

The Concept of Sovereignty Through Space and Time:

Cases of Russia and China

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I. Sovereignty and Its European Origins

A. Concept Deconstruction

The majority of concepts¹ present in international legal and political discourse have their roots in European **political** philosophy. This study focuses on the foundational concept of sovereignty – initially articulated in 16th-century France – its historical development, transplantation process² and contemporary interpretations in Russia and China.

The concept of sovereignty symbolizes the critical point of contention between legal norms and political dynamics. Having multiple formulations, it is used in both disciplines and often serves as a trigger for international disputes and conflicts.³ Although ostensibly transparent and normative, it nonetheless permits different interpretations and formulations.⁴ Moreover, as this concept originated in European political thought⁵ but is employed (among others) by representatives of countries with

¹ For example, such concepts as human rights, democracy, rule of law, and many others.

² The term “legal transplant” was coined by W. A. J. Alan Watson in 1970s and indicates the moving of a rule or the system of rules from one country to another, see Watson, *Legal Transplants: An Approach to Comparative Law* (Edinburgh, 1974).

³ For instance, the concept of sovereignty has been highly contested in the war between Russia and Ukraine, particularly around the principles of territorial integrity and self-determination in a framework of international law. Ukraine asserts its sovereignty over all its internationally recognized borders, which include the regions currently occupied by Russia. Russia, however, claims that all the regions under occupation (Crimea, Donetsk, Luhansk, Kherson, and Zaporizhzhia) chose to join Russia via referendum (2014 and 2022), framing it as an exercise of the right of self-determination. See Oral, ‘Ukraine v. The Russian Federation: Navigating Conflict over Sovereignty under UNCLOS’ (2021) *International Law Studies* 477 (479 ff); Grant, ‘Sovereignty in Crimea and Donbas at the European Court of Human Rights’ (2023) *CJIL* 39 (43 ff); Mäklsoo, ‘The Postcolonial Moment in Russia’s War Against Ukraine’ (2023) *Journal of Genocide Research* 471; Verma, ‘The Russia-Ukraine War and the Global South’s Sovereignty Paradox’ (2024) *Contemporary Security Policy* 555.

⁴ For instance, the concept of sovereignty, as analyzed by Martti Koskenniemi in his *From Apology to Utopia – The Structure of International Legal Argument* (New York, 2009), differs substantially from the classification by Stephen Krasner in his *Sovereignty – Organized Hypocrisy* (Princeton, 1999).

⁵ The modern understanding of the term sovereignty was initially introduced by Jean Bodin in 1596 and was exclusively employed by Western nations in constitutional and international legal discourses from the 16th to the 19th century. It was only then that this concept began to be adopted by non-Western countries across the globe. For more, see Nederman, ‘Sovereignty’, in Horowitz (eds.), *New Dictionary of the History of Ideas* Vol. 5 (Gale, 2005) 2243 (2243 ff); Philpott, ‘Sovereignty’, in Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition) <<https://plato.stanford.edu/archives/fall2020/entries/sovereignty/>> accessed August 10 2024; Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* (Cambridge: Cambridge University Press, 2019); Besson, ‘Sovereignty’, in Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, I-X (Oxford, 2012) 366.

their own distinctive political and legal traditions, the notion of sovereignty is susceptible to a multitude of interpretations, often advantageous to the party utilizing it.

In this context, it seems valuable to undertake a deconstructive analysis of the concept of sovereignty as it is understood in non-European countries, with a particular focus on how this understanding aligns with the prevailing conceptualisation of the term in modern Europe. In the context of political constructivism, “to deconstruct” signifies a critical analysis and examination of political ideas and narratives with the objective of revealing their underlying assumptions and ideological foundations.⁶ This process entails the dismantling of political constructs to gain insight into their formation, the interests they serve, and their impact on perceptions of reality and social order. This approach could be used to: (a) facilitate the observation of the evolution of the concept over time; and (b) investigate the distinctive and shared ways in which the concept of sovereignty is employed in different spaces, including Europe, Russia and China.

Following Martti Koskenniemi’s assertion that the modern construction of international law does not provide for one and clear solution in hard legal cases touching upon sovereignty,⁷ this paper undertakes a deconstruction of the sovereignty concept to see how its social connotations and local historical and philosophical interpretations affect the modern political use and legal understanding of the term by the two international heavyweights: Russia⁸ and China. The selection of the countries under examination is a consequence of the pertaining geopolitical shift in the world order with the two prominent exemplars of the counter-movement against Western hegemony on the international stage.

My hypothesis is that both Russia and China — due to their local political philosophies and history of international relations — still interpret sovereignty in its

⁶ See Marko, *Human and Minority Rights Protected by Multiple Diversity Governance* (Routledge, 2019) 31 f.

⁷ Koskenniemi, ‘The Politics of International Law’ (1990) *EJIL* 4.

⁸ In this study, Russia is classified as a non-Western and non-European country due to the contemporary prevalence of neo-Eurasianism as an ideological framework influencing political decision-making and legal theorizing. Additionally, the distinctive Russian evolution of political philosophy, in contrast to the traditions of Central and Western Europe, further supports the classification of Russia as a non-Western country. Nevertheless, I am fully aware of the potential issues associated with such a stance, which deserves an article on its own.

absolutist and *restricted*⁹ readings within their political discourse¹⁰ and very selectively accept the limitations on sovereignty imposed by the developments of international law during the past seventy years. This, in turn, gives rise to the current state of affairs, namely the *de facto* existence of multiple legitimate and legal realities that clash with each other in the international arena. It follows that as long as the sovereignty concept continues to underpin the construction of the world order,¹¹ it is very likely that the attempts to limit or restrict the sovereignty concept will be resisted by those countries for whom the *status quo* is optimal. This is particularly the case in instances where Westernisation¹² is perceived as a threat to the “sovereign equality” of nations. At the same time, the most effective means to understand the nature of the optimal international positioning of countries from their own standpoint and as an alternative to the Western path is through a thorough examination of their political philosophies. This study undertakes such a pursuit.

B. Evolution of the Sovereignty Concept in European Political Philosophy and Modern Positive Law

One of the basic definitions of sovereignty in political theory “is the supreme and ultimate source of authority that exists within any political unity or association.”¹³ Derived from the Latin *suprema potestas* through the French souveraineté, the term has a core meaning of “supreme authority within a territory.”¹⁴ This definition is

⁹ The term refers to the conceptualization of sovereignty developed in the 19th century France and Germany. For more details, see the section titled “Evolution of the Sovereignty concept in European Political Philosophy and Modern Positive Law”.

¹⁰ The primary discourse employed to draw the parameters of sovereignty is the prevailing political philosophy of the countries under examination, which is contextualized within their historical trajectories. I recognize that focusing exclusively on the prevailing political discourse may not be a comprehensive representation. Nevertheless, it is my contention that the historical context provided in the study and specifically respected by the political elites of the two countries under study serves to offset this limitation.

¹¹ United Nations Charter (adopted 26 June 1945), art 2(1).

¹² In the context of Russian and Chinese discourse, the term “Westernisation” is frequently employed to denote the predominance of minority rights over majority rights, the rise of individualism over communitarianism, the existence of double standards, political lobbying of Western nations in international institutions, and the purported imperialism of Western culture. See Morozov, ‘Class, Culture and Political Representation of the Native in Russia and East Central Europe: Paving the Way for the New Right?’ (2021) *New Perspectives* 349; Sautman, ‘Ethnic Law and Minority Rights in China: Progress and Constraints’ (2002) *Law and Policy* 283 ; Lee, *Principles and Laws in World Politics: Classical Chinese Perspectives on Global Conflict* (Singapore, 2022) 19 ff.

¹³ Nederman, ‘Sovereignty’, 2243 (2243 ff).

¹⁴ Philpott, ‘Sovereignty’ (2020 edition).

accepted by the majority of nations worldwide¹⁵ and, as a result, can be considered universal. Nevertheless, it is too inclusive, not normative, and not descriptive.

On the normative level, the universal interpretation of sovereignty that is set out in the United Nations Charter is widely accepted as the prevailing standard.¹⁶ However, it is important to note that the Charter merely designates sovereignty as the primary principle upon which the United Nations (UN) is founded, without offering a comprehensive definition of the concept. Several scholars¹⁷ see sovereignty as an inherent attribute of a state that fulfills the requirements laid out in the Montevideo Convention on the Rights and Duties of States (1933).

At the descriptive level, a plethora of controversies persist regarding the characteristics of the concept of sovereignty. This is evidenced by the numerous conflicts between the various parameters of sovereignty. Among the primary contested terms within the concept of sovereignty are territorial integrity vs. self-

¹⁵ While no single study directly surveys the acceptance of this concept by individual countries, multiple sources establish its global acceptance through analysis of international law, state practice, and treaty commitments. Most notably, the ratification of the UN Charter is a strong indicator of international consensus on sovereignty in its broadest meaning.

¹⁶ UN-Charter, art 2(1).

¹⁷ Among them James Crawford, Georg Schwarzenberger and Hersch Lauterpacht.

determination,¹⁸ non-intervention vs. responsibility to protect,¹⁹ *de jure* vs *de facto* sovereignty,²⁰ sovereignty vs Global Governance,²¹ and others.

Modern academic literature²² frequently reveals another important dimension of sovereignty: its duality. External sovereignty is defined as the supremacy of a state in the decision-making process. It means an “exclusive right to exercise power ... without

¹⁸ Territorial integrity implies that the boundaries of a state are inviolable, representing a core aspect of sovereignty. However, the right of self-determination – the right of people to choose their political status – often presents a challenge to this, particularly in instances of secessionist movements or colonial territories seeking independence. Conflicts may arise when groups within a state seek autonomy or independence, potentially disrupting established borders (e.g., Kosovo, Catalonia, South Sudan, Luhansk, and Donetsk). See Kraus and Gifra (eds.), *The Catalan Process: Sovereignty, Self-determination and Democracy in the 21st Century* (Barcelona, 2017) 29, 30 ff.

¹⁹ The principle of non-intervention represents a fundamental tenet of state sovereignty, whereby states are expected to refrain from interfering in the internal affairs of other states (UN Charter art 1(1)). Nevertheless, the principle of the Responsibility to Protect (R2P) formulated in a report about the “right of humanitarian intervention” by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 and adopted at the 2005 World Summit Outcome Document (UNGA Res 60/1 (2005)) permits intervention in instances where a state is unable to safeguard its population from genocide, war crimes, or crimes against humanity. This creates a tension that gives rise to debates concerning the circumstances under which sovereignty should be subordinated to humanitarian concerns. One may cite the cases of Libya in 2011 and Syria as illustrative examples. See Garwood-Gowers, ‘China and the “Responsibility to Protect”: The Implications of the Libyan Intervention’ (2012) *Asian Journal of International Law* 375 (380 ff), Chen and Yin, ‘China and Russia in R2P Debates at the UN Security Council’ (2020) *International Affairs* 787 (789 ff).

²⁰ In the context of international relations, the term “*de jure* sovereignty” is used to describe the legal recognition of a state’s authority, whereas “*de facto* sovereignty” refers to the actual control exerted over a territory and its population. It is not uncommon for there to be instances where a state is internationally recognized as the *de jure* sovereign authority over a territory yet lacks *de facto* control over it. Somalia is a case in point, with its internationally recognized government lacking control over certain regions. Conversely, there are instances where a state exercises *de facto* sovereignty, yet lacks widespread *de jure* recognition. Taiwan is an example of this. See, Bartmann, ‘Between De Jure and De Facto Statehood: Revisiting the Status Issue for Taiwan’ (2008) *Island Studies Journal* 113 (114 ff), Nicolosi, ‘Law of Military Occupation and the Role of de Jure and de facto Sovereignty’, in *Polish Yearbook of International Law*, 31th edn. (Warszawa, 2012) 165.

²¹ The emergence of international organizations and agreements, including the United Nations, World Trade Organization, and climate treaties, has presented a challenge to traditional notions of sovereignty. These institutions frequently require member states to adhere to specific standards and laws, which has led to a re-evaluation of the concept of national sovereignty in the contemporary era. The relationship between national sovereignty and the obligations of global governance remains a significant area of debate. See Meyer, ‘Indigenous Rights, Global Governance, and State Sovereignty’ (2012) *Human Rights Review* 327; Goodhart and Taninchev, ‘The New Sovereigntist Challenge for Global Governance: Democracy without Sovereignty’ (2011) *International Studies Quarterly* 1047 (1048 ff).

