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# Between Either/Or and More or Less: Sovereignty Versus Autonomy Under Federalism

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*The concept of sovereignty arose with the appearance of the modern state. It has survived because the state has survived as the seemingly necessary basis for political order. The persistence of cultural and ethnic nationalism and international anarchy has given the state a new lease on life. Countertendencies, including a reaction against the monarchical absolutism associated with sovereignty, have given rise to federal systems offering a more flexible, if less certain, combination of government on a large scale with relative autonomy on a smaller, local scale. Given modern realities promoting interdependence and making autarky both difficult to sustain and a threat to the rights of minorities, it may be better to settle for the "more or less" of federalism and autonomy than the "either/or" of the state and sovereignty.*

"In the modern world," Reinhard Bendix observed twenty-five years ago, "the state is the dominant political institution."<sup>1</sup> This generalization still holds, but it can no longer be said to be as robust as it was then. Although the state remains the matrix of domestic and international politics, pressures toward internal devolution and external interdependence are giving new life to alternatives to statehood, notably to the concept of autonomy under federalism. For the time being, the state, with its claim to sovereignty, remains the predominant paradigm. International relations are considered anarchic because they involve relations among states—actors recognizing no authority higher than their own except for treaty commitments they may revoke.<sup>2</sup> Within the territorial boundaries claimed by the state, associations with political aims are considered legitimate if they accept subordination to its ultimate authority, but outlaws if they reject subordination. State sovereignty is therefore defined as "the identification and monopoly of paramount control in a society."<sup>3</sup>

<sup>1</sup>Reinhard Bendix, "Introduction," *State and Society: A Reader in Comparative Political Sociology*, ed. Reinhard Bendix with the collaboration of Coenraad Brand, Randall Collins, Robert G. Michels, Hans-Eberhard Mueller, Gail Omvedt, Eliezer Rosenstein, Jean Guy Vaillancourt, and R. Stephen Warner (Boston: Little, Brown, 1968), p. 7.

<sup>2</sup>See the well-known formulation of the role of the state in the anarchy of international relations in Kenneth Waltz, *Man, the State, and War: A Theoretical Analysis* (New York: Columbia University Press, 1969).

<sup>3</sup>Morton H. Fried, "The State," *International Encyclopedia of the Social Sciences*, ed. David Sills (New York: Macmillan and Free Press, 1961).

Modern developments have heightened awareness that both the idea of the state and its corollary, the idea of sovereignty, are not so much necessary categories of political reality as artifacts of history created to serve the needs of an earlier time. They arose in the West in the early modern period (i.e., especially from the sixteenth century onward) in response to the final collapse of the Holy Roman Empire and the emergence of ambitious princes and cultural nationalism. The state served pressing needs for security and trade within conventionally demarcated territorial boundaries. From this Western base, the belief in the primacy of the sovereign state spread throughout the world, carried by colonialism and eventually turned against the colonizers by movements for national independence.

Even as it was spreading, the idea of the sovereign state was also being challenged, modified, and in some cases abandoned. At first, this conception of the political order was closely associated with absolute monarchy and often with mercantilism. As republican and free-market tendencies came to the fore, sovereignty was sometimes rejected along with absolute monarchy. Instead, constitutions were adopted which limited state power in order to protect property rights, assigned authority to separate branches, and sometimes provided for federalism to protect against overcentralization. In other cases, the idea survived in the new form of popular sovereignty. On the international plane, the notion of state sovereignty remained unchallenged, even though the reality in the balance-of-power era was that smaller states were often so dependent upon larger states that their sovereignty was more a legal fiction than a reality.

In recent times, many developments have raised important and troubling questions about the continuing appropriateness, not to say the indispensability, of the concept of sovereign statehood. During the Cold War, the disparity of power in the era of nuclear weapons and intercontinental delivery systems led to a bipolar confrontation between more or less hegemonic alliances led by two "superpowers"—a development representing a *de facto* compromise of independent state sovereignty. In the same period, economic relations as well were characterized as hegemonic, and their stability was thought to be a function of the control exercised by the two superpowers as hegemons over their respective alliances. Meanwhile, domestic frictions in multi-lingual, multi-religious, and multi-ethnic states have caused serious internal divisions, in some cases leading to partition, in others to persisting civil war and separatist terrorism, and in still others to the adoption of territorial federalism. The end of the Cold War has led to the resurgence of nationalism and subnationalism in eastern and central Europe. Meanwhile, at both regional and global levels, a growing sense of the reality of interdependence has arisen, due to many factors. These include the concern for collective security, the advantages of freer trade, the newly felt need for concerted ecological policy, as well as the impact of cultural homogenization, migrations, and vastly improved communication. While some of these developments evoke demands for micro-states, others make the whole notion of separate statehood seem anachronistic.

In view of these developments, the question deserves to be raised of whether the notion of sovereign statehood as the *sine qua non* of modern politics retains its descriptive and normative validity. It is the contention of this article that while the sovereign state arose for compelling historical reasons, recent developments are

making it less and less appropriate and an obstacle to further progress in resolving or at least stabilizing domestic and international conflicts. At least in some cases and in some respects, the alternative of autonomy under federalism is more appropriate and a more flexible instrument of accommodation. Thus, the “either/or” of sovereign statehood is often less realistic and constructive than the “more or less” of autonomy under federalism.

