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# ***The Future of State Sovereignty***

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## THE FUTURE OF STATE SOVEREIGNTY

JOSEPH RAZ<sup>1</sup>

### **Abstract**

Advances in the legalisation of international relations, and the growing number of international organisations raise the question whether state sovereignty had its day. The paper defines sovereignty in a way that allows for degrees of sovereignty. Its analysis assumes that while sovereignty has become more limited, a trend which may continue, there is no sign that it is likely to disappear. The paper offers thoughts towards a normative analysis of these developments and the prospects they offer. Advocates of progress towards world government, while wise to many of current defects, are blind to the evils that a world government will breed, and to the advantages of relatively sovereign political societies. The paper identifies the advantages of the legalisation of international relations, and the growth of international bodies. The dilemma of internationalisation is that its advantages can be obtained only if international organs acquire some of the characteristics of successful sovereign political societies, in attracting the loyalty and shaping the sense of identity of their members – a faraway prospect. The best we can hope for is a mix international regime of relatively sovereign states subject to extensive international organisations and laws. That requires a pluralistic jurisprudence of international organisations, allowing for great local diversity, of which we have so far seen only small beginnings.

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<sup>1</sup> The paper was written as a talk, and retains its character as a talk.

## **1. Introduction**

The paper is a speculative reflection on the theoretical implications, or some of them, of contemporary developments in the international scene.

There is a widespread view that the international sphere has undergone, and is undergoing, radical and swift changes. Naturally, there is no agreement on the main sources or features of the changes: the end of WWII, the end of the cold war, the rise of American supremacy, the end of American supremacy, economic globalisation, etc.

To the more legally minded: The explosive development of International Law, and related phenomena such as the emergence of the WTO, the rise of International Human Rights, and the emergence of International Administrative Law may seem to be the decisive factors.

From my point of view one can be ecumenical and take all of these and others as features of the changes.

It is far from clear whether the changes, whatever they are, call for a theoretical\_rethink. Should not theories of law, for example, be robust in the sense of being true of law in all places, all times?

Yes and No:

A successful general theory of law would (a) identify the important essential features of the law, and (b) explain why the law is or was central to the self-consciousness and political organisation of some societies. The two desiderata may point in different directions: think of sharia law, or of rabbinical law, or canon law. All are law and a good theory of law will confirm that. But in many countries when these laws were dominant features of their political societies the best theories of the essential structures of these societies may well not

have identified them as law, in our sense. Their mingling of law, morality and theocracy are missed when we think of them as law, that is as instances of the type of social practice or social organisation many instances of which do not allow for the kind of mingling of law and morality that sharia law exemplifies.

So good theorists of these societies may well have had a different analysis of their normative structures, different from that of modern political societies, in which law dominates.

By the same token, a time may come, may have come, when the fact that there are and are likely to remain state legal systems in contemporary political societies is consistent with a need for new theory that will show - if this is indeed the case - that nowadays, a state legal system is no longer the or one of the most important normative structures in our societies.

I am not, however, going to make that possibility the core of my speculation. Not quite.

What has attracted calls for a new theory was the so-called Death of the State - perhaps mostly expressed these days in less extravagant terms as the rise of legal pluralism or transnational law. I will not discuss these theoretical developments themselves. Rather my aim is to examine the general case for rethinking legal theory in light of the erosion of the Post-Westphalian doctrine of State Sovereignty.

For a long time Legal theory has been focussed on state law as the paradigm of a legal system. The recognition of the principle of state sovereignty in article 2(7) of the UN charter seemed to promise that that focus would remain justified for a long time to come. But the subsequent erosion of state sovereignty raises doubts, some of which I will discuss.

### **A Note on Method:**

To repeat: This is a speculation about some aspects of possible directions in which international relations may proceed. I focus it on the future of sovereignty for it seems plausible to think that the way state sovereignty seems to be changing or at least the way it is subjected to pressure to change, encapsulates some central trends in the development of international relations.