²² For instance, Nederman, ‘Sovereignty’, 2243 (2243 ff), and Prokhovnik, *Sovereignty: history and theory* (Charlottesville, 2013).

interference ... by other authorities.”²³ Internally (within the state), it unequivocally denotes the supreme authority to determine who shall rule and how they shall rule.²⁴ In other words, internal sovereignty refers to absolute authority within a state’s territory. In contrast, external sovereignty (between the states) refers to a state’s ability to act independently and autonomously in the face of external forces. Both aspects of sovereignty are engaged in a constant interplay.

In order to deconstruct the meaning of the sovereignty concept in European discourse, it is necessary to analyse the history of the concept’s evolution in European political and legal thought with separate attention to the concept’s internal and external types.

1. First Conceptualizations of Sovereignty

The first and original interpretation of internal sovereignty in its absolutist reading belongs to Jean Bodin and Thomas Hobbes. In their view, sovereignty was best understood as the highest legal authority “not limited either in power, or in function, or in length of time,”²⁵ and as an indivisible “regulative ideal establishing political stability and identity.”²⁶ Both Bodin and Hobbes considered the argument that the sovereign must possess absolute power over his people and the law in his land for the protection of these people from anarchy (i.e., from war against each other) to be the primary justification for supremacy.²⁷ Consequently, their texts establish the parameters of *absolutist internal sovereignty*.

The subsequent phase in the evolution of philosophical discourse was the conceptualisation of external sovereignty. The Peace of Westphalia²⁸ had significant

²³ Nederman, ‘Sovereignty’, 2243 (2243 f).

²⁴ Nederman, ‘Sovereignty’, 2243 (2244 f).

²⁵ Bodin, *On Sovereignty. Four Chapters from “The Six Books of the Commonwealth”* (Cambridge, 1992) 3.

²⁶ Prokhovnik, *Sovereignty: history and theory* (Charlottesville, 2013) 49.

²⁷ For Bodin’s and Hobbes’s conceptualizations of sovereignty, see Marko, *Human and Minority Rights Protected by Multiple Diversity Governance* 33, 42 ff; Prokhovnik, *Sovereignty: history and theory* 47 ff; Boucher, *Appropriating Hobbes: Legacies in Political, Legal, and International Thought* (Oxford, 2018); Skinner, *The Foundations of Modern Political Thought. Volume Two: The Age of Reformation* (Cambridge, 1978).

²⁸ The Peace of Westphalia, signed in 1648, refers to a series of treaties that ended the Thirty Years’ War in the Holy Roman empire and the Eighty Years’ War between Spain and the Dutch Republic. It is considered a foundational moment in international relations, as it established the modern state system based on the principles of territorial sovereignty and non-intervention. The treaties recognized

implications for the status of external sovereignty for the imperial states of the Holy Roman empire. In addition to confirming their traditional prerogatives, liberties, and privileges, the series of Westphalian treaties established “a *superitas territorialis* in all matters spiritual and secular.”²⁹ The newly formed order of international relations posited that states should be treated as equals in order to preserve peace through a balance of power.³⁰ In contrast, in areas outside of Europe where no sovereign states (or civil societies) existed according to Eurocentric international law, relations between nations could be based on exploitation. China and India, for example, were regarded by European lawyers as such states without civil society and were not considered sovereign.³¹ Consequently, the politics of non-interference did not have to be applied, which signified the non-inclusiveness of *Westphalian external sovereignty*.

The subsequent advancement in political discourse occurred when John Locke solidified the idea of *popular internal sovereignty*, which proved to be a more progressive and fundamental tenet of modern liberalism. Locke established the conceptual framework for what is now considered to be the modern understanding of liberal rights as subjective human rights.³² In his work he posits that the authority to govern lies with the people, rather than with the state. He asserts a right of resistance against unjust authority, introduces the democratic theory of government based on the concept of individual freedom guaranteed by the rule of law, and offers a novel interpretation of the social contract.³³ According to this interpretation, the law, which traditionally served to restrain the subjects of the king, is reframed as an enabling force, providing the “institutional framework for the realization of individual freedom.”³⁴

Jean-Jacques Rousseau espoused a contrasting perspective to that of Locke. He posited that the social contract is not founded on the individual freedom and the

the right of rulers to control their territories without external interference, laying the groundwork for Westphalian sovereignty. See Croxton, ‘The Peace of Westphalia of 1648 and the Origins of Sovereignty’ (1999) *The International History Review* 569.

²⁹ Marko, *Human and Minority Rights Protected by Multiple Diversity Governance* 60.

³⁰ Prokhovnik, *Sovereignty: history and theory* 25.

³¹ More about the principle of extraterritoriality in Fitzmaurice and Gragl, ‘Sovereignty, Territory, and Jurisdiction’, in Kolb (ed.), *The Cambridge History of International Law X: Global International Law in the Era of the League of Nations* (Cambridge, 2024) 162 (189 ff).

³² Marko, *Human and Minority Rights Protected by Multiple Diversity Governance* 47 ff.

³³ Prokhovnik, *Sovereignty: history and theory* 103 ff.

³⁴ Marko, *Human and Minority Rights Protected by Multiple Diversity Governance* 48.

separate will of each individual, but rather on the unity of separate wills in understanding the common good.³⁵ The “general will” is an abstract concept developed by Rousseau that unifies the entire nation under a shared understanding of the common good. This unification gives rise to a “collectivist sovereign entity”³⁶ with the authority to establish, modify, or abolish political institutions.³⁷

The philosophy of Immanuel Kant endeavoured to apply a philosophical lens to the study of politics and the advent of a novel system of nation-states. Kant conceived of the system of international relations as a federation of states with *cosmopolitan external sovereignty*,³⁸ predicated on the assumption that all states shall adhere to a single, universal moral law. He held the hardly achievable ideal of a world that could live in peace and saw “a lawful federation under a commonly accepted international right.”³⁹ Consequently, Kant posited that a republican form of government was the optimal structure for a just and stable society.⁴⁰ He asserted that only within a republic could the separation of powers be effectively guaranteed and the principle of *restricted internal sovereignty*⁴¹ be fully actualized. In the context of Kant’s philosophy, internal sovereignty can be defined as the state law itself.⁴² However, the right to resistance is denied, and the rationality shared by the whole humankind constitutes the categorical imperative which is accepted as a universal law that *de facto* restricts individualism. From the perspective of individual freedom, Kant’s internal

³⁵ Prokhovnik, *Sovereignty: history and theory* 122 ff.

³⁶ In the terminology of Joseph Marko.

³⁷ For this reason, Jean-Jacques Rousseau is often regarded as a forerunner of socialist thought.

³⁸ I use here the terminology originally developed by Johann Gottfried Herder, who believed that Kant’s universalism and his notion of perpetual peace through international law reflected a cosmopolitan worldview that transcended national boundaries. See Piirimäe, ‘Human Rights, Imperialism and Peace among Nations: Herder’s Debate with Kant’ (2018) *Intellectual History Archive* 2 (1). The utilization of the term “cosmopolitan” in reference to Kant’s philosophical concepts has become a standard practice within the domain of philological studies. This term is employed by prominent authors such as Georg Cavallar and Pauline Kleingeld, among numerous others, in their respective works. See Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge, 2012); Cavallar, ‘Cosmopolitanism in Kant’s philosophy’ (2012) *Ethics & Global Politics* 95. However, it is important to note that this form of cosmopolitanism pertains solely to the external manifestation of sovereignty.

³⁹ Kant, *Political Writings* (Cambridge, 1997) 90.

⁴⁰ Kant, *Political Writings* 92.

⁴¹ I name internal sovereignty by Kant “restricted”, because in his understanding, the “absolutist” sovereignty formulated by Bodin and Hobbes becomes restricted by constitution, separation of powers, human rationality and, finally, by categorical imperative.

⁴² Prokhovnik, *Sovereignty: history and theory* 148 ff.

sovereignty differs from the popular sovereignty formulated by Locke in that individual rights do not prevail over the categorical imperative. In order to facilitate this difference, I refer to the internal sovereignty formulated by Kant as “restricted.”

The further development of external sovereignty conceptualization may be attributed to Georg Wilhelm Friedrich Hegel, who introduced the parameter of state recognition as a novel aspect of external sovereignty.⁴³ The principle of recognizing state sovereignty played an essential role in the process of colonization, which reached its peak in the 19th century. Countries such as China were the first to experience this principle in a form of an *exclusive* understanding of *external sovereignty* that did not extend to them. This meant that countries that were considered by Europeans as non-nations did not possess the quality of sovereignty and therefore could not be treated as equals on the international stage.⁴⁴

2. Towards Limited Sovereignty

The early decades of the 20th century were a period “of emergence of the modern model of external sovereignty.”⁴⁵ The creation of the League of Nations after the First World War incorporated the tenets of Kantian thought⁴⁶ and represented the inaugural effort to establish a global collective security system predicated on the recognition of all states as autonomous subjects of international law. This was later perfected with the creation of the United Nations. Concurrently, this constituted the first alternative to the *Westphalian external sovereignty*, which *limited* the *external sovereignty* of the states involved. From now on, an external entity could resolve international disputes through arbitration.⁴⁷ In other words, the principle of non-interference, established by the Peace of Westphalia, was challenged by a collaborative approach to maintaining global peace and security with the help of international organizations. As Malgosia Fitzmaurice and Paul Gragl persuasively contend, “international organizations, while not sovereign themselves, started to perform sovereign functions more extensively in the League of Nations period, based on some form of a delegation from their Member States.”⁴⁸ Moreover, after the First

⁴³ Hegel, *Elements of the Philosophy of Right*, trans. T.M. Knox (Oxford, 1967) 213.

⁴⁴ This idea was disseminated by a multitude of European thinkers and politicians, for instance by Joseph-Arthur de Gobineau, Friedrich Nietzsche, Cecil Rhodes, Albrecht von Roon and many others.

⁴⁵ Besson, ‘Sovereignty’, 366 (373 f).

⁴⁶ In its desire for cosmopolitanism and international peace.

⁴⁷ First, in the Permanent Court of Justice, and, subsequently, in the International Court of Justice.

⁴⁸ Fitzmaurice and Gragl, ‘Sovereignty, Territory, and Jurisdiction’, 162 (186 f).

World War, the “decline of political sovereignty was paralleled by an evolution of legal sovereignty, formalizing this notion as a legal-positivist conception and progressively emptying it from any evaluative content.”⁴⁹

The concept of *limited external sovereignty* underwent a significant expansion following the progressive advancement of international law as well as the establishment of the League of Nations and the subsequent creation of the United Nations. These developments *de facto* necessitated a limitation of member states’ sovereignty in order to ensure peace among nations. This was particularly crucial in light of the devastation wrought by the Second World War. Among the new parameters limiting state sovereignty were the *prohibition of the use of force*,⁵⁰ the definition of sovereignty as a *law-based concept*,⁵¹ the principle of *self-determination*,⁵² the limitation of state sovereignty by the activities of *international organizations* (IOs), the development of *human rights law*,⁵³ and the concept of *responsibility to protect (R2P)*.⁵⁴

3. Carl Schmitt

The evolution of the concept of sovereignty across Europe during the 20th century appears to have been a unified and comprehensive process: from *absolutist internal sovereignty* to *popular internal sovereignty* as well as from *Westphalian external*

⁴⁹ Besson, ‘Sovereignty’, 366 (382 f).

⁵⁰ The prohibition of the use of force was initially formalized by the signing of the Kellogg-Briand Pact in 1928 and then by the adoption of UN Charter (art 2(4)) in 1945.

⁵¹ S.S. Wimbledon (United Kingdom and Others v Germany), 1923.

⁵² The legal basis of the right to self-determination can be traced back to Lenin’s The Right of Nations to Self-Determination, Wilson’s Fourteen Points (1918) and the Åland Islands case (Permanent Court of Justice *The Åland Islands, Case Advisory Opinion*, 1921). However, it was the United Nations Charter (1945), especially Article 1(2) and Article 55, that enshrined self-determination as a legal principle. This led to its recognition as a right under international law, notably supporting decolonization efforts in the second half of the 20th century. See Fitzmaurice and Gragl, ‘Sovereignty, Territory, and Jurisdiction’, 162 (188 ff); Marko, *Human and Minority Rights Protected by Multiple Diversity Governance* 72.

