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Citation for published version:

Mac Amhlaigh, C 2010 'Book Review: Panu Minkkinen *Sovereignty, Knowledge, Law*' University of Edinburgh, School of Law, Working Papers, SSRN.
<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1683490>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

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University of Edinburgh
School of Law

Working Paper Series

No 2010/30

Book Review:

Panu Minkkinen

Sovereignty, Knowledge, Law (Abingdon: Routledge, 2009)

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Edinburgh School of Law Working Paper Series
University of Edinburgh

Abstract

This Working Paper is a review of Panu Minkkinen *Sovereignty, Knowledge, Law* (Abingdon: Routledge, 2009).

Keywords

Sovereignty, Political Theory, Legal Theory, Philosophy, Post-modernism.

Panu Minkkinen, *Sovereignty, Knowledge, Law*, Routledge, 2009, x + 178

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The question of the relationship between power and law is one of the enduring controversies of modern liberal political and legal theory. The struggle for supremacy between law and power in modern society can be framed in a variety of ways, including democracy *versus* rule of law, security *versus* liberty, and might *versus* right. This conflict also runs to the core of the concept of sovereignty where it is expressed in the more abstract register of sovereign power *versus* the sovereignty of the norm. More specifically, the tension in the register of sovereignty represents rival attempts to give content to the notion of ultimate authority, the hallmark of the concept since Bodin and Hobbes. In his recent book, *Sovereignty, Knowledge, Law*, Panu Minkkinen interrogates the concept of sovereignty from both sides of the tension—norm and power—as well as, more abstractly, an epistemology of sovereignty.

In the first section of the book, the epistemic foundations of the supremacy of the norm are investigated through a deliberate focus on continental, particularly Germanic, legal theory. The first chapter is a study of the work of Hans Kelsen, who provided perhaps the clearest modern account of sovereignty as norm through the concept of the *Grundnorm* presupposed in relation to the Constitution. Kelsen famously equated the state—and by implication sovereignty—with its legal system, rejecting the dualism of juristic and sociological conceptions of the state common in contemporary legal theory. What Minkkinen adds to debates on Kelsen's work is an illuminating account of Kelsen's methodology in developing his pure theory of law. As Minkkinen emphasises, Kelsen's project of developing a legal *science* necessitated considerable groundwork on a scientific methodology. This would then clear the way for a pure normative science, a pure theory of law, cleansed of the impurities of political theory or sociology. For Kelsen, Minkkinen concludes, the *method* of legal science was as important, if indeed not more important, than its subject (26).

This discussion of Kelsen is complemented in Chapter 3 with a discussion of Kant's critical philosophy, where Kelsen's debt to Kant is made readily apparent. Reading Kant's philosophy of law as a 'preamble to the law of knowledge in general' (45), Minkkinen makes a convincing case in support of the contention that before Kant, the very idea of a science of law was impossible. In this Kantian scheme, sovereignty does not relate to the factual power of one social agent over another but rather entails a 'conceptual framework for normative validity as the transcendental precondition of law' (47). As with Kelsen, Minkkinen finds in Kant a claim that the very possibility of law and legal system necessitates a normative

framework within which norms, not raw power (49) reign supreme, and the sovereignty to legislate stems from an *a priori* principle inferred from reason. (52). Thus,

Sovereignty, the supreme power to which one submits oneself, is a *postulate* in a similar way as the postulates concerning freedom, the immortality of the soul and the existence of God are in the second critique (58).

Thus making the conceptual step from Kant's *a priori* law to Kelsen's *Grundnorm* a small one. By way of juxtaposition, Chapter 2, sandwiched between Kelsen and Kant, provides an account of alternative juristic theories by Kelsen's contemporaries, particularly those of the German constitutional jurist George Jellinek, who, unlike Kelsen, was comfortable with the dualistic conception of the state and propagated the heresy that constitutional law was part of a broader theory of the state.

The second section of the book explores the relationship between sovereignty and forms of power, juridical, political and factual. In Chapter 5, the notion of sovereignty as a form of political power which founds but also preserves the state is considered through a discussion of the concept of constituent power as well as Carl Schmitt's work on political ontology and the nature of sovereignty. The sovereignty-power relationship is further nuanced in Chapter 6 where the reader is given a rather exhaustive (and exhausting) overview of Michel Foucault's work on the typologies of power in contemporary society; classic sovereignty, discipline and governmentality, which operate according to their own internal rationality. There is nothing particularly new in these discussions for those who are familiar with Schmitt and Foucault. However, what Minkinen adds is a depth to the analysis by drawing on original-language texts as well as shedding light on perhaps more neglected aspects of their work. For example, his assertion that Foucault's notorious call for the metaphorical decapitation of the monarch was not a call to dispense with law and sovereignty but rather represented a 'new rationality of law that annexes itself to the judicial rationality' (97) and the section on Schmitt contains an interesting, if somewhat unsettling, discussion of the spatial element of Schmitt's conception of the state (89–93). Chapter 4, which opens this section, does seem somewhat misplaced, however, relating as it does an ethos of sovereignty. Here the reconciliation of sovereignty in terms of power with the norms of international law is analysed and a broad sweep through the development of international law is provided, concluding with a slightly obscure discussion of Derrida's resolution of the putative paradox of the plenary sovereign state bound by the norms of international law as a contest of rival sovereignties. However, the link or possible tensions between sovereignty as a form of power (political or otherwise) with the notion of sovereignty *qua* status entailing

rights and duties is not developed here, notwithstanding its centrality to the question of the essence of sovereignty.