I will be slow to judge the desirability or undesirability of different options and trends, though some thoughts about it will come to the fore later on. Even before that the analysis is impregnated by normative considerations. Most prominent among those will be:

First, judgements that certain features are important, and that's why the analysis is based on them, or highlights them, their importance being in their relevance to whether institutions, trends etc. are more or less desirable, and  
Second, that certain features are 'healthy' that is, conducive to the well-functioning of the institutions concerned.

Both are not ordinary normative properties, as health can contribute to the institutions being bad as well as to their being good, and importance may mark undesirable as well as desirable features.

## ***2. A Prospect of World Government?***

Some people discern a trend that may lead to the eventual emergence of a world government. Why think that that may be our actual direction of movement? Here is one very speculative suggestion: over the last 60 years or so, and at an accelerating pace, more and more aspects of international relations (i.e. relations among states, among international institutions, and between states and institutions) have been legalised, as I shall say. That is,

standards of international law governing them have emerged, and matters that until then were decided by negotiation, or actions leading to more or less coercive outcomes, are now settled in processes that involve reference to these international standards. I am trying to be realistic. The difference is not that now these matters are determined by the international standards. Often they are not, but even then the existence of the standards has an impact on the outcome. The outcome is tilted towards these standards. Perhaps we can say that the standards provide a default position, though one can negotiate one's way, more or less coercively, away from their straightforward application.

Does the growing legalisation of international affairs constitute an improvement? Not necessarily. After all laws can be good, bad or indifferent, and their impact in different circumstances may be bad even if the law is otherwise good. But perhaps there is at least one feature of legalisation that tends to give it some value in many, if not most, situations. In as much as an international standard has an impact on the outcome of disputes and disagreements it distances the outcome from one that reflects the balance of power between the competing sides at the time the dispute arises or is being dealt with. In that sense it tends to make the outcome more impartial, and often that may be an advantage. It may tend to make the settlements of disputes more equitable, but quite apart from that it may make the outcome more stable, as, where the way the outcome is reached is thought to be impartial, or relatively impartial, it may be more willingly accepted and more faithfully implemented.

As I keep repeating, these observations are empirical speculations, whose truth may vary depending on circumstances. Sometimes a treaty applies to predictable circumstances, and that enables it to enshrine a bias favouring

one party. In such circumstances a treaty may make things worse rather than better.

The points relevant to our reflections on world government are, first, that legalisation encourages the emergence of dispute-resolution bodies and procedures that will adjudicate disputes and disagreements by applying the international standards. And second that these bodies generate pressure towards harmonisation, towards shaping the emerging international standards in ways that make them express a more or less coherent outlook manifested in the way they govern international relations.

All of this may happen and leave us a long way from world government. But it represents a trend that may culminate in arrangements that are or are close to the existence of a world government.

The sensibly sceptical will say that mine is nothing but a Just So story. And taken literally and independently that is what it is. It should be taken as pointing to trends that, given appropriate circumstances, would exert pressure towards the emergence of something like a world government. Among other things a lot depends on whether people would welcome or dread such a development.

### **3. Analytic Framework**

#### **Defining sovereignty**

But what is a world government? And what kind of systems of international relations are inconsistent with it? At this point speculation about the future invites a degree of conceptual clarity. The two – conceptual clarity and speculation about the future – are not as distinct as may be thought. Concepts



die or get transformed, and in speculating about the future we should also speculate about the concepts that will become dominant in people's understanding of their own political organisations.

I'll focus on one alternative to world government: the existence of many sovereign political systems. I discuss it not because it is the most likely or most desirable alternative. But because it is where we are now. It is the state of international relations that we are moving away from.

**'Sovereignty'** is used in multiple ways and in many diverse contexts. So there is inevitably a stipulative element in my clarification of it. I do not mean to deny the propriety of other uses or meanings - merely to clarify how it is used by me. I am of course talking of sovereignty of political societies, like states. But I get there by defining the sovereignty of authorities.

**Absolute sovereignty**, I will suggest, consists of a double immunity. An authority is sovereign if both internal authorities and external authorities **acknowledge** that they do not have the power to rescind or modify its decisions and rulings.