⁵³ The legalization of human rights law in the mid-20th century was primarily initiated through the establishment of the United Nations and its adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The atrocities of the Second World War and the Holocaust led to a consensus at the international level on the need to protect individual rights. This culminated in the adoption of the UDHR, which set out fundamental rights and freedoms for all people. See Reisman, ‘Sovereignty and Human Rights in Contemporary International Law’ (1990) *The American Journal of International Law* 84 (866); Besson, ‘Sovereignty’, 366 (384); Philpott, ‘Sovereignty’ (2020 edition).

⁵⁴ See footnote No 19 in the section titled “Evolution of the Sovereignty concept in European Political Philosophy and Modern Positive Law”.

sovereignty to *limited eternal sovereignty*. The general international trend towards limited external sovereignty and popular internal sovereignty would have undoubtedly proven successful had it not been for the emergence of a political philosophy that challenged the very foundations of the aforementioned trend in 1930s.

Carl Schmitt revived the absolutist internal sovereignty conceptualization based on his notions of the “state of exception,”⁵⁵ “friend and enemy distinction,”⁵⁶ and his understanding of decisionism. Schmitt declared that “Sovereign is he who decides on the exception.”⁵⁷ Thus, he gave sovereignty a political criterion and opposed the pluralistic concept of democracy. One of the key ideas put forth by Carl Schmitt is that authority plays a pivotal role in the concept of sovereignty. In a normal situation, he suggests that sovereignty should reside with the people of the nation and be constrained by the rule of law. However, in an emergency situation, he proposes that sovereignty may not be restricted and may instead reside with the chosen leader of the state. In this context, Schmitt introduces the concept of “exception,” which refers to a situation where the state remains in place while the law temporarily recedes. In such a situation, the order is provided by the temporary, unlimited authority of the sovereign, while the constitution is temporarily set aside. Thus, decisionism is one of the main features of the sovereign rule by Schmitt.

⁵⁵ The concept of the state of exception by Schmitt refers to a situation in which the normal rule of law is suspended due to an emergency or crisis. In this state, the sovereign (usually the head of state) has the authority to act outside the established legal framework to restore order. Schmitt argued that the state of exception reveals the true nature of sovereignty, as it demonstrates the sovereign's power to decide the limits of law and its suspension in times of crisis. See Schmitt, *Political theology: Four chapters on the concept of sovereignty*, trans. G. Schwab (Chicago, 2005) 7 ff; Prokhovnik, *Sovereignty: history and theory* 218 ff; Kelly, *The State of the Political. Conceptions of Politics and the State, in the Thought of Max Weber, Carl Schmitt, and Franz Neumann* (Oxford, 2003).

⁵⁶ Schmitt asserted that the defining characteristic of political identity is the ability to distinguish between friend and enemy. For him, politics fundamentally arises from this distinction, as a group or nation must define itself in opposition to an existential threat. The enemy is not simply an adversary but a group that poses a challenge to the identity or existence of the nation. This distinction serves to reinforce Schmitt's perspective that sovereignty involves the ability to identify and act against enemies, especially in times of crisis. See Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge, 2001) 431 ff; Marko, ‘USA: Weimar und Philadelphia im Vergleich’, in Voigt (ed.), *Aufbruch zur Demokratie* (Baden-Baden, 2020) 887 (891f).

⁵⁷ Schmitt, *Political theology: Four chapters on the concept of sovereignty* 5.

Many critical conceptions introduced by Carl Schmitt can be traced in modern politics.⁵⁸ Such occurrences are becoming increasingly prevalent. The concepts of exception, decisionism and the distinction between friend and enemy as new parameters of *absolutist* sovereignty as introduced by Schmitt are particularly prevalent in Russia and China. Moreover, there has been a notable increase in interest in the works of Carl Schmitt in these countries.

4. Evolution of the Sovereignty Concept in Europe

Following the historical reconstruction of the sovereignty concept in Europe, it is now possible to outline its evolution process as specified in Figures 1 and 2.

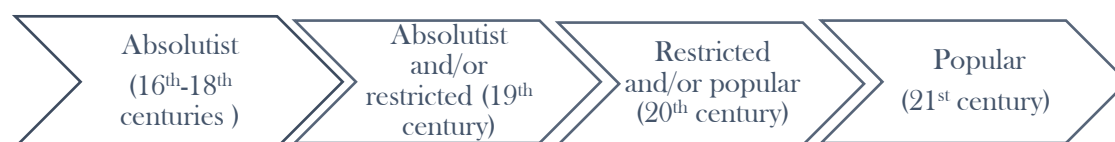


Figure 1. Evolution of the concept of internal sovereignty in Europe



Figure 2. Evolution of the concept of external sovereignty in Europe

The concept of internal sovereignty has progressed from *absolutist* to *popular sovereignty* as a prevalent conceptualization of sovereignty among European nations. With the exception of Schmittianism, the general direction of internal sovereignty evolution has been and continues to be the promotion of individual will and individual rights, as opposed to collective rights and the usurpation of authority by the state. The concept of external sovereignty has evolved from *Westphalian* to *limited external sovereignty*. It is notable that the parameters of *Westphalian sovereignty* (non-interference and equality of states) have remained within the modern understanding of *limited sovereignty*. They are now simply combined with

⁵⁸ Examples of Schmitt-like policy-making could be, for example, observed in the actions of numerous governments during the COVID pandemic, as well as in the strategy employed by President Xi Jinping to secure a third term as president and party leader in 2022. This strategy was designed to confront those within the government who were perceived as internal enemies. Additionally, the actions of President Putin in strengthening his political power can be viewed as an example of Schmitt-like policy-making.

the new conceptualizations aimed at limiting⁵⁹ state sovereignty introduced through positive law.

II. Deconstructing the Russian Concept of Sovereignty

In its modern sense, the concept of sovereignty reached Russian political and legal thought in the 19th century. Prior to its transplantation into the Russian lexicon, the local term “*samoderzhavie*” was employed in the context of Russian political and legal discourse as the most proximate local analogue to the Western concept of sovereignty.⁶⁰ It exhibited characteristics similar to the *absolutist* internal sovereignty as conceptualized by Jean Bodin.

A. The Concept of Samoderzhavie

The term “*samoderzhavie*”⁶¹ (derived from the Greek αυτοκράτωρ) is defined in the Big Russian Encyclopedia as a state system in Russia in which the bearer of the supreme power possesses supreme rights in the field of legislation, adjudication, development, and implementation of the strategic course in domestic and foreign policy.

In the view of the famous Russian historian of the Imperial era, Nikolay Karamzin, the phenomenon of *samoderzhavie* emerged as a consequence of the centralization of princely authority in the hands of the Moscow prince at the beginning of the 16th century.⁶² During the reign of the first Russian Tsars, the structure and the borders of the Russian state, the type and legitimization of princely power, the role of the Church,

⁵⁹ There are instances when these “limitation parameters” (such as the prohibition of the use of force, R2P, human rights protection, and the principle of self-determination) come into conflict with more conventional parameters. This has led to an increased use of political decisionism to overcome this deadlock. For example, the difficulties connected with the contradiction between human rights protection and the principle of non-intervention may be very well observed in cases of NATO intervention in Libya in 2011 (UNSC Resolution 1973) as well as in the UN process of resolution-making on the Syrian war. See Koskeniemi, ‘The Politics of International Law’ (1990) *EJIL* 4; Chen and Yin, ‘China and Russia in R2P Debates at the UN Security Council’ (2020) *International Affairs* 787; Wippman, ‘Kosovo and the Limits of International Law’ (2001) *Fordham International Law Journal* 129.

⁶⁰ For a deeper analysis of the term “sovereignty” in Russian legal discourse, see Antonov, ‘Sovereignty and Russian Resistance to Human Rights’, in Czech, Heschl, Lukas, Nowak, and Oberleitner (eds.), *European Yearbook on Human Rights* (Cambridge, 2020) 529.

⁶¹ Unless otherwise indicated, the original Russian and Chinese texts have been translated by the author of the article.

⁶² Karamzin, *Istoriya Gosudarstva Rossiiskogo [History of the Russian State]*, Vol 1 (Moscow, 1989).

and the position of the ruler of Rus' underwent significant transformations, acquiring the defining characteristics that would become the cornerstones of *samoderzhavie*.

It can be argued⁶³ that the formation of the Russian centralized state was significantly influenced by the 200-year occupation by the Golden Horde (1240-1480). Following the fall of Kyiv in 1240, the vast majority of the territories that constituted the Rus' state became incorporated into the Mongol empire (Golden Horde). Local rulers who submitted to the Great Khan were permitted to retain their positions, provided that they fulfilled the obligations imposed upon them, namely the collection of taxes and participation in the military expansion of Chingisid⁶⁴ supremacy.⁶⁵ The subordination of the princes to the higher authority that accompanied the demise of the local democratic rule⁶⁶ resulted in a change in the legitimization of their authority, which was no longer dependent on the people. The ruler of the principality was not the representative selected by the people but rather the Khan's appointee.⁶⁷ The principle was subsequently refined by Russian Tsars from the 15th century onwards, whereby the ruler of Rus' was required to originate from a ruling dynasty that was believed to have been chosen by God to rule over the Russian people.

In consequence of the 200 years of relative disorder caused by the invasion, the necessity for political centralization to expel the enemy became self-evident. Princely authority expanded in order to facilitate the rebuilding and reorganization of the

⁶³ It is a widely held view among Russian historians that the 200-year occupation of Russian lands by the Tatar-Mongols had a significant impact on the development of the Russian centralized state. This perspective has been espoused by a number of notable scholars, including Vasily Klyuchevsky, Georgiy Vernadsky, Lev Gumilev, and others.

⁶⁴ The Chinggisids were a dynasty descended from Genghis Khan (also known as Chinggis Khan), the founder of the Mongol empire.

⁶⁵ Feldbrugge, *A History of Russian Law: From Ancient Times to the Council Code (Ulozhenie) of Tsar Aleksei Mikhailovich of 1649* (Leiden, 2017) 43.

⁶⁶ The governance of the principalities of Rus before the 13th century was based on the squad council and the popular assembly (*Veche*). Additionally, there existed a tradition of invitation to reign. See Solov'ev, *Vlastiteli i sud'i. Legitimatsiia gosudarstvennoi vlasti v drevnei i srednevekovoi Rusi. ix-pervaia polovina xv vv [Rulers and judges. Legitimation of state power in ancient and medieval Rus' 9th - first half of the 19th century]* (Moscow, 1999) 100.

⁶⁷ For more about the origins and character of the state power in Russia from the 10th to 16th centuries, see Feldbrugge, 'Nicholas Timasheff's Views on the Role of Freedom in Russian History' (2010) *Review of Central and East European Law* 35 (1 ff); Waldenberg, *Drevnerusskie ucheniya o predelakh tsarskoy vlasti [The Old Russian Doctrines on the Limits of Tsar's Power]* (Petrograd, 1916); Verbova, 'Sozdanie gosudarstvennosti u vostochnykh slavyan [Creation of statehood among the Eastern Slavs]', *Problems of the state's history and law of Belarus: materials of the international scientific. practical conference* (Minsk, 2011) 49.

territory.⁶⁸ In the latter half of the 14th century, the Golden Horde experienced a significant weakening of its influence over the Rus' due to internal problems. Concurrently, the Byzantine empire, which exerted a profound political and cultural influence on the Rus' after the country's baptism in the 10th century, was also in decline. This resulted in an increased level of autonomy for the Russian Church. Consequently, the Muscovite Rus' emerged from the power struggle among the Russian principalities, uniting the disparate polities under the rule of the first Sovereign (*Gosudar*)⁶⁹ of the entire Rus', Ivan III (1440-1505). While Ivan III succeeded in uniting the Russian principalities and achieving the liberation of the last remaining Russian strongholds of the Mongols, his grandson Ivan IV (1547-1584) was responsible for the defeat of the Crimean horde, the establishment of a standing army, and the unification of ecclesiastical regulations. He was also responsible for the creation of a new code of law, the *Sudebnik* (1550), which marked the completion of the centralization of the state. He was proclaimed the first Tsar of Rus'. Thus, "*samoderzhavie* was born."⁷⁰

There were a number of defining characteristics of *samoderzhavie* that persisted until the demise of the Russian empire in 1917, namely autocracy as an optimal type of governance, a centralized state, co-supporting relations between the state and the church, and the messianic nature of Russian culture with its emphasis on disseminating Christian Orthodoxy.

