

Introduction

The conceptualization of sovereigns as trustees for humanity, i.e., the notion that sovereigns are accountable not only to their own citizens, but also to noncitizens, can draw on a long history. It has antecedents in sixteenth-century political, philosophical and legal scholarship on sovereignty and the state (and even further back), continuing its development through prominent eighteenth-century scholars, up to the present day. These scholars articulated and developed theoretical and legal justifications for casting responsibilities on sovereigns towards others, thus challenging the perception of sovereignty as being free from any obligations or limitations. For instance, the eighteenth-century scholar Emer de Vattel referred to the earth as belonging to all humankind, therefore obliging sovereigns to preserve their natural resources and share them with others. Similar arguments were voiced by Hugo Grotius during the seventeenth century.

Nonetheless, one cannot ignore the history of the sovereignty-as-trusteeship idea. It served for centuries as a justification for empires and states to conquer other sovereigns' territories in order to seize and exploit their natural resources. Because sovereignty over a territory bears with it the responsibility to use natural resources in a manner that benefits all of humankind, and to share them with other nations, sovereigns who failed to uphold those responsibilities were rightfully subject to a takeover by other sovereigns. The concept of sovereignty as trusteeeship also served to justify a paternalistic approach towards conquered nations and native peoples, which in turn reinforced their exploitation. In other words, the concept of sovereignty as trusteeeship was deeply embedded within the brutal imperialism of past centuries. It is not surprising, therefore, that for many decades it has been abandoned by most scholars, lawyers, and policymakers.

The idea has recently been revived, in a 2013 article by Prof. Eyal Benvenisti, published in the *American Journal of International Law*, and titled *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*. In light of the growing influence of globalization on the lives of people around the globe, and as a part of the proliferating academic interest in the responsibilities of states towards others in the globalized era, Benvenisti reexamined the idea of sovereign trusteeeship. He presented it as a fundamental concept that regards sovereigns as accountable to distant strangers. This renewed idea enfolds within itself questions regarding the responsibility of states to take into account the effects of their actions on

other states and on noncitizens within their territories; the right and duty of one state to intervene in another state's crisis in order to protect citizens from the harms cast upon them by their own government; the responsibility of a sovereign state to share its resources with other, less fortunate states; and so on. The revival of this idea has been accompanied by the establishment of the Global Trust research project at Tel Aviv University, and by a workshop conducted in June 2014, in which the conceptualization of sovereignty and of the responsibilities it bears was discussed. The articles gathered here are the product of this workshop.

Some authors in this collection scrutinize the idea of sovereignty as trusteeship and its history, raising suspicions with regard to its aptness as a means of promoting human rights. Others suggest solutions to overcome the past legacies of this concept. Some highlight that the concept of sovereignty can be easily reconciled with the responsibility towards others' rights. Others suggest the reconceptualization of sovereign trusteeship in a manner that facilitates using it to promote others' rights without falling back to imperialism, exploitation, and paternalism. Some authors contribute to the idea developed in Benvenisti's article by pointing to other, less familiar scholars, whose writings may be relevant for the cause of redeveloping the concept of sovereignty as trusteeship. Each article in this collection reveals a different aspect, and together they tie between the past and the present, as well as between legal theory and the philosophical foundations of sovereignty and trusteeship. The issue opens with four articles that present competing conceptual accounts of the idea of sovereignty. The following two articles offer an intellectual history of the concept of sovereignty as trusteeship and address its imperialist heritage. The next two articles shift our gaze to contemporary affairs and examine how the idea of sovereignty and trusteeship may illuminate the debate over humanitarian intervention and the challenges posed in the case of indigenous peoples. The concluding comment provides a brief overview of the other articles, as well as some replies to the abovementioned critiques and their suggestions.