Weaker sovereignties can be defined by relativizing this definition to particular subject matters, or in other ways, or by having a comparative scale, even a crude one, of degrees of sovereignty. Such weaker concepts will not be useful unless they cover major aspects of the powers to take decisions.

**Absolute World Government** will exist when there will be only one authority such that there are no authorities outside it, and all internal authorities acknowledge that its decisions are immune to change by them.

**Authority and Political Societies**

The question is what are those internal and external authorities? The reference is to those that are inside and those that are outside the relevant political society. That is, we define sovereignty as a property of a political authority that marks its standing both inside and outside a political society of which it is a part.

The connection between sovereignty and political society complicates matters.

We are concerned with one, broadly conceived, yet only one type of political society. Think about authorities in the sense in which an essential feature of authority is that it possesses *a general normative power*. A normative power is an ability to change someone's practical reasons (which includes changing their property or other rights and their normative status) by one's say so, provided that the reason for having that ability is the value or desirability of that person having it.

As well as authorities so understood there can be proclaimed or believed authorities, i.e. people or institutions that claim that they have authority or who are believed by some people to have authority of the kind we are considering. Some such proclaimed or believed authorities do in fact function as (justified) authorities would function had those subject to them been willing to put up with the exercise of their authority. These are de facto authorities.

To clarify: A de facto authority may or may not be a justified, legitimate authority. It is one that claims or is believed to have legitimate authority, and does act as one would were one to have that legitimate authority (though not necessarily in the sense of acting as justly etc. as a good legitimate authority would), and those affected by those actions are putting up with them, do not generally resist them. From now on, when referring to authorities I will be referring to de facto authorities, unless the contrary is indicated.

Sometimes authorities of this kind are part of the definition of a political society. This can take various forms. For example, there may be a political society consisting of all, or a certain subgroup, of those subject to that authority, or of all or a subgroup of those who can control the constitution of the authority (by election, or otherwise). States are an example of such political societies, but there are others.

It is not assumed that members of political societies regard their relations to the authorities, or the existence of those authorities, as primary justification of the existence of the political society. They may regard common ethnicity, geographical distinctness, common interests, etc. as the justification, or they may doubt or deny that there is any justification. What matters here is that the boundaries of the society are determined in a way that is essentially related to the relevant authorities. That gives us a necessary condition for the existence of a political society: an essential relationship to one or more authorities.

What would be a sufficient condition for the existence of a political society? Perhaps one additional condition, which moves us closer to having a sufficient condition, is that a political society is an authority-defined society, where the relevant authorities constitute **a harmonious authority group**.

In talking of a harmonious authority group I am trying to distance myself from any association with the Kelsenian framework, whereby a political system is defined by reference to relations of constitution and authorisation: one political system consisting of all the authorities that derive their powers from one norm, a norm that Kelsen thought has additional features that make it a basic norm (in his meaning of the term) and that Hart thought has other features that make it the ultimate rule of recognition (in his meaning of the term). Hart, even though he remained wedded to the idea of a single

organising rule, pointed the way towards an alternative approach that dispenses with it. He suggested that what keeps a legal system together, what makes it one, is the attitude of the population, or sections of it, to the authority of institutions; that is, the acceptance of that authority by those subject to it. My suggestion is that we come closer to a sufficient condition for the existence of a distinct political society if it is an authority-defined society, whose members, by and large, accept the authority of those defining institutions over them, and so do the various institutions. In other words, it is a society of people who are subject to institutions that are de facto authorities, and where, for example, if A regards itself as an authority over another authority, B, then harmony prevails if B accepts the authority of A, and so on.

**Note:** the test of de facto authority is one of attitude, willingness to put up with the other. It does not depend on any reason for the attitude. There may be various reasons, real or imagined, or none.

A political society of this kind is sovereign if no authority outside it claims to have normative power to rescind decisions of its authorities.