Nikolai Karamzin, Sergei Uvarov,⁷¹ Nikolay Danilevsky⁷² and other prominent Russian thinkers unified these features within a singular conservative ideology. Their conceptualization of *samoderzhavie* encompassed both legal and political dimensions. However, the political dimension was particularly pronounced, being reinforced by philosophical and religious considerations. These perspectives served

⁶⁸ Riasanovsky, *A History of Russia* (Oxford, 2000) 93.

⁶⁹ The term "sovereign" is a modern contextual translation of the Russian word "*gosudar*." The word "*gosudarstvo*" (state) is derived from "*gosudar*," which illustrates the significance of a single ruler in enabling the existence of the entire state. Consequently, the absence of a ruler precludes the existence of a state. These linguistic connections were formed and implemented during the period of centralization of Rus at the beginning of 16th century, which enabled the fight for independence from the Tatars-Mongols. As a result, the term "state" in Russian continues to convey the idea of the centrality of the state leader for state formation and independence, a concept that persists to this day. See Kharkhordin, 'What is the State? The Russian Concept of Gosudarstvo in the European Context' (2001) *History and Theory* 206 (214 f).

⁷⁰ Karamzin, *Istoriya Gosudarstva Rossiiskogo* (1989).

⁷¹ Minister of Public Education under Nicholas I.

⁷² Prominent Russian philosopher, historian, economist and naturalist.

as a foundation for a political movement known as the “Slavophiles,” a conservative group within Russian thought that placed a strong emphasis on the distinctiveness of the trajectory of Russian historical development.

B. Sovereignty Concept Transplantation and Adaptation

The concept of *samoderzhavie* was developed as a counterpoint to the ideas about the nature and form of the Russian state put forth by “Westerners.” It was a stream in Russian political and legal thought advocating for the Western path⁷³ of the development of Russia, a more secular definition of the state, the introduction of the rule of law, and, among other things, the adaptation of the term “sovereignty” into the Russian lexicon.

The concept of sovereignty had already been introduced to the Russian legal thought through the discipline of international law at the end of the 19th century. Notable Russian international lawyers such as Friedrich Martens and Mikhail Taube were pioneers in the field of Russian legal scholarship,⁷⁴ introducing the concept of sovereignty to the Russian audience through their scholarly works. They were distinguished for their contributions to the ongoing philosophical discourse on the trajectory of Russian civilizational development. Their research was consistently centered on the question of the universality of Western law and the challenges of its implementation in Russia.

However, representing the progressive liberal wing of Russian politics, the advocates of the introduction of the term “sovereignty” into Russian political discourse and the Russian legal framework were unsuccessful in achieving their goals. By 1918, the concept was still not used in either international agreements written in Russian or in internal legal proceedings.⁷⁵

⁷³ Westerners’ political and philosophical views were predicated on the notion of a universal human civilization, with the countries of the West serving as its vanguard. In this outlook, Russia was perceived as lagging behind the European nations in general human development and thus in need of catching up with the West, which was regarded as a role model. Westerners did not perceive Russia as a distinct civilization. Rather, they often regarded it as a nation that could potentially be incorporated into the Western sphere of influence and assimilated into the Western way of life. See Antonov, *Istoriya pravovoy Mysli Rossii [History of Russian Legal Thought]* (Sankt Peterburg, 2011) 77 ff.

⁷⁴ See Mälksoo, ‘The History of International Legal Theory in Russia: a Civilizational Dialogue with Europe’ (2008) *EJIL* 211 (214 ff).

⁷⁵ For example, one can refer to the text of the Peace Treaty of Brest-Litovsk between Russia and the Central Powers was signed on March 3rd, 1918 and marked the conclusion of Russia’s involvement in World War I. The English version of the document states the following: “The territories to the west

In the early stages of the Soviet Union's development (1922-1930s), legal and political scholars rejected the concept of sovereignty as a vestige of bourgeois ideology. Despite its actual application in the construction of the state (centralization of power within the party circle under the authoritative leadership of the General Secretary), the term was often used as a synonym for the omnipotence of public authority on a certain territory.⁷⁶ However, by the 1940s, the new legal ideology of the Soviets had reverted to the traditional tenets of political science.⁷⁷

According to Mikhail Antonov, the concept of sovereignty in the Soviet Union from the 1940s onwards was based on a conflation between actual (political) power and legal power, and reflected the mechanisms employed by the authorities to control the population.⁷⁸ Consequently, the legal system of the USSR integrated two contentious terms: a formal doctrine of self-determination and the actual practice of rigid political centralization. As Antonov notes, the communist ideology provided a framework within which the two competing values could coexist without the risk of a normative conflict.⁷⁹

The conceptualization of internal sovereignty did not undergo any further development within the field of legal philosophy during the Soviet era, as the concept was deemed to be incompatible with the social values espoused by communism. In the context of legal terminology, Soviet lawyers demonstrated a preference for eschewing the use of terms such as “rule of law” and “sovereignty,” opting instead to substitute them with alternative conceptualizations. With the understanding that political power was centralized in the Communist Party leadership, which valued collective rights, the concept of internal sovereignty was formally forgotten.

of the line agreed upon by the contracting parties, which formerly belonged to Russia, will no longer be subject to Russian sovereignty (The Peace Treaty of Brest-Litovsk, 1918).” It should be noted, however, that the Russian text of the treaty does not include the term “sovereignty.” In lieu of the aforementioned term, the wording “*verhovnaya vlast*” (supreme power) is employed (Brestskii Mir, 1918).

⁷⁶ Levin, *Suverenitet [Sovereignty]* (Moscow, 1948) 110.

⁷⁷ The first Soviet textbook on constitutional law provided the following definition of sovereignty in 1938: “supremacy of the state power which makes this power unlimited and independent inside the country and runs autonomous foreign policy in international relations” (Sovetskoe gosudarstvennoe pravo: uchebnik dlia iuridicheskikh vuzov, trans. Antonov (Moscow, 1938), 262). This definition has no particular relevance to “bourgeois” legal theory any longer, signifying the departure from the Marxist terminology. See Antonov, ‘Theoretical Issues of Sovereignty in Russia and Russian Law’ (2012) *Review of Central and East European Law (RCEEL)* 95 (99 ff).

⁷⁸ Antonov, ‘Theoretical Issues of Sovereignty in Russia and Russian Law’ (2012) *RCEEL* 95 (100).

⁷⁹ Antonov, ‘Theoretical Issues of Sovereignty in Russia and Russian Law’ (2012) *RCEEL* 95 (102).

Meanwhile, external sovereignty of the state was seen in what was regarded as the “most extreme” positivist outlook,⁸⁰ accepting only state practice in the form of international treaties as international law and not extending this prerogative to customary law.

The concept of sovereignty is still a relatively novel addition to the lexicon of Russian legal terminology, having been employed only infrequently in Imperial law and exerting minimal influence on Soviet law. The dissolution of the USSR, the search for a new constitutional identity of the country, and its efforts to gain international recognition with the goal of joining the international democratic community resulted in the necessity to revitalize the sovereignty concept after 1991.

The concept of *popular internal sovereignty* became a fundamental tenet of the 1993 Constitution of the Russian Federation. The political aspect of sovereignty remains a significant factor in contemporary discourse, as evidenced by its continued prominence among the Russian political elite and the majority of jurists. However, its interpretation has become increasingly *absolutist*.⁸¹ This happened as a consequence of the deconstructive occurrences during the initial years of the 1990s, which may have culminated in the disintegration of the Russian Federation into multiple autonomous entities.⁸² In consequence of these developments, the Constitutional Court of the Russian Federation (CCRF) handed down a series of momentous decisions in the 1990s that established a clear hierarchy of state power, with rigorous delineations of competencies between the federal and regional governments. Over time, and particularly following the ascent of Vladimir Putin to power, an increasing degree of authority has been devolved to the federal government level. This shift reflects an ongoing process of political centralization, occurring through a series of legitimate legal procedures and actions.

⁸⁰ Freeman, ‘Some aspects of Soviet influence on international law’ (1968) *American Journal of International Law (AJIL)* 710 (716).

⁸¹ Antonov, ‘Sovereignty and Russian Resistance to Human Rights’, 529 (531).

⁸² In 1990, Russia declared its independence from the Soviet Union, citing the formal principle of self-determination as the rationale for this action. Subsequently, other Soviet republics emulated this action. Nevertheless, the process did not cease at the level of the republics and continued to the lower levels of the state organization. The vacuum in legislation created the potential for autonomous state formations even within Russia. When proclaiming Russia’s sovereignty in 1990, Yeltsin famously addressed the regional leaders, encouraging them to assert “as much sovereignty as they could.” In the context of the discussions surrounding the drafting of the new Russian Constitution, the constituent entities were viewed as sovereign states (Antonov, 2012). Consequently, the constitutions of nearly all the constituent republics of the Russian Federation made reference to their republican sovereignty.

These legal developments were supported by the appearance of the concept of “sovereign democracy,” which was vigorously disseminated in 2000s and partially⁸³ correlated with neo-Eurasianism.⁸⁴ Vladislav Surkov⁸⁵ developed an ideology that sought to integrate democratic principles with traditional Russian social collectivism, autocracy (in the sense of *samoderzhavie*), and unity of social and individual rights. This integration was to be achieved through the “antique model” of democracy, which Surkov described as a system where the state and people work in harmony to maintain social and political stability.⁸⁶

The primary concept of political centralization within the context of democratic governance is evident in Surkov’s construct. However, the dominant conceptualization of sovereignty in this framework represents a conventional notion of *samoderzhavie*, as articulated in 19th-century Russian political thought. Despite the fact that Surkov’s conceptualization was subjected to a considerable amount of philosophical criticism,⁸⁷ it became evident that

Vladimir Putin frequently invoked extracts from the doctrine of sovereign democracy in numerous speeches,⁸⁸ provided that the democratic trajectory of Russia’s development remained a viable option.

The currently prevailing ideology of neo-Eurasianism negates the Western or democratic path for Russia in its entirety. Neo-Eurasianism is an ideology oriented towards a civilizational reconstruction of Russia with a strong anti-Western and anti-Atlanticist component.⁸⁹ It originated in the 1920s, during the initial phase of Russian immigration following the revolution, and asserted a distinctive path for Russia, synthesizing both European and Asian cultural influences. The contemporary iteration of this ideology denies the path of the “liberal West” and instead advocates

⁸³ Mostly in acceptance of autocratic rule and prevalence of collective rights.

⁸⁴ Neo-Eurasianism, as promoted by figures like Aleksandr Dugin, is a geopolitical and cultural ideology that advocates for a Russia-centric, anti-Western global order.

⁸⁵ The author of the term “sovereign democracy.”

⁸⁶ Foy, ‘Vladislav Surkov: “An overdose of freedom is lethal to a state”’, *Financial Times* (2021).

⁸⁷ A number of prominent Russian philosophers and political thinkers have publicly expressed their reservations about Surkov’s approach, citing a perceived contradiction between democratic principles and authoritarian practices. Among them are Alexei Yurchak, Andrei Zorin, Vladimir Pastukhov, and others.

⁸⁸ Notable instances wherein Putin’s ideas mirror those of Surkov include his 2006 Address to the Federal Assembly, his 2013 Address at the Valdai International Discussion Club, and his 2018 Presidential Campaign Speech.

⁸⁹ Pizzolo, *Eurasianism: An ideology for the multipolar world* (Ph.D. thesis) (2020) 105.

for the establishment of a Russian civilization-state⁹⁰ founded upon Russian traditional values among the nations that share the same historical cultural heritage. Aleksandr Dugin is the principal ideologue of Russian neo-Eurasianism and one of the first Russian scholars to apply Carl Schmitt's understanding of political sovereignty to Russian realities. Schmitt's ideas of *Großraum*,⁹¹ perception of enemy and friend, and the political aspect of sovereignty in the situations of exception remain of great importance for the main ideologue of Russian neo-Eurasianism.

