Book review


This stimulating and diverse collection of 25 essays re-assesses the meaning and importance of ‘sovereignty’ in the context of our modern and interdependent world society. The heart of the book can be summed up in the words of the collection’s inspiration and dedicatee, Judge Pieter Kooijmans:

Two world views collide: the traditional view of the world consisting of sharply distinguished compartments (the national States) and a view of an interdependent world society with common values and with problems that can only be solved through common efforts and with respect for universal, hence supra-national, legal rules.

The collection examines this collision of ‘two world views’ as follows: after a masterly introduction, Part I addresses ‘Conceptual Issues’, Part II contains ‘Practical Manifestations’, Part III is a ‘Conclusion’ consisting of one essay, and Part IV is entitled ‘On Pieter Kooijmans’.

The first chapter of this collection, ‘Bridging the Gap between State Sovereignty and International Governance: The Authority of Law’, is written by one of the editors, Marcel Brus. It is a model introduction. Tightly focused and tautly written, in just over 20 pages the chapter surveys all contributions and identifies common responses to the principal questions posed and major points of divergence. This is especially useful because the contributors’ approaches, subject matter and views vary considerably.

As Brus states, no author believes that State sovereignty has become obsolete in international law. Nonetheless, overall, the authors demonstrate that the concept of sovereignty is, or should be, gradually transforming in the context of the emergence of international governance. The collection affirms that States will remain the most important actors in international law and international relations, but, as Brus concludes:

they have to adapt to the changing circumstances in the present international society. On the one hand it means being part of a continuous process of developing norms of the international community which determine the degree of freedom that sovereign States enjoy in inter-State relations and, as a relatively new element, in the conduct of their internal affairs. Moreover, and perhaps even more importantly, we can observe that the international community has made some progress in the way it responds to situations in which States have misused their sovereign powers.

2 p. 21.
3 pp. 21–22.
The great challenge is to develop ‘fair and legitimate procedures and mechanisms … to respond effectively to situations in which States violate fundamental community norms.’

The contributions in ‘Part I Conceptual Issues’ bristle with diverging views. Take, for example, the relationship between democracy and international law. In her essay ‘Sovereignty and Personality: A Process of Inclusion’, Janneke Nijman concludes that ‘to comprise fair processes, the global legal community can only accept participation of legitimate authority, thus a democratic government. The legitimacy of international law comes from the people through the mechanisms of democratic governance within States.’ In stark contrast, Sir Robert Jennings states that an ‘example of, shall we say, the insensitivity of western international lawyers is the fashionable school of thought which seems to regard democratic government as being a necessary element of a developed universal international law system.’

Jennings’ feisty and challenging essay, ‘Sovereignty and International Law’, is one of the highlights of this collection. He categorically affirms the central importance of sovereignty in international law. Referring to the implementation of United Nations sanctions and of international human rights law, he states ‘(a) legal verity that seems often to be lost sight of, especially by internationalists of various kinds, is that the territorial sway of States – territorial sovereignty in fact – is far and away the most important factor in the application and enforcement not only of municipal law but also of an ever increasing amount of international law.’ Yet Jennings recognises that the concept of sovereignty must develop: ‘thinking about this sovereignty needs to be seriously developed into new directions if we are ever to create effective international institutions and procedures for making those decisions, and especially for the making of much needed political decisions and not just for forensic judicial decisions.’ Jennings also challenges international lawyers’ dominant focus on international judicial tribunals and the content of substantive international law:

International lawyers, with some honourable exceptions, seem reluctant to think about … central questions of international organization and prefer to spend their energies on other and doubtless also important matters such as the proliferation of tribunals, the vast new areas of substantive law such as human rights and the environment, and the creation of international criminal courts and the elaboration of an international criminal law. What is the use of all that if we still do not have more than the vestiges of procedures and institutions for international governmental decisions and actions?’

‘Part II Practical Manifestations’ consists of 15 essays that concentrate on a particular field of international law to illuminate the relationship between sovereign authority and international governance. As Brus notes in his introduction, broadly speaking, the authors speak of international governance in one of two senses. The first sense is inter-