There is one more point to make before returning to international trends: one of the most important features of political societies is the degree to which they are healthy. Their health consists in a measure of solidarity among the people in that society, which manifests itself most importantly in the degree to which they are willing to make sacrifices, or to suffer disadvantages for the sake of other members of their society, and the degree to which they take their society to be, with all its shortcomings, basically decent and morally o.k. The health of a society assures its internal stability. Its absence subjects the society to inner tensions and disintegrative tendencies.

This provides us with an idealised picture of an international society of sovereign states: They are subject to law in their inter-relations, that is moral law and customs. There are also treaties, binding by the agreement of the contracting states, but no supranational authorities.

**A Clarification regarding International Customary Law:** My remarks expressed a conventional and traditional view of the nature of customary international law. One may doubt whether it was ever true to the reality of IL. I will not express a view on that. But I want to put to one side two challenges to this view: first, for a long time some International Lawyers felt challenged and unappreciated by other lawyers who doubted that international law was law at all. Not that it was not state-law. That is obvious, but that it is not law. Some in their anxiety to rehabilitate it as law devised interpretations of customary law as the enactments of communities and such like. These were unnecessary fictions. More serious is the contemporary challenge that regards much customary law today as the product of multilateral treaties (given some additional conditions). Much has been written about the changing faces of customary IL today, and it is fascinating stuff. I avoid it because I am referring here to the older kind of customary IL.

#### **4. The Eroding Trends and their Outcome**

Now back to the growing legalisation of international relations: In itself the subjection of states to norms not of their making does not affect their sovereignty. Most people know that they are subject to moral norms, and many either identify those with social practices, or at any rate know that states are subject to social practices, local, or global, with no loss of sovereignty. (We can think that all such norms, including international ones, while binding on states, require some form of incorporation to be reflected in their law).

The legalisation of international relations leads to reduction of sovereignty because de facto it brings in its wake international authorities that claim superiority over state authorities, in at least some of the matters within their jurisdiction. This can take the form of claiming that state institutions lost their power in certain domains, so that matters within these domains must be handled directly by those international bodies. More commonly, and I will refer only to this kind of limitation of authority: the jurisdiction of state authorities remains unaffected (or largely unaffected) but their decisions can be overturned on appeal or via some other process by international authorities. Or, the international authority can impose a duty on state authorities to refrain from acting on their own rulings that conflict with its. Claims to such powers by international authorities limit the sovereignty of states, and if the trend continues they will do so more and more.

### **Sovereignty: Survival and Decay**

As things stand the erosion of sovereignty does not threaten its survival. No alternative to sovereignty appears on the horizon. The European Union is perhaps the clearest potential exception: an ever greater union may be taken to have, as its ultimate goal, an end to the sovereignty of the member states, and their absorption into one federal entity. But political trends indicate that that is not a realistic prospect today. They manifest a strong preference for separate sovereignty, and against transfer of power to the Union. To mention but one example: The German Federal Constitutional Court in its decision about the Lisbon Treaty has established that Germany's Basic Law limits in an unamendable way, the degree to which European integration can erode the sovereignty of Germany (Judgment of 30 June 2009 - 2 BvE 2/08). Similar trends are visible in other parts of the world.

**There are exceptions.** But they are largely confined to countries recently emerging from being subject to oppressive regimes or to foreign domination, for whom adoption of international standards and joining international organisations are desirable as signs of being admitted into the 'international community', and becoming respectable. Recent developments in the former Eastern Bloc show how superficial such tendencies often are.

Resistance to loss of sovereignty is everywhere powered by desire to retain local identity.

### **The Emerging Shape**

Which way are we going? What is the shape of things to come? Needless to say I offer no answers, merely some observations. Developments like the ones we noted need not erode the jurisdiction of internal authorities, nor need they erode their sovereignty. They can be confined to merely adding to the norms that bind sovereign authorities.