One of Dugin's most recent ideas is the development of the concept of the civilization-state.⁹² The goal of the thinker's conceptual experiments is to proclaim that true sovereignty can only be achieved through the decolonization of consciousness in Russian, Chinese and Indian civilizations. According to Dugin, today, only the Western world is truly sovereign. This is the real full-fledged sovereignty that "wants to be the only, universal, dominant one."⁹³ It is this kind of political sovereignty, also understood as independence of political thinking and secularization of people's minds, that Dugin wants for Russia as a civilization-state.

A more normative and yet very philosophical understanding of sovereignty can be attributed to another prominent figure in the modern Russian discourse on sovereignty. Valerii Zorkin, the Chairman of the Constitutional Court of Russian Federation (CCRF), warns against "external conducting" of the legal situation in Russia while "ignoring the historical, cultural, and social situation."⁹⁴ Zorkin is the

⁹⁰ In Aleksandr Dugin's framework, a civilization-state is a geopolitical and cultural entity defined by its unique historical, spiritual, and cultural values, transcending nation-states. It rejects Western universalism, emphasizing sovereignty and the preservation of civilizational identity. See Dugin, 'Gosudarstvo-Tsivilizatsiya [Civilisation-State]' (*Izborski Klub*, 31 May 2022) <<https://izborsk-club.ru/22879>> accessed 14 November 2024.

⁹¹ In Schmitt's work, *Großraum* represents a space controlled and dominated by a particular sovereign state or power, which extends beyond its traditional territorial boundaries. The concept emphasizes the idea of a distinct sphere of influence and control, where a particular political entity exercises its authority and power. See Schmitt, *The Concept of the Political* (New Jersey, 1976).

⁹² Dugin, 'Moment Imperii. Chto skryvayetsya za terminom «Gosudarstvo-Tsivilizatsiya» [Moment of empire. What lies behind the term "State-Civilization"]' (*Rossiyskaya Gazeta*, 6 October 2023) <<https://ria.ru/20231006/imperiya-1900924123.html>> accessed 21 August 2024.

⁹³ Dugin, "Nam nuzhna dekolonizatsiya soznaniya": Aleksandr Dugin o tom, kak vyrvat' iz nas vse zapadnoye ["We need decolonization of consciousness." Aleksandr Dugin on how to wrest all things Western from us]' (*Business-gazeta*, 13 September 2023) <<https://www.business-gazeta.ru/article/606791>> accessed 21 August 2024.

⁹⁴ Zorkin, 'Rossiya dolzhna borotsya s vneshnim dirizhirovaniem pravovoi situatsiyei v strane [Russia must fight external orchestration of the legal situation in the country]' (2010) *Rossiyskaya Gazeta* 246-5325.

author of numerous articles on the nature of Russian law, with special attention to the issue of sovereignty.⁹⁵ He indirectly approves of authoritarianism in Russia and legitimizes it from the point of view of legal philosophy and Russian history. He considers authoritarian rule (albeit restricted by the constitution) and *restricted internal sovereignty*⁹⁶ to be preferable for Russia.

Prior to 2022,⁹⁷ Zorkin did not accept the complete submission of Russian legal sovereignty in the sphere of human rights (as an example) to the European Convention on Human Rights (ECHR), but advocated a direct dialogue between the European and Russian institutions in order to establish new standards of human rights that would correspond to the values of all parties to the ECHR. Following the year 2022, his rhetoric became increasingly nationalistic, emphasizing a break from Western legal influences and advocating for a legal framework that aligns more closely with the interests of the Russian government. In his 2022 article, he states, “Either sovereignty or colony: there is no other possibility.”⁹⁸

This position echoes Dugin’s rejection of a universal authority to which Russia should submit. Thus, both authors advocate *Westphalian external sovereignty*, with its main parameters of non-intervention and equality of states. However, they both reject popular internal sovereignty based on the liberal tradition. Dugin clearly leans toward the Schmittian view of *absolutist internal sovereignty*. Zorkin is more of an adept of *restricted internal sovereignty*, since he accepts the existence of supranational organs that could limit state sovereignty (UN).

In the official modern Russian discourse, represented by the statements of politicians and public figures, the interpretations of sovereignty of both Dugin and Zorkin are vividly represented.⁹⁹ In accordance with these positions, the Russian understanding

⁹⁵ For example, Zorkin, (2010) *Rossiyskaya Gazeta* 246-5325; Zorkin, ‘Pravo Rossii: Al’ternativy i riski v usloviyakh global’nogo krizisa [Russian Law: Alternatives and Risks in a Global Crisis]’ (2022) *Rossiyskaya Gazeta* 139-8787; Zorkin, ‘Sudebnaia reforma Aleksandra ii: uroki dlia Rossii [Judicial Reform of Alexander and: Lessons for Russia]’ (2014) *Rossiyskaya Gazeta* 220-6492.

⁹⁶ The term refers to the type of sovereignty conceptualization formed in 19th-century Germany and France.

⁹⁷ When Russia was expelled from the Council of Europe.

⁹⁸ Zorkin, (2022) *Rossiyskaya Gazeta* 139-8787.

⁹⁹ For example, in a public blog post published in 2019, Senator Klishas cited Zorkin’s ideas as a point of reference: Klishas, ‘Suverenitet i novyye vyzovy s tochki zreniya prava [Sovereignty and new challenges from a legal perspective]’ (*Senator blog*, 2019) <<http://council.gov.ru/services/discussions/blogs/100773/>> accessed 14 November 2024. During the

of state sovereignty implies the existence of a multipolar world in which each state — whether a nation-state or a civilization-state — has its own legal system. In Russia's case, this system tends towards authoritarian rule based on the harmonious coexistence of the state and the church in which people value collective rather than individual rights while remaining free from intervention by other states. Above this horizontal system, only one legal authority is accepted: the United Nations. The dominant understanding of sovereignty is political.

III. Deconstructing the Chinese Concept of Sovereignty

The concept of sovereignty first emerged in Chinese political and legal discourse in the mid-19th century. It is considered that the first official translation of the term “sovereignty” (*zhuquan* 主权)¹⁰⁰ into Chinese was made by the American missionary William A.P. Martin in 1864.¹⁰¹ It appeared in his translation of Henry Weaton's *Elements of International Law* and was produced in the context of significant losses incurred by China in two Opium Wars¹⁰² which transformed the country into a semi-colony of Western nations.¹⁰³ From the moment of its introduction, the concept of sovereignty has been mainly used in its external meaning, given the initial experience of the Chinese government with international law, which involved a factual loss of

discussion, “Southeast Asia in a Multipolar World”, at the Eastern Economic Forum, Maria Zakharova (the Director of the Information and Press Department at the Ministry of Foreign Affairs of the Russian Federation) and Aleksandr Dugin proposed that the system of international relations that has developed in the Far Eastern region should become an organic element of a large Eurasian partnership, which aligns with Dugin's ideas of Eurasianism: Surinskaya, ‘Dugin, Zakharova i Malofeyev obsudili budushcheye mnogopolyarnogo mira [Dugin, Zakharova and Malofeev discussed the future of the multipolar world]’ (*Vedomosti*, 5 September 2024) <<https://www.vedomosti.ru/society/articles/2024/09/05/1060195-dugin-zaharova-malofeev-obsudili>> accessed 14 November 2024.

¹⁰⁰ The wordly meaning is “a right of an owner” or “main right.”

¹⁰¹ Mitchell, ‘Vast Imperium: The Origins of Modern Chinese Conceptions of Sovereignty and International Law in Guanxu Era Geopolitics’ (2021) *Tsinghua China Law Review* 23 (24 ff).

¹⁰² The first Opium War (1839-1842) was fought between China and Great Britain. The second Opium War (1856 - 1860) was fought between China, Great Britain and France.

¹⁰³ Yin, ‘Heavenly Principles? The Translation of International Law in 19th-century China and the Constitution of Universality’ (2017) *EJIL* 1005.

sovereignty¹⁰⁴ for nearly 100 years.¹⁰⁵ The stress on external sovereignty remains the main feature of Chinese modern understanding of the concept.

A. The Concept of Great Unity

Similar to Russia, there existed another local term that incorporated many features of the Western notion of sovereignty prior to the introduction of the concept of sovereignty into the Chinese legal lexicon. This was the concept of Great Unity/Great Unification (*dayitong* 大一统).

In the view of the modern Chinese political scholar Yue Chen, the Great Unity may be conceived of as a “kind of centripetal force or returning power, which is the spiritual core of the continuity of Chinese civilization and the vitality of the Chinese nation.”¹⁰⁶ In the era of the Chinese empire, this concept entailed the necessity of unification among the Chinese populace, both politically and culturally, under the rule of the Son of Heaven.¹⁰⁷ This was deemed essential for the maintenance of peace and adherence to the natural law.

The concept of Great Unification is believed to have originated in China as early as the 6th century BC or even earlier. It was mentioned by Konfucius, Mencius, and their followers. From their perspective (presented herein in a highly generalized manner), a state of peace and prosperity can be realized for the disparate and constantly fighting states only through a unification into a singular political entity, headed by a Son of

¹⁰⁴ The unequal treaties of 1842, 1858 and 1860 established the principle of extraterritoriality, which permitted citizens of Western nations to be exempt from local Chinese laws within China and instead be subject to the laws of their respective countries of origin. The largest Chinese ports and customs authorities were fully administered by foreigners. The system of extraterritoriality remained in place in China until the early 20th century, with most of these privileges being gradually abolished in the 1930s and 1940s as China’s national sovereignty was reasserted. See Fitzmaurice and Gragl, ‘Sovereignty, Territory, and Jurisdiction’, 162 (189 f).

¹⁰⁵ This period is called a “Century of Humiliation” in China.

¹⁰⁶ Chen, ‘论中国古代“大一统” 内涵的发展演变 [On the Development and Evolution of the Concept “Great Unity” in Ancient China]’ (2022) *中国边疆史地研究 [China’s Borderland History and Geography Studies]* 33 (43).

¹⁰⁷ The term “Son of Heaven” (*tianzi* 天子) in Chinese discourse refers to the emperor, signifying his divine authority and connection to the cosmos. Rooted in Confucian and Daoist thought, the title denotes the ruler’s mandate to govern as the intermediary between Heaven (*tian* 天) and Earth. See Pines, *The everlasting empire: the political culture of ancient China and its imperial legacy* (Princeton, 2012) 44ff.

Heaven/Chinese emperor.¹⁰⁸ In this context, the concept of “Chineseness” was of paramount importance, as “China” (*Zhongguo* 中国) referred not only to a geographical entity but also to a political and cultural center of human civilization. The Chinese believed that they alone had grasped the fundamental principles of natural law and the optimal way for people to live in the world harmoniously. These principles delineated a highly structured political system, wherein a Son of Heaven was at its pinnacle. The imperial rule was believed to be divinely sanctioned by the Mandate of Heaven (*tianming* 天命), as evidenced by the prominence of rituals (*li* 礼) that were thoroughly explained in Confucianism. This system was the only one that would allow for a harmonious life in the world under Heaven (*tianxia* 天下).¹⁰⁹

The Chinese political discourse of the Warring States period (475-221 BC) laid the philosophical groundwork for legitimizing the Great Unification in its universal aspiration. The unification was not only intended to bring together the traditional Chinese polities that had been in conflict since the 5th century BC, but also to incorporate neighboring territories and the alien periphery. *Rong Chengshi*,¹¹⁰ a recently unearthed manuscript which was written circa 300 BC, shows that even the beasts and birds were incorporated into the comprehensive framework of the ancient monarchs’ control. This represents the apex of the universalistic claim in the history of Chinese civilization.

The implementation of Great Unification was made possible centuries after it had been developed and mainly by the actions of two emperors: Qin Shihuang (259-210 BC), who united the warring states of China into the first empire and unified the legal administration, and Han Wu Di (156-87 BC), who extended the empire and strengthened the central government.

In accordance with the political practice of these emperors and their successors, the concept of the Great Unity exerted a profound influence on the formation of the Chinese polity, the distribution of authority within it, and its governance in both internal and external contexts. The internal aspect of the Great Unity was transmitted

¹⁰⁸ Pines, ““The One That Pervades the All” in Ancient Chinese Political thought: The Origins of “The Great Unity” Paradigm” (2000) *T’oung Pao* 280.