This contention is by no means new, but neither is it yet fully appreciated. Many modern analysts have pointed out that federalism has already become an alternative to state sovereignty in a number of countries, including the United States, Canada, Australia, and West Germany, and that ethnic and territorial conflicts elsewhere can best be addressed by adopting proposals for autonomy rather than by creating mini-states.<sup>4</sup> Ivo Duchacek has emphasized the association between federalism and democracy, noting that federalism is “a territorial expression of the core creed of democracy.”<sup>5</sup> As belief in the ideal of democracy spreads, more and more countries can be expected to adopt federalism as a domestic expedient and to become more open to it internationally. There is bound to be resistance, however, to the call to abandon a notion that has become ingrained and that seems, however mistakenly, to promise stability because it connotes certainty about the locus of ultimate authority. The very word “sovereign” has long carried an aura of assurance that often turns out to be illusory: Under the pressure of domestic tensions or of external dependency, all that seems so solid can easily melt away, leaving both authority and power either fragmented or controlled from without. By contrast, federalism is a continuing exercise in living with uncertainty. This very flexibility, however, is its strength. As a “co-ordinate division of powers” between a general authority and regional authorities,<sup>6</sup> modern federalism has the advantage of allowing for a blend of interdependence and autonomy not readily permitted by statehood and sovereignty. This blending makes it increasingly appealing under modern conditions.

In order to promote appreciation of this contention, we will review the development of the idea of sovereign statehood in Western political theory, from its emergence under monarchy to its modification under the pressures of republicanism, and then seek to show that the alternative of autonomy under federalism is often a better device for meeting modern needs.

### THE ORIGINS OF SOVEREIGNTY

The case for sovereignty was first made four centuries ago in the vacuum caused by the final collapse of the Holy Roman Empire, when the struggles that ensued for control of the emerging nation states of Europe erupted in dynastic and civil wars. In view of the threats posed by religious schism and by efforts to protect the

<sup>4</sup>See especially the writings of Daniel J. Elazar, including *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987) and his edited volume, *Self Rule/Shared Rule: Federal Solutions to the Middle East Conflict* (Ramat Gan, Israel: Turtledove, 1979).

<sup>5</sup>Ivo D. Duchacek, *The Territorial Dimension of Politics Within, Among, and Across Nations* (Boulder, Col.: Westview, 1986), p. 96.

<sup>6</sup>As defined in the now classic study by Kenneth C. Wheare, *Federal Government* (London: Oxford University Press, 1946), p. 3.

traditional rights of the hereditary nobility and medieval constitutional authorities like the *parlements*, the French “Legists” of the middle decades of the sixteenth century had a plausible case for locating *imperium* in monarchy. If royal authority had not been endowed with supreme and indivisible rule, anarchy and civil war would have been unavoidable. Writing at the height of the Huguenot revolt in 1576, even moderate constitutionalists like Jean Bodin became converted to their cause.<sup>7</sup>

The concept of sovereignty was directly associated with the acceptance of the validity of the territorial state as the primary unit of government. The state was assumed to be the highest practical unit of government, much as the *polis* had been assumed to be the highest possible unit of government by the ancient Greeks. Bodin made the idea of sovereignty a central consideration in an attempt to settle the question of how, not necessarily by whom, the territorial state must be organized for the sake of order. “The question that he asked, in other words,” as Julian Franklin has recently observed, “was what prerogatives a political authority must hold exclusively if it is not to acknowledge a superior or equal in its territory.”<sup>8</sup> There must be, Bodin answered, a single concentrated focus of power and authority that is both “absolute and perpetual.”<sup>9</sup> It is “not limited either in power, or in function, or in length of time.”<sup>10</sup> As the source of law, the sovereign must be, in the phrase he made well known, *legibus solutus*, or not subject to law. In view of the fact that rule was exercised by princes, it was a short step to a confusion of sovereignty with their rule, and Bodin took it:

Since there is nothing greater on earth, after God, than sovereign princes, and since they have been established by Him as His lieutenants for commanding other men, we need to be precise about their status (*qualité*) so that we may respect and revere their majesty in complete obedience, and do them honor in our thoughts and in our speech. Contempt for one’s sovereign prince is contempt toward God, of whom he is the earthly image. That is why God, speaking to Samuel, from whom the people had demanded a different prince, said “It is me they have wronged.”<sup>11</sup>

As Bodin acknowledged, however, sovereignty did not require or necessarily imply absolute monarchy. The authority of the monarch might be constrained by moral law and by customary law, including the law of succession, and by the subjects’ right of property. In some circumstances, sovereignty might belong to the assembly of the people, though Bodin was quick to add that it would be unwise to allow “deliberation on affairs” to popular assemblies, effectively making the only institutional alternative to monarchy an assembly of gentlemen, such as the Venetian Great Council.<sup>12</sup>

Precisely because the ideas of the state and of sovereignty proved to be even more adaptable than Bodin supposed, they survived attack over several centuries and

<sup>7</sup>See Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 2 (Cambridge, U.K.: Cambridge University Press, 1978), pp. 254-301.

<sup>8</sup>Julian H. Franklin, “Introduction,” *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, ed. Jean Bodin (Cambridge, U.K.: Cambridge University Press, 1992), p. xv.

<sup>9</sup>*Ibid.*, p. 2.

<sup>10</sup>*Ibid.*, p. 3.

<sup>11</sup>*Ibid.*, Book I, Ch. 10, p. 46.