But they are very likely to lead to erosion of sovereignty, though in a fragmented way, and towards fragmented institutions. Again there may be exceptions and the EU could be one of them. These exceptions apart, what we see and are likely to see more of are the strengthening of international institutions, and the emergence of new ones, which erode sovereignty without replacing it, simply because each one of them has limited jurisdiction and their proliferation leads to an erosion of state sovereignty in favour of a fragmented array of international organisations.

### ***5. Institutional Fragmentation may be Welcome:***

I hope that you will bear with me if I briefly survey some points for and against fragmentation, suggesting that on balance it may not be unwelcome.

- 1) It will reduce the resistance to a big world government.
- 2) It may generate a desirable balance of power capable of correcting policy faux pas through negotiations and bargaining among institutions.
- 3) It may generate conditions that favour diversity and sensitivity to local needs, perhaps through endorsing principles of subsidiarity.

Needless to say, fragmentation means that the hankering for world government will *remain unassuaged, but then it is based on a series of mistakes*

- 1) mistakes about obedience to rules: I suspect that adherents to the ideal of world government believe that if only there will be a common authority issuing rules addressed to everyone, with the kind of enforcement institutions we are used to in sovereign states operating on a global level, peace and order will prevail. But levels of compliance with law are enormously varied, and depend on many factors, which vary across the globe.
- 2) mistakes about the likelihood that there will be more justice or welfare under a world government, rather than that it will lead to more injustices and to greatly entrenched pockets of poverty. I know of no reason to believe that.
- 3) more specifically, I suspect that the dream of a world government is nourished by awareness of the limitations that territorial sovereignty involves, of the impotence of governments to cope with various problems because their jurisdiction is limited. Criminals can escape etc. etc. These limitations are of course real. But there is every



reason to think that a world government will have its own limits, even though they will take different forms.

In brief, much more than law is needed to cope with the injustices and other undesirable aspects of life today. Needless to say, how much good a world government may bring *will depend on its shape - but why assume that it will have, or that it will for ever keep the preferred shape?*

I should add that some objections to world government may also be ill founded. For example, a matter particularly close to my heart, it is sometimes complained that governmental authority is legitimate only if it is a form of self-government by its subjects, and that world government is too big, remote and anonymous to meet this condition. True, but so are state governments, and indeed all governments except those of very small and cohesive communities.

To be taken more seriously is the worry that a world government will impose uniformities that do not respect the diversity of cultures and ways of life, and the interest in autonomy (communal self-rule) needed to protect them. It is not that world government must disregard these concerns. It is merely that it is very likely to violate them.

## **6. A Normative Framework**

Even those who would agree with my observations so far will find them unsatisfactory. They are a scatter of remarks, which may indeed hang together in some way, but which do not arise out of a general normative framework guiding the assessment of international bodies and the laws that govern them and that they apply to those subject to them.

Embracing subsidiarity principles provides an important step towards such a framework. A subsidiarity principle specifies that 'a central authority should

have a subsidiary function, performing only those tasks that cannot be performed effectively at a more immediate or local level' (OED). That is, a subsidiarity principle specifies that, regarding a certain domain, institutions have legitimate powers only if they pursue worthwhile ends that can be better secured by them than without any institutional intervention or by less centralised institutions. Much more is needed to clarify the idea. I will just add that the principle is to be understood to include a comparative measure: their ends are worthwhile if achieving them does not have too severe undesirable consequences, etc. For the rest I rely on our familiarity with the concept, which derives from Catholic social doctrine, and is familiar in the European Union.<sup>2</sup>

Principles of subsidiarity introduce the question that is crucial for judging the case for more centralised authority: Would it be more secure in realising desirable ends than the way things will work out when relying on no authority or on less centralised authorities only?