Michel Troper opens the issue by analyzing the idea of sovereignty trusteeship in light of the sovereignty paradox: if the sovereign is the highest authority, how can it be subject to a duty towards others? Despite this paradox's strong appeal, and although sovereignty and limitations are commonly referred to as antimonies, Troper shows that they have always been reconcilable. By discussing scholarship on sovereignty — sixteenth-century scholars, as well as contemporary ones — he points to the inclusion of limitations within the concept of sovereignty since its initial development, along with the development of the modern state. Specifically, Troper conceptualizes

sovereignty as necessary to the emergence of the modern state as a hierarchy of norms — hence conceiving the sovereign as both absolute and limited.

David Dyzenhaus also takes the sovereignty paradox as his starting point, but offers a different perspective. He examines the paradox through the writings of three prominent Weimar legal scholars: Carl Schmitt, Hans Kelsen and Hermann Heller. Dyzenhaus shows that both well-known scholars — Schmitt and Kelsen — provide only a partial solution to the paradox. While Kelsen focuses on the legal aspects of sovereignty, Schmitt conceives the sovereign mainly as a political entity. Contrarily, the third, lesser-known scholar — Heller — ties between these two conceptions of sovereignty. Like Schmitt, he interprets sovereignty as inherently political, and at the same time, like Kelsen, he affirms that the sovereign is legally constituted. This provides a useful potential link between sovereignty on the one hand, and responsibility and trusteeship on the other — a link that, according to Dyzenhaus, can be helpful for further promoting and re-conceptualizing the idea of sovereigns as trustees.

Sergio Dellavalle seeks to ground the duty of sovereigns to act in solidarity with others. He explores two possible conceptual sources for the legitimacy of sovereignty: an “ascending” (bottom-up) conception and a “descending” (top-down) one. The author concludes that while the “ascending” conception indeed provides sovereigns with legitimacy, neither source provides a sufficient conceptual justification for imposing a duty of solidarity of sovereigns towards others. Dellavalle thus contends that the theoretical focus should be shifted from the sources of sovereignty’s legitimacy to the rationality of the application of sovereignty. He analyzes six possible rationalities (particularistic, functional, strategic, holistic, deconstructed, and communicative) and shows that only one of them — the communicative rationality — can support the imposition of a duty of solidarity on sovereigns towards others. This reconceptualization of sovereignty as encompassing the duty of solidarity provides another basis for the idea of sovereignty as trusteeship, while overcoming some of its past flaws.

Lorenzo Zucca is similarly seeking an alternative conceptual framework to sovereignty in the global era. Zucca explores the connection between states and sovereignty and presents three models for explaining this connection: one that is grounded in theology (referred to as *Jerusalem*), one that is grounded in reason (*Athens*), and one that conceptualizes the state as a practical solution (*Rome*). While philosophers that have attempted to explain state sovereignty usually focused on normative justifications, i.e., on the first two models, they tended to ignore the practical aspects of states’ power. The latter aspect, namely the *Rome* model, according to Zucca, best describes the modern state. Zucca proposes an alternative, evolutionary and dynamic conceptualization of sovereignty. This conceptualization, inspired by Baruch Spinoza, emphasizes

effectivity: the state's existence depends on its ability to guarantee peace and stability and does not necessarily lean on moral superiority. When thus interpreted, the state is tied to sovereignty as long as this tie serves those practical ends, and therefore the demise of states' power in the global era, as well as their obligations towards others, do not conflict with the idea of sovereignty.

Benjamin Straumann moves beyond the history of the idea of sovereignty and its conceptualization to the history of the idea of sovereignty as trusteeship. Straumann explores the origins of the idea by referring to prominent thinkers, such as Hugo Grotius, Emer de Vattel, and others. Straumann shows that much of the sovereignty trusteeship concept was built upon private-law foundations, specifically those developed by Grotius. However, he observes that these foundations are too narrow and insufficient for conceptualizing the obligations of states towards others. He thus turns to Vattel's interpretation of Grotius's idea of imperfect duties, and shows that this aspect of the Grotian scheme — rather than merely the private-law-based perfect duties — is necessary for the conceptualization of sovereignty as trusteeship. Straumann's exploration enables him to situate Benvenisti's contemporary idea *vis-à-vis* past conceptions of sovereign trusteeship.

