

Sovereignty, Autonomy and Right

The remote summit makes a good metaphor for sovereignty, or at least for a dominant conception of it. Something we are oriented towards but rarely glimpse. If sovereignty is a peak we are somewhere on the slope. We sense the mountaintop above, somewhat oppressive, daunting, but also aspirational. The higher you go – the closer you get to the peak – the more commanding is the view, but the air is thinner – and it's dangerous: you might get dizzy, you might fall. Farther down is more stable, but also less interesting, less commanding. But no matter where we stand there is always parallax in relation to the top – we live with a partial and distorted view. Our angle determines what we perceive – harsh and jagged from one side, say, sloping softly from another. Nearer, lesser hills can impose upon or obscure the farther, higher, peaks. Whatever our angle, the summit is necessarily schematic, an outline, a surface, its substance a matter for speculation....¹

1.1 Introduction

The core questions in this book concern personal autonomy, and the ability of an individual to recover and reclaim dignity following abuses which the national justice system has failed to rectify. These issues dwell at the core of the promise of the international human rights law order, as established in the post-World War II era. Examined here are the actions of a range of parties to seek justice in response to a pattern and practice of covert human rights abuses against one group: Romani women. It traces how forces set in motion by a diverse range of actors – individuals, civil society organizations, European structures, government bodies and other formal and informal agents – have responded, changing the legal, social, political and discursive field, and ultimately compelling a series of responses by the formal authority and forcing a reordering of the public space in certain key ways, all of them beyond the control of any one or even multiple actors concerned. As a result, at the heart

1 Humphreys, Stephen, 'Polymorphous Sovereignty', in Barbour, Charles & Pavlich, George (eds), *After Sovereignty: On the Question of Political Beginnings*, New York: Routledge, 2010, pp. 146–147.

of the theoretical issues examined here is the question of sovereignty (in particular national sovereignty), and the question of the agency or autonomy of the person.

In addressing these questions, this study troubles theory as concerns state or national sovereignty. Questions of sovereignty have in recent years been the subject of reinvigorated discussion for a number of reasons, including the dramatic events of 1989, continuing discussions of globalization and its many and diverse impacts, as well as because of the remarkable successes of international law, norms and processes related human rights, particularly in the past several decades. In Europe, examination of questions of sovereignty took on renewed urgency following the entry into force of the Treaty of Maastricht, with its seeming quantum leap forward for the project of European integration.

The sections which follow probe, first, the idea of sovereignty in international law, and in particular national sovereignty as the organizing principle of the international system. Next, it examines several challenges to the concept of sovereignty arising in particular in the period before the existence of the international human rights law order. Third, it looks at recent discussions of sovereignty emerging from international relations theory, as well as from international law theory examining the impact of international law, in particular international human rights law. Following this, the chapter examines two authors – Marie Benedicte Dembour and Jürgen Habermas – who have attempted meaningfully to probe in theoretical terms the evolution of national sovereignty as a matter of securing individual dignity on the one hand, as well as in the context of international normative human rights commitments on the other. Finally, the chapter returns to questions of the ability of the pariah to seek and receive justice for human rights harms – to reclaim personal autonomy – in our current legal systems as established under the human rights order.

1.2 National Sovereignty

The standard account of state sovereignty in public international law theory accords absolute authority to the state over domestic, internal affairs. Bobbitt notes that we ‘owe the term “sovereignty”...to an essay by Jean Bodin in 1577... which took the familiar idea of *le souverain* (meaning that from which there was no higher appeal) and applied it to the state itself.’² Bodin provided the

² Bobbitt, Philip, ‘Public International Law’, in Patterson, Dennis (ed.), *A Companion to Philosophy of Law and Legal Theory*, Oxford: Blackwell Publishing 1996, p. 103.