<sup>12</sup>*Ibid.*, pp. 50, 54.

came to be recognized as serving indispensable purposes, both for legal theory and for political practice. The state, in Max Weber's canonical phrase, came to be defined as that body possessing the legitimate monopoly of the means of physical coercion in a given territory. Sovereignty—in the thinking not just of John Austin and later positivists, but of international lawyers as well—was understood to be both the source of the legal sanctions governing the use of physical coercion and an attribute that serves as the basis for the recognition of the state by other “sovereign states.”

### CRITICISMS OF SOVEREIGNTY AND ITS DEFENSE

The notion of sovereignty was attacked almost from the outset on two particular grounds: (1) some commonwealths were said to have mixed constitutions and, therefore, to defy the rule that all states must have an indivisible sovereign; (2) because absolute monarchy seemed all too convenient an expression of sovereignty, the idea was at first considered incompatible with parliamentary government and the liberty of the individual. Both attacks were fended off, but they left the case for sovereignty weakened, opening the way for efforts to dispense with it.

Bodin himself was well aware of the first objection, but he contended that it was based on a mistaken view that systems of government could function successfully without an ultimate source of power and authority. He noted that commonwealths in which kings consult the estates of the realm were said to have mixed forms of government in which there was no locus of sovereignty. He disposed of these cases by pointing out that the kings of England, France, and Spain often imposed laws without asking the consent of the estates. He faced a more formidable challenge in rejecting this objection as it applied to Rome, inasmuch as such venerable authorities as Polybius and Cicero had attributed Rome's republican perfection to its mixed constitution. He dismissed this case too, by denying that republican Rome in fact had a mixed constitution. The Senate had the power to deliberate and to decree, he contended, but the ultimate power to order rested with the people of Rome, in accordance with the ancient Roman saying, *Imperium in magistratibus, auctoritatem in Senatu, potestatem in plebe, maiestatem in populo* (Command in the magistrates, authority in the Senate, power in the commons, and sovereignty in the people).<sup>13</sup>

Bodin's dismissal of Rome's mixed constitution was either disingenuous or a result of a failure to appreciate the realities of shared power. His aim after all was to identify sovereignty as a real exercise of power, not as some remote or metaphysical source of authority that might express itself in tacit consent to whatever actual rulers did. He was determined to show that wherever power was exercised, it always emanated directly from some single indivisible source. This way of formulating the question strongly suggested that sovereignty required absolute monarchy.

That very effort to make sovereignty absolute, yet limited, provoked a second objection which Bodin did not address. His claim that the sovereign could tax

<sup>13</sup>Ibid., p. 53.

subjects was inconsistent with his implied admission that subjects could not be taxed without their consent (lest the restrictions on the taking of their property be transgressed). This inconsistency had little consequence at first, but ultimately became a ground for resistance by revolutionaries bent on transferring sovereignty from the king to the people.

The first theorists of sovereignty were hardly in favor of that sort of transfer. Although Bodin acknowledged that sovereignty might reside in the people, as in the case of the Roman republic, he would not have considered it legitimate or conducive to good order for subjects to deprive their kings of sovereignty or hold them accountable for their exercise of power. Monarchs held their titles on the presupposition that sovereignty had been irrevocably conferred. Similarly, when Thomas Hobbes continued the work Bodin had begun, he could describe his task as the definition of the “rights of states, and duties of subjects.”<sup>14</sup> Like Bodin, he was particularly anxious to show that the insistence on liberty of conscience by dissenting religious sects was a recipe for anarchy. He too was preoccupied with the need to establish the principles by which political communities could be protected against the uncertainties and internal weakness due to conflicting claims of authority, especially those between *regnum* and *sacerdotium* that had riven Europe since the investiture controversy of the eleventh century.

Perhaps because they did not appreciate the degree to which the concern with the right of property would become a metaphor for the larger concern with the liberty of the subject and a justification for revolution, neither Bodin nor Hobbes saw it as a serious threat to sovereignty. Hobbes gave reassurance that subjects would enjoy liberty in those things “by the laws praetermitted,”<sup>15</sup> but argued that obedience to the sovereign was the *sine qua non* of security—the necessary basis for any liberty at all on the part of the subject.

### POPULAR SOVEREIGNTY

Nevertheless, in developing the notion of the social contract, Hobbes opened the door to a restatement of the classical notion of the popular basis of sovereignty. Even legists implied that the authority the king exercised could be understood in two ways, either as *majestas* or *regnum*, recognizing a distinction between the authority the king exercised on behalf of the state and the authority he exercised in his own personal right. Roman political theory had assumed that the authority of the emperor had ultimately been conferred by the people. The legists were reluctant to make this explicit, but some early modern theorists, especially Johannes Althusius, made it very explicit by defining the social pact as a pact among the (“consociational”) groups that compose society.

By so doing, Althusius took Bodin’s concept of sovereignty, as Carl J. Friedrich pointed out, “and in a most ingenious fashion . . . made the organized community,

<sup>14</sup>Thomas Hobbes, “Introduction,” *De Cive or the Citizen* (New York: Appleton Century Crofts, 1949), p. 11.