¹⁰⁹ For more on the history of political thought in China, see Sun, ‘观念史视域下的中国政治思想史 [The History of Chinese Political Thought from the Perspective of Conceptual History]’ (2021) *社会科学文摘 [Social Scienced Digest]* 99; Kim, *A History of Chinese Political Thought* (Cambridge, 2018).

¹¹⁰ Pines, ““ Political Mythology and Dynastic Legitimacy”, in Rong Chengshi’ (2010) *Bulletin of the School of Oriental and African Studies* 503 (507 ff).

through the centralizing reforms of Qin Shihuang. The external aspect was initially introduced through the construction of the Great Wall, and subsequently reinforced by the policies of emperor Wu Di of Han. As the task of state centralization had been largely completed by his predecessors, he was able to direct his attention toward external policies. During the sixth year of his reign, Wu Di was confronted on multiple occasions with rebellions along the southeastern border. In response, he employed a policy of brutal force and conquest. His own understanding of the external issue was straightforward and uncomplicated: “The Han Dynasty is the world’s leader; it is in charge of killing to control the lives of the people in the country, so that those who are in danger have hope for peace and those who are in turmoil can be cured.”¹¹¹

During the reign of Wu Di, the Middle Kingdom was established as the orthodox model for the Chinese empire. In the “us” vs. “them” dichotomy, the correct and orthodox state of China (*Zhongguo*) was pitted against the barbarians, who were perceived as a threat and were subsequently conquered and civilized. The civilizing mission of the state was manifested in the dissemination of Confucianism as the dominant philosophical and administrative paradigm in the newly acquired territories. With the exception of Mongolia and Tibet, China was successful in disseminating its orthodoxy throughout most of its newly acquired territories, which eventually became “civilized.” The territory of the Middle Kingdom under the Han Dynasty became the “core” territory of China. Over the course of the subsequent centuries, and as the empire expanded its territorial reach, this core territory continued to serve as the source of Confucian tradition and Chinese orthodoxy. Therefore, the size of the empire was constantly expanding in conjunction with the expansion of Chinese Confucian orthodoxy throughout 2000 years of Chinese history.

During this time, the concept of Great Unity was characterized by several key features, including its legitimizing function for the existence of China, the endorsement of autocratic rule, the empire as the ideal form of political organization of the Chinese state, the transmission of Chinese orthodoxy through Confucian political philosophy, and obedience to the Mandate of Heaven. In practice, unification (*yitong* 一统) served as a model of governance for China’s core territories. Diversified forms of governance were employed for peripheral areas on the outer borders of empire. The tribute system functioned as the mode of communication between the core and

¹¹¹Chen, (2022) *中国边疆史地研究* [*China’s Borderland History and Geography Studies*] 33 (43).

peripheral territories. Finally, China was perceived as the most developed and civilized polity on earth, which contributed to its unique civilizational connotation.

Over the course of more than two millennia of the existence of the Chinese empire, the concept of the Great Unity underwent only minor alterations, yet its autocratic nature remained largely intact. The success of the concept was concurrent with the growth and prosperity of Chinese civilization. In discourse, the fundamental principle of the Great Unity ensured that the Chinese civilization remained at the pinnacle of evolution, regardless of the ruling dynasty or the extent of conquests.

B. Sovereignty Transplantation and Adaptation

The transplantation of the concept of external sovereignty began during the latter decades of the Qing dynasty after the losses in the Opium Wars.¹¹² The notion of Great Unity appeared to be the nearest local representation of Western-borne internal sovereignty in its absolutist reading. However, the philosophical texts of Bodin, Hobbes, and other seminal figures in Western political philosophy were only fully translated into Chinese at a much later point in time.¹¹³ The concepts of internal and external sovereignty were introduced to China primarily through the lens of Japanese constitutional law and selected passages from German Idealism.

At the end of the 19th century, Chinese scholars became increasingly interested in Japanese education and constitutionalism due to Japan's rapid modernization following the Meiji Restoration (1868). Japan's successful transformation into a modern state, particularly its adoption of Western-style legal and political reforms, provided a model for Chinese intellectuals who sought ways to strengthen China in the face of Western imperialism. The Meiji Constitution (1889), in particular, influenced Chinese scholars who saw it as a potential blueprint for reforming China's governance. Japanese educational institutions also served as gateways to Western knowledge, which Chinese scholars sought to adapt to China's unique cultural and

¹¹² The Opium Wars (1839–1842, 1856–1860) were two conflicts between the Qing empire and Western powers, primarily the United Kingdom, over the trade of opium. The wars were precipitated by China's endeavors to curtail the opium trade, which had resulted in pervasive addiction and social unrest. The Chinese government sought to close its ports for trade, a move that was met with opposition from Western nations, as it would have had an adverse impact on their trade balances. See Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* 82 ff.

¹¹³ Jean Bodin's *Six Books of the Commonwealth* were translated into Chinese by Xu Diannian in 1939; Hobbes's *Leviathan* was translated by Liang Qichao in 1935; the full text of Rousseau's *Social Contract* was presented to the Chinese public by Deng Yanda in 1921. *Critique of Pure Reason* by Kant was fully translated only in 1960s, mainly by Mou Zongsan. Similarly, Locke's *Second Treatises* was not translated into Chinese until 1959, by Deng Yizhe.

political context. The classical Chinese concepts of *tianxia* world order, including the understanding of the empire as an optimal polity construction, were increasingly perceived as a rationale for China's military setbacks and its lack of advancement.¹¹⁴ Under these circumstances, the principal ideologies that informed the Chinese intellectuals' reformist agenda during the last decades of the Qing empire were socialism, nationalism and social Darwinism.¹¹⁵

Notable intellectuals such as Kang Youwei, Liang Qichao, and Sun Yat-sen advocated for a unified Chinese identity. They proposed that China should be conceptualized as a unified people, nation, and state, contrasting with the diversified governance of the ethnically heterogeneous regions that characterized the Qing empire.

Sun Yat-sen (1866-1925)¹¹⁶ remains the "father" of the Chinese nation to this day. He formulated the Three Principles of the People (1905), officially shifted the locus of power from the Son of Heaven to the people of China, and was the inspirational leader of the Xinhai Revolution that put an end to the more than 2000-year history of the Chinese empire. He posited that nationalism – the formation of a unified Chinese nation – was a prerequisite for the establishment of a genuinely sovereign Chinese state that could engage on an equal footing with the Western powers. He argued that a nation's external sovereignty is contingent upon its internal popular sovereignty within a nationalistic state and believed that only a nation united "as a rock"¹¹⁷ can become the source of power for the country.

After the revolution, the moral cosmological kingship, which was a central tenet of the Sino-centric worldview, was replaced by the republican state, which aspired to attain an equal position among the civilized nations.¹¹⁸ In essence, the revolution guaranteed restricted internal sovereignty¹¹⁹ for the Chinese people as it was envisaged by Sun Yat-sen. A republican government was established, safeguarding the

¹¹⁴ Zhang, *The Constitution of China: A Contextual Analysis* (Oxford, 2012) 2.

¹¹⁵ Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* 82 ff.

¹¹⁶ Chinese revolutionary leader and the founding father of the Republic of China.

¹¹⁷ Sun, *San Min Chu I: The Three Principles of the People People*, trans. Frank W. Price, ed. L. T. Chen (Taipei, 1963) 52.

¹¹⁸ Zhang, *The Constitution of China: A Contextual Analysis* 18 ff.

¹¹⁹ The primary defining characteristic of this form of sovereignty, as opposed to the popular sovereignty by Locke, was the disregard for individual rights. In fact, the Chinese conceptualization of democracy was more akin to restricted internal sovereignty. This is due to the acceptance of collective rights, general will, and limitation of the right to resistance. Ethnocentrism brings this type of restricted sovereignty particularly close to the French tradition.

democratic¹²⁰ and socialistic ideals of the emerging new Chinese society. Nevertheless, the autocratic style of governance persisted. Sun Yat-sen elucidated this phenomenon as a consequence of the transitional phase of governance on the path towards the establishment of a nationalist government for the entire unified country. The Communist Party, 40 years later, designated this as the “people’s democratic dictatorship.”¹²¹ The preference for authoritarianism as a style of governance persisted regardless of the political rationale, manifesting in both nationalist and communist regimes.

After 1912, Chinese diplomats began to place greater emphasis on the importance of Chinese sovereignty and its right to exist over the principle of *pacta sunt servanda* to modify the unequal treaties signed after the Opium wars. Over the course of the following three decades, Chinese diplomats spearheaded a relentless campaign to dismantle the remaining unequal treaties. This ultimately led to the restoration of China’s sovereignty over the majority of the territory¹²² that had previously constituted the Qing empire.¹²³

The conceptualization of sovereignty by the members of the Chinese Communist Party (CCP) – which assumed power in the country nearly four decades after the fall of the Qing dynasty – has significantly influenced the trajectory of the People’s Republic of China (PRC). Initially, the CCP espoused a rejection of sovereignty in favor of an idealized global order guided by social internationalism. However, over time, there has been a notable shift towards the acceptance of sovereignty as a fundamental principle to be asserted for the democratization of international society and as a means of defending China’s territorial integrity and national unity against Western imperialism.¹²⁴

The year 1989 proved to be a pivotal moment in Western history, as well as a defining year in the modern history of China. The suppression of the Tiananmen Square

¹²⁰ Sun’s comprehension of democracy was far from modern. In essence, this meant that the political decisions were derived from the collective will of the people. However, during the period of the Republic of China, active involvement in the legislative process was largely unfeasible. The system retained an autocratic style of governance. See Zhang, *The Constitution of China: a Contextual Analysis* 18 ff.

¹²¹ Constitution of the People’s Republic of China, 1954, Preamble.

¹²² Among the territories that remained outside China’s sovereignty until 1949 were Outer Mongolia, Taiwan, the Pescadores Islands, Hong Kong, Macau, Tannu Uriankhai, and the South China Sea Islands.

¹²³ See Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* 109 ff.

¹²⁴ Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* 152 ff.

protests¹²⁵ demonstrated that China's political landscape remained unaltered and that liberal democracy was not a viable option for its future development. The Chinese government anticipated that the only change to be made would be the adaptation of certain principles of capitalism and the free-market economy, as outlined in the formula "socialism with Chinese characteristics."¹²⁶ It is evident that this formula did not entail any alterations to the concept of *internal sovereignty*, which continues to be regarded as *restricted sovereignty* in its socialist interpretation.

Over the past decade, the concept of sovereignty within the context of Chinese communist ideology has been augmented by the influx of traditional Chinese thought. This has led to the resurgence of the concept of Great Unity. Zhengyuan Fu, a modern Chinese scholar, posits that there is a fundamental alignment between the official Marxism-Leninism-Maoism espoused by the PRC and the traditional Chinese imperial ideological orthodoxy.¹²⁷ The interpretations of sovereignty adopted by the current Chinese government remain closely aligned with those of *restricted internal sovereignty* under the republican government and Great Unity (analogy of *absolutist internal sovereignty*) under imperial rule. Additionally, there has been a notable resurgence of Confucian orthodoxy within philosophical discourse.

Moreover, reemergence of the concept of Great Unity has implications for civilizational discourse. There is a consensus among Chinese scholars and political elites that Chinese civilization will ultimately prevail in the annals of history. In this regard, the political theories that are currently in trend may well be superseded by

¹²⁵ The Tiananmen Square protests of 1989 constituted a series of pro-democracy demonstrations in Beijing, spearheaded primarily by students, intellectuals, and workers. The demonstrators demanded political reforms, freedom of speech, and an end to corruption. In response, the Chinese government declared martial law and subsequently deployed military force on June 3rd through June 4th, resulting in a violent crackdown that involved the use of troops and tanks to clear the square. This resulted in significant casualties. The event remains a contentious topic in China, with discussions and commemorations subject to significant censorship. See Human Rights Watch, 'The Tiananmen Legacy: Ongoing Persecution and Censorship' <https://www.hrw.org/sites/default/files/related_material/The%20Tiananmen%20Legacy_3.pdf> accessed 14 November 2024.