The final part of the book, the acephalous subject, is framed by the political philosophy of Hegel. Here, the focus is on Hegel's notion of the state as an ethical substance analogous to the family, constituting the 'manifest substantial will revealed to itself that knows and thinks itself and accomplishes what it knows and in so far as it knows it'; presaging a dense and difficult series of chapters. Given that sovereignty is an essential characteristic of the state, sovereignty is also a manifestation of 'self-knowledge and of self-consciousness in ethical being' (115) reasons Minkkinen. This theme of sovereignty as (self-) knowledge is then worked out in subsequent chapters through various (mainly French) Hegelian thinkers. Kojève's exegesis of Hegel receives particular attention including his notion of recognition as being (121) and his definition of sovereignty as the 'plenitude of subjective rights' (126), that is sovereignty as absolute freedom in the absence of any duty or obligation. This is then further explored in the subsequent chapter through the work of the French mystic Georges Bataille. For Bataille, in an echo of the potential unpredictability of Schmitt's exception, sovereign moments

take place as inner experiences, highly subjective sensitivities concerning the unknown that, in essence, are antagonistic in relation to the idea of an architectural perfection that scientific thinking represents (135). a

The final chapter then moves through the necessarily ever-abstract implications of sovereignty as knowledge through Lacan and Freud; Lacan, in particular ending on a sceptical note as to the structural possibility of pure sovereignty given that this radically autarkic conception is shackled to the symbolic order (156), primarily expressed here in terms of language.

Unpicking the premises and point of these difficult works in this section is not a job for the faint-hearted and while an admirable effort is made here by Minkkinen, one gets the feeling that it may have been as much an exercise of conceptual ground-clearing for himself as an attempt to elucidate or critique the Hegelian canon for a broader audience. The chapters move with an alarming alacrity from Hegel to Kojève on Hegel, to Bataille on Kojève on Hegel with excursions on Blanchot on Bataille and Nancy without so much as a pause for breath. These are challenging works even for the initiated, and only those with a good familiarity of the general contours of the works will have the interest (and the stamina) for this final section. For this reviewer, it was simply too quick a journey through too dense material in order to make the attempt worthwhile.

More generally, the book lacks a central argument or position in relation to the various discussions referenced, beyond the rather thin umbrella of sovereignty. In his exposition of the work of different thinkers on sovereignty over the centuries, from Bodin to Bataille, Minkkinen provides a summary of various parts of their work, relying on large chunks of direct quotation to back up a particular point or assertion. The themes and theorists are dealt with rather schematically and the book is perhaps therefore best approached as a reference book, where one can dip in and out of sections in order to glean insights into, for example, Hegel's master/slave dialectic and how it relates to the concept of sovereignty rather than to be read in a linear way (which a reviewer must invariably do). Even allowing for this interpretation of the purpose of the book, however the text is, at times, a little dense, and some of the expositions of the works under consideration are almost as prolix as the original works themselves (clearly not helped by the fact that it relies heavily on hefty chunks of direct quotation) thereby limiting somewhat its utility as a reference book.

Moreover, the structure of the book is a little haphazard. The seemingly Weberian titles of each section would suggest that the book deals methodically with the various dimensions of sovereignty: heterocephalous—not being subject to higher authority (putatively reflecting the internal/constitutional dimension of sovereignty); heterocephalous—literally 'multi-headed' (the international realm and the sovereign equality of states); and the acephalous or 'headless' subject (capturing the radical openness of sovereignty as knowledge). However the mismatch between section title and content quickly becomes apparent when the discussion in each section wanders off in various directions, sometimes jumping between themes within the same section, sometimes introducing various musings on unrelated topics (an interesting but inexplicable aside on the common etymology of the words 'hostility' and 'hospitality' on pp. 93-4 being a case in point). Notwithstanding the fact that the book's signposting is slightly awry, the substantive discussions of sovereignty's legal, political and metaphysical dimensions are considered and illuminating, if at times, heavy-going.

In sum, in *Sovereignty, Knowledge, Law*, Minkkinen has produced an impeccably researched volume which would be recommended for those with a very particular interest in the philosophical dimensions of sovereignty, power and authority. It provides a very good overview of wide-ranging works, including some more obscure writings on the subject, and contains some fascinating insights into the broader questions regarding its subject matter. However it is not the easiest read and the casual reader with only a passing interest in these questions will find the book somewhat esoteric and would be better directed elsewhere.

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