty-game is one of self-help; states are individually responsible for looking after their own security and welfare: the state decides for itself ‘how it will cope with its internal and external problems, including whether or not to seek assistance from others . . . States develop their own strategies, chart their own courses, make their own decisions about how to meet whatever needs they experience and whatever desires they develop’.  

That situation is of course not only one of opportunity, but also of constraint: ‘Statesmen are free within the situation they find themselves which consists externally of other states and internally of their subjects. This is obviously a circumstance of constrained choice . . .’.  

The dealings with other states are based on reciprocity, that is, they involve a notion of symmetry, of giving and taking for mutual benefit. In the present context, reciprocity should be seen less as a bargaining strategy employed by single actors and more as a systemic norm according to which bargains between parties are made. A game based on reciprocity is a symmetric game where the players enjoy equal opportunity to benefit from bi- and multilateral transactions. Reciprocity in this sense is expressed, for example, in the 1947 adoption of the General Agreement of Tariffs and Trade (the GATT). That organization is based on rules which are basically liberal in character. The basic norm is the ‘most-favoured-nation’ rule which stipulates equal treatment in commercial relations between states, regardless of size, power, location, and any further particulars about them.  

In sum, the Westphalian sovereignty game features substantial, capable states in a self-help game based on non-intervention and reciprocity. Many IR-theorists, perhaps especially neorealists, have thought of the Westphalian sovereignty game as the standard game played by all independent states. But this view is misleading. There are two other distinct types of sovereignty game in the present international system.  

The Post-colonial Sovereignty Game  

This sovereignty game emerged when decolonization extended constitutional independence to the former Western colonies in the Third World. A new type of player then joined the society of states, a weak player with severe deficiencies in substantial terms.  

Even the basic possession of territory, people, and government was frequently more formal than real. Ex-colonies took over the borders established by the colonial powers; rarely did the newly independent states exercise effective control over their nominally allotted territories.  

Populations were divided along ethnic, linguistic, socio-cultural, and other lines. Governments became based on weak and underdeveloped institutions most often in the hands of tiny elites that sought to exploit their positions to their own advantage.

Post-colonial states do not have national economies in the sense of coherent main sectors within a unified economic space. They are dependent mono-economies based on the export of one or a few primary goods and the import of sophisticated, technology-intensive products. Large parts of the populations are outside of the formal sectors, living in localized subsistence-economies at very low standards.

The weak, post-colonial states are not nation-states. The people inside former colonial borders were communities only in the sense that they shared a border drawn by others. Their idea of nationalism was a negative one: get rid of the colonizers. When that project succeeded, there was no positive notion of community left over. Political elites made some attempts to construct such a notion, but they quickly gave up trying and in general that project was a huge failure. Therefore, political community was not created, neither in the Gesellschaft, nor in the Gemeinschaft sense. The communities that prevailed were the different ethnic sub-groups which competed for access to state power and resources, sometimes building frail alliances amongst each other.

It is clear that the legal equality between modern and post-colonial states is not matched by substantial equality; post-colonial states are much weaker players. As a consequence, post-colonial states display a distinctly different game of sovereignty. Contrary to what neorealists claim, the international system is not one of self-help for post-colonial states. Exactly the opposite: it is non-self help. Weak, post-colonial states are unable to put up a defence against threats from the outside; instead, they rely on the international community to provide the absolute security guarantee of non-intervention. In more general terms, the main security problem in post-colonial states is domestic rather than international. The traditional security dilemma is turned on its head.

Post-colonial states cannot systematically base their relations with developed countries on reciprocity. They need special, preferential treatment from the developed world. That is the basis for the emergence of development assistance regimes where economic aid flows from rich, developed countries to poor, underdeveloped countries. This is a replacement of the liberal, equal opportunity principle in relations between states with a principle of special, preferential treatment of the weak party. In a similar vein, the GATT regime has special provisions for weak, post-colonial states which amounts to a change from reciprocity between equals to a situation of non-reciprocity between unequals. Economic and other aid gives the donors an amount of influence over the domestic affairs of recipients. That puts pressure on the principle of non-intervention. Economic conditionalities and, of late, political conditionalities have been tied to development assistance. Even if such conditionalities do not represent a sharp deviation from non-intervention (because they are based on negotiated agreements between the parties), they do demonstrate how non-intervention is under pressure in the case of weak, post-colonial states. The decisive shift from non-intervention to intervention comes in the case of state failure. Since the end of the Cold War, the international community has in several instances undertaken intervention in failed states in order to provide security for innocent civilians. Such intervention is always fraught with problems.
because they are never undertaken solely with humanitarian objectives in mind. These issues cannot be taken up here. What must be stressed is that the international society has yet to come up with an effective formula for dealing with the special security and welfare problems in weak, post-colonial states. The peculiar sovereignty game played by post-colonial states is a reflection of that situation.

**The Postmodern Sovereignty Game**

This is a sovereignty game based on intense cooperation between sovereign states. The European Union currently represents the case where such supranational cooperation has gone farthest. West European cooperation was pushed by the lessons of World War Two; getting Germany and France to work together was a way of avoiding new disasters in Europe. But what began as interstate cooperation between what was basically Westphalian ideal type states in the 1950s has developed in qualitative new ways since then. The members of the EU are no longer ‘Westphalian’ in terms of their substantial statehood. They exemplify a new type of statehood which is not modern in the ways described earlier. For lack of a better term, this new form of statehood can be labelled ‘postmodern’; my intention in employing this term is merely to stress that the states in question have developed beyond ‘modern’ in important respects; ‘late modern’ is another possible label for these states. Postmodern states are characterized by transnationally integrated, globalized economies; by multilevel governance; and by identities that are no longer exclusively tied to that nation-state.