¹²⁶ The concept "socialism with Chinese characteristics" is explicitly included in the Chinese Constitution. It was first incorporated in the 1982 Constitution (Preamble), emphasizing China's commitment to a socialist path tailored to its national context under the leadership of the CCP. Subsequent amendments, such as in 2018, further entrenched this concept, reflecting its evolving ideological and practical significance, including the integration of policies and thoughts associated with leaders like Deng Xiaoping and Xi Jinping. See Boer, *Socialism with Chinese Characteristics: A Guide for Foreigners* (Springer, 2021).

¹²⁷ Fu, *Autocratic Tradition and Chinese Politics* (Cambridge, 1993) 127.

those that emerge in the future. However, only those that help to support the continuity of Chinese civilization will be instrumentalized by the Chinese government. Modern Chinese scholar Yang Gan refers to this as the preservation of “civilization autonomy/independence” in contemporary China.¹²⁸ One of the leading philosophers who proposes the Chinese model of international world order is Zhao Tingyang. In his works, he redefines the ancient Chinese concept of *tianxia* (“all under heaven”)¹²⁹ and suggests that it could become a new model of international relations as an alternative to post-Westphalian system.¹³⁰

However, in order to maintain and enhance its internal sovereignty in today’s realities, China consistently seeks to use the discourse of Westphalian external sovereignty to its own advantage. China’s imperative is to minimize the influence of international organizations on its sovereignty in the sphere of human rights and political regime choices.¹³¹ The only accepted sphere of state sovereignty limitation is the economic one, due to the increased attention that China pays to the World Trade Organization (WTO) and its Belt and Road Initiative.¹³²

As stated in the 2011 White Paper on China’s Peaceful Development,¹³³ the fundamental tenets of Chinese international policy remain consistent with the Five Principles of Peaceful Coexistence¹³⁴ and the concept of the Community with a

¹²⁸ Gan, 通三統 [*Synthesizing Three Traditions*] (Beijing, 2007).

¹²⁹ See Zhao, *All Under Heaven: The Tianxia System for a Possible World Order*, Volume 3 (Great Transformations) (California, 2020).

¹³⁰ In international relations, the post-Westphalian system often implies a shift from *Westphalian external sovereignty* to *limited external sovereignty*.

¹³¹ See Xue, *Chinese Contemporary Perspectives on International Law: History, Culture, and International Law* (Hague, 2012).

¹³² The Belt and Road Initiative (BRI), which was launched by China in 2013, represents a global infrastructure and economic development strategy that is designed to enhance connectivity and trade. The BRI comprises two principal components: the Silk Road Economic Belt, which encompasses overland routes linking Asia, Europe, and Africa, and the 21st-century Maritime Silk Road, which connects regions via sea routes. The BRI’s objective is to facilitate economic integration, develop infrastructure, and cultivate partnerships among participating countries. However, it has also been the subject of criticism regarding issues such as debt sustainability and geopolitical influence. See Shi and Li, ‘Aligning the BRI With Sustainable Development: A Regulatory Framework and Its Implementation’ (2023) *Journal of World Trade* 933; Johnson, ‘The Belt and Road Initiative: What is in it for China?’ (2018) *Asia & the Pacific Policy Studies* 40.

¹³³ White paper on China’s peaceful development, 2011.

¹³⁴ The Five Principles of Peaceful Coexistence represent a set of diplomatic principles initially proposed by China and India in 1954, which were designed to serve as a guiding framework for

Shared Future for Mankind.¹³⁵ In accordance with these directives, China's foreign policy is not geared towards establishing a hegemonic position in the world. Instead, it is pursuing a path of peaceful development, with the goal of fostering a "splendid" Chinese civilization. Ultimately, China's foreign policy is designed to create a peaceful international environment that will allow for a "bright future for mankind." As outlined in the paper, China is positioned as a key contributor to the development of a peaceful global order. China has been successful in its role as a broker of international peace deals due to its policy of non-intervention and impartiality during negotiations. The latest example of this is the Saudi-Iran agreement of 2023.

However, in light of the evolution of local political discourse over the past decade — which has increasingly drawn upon monistic ideals of *tianxia* as a pyramidal model for global governance — there arises a question as to whether China will ultimately align with the Westphalian multipolar international system. In any case, it seems likely that the understanding of sovereignty in China will be connected with the following expression of Xue Hanqin:¹³⁶

The relevance of principles of sovereignty and non-interference is not whether these terms should be reviewed and redefined in the abstract; rather it is a matter that touches on the political and legal fundamentals of states, raising the question of whether each state can genuinely exercise its sovereign right to determine its own path of development.¹³⁷

international relations. The five principles comprise the following: 1) Mutual respect for sovereignty and territorial integrity 2) Mutual non-aggression 3) Non-interference in each other's internal affairs 4) Equality and mutual benefit 5) Peaceful coexistence. See Ambekar and Divekar (eds.), *Documents on China's Relations with South and South-East Asia (1949-1962)* (New York, 1964).

¹³⁵ The Community with a Shared Future for Mankind is a concept introduced by Chinese President Xi Jinping, emphasizing global cooperation and mutual benefit. It advocates for shared development, peaceful coexistence, and collective efforts to address global challenges such as poverty, climate change, and conflict. The idea stresses the importance of inclusivity, equality, and respect for different cultures and sovereignty, positioning China as a leader in promoting a more balanced and harmonious international order. The concept was formally enshrined in the Chinese Constitution by the 2018 amendments. See Li, 'The Community with a Shared Future for Mankind', in Fang and Nolan (eds.), *Routledge Handbook of the Belt and Road* (London, 2019) 246.

¹³⁶ Xue Hanqin is a prominent Chinese jurist and diplomat, former Vice-President of the International Court of Justice.

¹³⁷ Xue, 'Meaningful Dialogue through a Common Discourse: Law and Values in a Multi-polar World' (2011) *Asian Journal of International Law* 13 (17 ff)

IV. Discourse in the Two Countries Compared

A. Similarities

1. Civilizational claim

One of the most apparent similarities between sovereignty interpretations in Russia and China is the emphasis placed on historicism and the civilizational character of the state. China has consistently invoked its history, and more particularly, the civilizational character of its polity. The notion of a civilizing mission is a key aspect of its China's historical identity. Xi Jinping has consistently portrayed China as a civilization that will chart its own political course, grounded in local social traditions and features.¹³⁸ The civilizational connotation has become a powerful tool for the justification of the selective acceptance of "universal" human rights by the PRC's government and courts, the proclamation of Chinese sovereign culture that should be preserved and respected, and the legitimization of Chinese sovereignty over the territory of today's China (including Taiwan, Hong Kong, Macao, Tibet, and the Paracel Islands). Since the early 2000s, there has been a notable increase in the prevalence of civilizational discourse in Russia as well. In terms of popularity, the civilizational discourse supplanted the liberal discourse of the 1990s, which advocated for limited external sovereignty, popular internal sovereignty, and Russia's gradual integration into the "Greater Europe."¹³⁹ The civilizational narrative, currently promoted by Aleksandr Dugin, offers means for Russia to regain its political sovereignty and pursue a distinctive trajectory for the country's development. In both countries, the dominant ideologues¹⁴⁰ are promoting the concept of a civilization-state.

2. Constitutional adherence to democracy?

At the constitutional level, both Russia and China today assert that the power within the state belongs to the people. This is in opposition to absolutist internal sovereignty in its classical form, as proposed by Bodin and Hobbes. Both countries select their parliaments and presidents through elections, thereby nominally fulfilling the requirements of popular internal sovereignty. Nevertheless, the two countries' respective interpretations of sovereignty diverge from the Western liberal standards

¹³⁸ Ju, 'Xi stresses building modern Chinese civilization' (*China Today*, 5 June 2023) <http://www.chinatoday.com.cn/ctenglish/2018/ttxw/202306/t20230605_800332970.html> accessed 15 November 2024.

¹³⁹ Sakwa, *Russia Against the Rest* (Canterbury, 2017).

¹⁴⁰ Aleksandr Dugin in Russia and Zhang Weiwei in China.

based on the Locke's internal sovereignty interpretation. Over the past decade, the processes of state centralization around country leaders who personify the general will of the nations have been cemented on the constitutional level in both countries. These processes are allegedly legitimized by the people's "democratic choice." In this regard, the Constitution of the PRC represents a traditional authoritarian constitution, offering less specificity, protecting fewer rights, and providing less judicial independence.¹⁴¹ Conversely, the Constitution of the Russian Federation maintains its democratic text but is nevertheless authoritarian in its interpretation.

3. Positive attitude towards autocracy

Furthermore, it is essential to examine the role of attitudes towards autocracy as a unifying element in the conceptualisation of sovereignty in Russia and China. In the Russian language, the term "autocracy" is not typically perceived in a negative light. Historically, supreme power – whether in the form of *tsarism*, *samoderzhavie* or imperial power – has been regarded as a positive force. In China, the moralization of the duties of the king or emperor was a prominent phenomenon. Subsequently, the "dictatorship of the proletariat" has also given rise to a form of authoritarianism. The modern glorification of President Xi, his personal political blog, and the creation of a public image of a wise and caring leader bear striking similarities to Mao's cult of personality.

4. Multinationalism

The modern states of Russia and China have inherited territories that were previously ruled by empires. This suggests the necessity of multiple nations coexisting under the ideological umbrella of state unity. Both countries have employed a variety of methods and ideologies to maintain this coexistence throughout history. In the case of China, this was the concept of Great Unity followed by Maoism. In the case of Russia, the preceding system was that of *samoderzhavie*, which was subsequently succeeded by the Leninist ideology. This latter system served to unify the various Soviet nations into a single union. At the present time, in both countries, the notion of a unified civilization comprising all peoples is held to be of greater importance than the political rights of individual nations. The right of self-determination and secession to constituent nations is denied in both cases.

¹⁴¹ Elkins, Ginsburg & Melton, *The Content of Authoritarian Constitutions* (Cambridge, 2014) 162.

5. Schmittianism

Finally, the Russian and Chinese modern interpretations of sovereignty exhibit support for the theories put forth by Carl Schmitt. This is a striking similarity between Russia and China. The renewed interest in the works of the German political theorist is largely driven by a focus on his key concepts such as “decisionism,” “state of exception,” “sovereign,” and “friend-enemy distinction.” However, there is a notable absence of attention paid to the role that Schmitt played in the Nazi movement. In alignment with Schmitt’s ideology, Aleksandr Dugin, a leading ideolog of Russian neo-Eurasianism, publicly advocated for a direct confrontation between Russia and the collective West based on the friend-enemy distinction as early as 2014.¹⁴² In 2023, he discussed the trajectory of the sovereign development of the Russian state, which, in his opinion, is contingent upon the evolution of the Russian understanding of law, philosophy, culture, and state sovereignty. Dugin insists that these disciplines must be detached from the Western tradition and advocates for decisionism in its purest form.¹⁴³ In China, a growing interest in the work of Carl Schmitt has led to the emergence of a phenomenon known as “Schmitt fever.” A preliminary search of major Chinese academic databases reveals the discovery of hundreds of new articles per year that mention Schmitt by name.¹⁴⁴ At present, three distinct scholarly traditions in China are engaged with Schmitt’s ideas: the “Chinese Path,” the “New Left,” and the “Liberals.” Chen Duanhong is the principal ideologist of the “Chinese Path,” which is the most prominent school of political thought in China. He advocates a conceptualisation of legitimacy based on the principles of sovereignty, national security and the state of exception. This approach is evident, for instance, in his support for the 2020 national security law in Hong Kong.¹⁴⁵

In both Russia and China, Carl Schmitt’s ideas have been utilized as a foundation for the legitimization of authoritative state power that is constrained by the tenets of the local constitution but not by the influence of foreign institutions. In this configuration, even local constitutions may be modified based on the needs of the sovereign in a state of emergency. The application of Schmitt’s theories regarding external

¹⁴² Dugin, *Yevraziyskiy revansh Rossii [Eurasian Revenge of Russia]* (Algoritm, 2014).

¹⁴³ Dugin, speech at SPIEF, 2023, <https://www.youtube.com/watch?v=cvT1_TA4v-w> accessed 26 August 2024.

¹⁴⁴ Mitchell, ‘Chinese Receptions of Carl Schmitt Since 1929’ (2020) *Penn State Journal of Law & International Affairs* 181.

¹⁴⁵ Chen speech at the National Constitution Day Symposium, 2020, <<https://www.readingthechinadream.com/chen-duanhong-national-security-and-the-constitution.html>> accessed 26 August 2024.

sovereignty can be primarily attributed to the extrapolation of Russian and Chinese influence in Europe and Central Asia, respectively.