<sup>15</sup>Thomas Hobbes, *Leviathan* (Harmondsworth, U.K.: Pelican Books, 1968), Part II, Ch. 21, p. 264.

that is the 'people,' the sovereign."<sup>16</sup> Althusius did not go so far as to propose that popular sovereignty be institutionalized by a revival of republicanism. Instead, he attempted to counter Bodin's elevation of monarchical power by arguing that sovereignty should be exercised by the estates and the corporations. This effort was doomed to fail because it amounted to a wistful attempt to reconstitute medieval society at a time when the state was emerging out of the pressures to overcome the fragmentation of society into hierarchical corporate segments. The centralization of power in the hands of absolute monarchs reinforced apprehensions, such as those of Althusius, and continued to make medieval corporatism look more and more attractive. Thus, Montesquieu pointed out that in preventing a concentration of power, "intermediary powers" had preserved liberty. Like Althusius, he too vainly proposed that the role of the estates be revived.

Later champions of republican and parliamentary government, including John Locke, sought to change the language of politics altogether so as to eliminate any need to define the state or locate sovereignty. Locke wrote not of the state but of "civil government" and avoided any reference to sovereignty. Locke's insistence that rights were natural and that political power originated in an effort to protect these rights both rationalized and encouraged efforts to restrict the power claimed in the name of sovereignty. Jean-Jacques Rousseau's version of the social contract had an equally momentous effect in promoting the belief in popular sovereignty. Locke's argument that authority originates with the formation of civil society and is given to a representative and accountable legislature as a fiduciary responsibility was readily assimilated to the idea of popular sovereignty. Rousseau was much more explicit in calling for popular sovereignty because he saw no need to restrict it by natural law. As Maurice Cranston has noted, he agreed with Hobbes "that sovereignty must be absolute or nothing, but he could not bring himself to accept Hobbes' notion that men must choose between being governed and being free."<sup>17</sup> The *Social Contract* was his answer to Hobbes in the sense that he revised the concept of sovereignty to make it apply to the entire body of citizens acting in their capacity as citizens rather than subjects, cooperating to express their common or general will. They could thus be governed and free (or self-determining) at the same time.

The constitution of the Fourth French Republic, adopted in 1946, made Rousseau's identification of democracy with sovereignty explicit: "National sovereignty belongs to the French people. No section of the people nor any individual may assume its exercise." In an echo of the Declaration of the Rights of Man, the Constitution adds, "The principle of all sovereignty rests essentially in the nation."<sup>18</sup> In this form, it seems to protect the individual liberty guaranteed by the

<sup>16</sup>Carl J. Friedrich, "Introduction," *Politica Methodice Digesta of Johannes Althusius (Althaus)* (Politics Methodically Set Forth of Johannes Althusius) (Cambridge, Mass.: Harvard University Press, 1932), p. xci.

<sup>17</sup>Maurice Cranston, "Introduction," *The Social Contract*, by Jean-Jacques Rousseau (Harmondsworth, U.K.: Penguin Books, 1968), p. 27.

<sup>18</sup>Stanley I. Benn and Richard S. Peters, *Social Principles and the Democratic State* (London: George Allen and Unwin, 1959), p. 334.



Declaration; in principle, however, and disassociated from such a declaration, popular sovereignty becomes a recipe for a tyranny of the majority.

That danger appeared to be a real one not just to opponents of the French Revolution but even to some participants in the American Revolution. As Tocqueville remarked, "The dogma of the sovereignty of the people came out from the township and took possession of the government; every class enlisted in its cause; the war was fought and victory obtained in its name; it became the law of laws."<sup>19</sup> Tocqueville learned the phrase "tyranny of the majority" from the Whigs (or former Federalists) he met in America, and made it the focus of his anxieties for the future of American democracy.

### SOVEREIGNTY CONFOUNDED: THE AMERICAN CASE

These fears were misplaced, however, because the framers of the U.S. Constitution were not at all enamored of popular sovereignty. The first American national constitution, the Articles of Confederation, left sovereignty more in the hands of the constituent states than of the new federal government. The subsequent Constitution of the United States made sovereignty all but impossible to find in the American system of federalism. Formal sovereignty presumably inhered in the constituent authority that had created and could amend the constitution, but amendment was deliberately made cumbersome, and sovereignty, or what there was of it, was parcelled out among the three branches of the federal government and the states. The authority of the national government was expressly conferred and limited by the specification of enumerated rights, which the government was forbidden to deny. Even the ever insightful Tocqueville failed to appreciate the degree to which the dogma of popular sovereignty had been vitiated in its implementation. "The people, he observed, reign over the American political world as God rules over the universe. It is the cause and end of all things; everything rises out of it and is absorbed back into it."<sup>20</sup> Given the care with which the framers of the U.S. Constitution hedged and restricted popular sovereignty, however, they may better be understood to have sought to avoid establishing any locus for sovereignty. They knew well that William Blackstone had put sovereignty in the king, lords, and commons of England, and therefore effectively in Parliament, and they sought instead to put it nowhere definitively.

### THE SURVIVAL OF STATE SOVEREIGNTY

Elsewhere, partisans of the French Revolution readily associated sovereignty with monarchy and condemned both of them indiscriminately. But the demand for liberty did not succeed in overthrowing the felt need for a fixed authority, which was so well met by the concept of sovereignty. Prudent monarchs agreed to respect the customary, common law, or natural rights of their subjects and to share their

<sup>19</sup>Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence (Garden City, N.Y.: Anchor Books, 1969), Part I, Ch. 4, p. 59.

<sup>20</sup>*Ibid.*, p. 60.

authority with parliaments. From the petitions of right in the seventeenth century to the various bills of rights in the eighteenth, legal challenges and enactments resulted in the limitation of the power of the sovereign, first in England and then elsewhere, as the example spread.