By a straightforward and common understanding subsidiarity principles work like this: There is a good that people would benefit from, or that they are entitled to have, say educational opportunities, protection from violence, health care, and the like. Under some circumstances it is possible to have it with or without institutional intervention; however, it may be that the state, or the city, are better or will be better at securing it than any less central authority. In which case the subsidiarity condition of legitimacy is satisfied. So

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<sup>2</sup> Pius xi in his encyclical *Quadragesimo anno*: "It is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order, to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies. Inasmuch as every social activity should, by its very nature, prove a help to members of the body social, it should never destroy or absorb them" (79)

understood the subsidiarity condition does not exhaust the conditions for legitimacy of institutional authorities. I will conclude by examining two further considerations.<sup>3</sup>

There may be a value in the existence of a political institution that cannot be realised independently of such institutions. Any institution functions through the activities of individuals involved in it, as officials, voters, etc. Thus, the existence of political institutions provides opportunities for people and some of them cannot exist except in such contexts. One paradigmatic example is the opportunity to be a citizen of a democratic country, that is a citizen who has a right to participate in the public life of the institution, as a voter, a candidate, or merely someone who can publicly express his views on public affairs. This opportunity adds the possibility of a rich and potentially very rewarding dimension to people's life, which some will take advantage of while others will ignore.

There can be, therefore, a case for political institutions that says: even though achieving some worthwhile goals would be jeopardised by the institution its existence is justified because by its very existence it secures other, more important, ends that cannot be reached without it. For example, democratic citizenship.

It would be interesting to explore whether the existence of super-state organisations realises such ends. It is not difficult to sketch an argument that membership of a neighbourhood swimming pool and local park committee, while providing opportunities for social and political involvement with neighbours, does not involve all the desirable opportunities that citizenship of a state provides. But is there more value secured by the very existence of

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<sup>3</sup> As intimated subsidiarity principles can be given a more comprehensive, if less natural, reading that subsumes under them the two conditions I will discuss and others.

super-national organisations than is secured by state citizenship? If not then the legitimacy of super-national institutions depends, broadly speaking, on instrumental considerations. That is not the way most people understand the case for state sovereignty. States have emotional and symbolic significance for people, which goes beyond their success in securing services and opportunities.

### ***7. The Super-national Dilemma***

Now we arrived at the heart of our predicament. It is not whether fragmentary erosion of sovereignty is inferior to world government. It is likely to be better than world government. It is whether super-national organisations can succeed simply by being more efficient ways of securing common services and opportunities without their existence having intrinsic, non-instrumental values. That is the dilemma because arguably sovereign countries can succeed instrumentally, can succeed by meeting the subsidiarity condition, only because they are perceived by so many of their members as having additional value, and in particular, citizenship in such states is taken by many to be intrinsically valuable.

The case for that conclusion is simple enough: The effectiveness of governments in securing services and opportunities depends on those subject to their rule being loyal to them and having a strong sense of solidarity with each other. Without loyalty and solidarity the ability of governments to require restraint and co-operation from people, including restraint and co-operation that people perceive to adversely affect their personal interests, is severely undermined. Official measures would meet resistance and persistent attempts to avoid compliance. Trying to overcome such resistance will call for interference with people's privacy and restricting their freedom. The more

limited the loyalty and solidarity the more likely is the government to resort to repressive measures that undermine its moral legitimacy.

But in our world, loyalty and solidarity, the willingness to forego personal advantages for the sake of anonymous others, i.e. others who are not family or friends, are not commercial commodities. They depend on valuing common citizenship for its meaning, for its symbolic value.

Can it be different with international super-state organisations? Can they thrive because of their instrumental value only? There is strong evidence that often the answer is affirmative. The co-ordination rules for international aviation, for radio and internet communications, for international postal services, and many others show the value of international organisations that succeed, and whose success is essential for life in advanced societies. Yet in all such cases the instrumental case for co-ordinated regulation is sufficient to secure it.