B. Differences

1. Origins of autocracy

Historically, China and Russia exhibited disparate patterns of centralization of power within their respective polities. The principalities of Rus' (9-12 centuries AD) were predominantly democratic in nature, as evidenced by the preeminence of the popular assembly, or *veche*, as the primary organ of state power. It was only following the Mongolian incursion and the subsequent usurpation of the tradition of receiving authority from a higher power that the Russian princes began to perceive centralized governance as a vital necessity for the state. In stark contrast to this, the first Chinese Kingdoms were defined by the centrality of kingship in the process of state formation. In other words, the Confucian orthodoxy presents autocratic rule as the primary rationale for the establishment of the state. Kings were not merely regarded as a constituent element of the natural order – as evidenced by the appellation *tianzi*, or Son of Heaven, which could signify the intermediary role of the king within this and other realms – but also as dispensers of moral governance.

2. Religion

The role of religion may be perceived as a difference in Russian and Chinese perceptions of state sovereignty.

The role of Christianization in the formation of the Russian centralized state is of paramount importance. Following the fall of Byzantium, Russia came to be regarded as the embodiment of a “Third Rome,” a role that was seen as fulfilling a messianic mission. In modern discourse, the role of the church is one of great symbolism. This is particularly evident in the context of the civilizational narrative. Furthermore, Russian Orthodoxy is regarded as a primary constituent of national identity.

China has never been subject to the same degree of influence from Western religions as other countries. The most prominent religions in China, namely Buddhism and Daoism, never attained a position that would resonate on the political level. The role of state ideology or political philosophy was secured during the imperial era by Confucianism. Nevertheless, it cannot be considered a religion in its full sense, as it lacks a distinct institutional base. The Confucian cultural heritage plays a similar role in Chinese orthodoxy as Byzantine Christianity does in Russian orthodoxy. However, it has never been institutionalized, nor does it possess any distinctive religious

practices that would characterize a religion. Instead, it has remained at the level of a philosophical teaching or worldview, which has become an integral part of Chinese identity.

3. Worldview

One of the most significant differences between Russia's and China's interpretations of external sovereignty can be found in their traditional political perceptions of the world order.

Russia has been engaged in a continuous struggle for recognition as a "civilized nation" since the inception of its centralized state. The history of the 20th century demonstrates that Russia frequently perceived itself as a European nation on a trajectory of perfection. This illustrates that the traditional Russian understanding of the world was centered on alignment with European civilization, which was regarded as the pinnacle of political evolution. A robust theoretical foundation for embracing and advancing Russia's distinctive civilizational trajectory emerged only with the advent of Eurasianism.

In contrast, China's traditional worldview has been Sino-centric. In imperial China, the system of *tianxia* was widely embraced as an inherent global order, with China and its emperor at its core. Following the geopolitical setback that commenced with the Opium Wars and persisted roughly until the end of the 20th century, China reasserted its position in the global political landscape as a prominent power. It has since publicly advocated for cultural and political multipolarity, the equal sovereignty of nations, and non-interference.

4. Sovereignty transplantation process

The process of sovereignty transplantation unfolded in disparate ways in Russia and China, leading to different weight accorded to internal and external parameters of sovereignty in these countries.

In the case of Russia, the concept entered the realms of political philosophy and constitutional law mostly in the 19th century through the translations of European scientific and philosophical works. The concept was not widely embraced during the Soviet era, largely due to its Western "bourgeois" origin. Following the dissolution of the Soviet Union, Russia initially espoused a liberal interpretation of limited external sovereignty and popular internal sovereignty, aligning with the Western liberal tradition. However, in the face of the threat of disintegration, Russia has reverted to a relatively conservative understanding of internal sovereignty that largely bases itself

on the traditional parameters of *samoderzhavie* representing a mix of *restricted* and *absolutist internal sovereignty*. Such features of the concept include constitutionalism, state centralization, general will, collective rights, morality of law, and the absence of a right to resistance and come close to the French and German political tradition of the 19th century. Having experienced the growing threat of NATO enlargement over the past 30 years, Russia has also changed its view of external sovereignty. It has moved from accepting limited external sovereignty to a mix of *Westphalian* and *exclusive external sovereignty*. The latter is largely influenced by the legacy of Soviet-style power politics and the need to protect the western borders of the Russian civilization-state.¹⁴⁶ The interconnection of internal and external sovereignty and adherence to conservatism represent the primary characteristics of the sovereignty transplantation process in Russia.

China's experience of the transplantation process is markedly distinct from that of Russia. China was compelled to grapple with the nuances of international legal language, with external sovereignty emerging as a pivotal concept in the wake of the two Opium Wars that precipitated the semi-colonization of China. Since then, external sovereignty has been regarded as a defining feature of Chinese sovereignty. From the era of diplomacy (post-1912) to the present, China has consistently championed *Westphalian external sovereignty*, advocating for non-interference and equality of states in the international arena. The prominence of the external sovereignty discourse is also reinforced by the fact that internal sovereignty conceptualization is not a prominent feature of communism, which remains the dominant official ideology in China. In addition, new ideas of international world order – inspired by the traditional ideas of *tianxia* – project the *cosmopolitan* view of the *external sovereignty* of the Chinese nation. With regard to internal sovereignty conceptualization, China, on one hand, inherited a *restricted* understanding of *internal sovereignty* rooted in the socialist philosophical tradition stemming from 19th-century Europe. On the other hand, the return of classical philosophy and the notion of Great Unity suggests strong support of *absolutist internal sovereignty*.

¹⁴⁶ As President Putin asserts in his 2021 article, Russia's civilizational claim can be seen as applicable within the borders of Russia, Belarus, and Ukraine. See Putin, 'On the historical unity of Russians and Ukrainians', 2021, <<http://kremlin.ru/events/president/news/66181>> accessed 14 November 2024.

C. Evolution of the Sovereignty Concept: A Comparative Perspective

Following a comprehensive examination of the sovereignty conceptualizations in Russia and China, it is now possible to compare their trajectories of development with each other, as well as with the historical development of the initial sovereignty concept in Europe.

	16-18 th centuries	19 th century	20 th century	21 st century
Europe	Absolutist	Absolutist and restricted	Restricted and popular	Popular
Russia	Samoderzhavie	Samoderzhavie and restricted	Restricted and absolutist (under Soviets) Popular (1993-1999)	Restricted and absolutist (conservatism and centralization under Putin)
China	Great Unity (6 th century BC – 18 th century AD)	Great Unity	Restricted and absolutist (both in RoC and PRC)	Restricted and absolutist (communism with Chinese characteristics under Xi Jinping)

Table 1. Evolution of internal sovereignty in Europe, Russia, and China

	16-18 th centuries	19 th century	20 th century	21 st century
Europe	Westphalian	Cosmopolitan and exclusive	Exclusive and limited	Limited
Russia	Samoderzhavie	Samoderzhavie and exclusive	Westphalian and exclusive (under Soviets) limited (1993-9)	Westphalian and exclusive (especially after 2008)
China	Great Unity (6 th century BC - 18 th century AD)	Great Unity and Westphalian	Westphalian (under nationalist and communist governments)	Westphalian and cosmopolitan (Community with a Shared Future for Mankind)

Table 2. Evolution of external sovereignty in Europe, Russia, and China

From the comparative tables it becomes evident that both Russia and China predominantly align with the parameters of *Westphalian external sovereignty* in their views on external sovereignty. Nevertheless, the discourse in both countries also espouses particular parameters associated with alternative types of sovereignty. These are *cosmopolitan internal sovereignty* for China, and *exclusive external sovereignty* for Russia. The primary distinction between Russia and China in their conceptualizations of external sovereignty can be attributed to the former's partial adherence to the principle of exclusive sovereignty. This is a consequence of its status as an ex-Soviet great power under perceived NATO threat. In contrast, the latter's espousal of cosmopolitan sovereignty is exemplified by its promotion of universal unity under *tianxia*. This discrepancy is indicative of a significant incoherence in the foreign relations agendas of the two nations.

Upon examination, the two countries' conceptualization of internal sovereignty exhibits a greater degree of overlap than that observed in the interpretation of external sovereignty. Both nations demonstrate the acceptance of *restricted* and *absolutist*

internal sovereignty. The sole distinguishing characteristic between Russia and China within the realm of internal sovereignty is Russia's commitment to popular internal sovereignty under its constitution. Nevertheless, this commitment has proven to be elusive, largely due to shifts in Russia's political direction and rhetoric since 2008.¹⁴⁷

The tables also demonstrate that the transplantation of the European concept of sovereignty exerted the most significant influence on the discourse in the studied countries during the first century following the transplantation. From the end of 19th century, both China and Russia have largely adopted the European conceptualizations of sovereignty. However, a century later, both China and Russia began to turn to local political philosophies as a source of political knowledge as European discourse evolved toward popular internal and limited external sovereignty. These philosophies (Eurasianism in Russia and Confucianism in China) are used to reinterpret the concept of sovereignty in light of the cultural developments, characteristic of their respective societies.

V. Conclusion

This study demonstrates that the concept of sovereignty has evolved significantly through space and time. From its original formulation in 16th-century France, it has become a universally accepted legal norm and one of the fundamental principles that underpin the modern world order. One of the factors contributing to the contemporary quandary surrounding the interpretations of sovereignty is the plurality of the trajectories of the concept evolution across diverse political cultures. These trajectories are becoming increasingly divergent from the European line of development, a sign of the enhancement of multipolarity in the international arena.

¹⁴⁷ The 1993 Constitution of the Russian Federation was drafted in a liberal spirit. It declared Russia a democratic, federal, and secular state (Art. 1), proclaimed the protection of the rights and freedoms of Russia's citizens the supreme value (Art. 2), guaranteed the equality of all constituent entities within the federation while affirming their autonomy in certain spheres (Art. 5), and proclaimed the supremacy of international law over domestic law (Art. 15(4)). However, between 1993 and 2008, Russia underwent a significant transformation in its political trajectory, marked by evolving interpretations of the Constitution, democracy, and liberal rights in an increasingly autocratic manner. This period is characterized by the consolidation of power under an increasingly centralized executive authority, which stands in contrast to the initial promise of liberal constitutionalism that emerged in the aftermath of the Soviet Union's collapse. One might posit that the final departure from the liberal way of Russian development occurred after President Putin's speech at the 2008 Munich Security Conference, in which he presented a sharp critique of the U.S.-led unipolar world order and outlined key grievances and principles that shaped Russia's stance on external and internal policies. See Putin, Speech at the Munich Security Conference, 2008, <<http://en.kremlin.ru/events/president/transcripts/copy/24034>> accessed 15 November 2024.

Currently, the concept of sovereignty serves Russia and China as an ideal instrument for promoting the conception of the independent coexistence of civilization-states, legal relativism, and the supremacy of local cultural values over liberally formulated legal norms and alleged Western dominance. However, the choice of sovereignty interpretation, in the case of Russia, is rather dictated by (a) the local conservative attitude to law and politics together with (b) the Soviet heritage of a great power politics envisaged in an exclusive reading of external sovereignty; conversely, in case of China, the sovereignty interpretation is linked more strongly to (a) the traditional legitimization of a centralized state rule and (b) the diplomatic heritage of the Republican Era. Thus, from the perspectives of political philosophy and the history of law, the two countries have different grounds for their interpretations of sovereignty. Yet, both of them repudiate the final stage in the progression of the European conceptualization of sovereignty, namely *popular internal* and *limited external sovereignty*.

It is suggested that as long as the sovereignty concept persists in shaping the international order, attempts to curtail or restrict it are likely to be rebuffed by those nations for whom the *status quo* is optimal. This phenomenon is especially evident in contexts where Westernization is perceived as a potential threat to the “sovereign equality” of nations. In light of the ongoing transition to a multipolar world order, the concept of sovereignty, with its inclusivity, is poised to persist as a bulwark for the voices opposing eurocentrism. These voices appear to be increasingly incorporating local political conceptions into an evolving understanding of sovereignty (the concept of *samoderzhavie* in Russia and the notion of Great Unity in China). In this particular context, there is a need to understand these distinctive and unique political cultures keen to share their insights and knowledge with the global community. This may be essential in order to navigate the unknown waters of the newly forming international order.

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