In the nineteenth century, anarchists like Pierre-Joseph Proudhon renewed the attack on both the state and sovereignty. In the early decades of the twentieth century, the anarchists were joined by a more respectable chorus of pluralists (such as the younger Harold Laski, G. D. H. Cole, J. N. Figgis, and Léon Duguit), who denied that “the omnicompetent state” could require the exclusive or ultimate loyalty of all “subjects” without competing for their affections against other associations, such as churches and trade unions. These challenges too were rebuffed successfully.

The sovereign state survived these attacks because civil discord and the persistence of war made its existence the sine qua non of order, just as its earliest advocates had argued. Liberals sought to remove the threat of state despotism and the dangers to liberty of popular sovereignty by constitutionalizing the authority of the state so that it could not infringe on basic rights. Everywhere, however, the state grew more and more “institutionalized” as the exclusive framework for public law and government, territorial security, and economic management.

This domestic institutionalization was reinforced by the failure to achieve a degree of supranational organization capable of overriding state sovereignty. “Idealists” imagined a world under international law in which sovereignty and statehood were respected and “realists” defined the international system as anarchic, making states the principal actors in it and sovereignty, wherever it was actually enforced, the mark of statehood.

The birth of the modern state system, of which theorists like Bodin and Hobbes may be said to have been the midwives, was momentous for Europe and afterward for the rest of the world. The Peace of Westphalia in 1648 created the modern system of international relations, a system in which many states, each sovereign in its own territory, coexist as equals without subordination to any higher authority. The system rests on international law and the balance of power—“a law,” as Leo Gross has observed, “operating between rather than above states, and a power operating between rather than above states.”<sup>21</sup> Before then, the imperial system that had more or less united medieval Europe had formed one of four great imperial systems in the world, the others being those of the Asian Han, Kushan, and Parthian kingdoms.<sup>22</sup> The transformation of this empire in the West into an order of independent states was eventually to affect these other empires as well. As the new European states undertook great efforts of exploration and expansion, they spread ideas of nationalism which challenged the remnants of the other empires. World War I led to the defeat of the newer Ottoman Empire. The European powers created

<sup>21</sup>Leo Gross, “The Peace of Westphalia: 1648-1948,” *International Law and Organization: An Introductory Reader*, eds. Richard A. Falk and Wolfram F. Hanrieder (Philadelphia: Lippincott, 1969), pp. 53-54; quoted in Gianfranco Poggi, *The Development of the Modern State* (Stanford, Cal.: Stanford University Press, 1987), p. 89.

<sup>22</sup>*Ibid.*, p. 88.

new empires of their own, but eventually lost them. Waves of decolonization in Africa, Asia, and the Middle East made the system of independent sovereign states universal, even though, in some cases, the state systems remained fragile and poorly institutionalized.

In the decades and centuries that followed, this system has been extended to virtually the whole world. The end of imperialism left the state as the predominant political organization in regions where it was a foreign imposition upon tribal and personalistic forms of rule. Balance-of-power strategies first created alliances in which dependent states forsook formal sovereignty in order to enjoy subvention and protection from richer and more powerful states. Potentially the most far-reaching change has been the creation of international organizations, first the League of Nations and later the United Nations, designed to provide a measure of collective security without challenging the principle of national sovereignty.

### MODERN TENDENCIES: THE CHALLENGE TO STATE SOVEREIGNTY

The rise and persistence of anomalous mixed systems of government like that of the United States of America, in which power is deliberately divided and federated, began to put both related concepts of the state and sovereignty in question. If the Swiss Confederacy could be dismissed as a small and marginal aberration, the example of the United States could not be so readily ignored; and as early as 1793, in a landmark opinion of the Supreme Court (*Chisholm v. Georgia*), Justice James Wilson noted pointedly that “to the Constitution of the United States the term sovereignty is totally unknown.”

More recently, the controversy over sovereignty was renewed, less for political than for intellectual reasons, but without leading to rejection. Concern for the clarification of political language led Stanley Benn and Richard Peters to initiate the modern discussion by remarking that sovereignty “is an ambiguous word, and the theories associated with it are complex and often puzzling.”<sup>23</sup> Benn delineated six different meanings of the term and found them so lacking in coherence and empirical relevance as to make a “strong case for giving up so protean a word.”<sup>24</sup> The ambiguity that Benn and Peters had in mind was mainly the expression of the conflict between *de jure* and *de facto* interpretations. As they point out, the claim to exercise supreme legal authority is not necessarily or always coincident with the ability to enforce obedience to that authority, whether by consent or coercion.<sup>25</sup> Indeed, diplomacy has often been bedeviled by the question of whether to consider *de facto* sovereignty the basis of *de jure* sovereignty, also known diplomatically as “legitimacy.” This ambiguity is a secondary effect of the ambiguous character of

<sup>23</sup>Benn and Peters, *Social Principles and the Democratic State*, p. 257.

<sup>24</sup>Stanley I. Benn, “The Uses of ‘Sovereignty,’” *Political Studies* 3 (June 1955): 109-122; reprinted in Wladyslaw J. Stankiewicz, ed., *In Defense of Sovereignty* (New York: Oxford University Press, 1969), p. 85.

<sup>25</sup>Benn and Peters, *Social Principles and the Democratic State*, pp. 257-263.

the modern state, to suit which the term sovereignty was designed. The theorists of the state begged the question of whether the order designated as sovereign was legitimate—or, in other words, whether it was acceptable to those whose lives and liberties were being ordered.