The evidence also strongly suggests that this kind of success is limited. It is tempting to find principles that explain the limits. Perhaps success is confined to areas where co-ordination does not involve significant self-restraint and therefore where people do not feel that they are making 'sacrifices'. Such explanations have some value. But it is also the case that controversy and resistance can arise accidentally, and that they can be manipulated. Is opposition to various international trade agreements currently being negotiated, or to genetic manipulation of crops, etc., due to genuine interests of the objectors, or is it manipulated by interested parties? For our purposes what matters is that without loyalty and solidarity, important, perhaps the most important, super-state organisations meet growing difficulties. State sovereignty may be eroding, but there are few if any super-state organisations

that are perceived as having more than merely instrumental value. Therefore, few if any attract loyalty and solidarity. And therefore, even their instrumental success is in jeopardy. The problem affects all regional organisations like the EU, the African Union, and the UN. It also affects all human rights organisations. A revival of – not very attractive – nationalism embracing extensive state sovereignty is a real possibility[has already emerged? Ukip?].

### ***8. Misleading Arguments***

Some arguments against super-state organisations enjoy great popularity in Britain and elsewhere in spite of being confused or based on false premises. One is an argument against super-state bodies because they are not democratically governed. The argument is misguided for it is not based on a cogent understanding of the nature of democracy and its uses. Another is the argument that says that we want to govern ourselves rather than be governed by ... (the bureaucrats in Brussels etc.). To the extent that this argument presupposes that one is more free when one's ability to successfully form and pursue goals is limited by market forces or naked threats and coercion than when one's options are limited by institutionally adopted and enforced standards it is confused.

The valid concern that sometimes motivates adopting these arguments is a worry that super-national organisations are likely to be blind to the diversity of different cultures and to different legitimate ways of allocating opportunities and processing disputes. Absent sensitive acknowledgement of legitimate diversity, institutions will not enjoy loyalty and will not be underpinned by solidarity among those subject to them, and they will fail to acquire positive symbolic meaning for their subjects.

### ***9. What are the Perceived Advantages of Sovereign Nations?***

It appears, to me at any rate, that the legitimacy of super-national institutions depends on their recognition of value pluralism and their ability to adjust their structures of government and their aims and modes of activity to value pluralism. That is necessary for them to be responsive to local needs, interests, to diversity in tastes and preferences, to local traditions, ways of life and ways of doing things (including business).

Perhaps value pluralism indicates a case for limiting the growth of super-national organisations. Perhaps sovereign states, negotiating international agreements when they are useful, are the best protectors of legitimate value pluralism. One great advantage of trusting the task to sovereign states is that they can respect value pluralism without recognising it. Each state may respect the values that are recognised by its inhabitants, while denying the legitimacy of other ways of life enjoyed by the peoples of other states, which luckily it cannot do much to affect. If super-national organisations are to be trusted with that task they will need to recognise the legitimacy of plural values, and will encounter mistrust and hostility from people who deny value pluralism.

If a culture of respect for value pluralism can spread around the world then perhaps international organisations can adjust to respecting value pluralism. Subsidiarity principles, when applied much more aggressively than is the case in the European Union at the moment, are themselves important instruments for protecting pluralism. Fragmentation leading to checks and balances can also serve a useful role, when motivated to protect value pluralism.

But they are not enough. What is needed is an interpretation of universal standards, such as the basic principles of human rights, in a way that allows for diverse correct interpretations of their requirements and applications in

different circumstances. Call this **simultaneous interpretive pluralism**, namely a method of, or approach to, interpretation allowing that incompatible interpretations can all be valid at the same time and in the hands of the same court.

To a degree the European Court of Human Rights, in interpreting the European Convention of Human Rights, allows for such interpretive pluralism through its doctrine of a margin of appreciation. But the pluralism I point to is not to be confused with a band of toleration of mistaken judgments due to the different conditions and traditions of different national courts. Nor is it to be confused with exceptions like those of Article 10(2), which provides that the right to freedom of expression may be 'subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.' Here the matter in hand is conflict between different values. Interpretive pluralism allows for a plurality of incompatible interpretations of one value.

In brief, the legitimacy and success of super-national institutions and their ability to replace some of the functions of states, thus eroding states' sovereignty, depend on their ability to develop loyalty and broaden people's sense of solidarity. And these depend on the people of the world coming to recognize the validity of value pluralism, and on super-national institutions proving able to embody in their constitutions and activities recognition of legitimate value pluralism.



\*\*\* The End \*\*\*