Andrew Fitzmaurice also delves into the historical roots of the idea of sovereignty as trusteeship, but focuses on empires and their expansion. By analyzing the writings of several seventeenth-century scholars, the author shows how the natural-law-based justifications of the sovereign trusteeship idea — namely, fellowship, self-preservation, and the protection of others' interest — were traditionally used to justify imperialism. Fellowship was expanded to mean rights to commerce, trade, refuge and hospitality, in a manner that legitimized war and expansionism. Self-preservation, which originally meant efficient exploitation of resources, served as a justification for their takings. Protection gradually turned into saving the natives from their own "barbarity" by conquering their lands and ruling them. Nonetheless, beginning in the nineteenth century and throughout the twentieth century, these terms seem to have been transformed again and not only for the better. Fitzmaurice's historical problematization of the concept of sovereignty as trusteeship illuminates its susceptibility to rhetorical manipulation and calls for greater scrutiny to avoid it.

Evan J. Criddle shifts the discussion beyond history to the study of historical ideas and their relevance in current affairs. Criddle draws on the writings of Hugo Grotius to suggest legal and institutional reforms in the realm of humanitarian intervention. The author presents two familiar Grotian theories on international involvement in states' crises. The first theory focuses on punishment and justifies international intervention that is aimed at punishing

violations of international norms. The second theory relates to the residual fiduciary relationship between states and maltreated foreign nationals. It holds that natural law of humanitarian intervention authorizes states to protect foreign citizens from their own states. Criddle provides a different standpoint, leaning on another, long-abandoned Grotian theory of humanitarian intervention as an inherent part of a fiduciary relationship. For elucidating this idea in a contemporary context, three reforms are proposed: obligation of intervening states to consult and respect the preferences of the protected peoples, intervening states' adherence to human rights norms, and accountability of states if they abuse their authority. The discussion of these practical and modern reforms revives Grotius's fiduciary theory of humanitarian intervention and illuminates its contemporary relevance.

Evan Fox-Decent and Ian Dahlman focus on the hard case of indigenous peoples that reside within sovereign states. Like other authors in this issue, they also explore the problematic history of the sovereign trusteeship idea, and seek to establish a new model of trusteeship of public authority that avoids the pitfall of becoming a moral but paternalistic tyranny. A major part of the new model encompasses the duty to consult with indigenous peoples and include them in decision-making processes that affect their lands and rights. Fox-Decent and Dahlman analyze several cases decided by the Inter-American Court of Human Rights (IACHR), and conclude that they may provide a model that overcomes the moral-busybody challenge and the risk of fiduciary abuse. The IACHR regime offers a pluralist account of the trusteeship model, which recognizes that indigenous peoples are cognizable to international law as sovereign actors.

Eyal Benvenisti concludes the issue by tying all the articles together and locating them within the contemporary discourse on sovereignty in general, and on sovereignty as trusteeship in particular. He distinguishes between the "external" aspect of the sovereignty paradox and its "internal" aspect, i.e., between the responsibilities cast upon sovereigns by other states and international institutions, and the limitations that the sovereign casts upon itself. Both kinds of limitations, according to Benvenisti, are reconcilable with the concept of sovereignty, if the latter is understood not only as power, but also as authority. This conceptualization of sovereignty enfolds within itself the responsibility, both to the states' citizens and to noncitizens within and outside the borders of the state. Benvenisti argues that by going back to the private-law roots of the concept of trusteeship, one can re-conceptualize sovereignty as trusteeship while emancipating it from its tragic history. Trusteeship, under this legal-theoretical framework, is not based on confidence or faith. Quite the opposite: it is the lack of confidence in the decision-maker that necessitates the imposition on her of the duties of a trustee. One must

mistrust the trustees. Therefore, articulating states' responsibility towards others in terms of trusteeship — along with institutionalizing international supervising mechanisms — may prove to be useful for enhancing states' duties and obligations towards others in the globalized era.

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