In the decade of the 1960s, Francis H. Hinsley and Alexander d'Entrèves separately answered this complaint and made persuasive cases for retaining the term. Sovereignty, Hinsley argued, reflects the important effort to convert power into authority and thereby set limits to the exercise of coercion by the state.<sup>26</sup> While admitting that increasing social complexity has made it more difficult to locate sovereignty and even brought the existence of a single sovereign authority into question, he concluded that because of the persistence of statehood, sovereignty remained an indispensable notion.<sup>27</sup> D'Entrèves took a similar line, pointing out that the late medieval jurists who first “invented” sovereignty sought, under Roman influence, to make law the authoritative expression of supreme power, defining sovereignty as both the foremost attribute of a plurality of states and the basis of their justification.<sup>28</sup> Rather than abandon the notion of sovereignty as obsolete in a world of fragmented and interdependent states, d'Entrèves warned that it remained necessary in order to reduce friction and prevent civil wars in unstable states with “mixed constitutions”<sup>29</sup> and to restrain the exercise of force in political organizations aiming to transcend the state: “Surely all the delicate mechanisms by which the power of the Nation-State has been brought under control may equally be needed if the World-State ever comes into being.”<sup>30</sup> With good reason and strong support, Wladyslaw Stankiewicz therefore concluded in 1969 in an introduction to a book of essays called *In Defense of Sovereignty* that, for all its ambiguities, sovereignty remains a vitally needed concept because it provides a unifying theory in which the interests and purposes of any political order can be defined and made the basis of the exercise of power and of the obligation of those subject to it to respect that exercise of power.<sup>31</sup>

As persuasive as these arguments were in supporting retention of traditional usage, empirical developments continued to bring it into question. As the Cold War fell to freezing point, a more or less bipolar universe was said to have come into existence in which many legally sovereign states had become subordinate in military and economic respects to two “hegemonic” superpowers, the United States of America and the Soviet Union. A “balance of terror” resulting from the possession by both sides of nuclear weapons and intercontinental delivery systems was said to have imposed “hegemonic stability” in a formally anarchic world of independent sovereign states.<sup>32</sup>

<sup>26</sup>Francis H. Hinsley, *Sovereignty* (New York: Basic Books, 1966), pp. 25 and *passim*.

<sup>27</sup>*Ibid.*, pp. 227-228.

<sup>28</sup>Alexander P. d'Entrèves, *The Notion of the State: An Introduction to Political Theory* (Oxford: Oxford University Press, 1967), pp. 6, 92-93.

<sup>29</sup>*Ibid.*, p. 117.

<sup>30</sup>*Ibid.*, p. 131.

<sup>31</sup>Wladyslaw J. Stankiewicz, “In Defense of Sovereignty: A Critique and Interpretation,” *In Defense of Sovereignty*, ed. Wladyslaw J. Stankiewicz, pp. 3-38.

<sup>32</sup>Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World's Political Economy* (Princeton, N.J.: Princeton University Press, 1984), p. 130.

Once again, however, empirical developments appeared at first to have rescued sovereignty from impending oblivion and even vindicated it. No sooner had a thaw in relations between the two superpowers loosened the ties binding the Western alliance and all but destroyed them among the satellites and subordinated nationalities of the Soviet bloc, than previously suppressed feelings of national and subnational independence have come to the fore. In the former Soviet Union, these feelings have produced a political implosion. Throughout eastern Europe, the same feelings have been reasserted, and the loosening of Moscow's grip has led to the reunification of Germany and the division of Yugoslavia, the latter formerly held together by fear of the Soviet Union and by what was widely but erroneously thought during the time of "Titoism" to be a fervent nationalism overriding religious and ethnic loyalties. Czechoslovakia, newly restored to the independence it was given at Versailles, almost immediately split into two separate sovereign states. Similar fissiparous tendencies are at work elsewhere in the world and could lead to the breakup of other ethnically, religiously, and/or linguistically diverse states, including Iraq and Lebanon and possibly even Spain and Canada. The multinational (or transnational) entities, moreover, have not proven altogether immune to state authority, as the negotiation of agreements on monetary policy, tariffs, and trade makes plain.

### COUNTERVAILING FORCES

This latest turn of events is apt to provide only a temporary reprieve, however. Although recent developments seem to suggest that whatever sovereignty may mean, belief in it is becoming more, not less, pronounced, countervailing forces make its prospects uncertain. It is by no means clear, for example, that either the large states that will remain intact or the smaller new states to emerge from the current process of disintegration can possibly become as fully sovereign as the nation-states of Europe sought to become when the concept of sovereignty first emerged in the sixteenth and seventeenth centuries. If sovereignty requires not only recognition of legal control over a certain defined territory but also military and economic independence and, no less critically, a separate sense of cultural identity, then sovereignty may become harder and harder to find in the modern world. Modern technologies of all sorts, from space surveillance satellites to transportation and communications systems, make geographic and physical frontiers much more permeable than they were when oceans, rivers, mountains, and man-made walls promised isolation and protection. Economic growth and stability require the concerting of monetary and trade policies and often the assistance of global lending agencies; a growing cultural homogeneity is eroding folk cultures and creating a global mass culture. The intermingling of peoples, products, and ideas, especially among the most economically advanced countries, makes insular nationalism hard to sustain despite its emotional appeal. The need to adopt formal and informal systems of cooperation for the sake of security (such as the North Atlantic Treaty Organization [NATO]) and economic exchange (such as the Common Market and now the European Community) has not abated with the end of the Cold War. In addition, there are signs of a growing recognition of the need to protect both human

rights and environmental health and safety. As a result of all of these forces, *de jure* and *de facto* systems of federalism are being adopted that limit if they do not altogether replace sovereignty.