The process of economic globalization contains two main elements; one is the increase of all kinds of economic relations between countries, that is, intensified economic interdependence. The other is the gradual replacement of national economies by a global economic system based on a consolidated global marketplace for production, distribution and consumption. Postmodern states are characterized by globalized economies. Compared to ‘Westphalian’ economies, in globalized economies external linkages are as important or even more important than internal linkages; the economic structure is extrovert rather than introvert. The ‘national’ economy is no longer self-sustaining; it is part of a larger, globalized economic space.

Economic globalization provides a decisive incentive for more intense supranational political cooperation, because such cooperation is a way of recapturing some of those powers of political regulation which have been lost at the national level due to the process of globalization. States bargain with their sovereignty, their territorial authority, in the sense that they allow other states to influence the regulation of their domestic affairs in return for influence over the domestic affairs of these other countries. It is such processes which lead to the creation of multi-level governance. Instead of purely or mainly national political

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44 See Keohane, ‘Hobbes’s Dilemma and Institutional Change’.

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regulation, there develops a complex network of supra-national, national, and sub-national regulation.

Multi-level governance in a globalized economic space changes the foundations for national identities. Recall that the political community of ‘Westphalian’ states is based on Gesellschaft and Gemeinschaft. The Gesellschaft component changes because borders are increasingly perforated in a context of supra-national governance. In the EU, for example, there is an integrated labour market and citizens can freely pick up jobs in other member countries. The Gemeinschaft component changes because the community of people defined by the nation now has other concepts of community emerging stronger next to it, in particular local identities and supra-national identities. This need not lead to transfer of loyalties from one level to another; in Europe, it appears to lead to more complex sets of identities and loyalties. Political community, then, is no longer exclusively defined by the state, but by a new context of multi-level governance.

The sovereignty game played by postmodern states differs in basic respects from the ‘Westphalian’ sovereignty game. The rule of non-intervention is seriously modified in the sense that an opening has been created for legitimate outside intervention by member states in national affairs. This is most clearly evident in the Single Market Treaty where a majority of member states may define rules applicable to all members. And this ‘First Pillar’ cooperation is set to expand to cover additional areas in coming years.

As regards reciprocity, postmodern cooperation involves some redistribution of economic resources across national boundaries which is not based strictly on member countries, but also on regions within member countries. Whereas in the Westphalian game, the rule of reciprocity is basically that of equal or fair competition, in post-modern game it is cooperation rather than competition. For example, poor regions get special, preferential treatment. This resembles the aid regime described in the post-colonial game, but there is a decisive difference. In the EU context, there is an institutional network with overseeing powers. That is, EU-institutions have the possibility of controlling whether aid for poor regions is actually used according to intentions and take corrective measures if this is not the case. A similar combination of cooperation and control is absent from the post-colonial sovereignty game.

There is an intense discussion in Europe concerning the relationship between the regulative rules of sovereignty and constitutional independence. In particular, those that are sceptical towards EU-cooperation find that the modifications of regulative rules described here are in the process of going so far (or have indeed already done so) that they have consequences for the constitutive rule of sovereignty: constitutional independence. The argument is that integration via modification of regulative rules can proceed so far that constitutional independence ceases to exist in more than purely nominal terms: there is no way out anymore. The counterargument is that constitutional independence remains intact; countries dissatisfied with EU-developments can, should they so wish, discontinue their membership. I support this counterargument, but the discussion indicates how far-reaching modifications of sovereignty’s regulative

45 G. Sørensen, Suverenitet: Formel og faktisk (Copenhagen, Danish Institute for International Affairs, 1997).
rules raises new debates about the institution. Sovereignty becomes a contested concept.

Conclusion
The institution of sovereignty is changing, but there are also core elements of continuity. The debate about what happens with sovereignty is plagued by the confusion of three distinct aspects of sovereign statehood: (a) the constitutive rules of sovereignty; (b) the regulative rules of sovereignty; and (c) substantial, empirical statehood. I have combined these three elements in the above presentation of three distinct sovereignty games in present-day international society: The Westphalian game; the post-colonial game, and the postmodern game. In ideal typical terms, these three games describe and explain how sovereignty is played out in today’s world.

What about the future of sovereignty? The implication of the argument in the present paper is that any argument about ‘end of sovereignty’ is profoundly misleading. What happens is that the institution changes in order to adapt to new challenges mainly stimulated by changes in substantial statehood. The three games identified above will probably stay with us for the foreseeable future. Changes in the post-colonial game will demand either a change of the legal context so as to introduce forms of sovereignty which fall short of constitutional independence, or change in the empirical statehood of weak states towards far more substantial statehood. Neither prospect is likely. Changes in the post-modern game is predicated upon either a set-back toward more conventional forms of inter-state cooperation, or progress towards more genuine federal structures. None of those prospects are likely either. Most probably, change in sovereignty will emerge from the development of the classical, modern Westphalian sovereignty game in yet new directions not covered by the two other ideal types discussed here.