Today, however, it is not just the experience of one or two countries, whether small or large, that is shaking the foundations of the state and sovereignty. The threats are arising from both centrifugal and centripetal forces that are being felt in different ways and in different degrees in many parts of the world. The centrifugal forces appear most visibly in renewed national and subnational claims for independence or at least special status. Some of these have arisen in the wake of the Cold War, as the grip of Soviet imperialism has been loosened, and are now apparent in the former territories of the Soviet Union and in several of its erstwhile satellites in eastern Europe. These developments do not necessarily show that statehood and sovereignty are obsolete; on the contrary, they entail demands for the proliferation of statehood and sovereignty rather than for their abolition. In doing so, however, they call traditional claims of both statehood and sovereignty into question and raise the problem of an almost infinite regression of both statehood and sovereignty. As some ethnic and cultural minorities form new states, they are apt to assert their sense of liberation and national identity in ways that seem threatening to citizens who constitute a minority within these states, like the 25,000,000 ethnic Russians living in the newly independent states of the former Soviet Union. In the most notorious case, that of Yugoslavia, the Muslim minority has become the victim of efforts of expulsion and even genocide described as "ethnic cleansing." Such groups are bound to feel that they can protect themselves only by seceding and achieving their own statehood or at least acquiring specially protected status. As a result, the nations of eastern and central Europe may break apart still further, forming states out of little more than territorial enclaves. The resulting patchwork of real and aspiring separate national states could well prove highly unstable. Similar centrifugal tendencies are also appearing elsewhere, as the quest to preserve traditional identities from cultural homogenization arouses passions in Spain, Canada, and in newly decolonized nations in the Middle East, Africa, and Asia. These pressures are putting new strains on the ability of the state to uphold the claim to exclusive control over "its own" territory, and they suggest a need in many cases to reconstitute both statehood and sovereignty to make them less "either/or" choices and more opportunities to accommodate diversity under federal systems allowing a significant degree of autonomy.

The centripetal forces come from growing economic interdependence, from progress in communications which promotes cultural universalization, from the need to achieve protection against the increasing lethality and range of modern weaponry, and lately from a growing perception of planetary solidarity induced by threats to the environment that cannot be dealt with except through concerted action. Transnational organizations like the Universal Postal Union, trade regimes for coffee and other commodities, and quasi-cartels like the Organization of Petroleum Exporting Countries (OPEC) have been seen as harbingers of a new functional transnationalism that is moving the world "beyond the nation state."<sup>33</sup>

<sup>33</sup>Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organization* (Stanford, Cal.: Stanford University Press, 1964).

Similarly, the rise of the transnational corporation is said to have put "sovereignty at bay."<sup>34</sup> The United Nations, even though its charter acknowledges the principle of state sovereignty and its very existence and effectiveness depend on the willingness of independent states to pay its bills and supply its peacekeeping forces, nevertheless represents a step toward an unprecedented form of international government in which the privileges and immunities of state sovereignty are subject to abridgement in the name of collective security and human rights. The federative arrangements of the European Community, while still highly controversial and uncertain in character and extent, also presuppose some sacrifice of traditional independence.

### FEDERALISM AND AUTONOMY

Taken together, these trends make imperative a reexamination of the reliance on statehood and sovereignty as the sine qua non of political organization. More positively, they support the desirability of resurrecting a concept that is even older than sovereignty—the concept of autonomy (or *autonomia* in the original Greek usage) which, coupled with federalism, provides an alternative to statehood and sovereignty yielding the benefits of integration while preserving individual and collective liberty.

In the modern world, sovereignty is unlikely to disappear,<sup>35</sup> but it will have to coexist with new forms of government in which mechanisms of federalism will provide for more limited forms of self-determination by states and subordinate entities. These forms of self-determination are best described as forms of autonomy rather than sovereignty. The ancient ideal of autonomy (*autonomia*) began as a recognition of the relative independence of one *polis* from another.<sup>36</sup> It was initially transformed by natural rights/social contract theory from a corporate to an individual ideal, but nationalism has again made it a corporate ideal as well. If corporate *autonomia* is to be a viable and peaceful ideal, however, the autonomous entities, whether they are sovereign or only semi-sovereign states, must become associated in federations that will recognize and protect their right to autonomy while requiring measures to protect common interests and fundamental human rights.

It would be too simple, even in some respects altogether wrong, to say that in view of both the international integration and domestic disintegration now occurring or in prospect, sovereignty is already an obsolete notion. Even domestic disintegration, as in the case of the former Soviet Union, only leads in the short run to the multiplication of sovereignties, not to their elimination. Formally or legally, and in power-political terms as well, the nation-state remains the central actor. But

<sup>34</sup>Raymond Vernon, *Sovereignty at Bay: The Multinational Spread of U.S. Enterprises* (New York: Basic Books, 1971).

<sup>35</sup>But see Joseph A. Camilleri and Jim Falk, *The End of Sovereignty?* (Aldershot, U.K.: Edward Elgar Publishing, 1992), p. 9, for the view that "the theory of sovereignty serves us poorly" already.

<sup>36</sup>See the discussion of *autonomia* in Martin Ostwald, *Autonomia: Its Genesis and Early History* (Chico, Cal.: Scholars Press, 1982) and Cynthia Farrar, *The Origins of Democratic Thinking: The Invention of Politics in Classical Athens* (Cambridge, U.K.: Cambridge University Press, 1988), pp. 103-104.

the new ties that have lately developed among nation-states, such as those reflected in the United Nations, the European Community, NATO, and the Organization of American States (OAS), have begun to introduce a significant degree of federalism and interdependence. These changes still fall far short of visionary dreams, but they complicate the old picture of the political world as a collection of isolated and independent sovereignties.

If subnational conflicts are to be addressed successfully, experiments will need to be made with systems of political autonomy that fall well short of traditional sovereignty but derive strength from federalism. As Daniel J. Elazar has remarked, "The homogeneous nation-state embracing a population of individual citizens undivided by permanent group ties, which was the goal of the sovereignty movement as it grew out of the European context, has simply not been achieved, nor is it likely to be in the foreseeable future."<sup>37</sup> Autonomy under federalism offers a constructive alternative. Thus, the return of constitutional democracy to Spain has led to its reconstitution as "the state of the autonomies." In accordance with the 1978 constitution, it now consists of a national government with primary responsibility for economic and security matters and seventeen autonomous communities, seven of them constituted by single provinces, several with "super-autonomous" status enabling them to preserve regional languages and cultures and even to send their own foreign trade missions to other countries.<sup>38</sup> A similar scheme of autonomy might have made more sense than complete independence for many peoples of the former Soviet Union and the other East European states. Even in well established states, such as Canada, France, and the United Kingdom, demands for autonomy are being made on behalf of linguistic, cultural, or regional groupings. In Cyprus, some form of autonomy will surely have to be granted to both Greek and Turkish communities if that troubled island is to become more tranquil. An arrangement for autonomy (under formal Argentine sovereignty) might have been an acceptable enough solution in the Falklands/Malvinas controversy to have averted war. The residents of Hong Kong would surely prefer autonomy to full absorption into China. It may also be the only practical basis for resolving the claims of Kurds and Palestinians, two cases worth closer examination.

Having seen earlier promises of an independent Kurdistan ignored, the Kurds of Iraq ask not for independence but only for autonomy within Iraq. The creation of Kurdistan would require the extremely unlikely agreement of several countries—Turkey, Syria, and Iran, as well as Iraq—to lop off parts of their territory. Autonomy within Iraq may be more feasible if the United Nations continues to play a supervisory role with respect to Iraq's compliance with the agreement to end the war over Kuwait. If Kurdish autonomy can be achieved, a people long denied any

<sup>37</sup>Daniel J. Elazar, "Options, Problems and Possibilities in Light of the Current Situation," *Self Rule/Shared Rule*, ed. Daniel J. Elazar, p. 10.

<sup>38</sup>See Audrey Brasloff, "Spain: The State of the Autonomies," *Federalism and Nationalism*, ed. Murray Forsyth (Leicester: Leicester University Press, 1989), pp. 24-50. See also, Brian Hocking, ed., *Managing Foreign Relations in Federal States* (London: University of Leicester Press, 1993) and Hans J. Michelmann and Panayotis Soldatos, eds., *Federalism and International Relations: The Role of Subnational Units* (Oxford, U.K.: Clarendon Press, 1990).



semblance of self-determination and security could enjoy a measure of both. It might also set a precedent for addressing the status of Kurds in the other countries of the region.

Arab-Israeli peace negotiations are premised on the belief that the path to a solution lies through an interim agreement that would give Palestinians autonomy. The Palestinian leaders see such an interim arrangement as a stage along the way to full independence; their Israeli counterparts are not prepared to countenance the creation of a mini-state between Israel and Jordan, but they are prepared to encourage an experiment in autonomy. Full Palestinian statehood would pose difficulties for both Israel and Jordan, both of which would have reason to fear irredentism from Palestinian Arabs who have claims on the territory of both states and who constitute a majority of the population of Jordan and a sizable minority of that of Israel. This difficulty could be addressed by federation, either between Jordan and an autonomous Palestinian entity, or between Israel, Jordan, and the new entity, perhaps as part of a larger Middle Eastern community of states.

The pressures on sovereignty from within and without could have beneficial effects in promoting liberty, if devolution is balanced with protection of individual rights. Although sovereignty once threatened to deny the liberty of the individual, the compromise later worked out in the creation of constitutional democracies has served well to protect domestic liberty and even helped create a global demand for human rights by showing that liberty and order are not incompatible. There can be no guarantee that domestic devolution will be equally respectful of individual liberty, especially when it is done to placate subnationalist demands. Forbidding English-speaking Quebeckers from displaying English-only signs on their shops does not enhance individual liberty. International association, on the other hand, could promote prospects for individual liberty if it leads to the adoption of uniform codes of human rights and establishes mechanisms like the European Court to which individuals can appeal against their own states. Not only do such associations promote a wider consensus on human rights, but they also allow for greater personal mobility as well as diversify and multiply the structure of authority in ways that may well enhance opportunities for dissent and redress. In a democratic age, all politics must be conceived of as a form of power-sharing involving both individual citizens and groups, as well as different levels and agencies of government. In an increasingly interdependent age, it must also be understood to involve relationships, perhaps even rights and obligations, that transcend territorial boundaries.