



THE RIGHT AND WRONG OF SOVEREIGNTY

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Part 2 of 2

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Failure to distinguish between the internal and external aspects of sovereignty leads to the most dangerous confusion of all.

Many persons today talk about “limited sovereignty” or about restrictions of sovereignty which would permit nations to remain sovereign to some extent and yet become members of a larger political community under a superior government. They frequently employ the federal structure of the United States or of Switzerland to illustrate what they mean by limited sovereignty. They point to the federal government of the American union as having one sort of limited sovereignty, and the governments of each of the federated states as having another sort of limited sovereignty.

Why, then, would it not be possible to form a world government by federation, in which the existing nations of the world could each retain some degree of the sovereignty they now possess?

Once we separate internal from external sovereignty, the answer becomes clear and indisputable.

Only in the internal aspect do the state governments of the forty-eight states have *some* of the sovereignty which they possessed when they were independent communities. They have *none of* the external sovereignty they once possessed.

The federal government, the state governments, and even the governments of chartered cities and incorporated towns have internal sovereignty to whatever degree *each regulates matters not regulated by all the others*. We do not ordinarily speak of the sovereignty of municipal governments because we regard sovereignty as inalienable. Theirs is revocable.

The Constitution of the United States defines the spheres of federal and state governments and, in doing so, apportions to each some measure of internal sovereignty. Each of the state constitutions proceeds similarly with respect to the subordinate local governments within its domain.

But no town, city, or state has any external sovereignty whatsoever. None has any foreign policy or foreign commitments. None has diplomats or armaments for dealing with other communities. None is an independent state in relation to other independent states.* In contrast, the self-governing dominions of the British Empire, such as Canada or the Union of South Africa, have as much external sovereignty as Great Britain. The dominions can make war independently of one another, conclude treaties, and enter into all sorts of foreign engagements.

* The Constitution of the United States declares that “no state shall enter into any treaty, alliance, or confederation ... [that] no state shall, without the consent of Congress . . . keep troops or ships of war in time of peace, or enter into any agreement or compact with another state. . . .” These provisions should not be referred to as limiting the sovereignty of the several states in the American union, or as merely taking away some sovereign rights. Sovereignty may be a bundle of rights, but the rights of internal and external sovereignty do not belong to the same bundle. The Constitution removes every vestige of external sovereignty from the states.

We see, therefore, that there is no meaning to the phrase “limited sovereignty” in the sphere of foreign affairs. The external sovereignty of a political community is either complete or nonexistent. It is complete as long as the community remains an independent state. It is nonexistent when the state ceases to be independent and becomes part of a larger political unit.

There is absolutely no middle ground here—nothing—between the independence of a single political community, which may be a whole of parts, and the nonindependence of its parts, regardless of what portion or kind of internal sovereignty they retain.

Those who persist in speaking of “limited sovereignty” *in the sphere of external or foreign* affairs play fast and loose with the word. If in their dealings with one another, two states are exempt from the coercive force of law, they are absolutely sovereign. If the contracts or treaties they make with one another are reviewable by a higher juridical authority and if they are enforceable by law rather than by war, then they have no external sovereignty, whatsoever.

When one independent nation makes a treaty with another, that act does not limit its sovereignty (Mr. Sumner Welles and the Editors of the *New York Times* to the contrary notwithstanding); for a contract voluntarily made by sovereign nations is binding *only at the pleasure of the Parties*. Since self-coercion is impossible, and since the only limitation which can affect sovereignty must be coercive, treaties between independent nations do not represent limitations of sovereignty.

Nor can a state be conceived as retaining a limited sovereignty because it is permitted by a federal authority to negotiate or enter into ‘contractual relations with other states which belong to the same federation. Unless such negotiations or contracts are subject to review and approval or disapproval by the federal authority, unless they are legally binding and enforceable by reference to the constitution and laws of a government superior to both of the contracting states, the contracting states cannot be conceived as belonging to a federal structure. They can be conceived only as absolutely sovereign. But if they do, by these criteria, belong to a federal structure, the contracting states cannot be conceived as having a limited external sovereignty simply because they are permitted to negotiate. The juridical conditions under which they exercise freedom of contract indicates that they have no external sovereignty whatsoever.

It is, therefore, an equivocation on the word “sovereignty” to regard freedom of contract as the mark of a so-called “limited sovereignty” which states can retain even though they have surrendered their absolute sovereignty by becoming subordinate members of a federation. This equivocation leads, in turn, to the more serious error of supposing that world government is incompatible only

with absolute sovereignty on the part of the world's nations, but not with this fictitious "limited sovereignty."

The truth is that world government cannot co-exist with the sovereignty of independent nations, and such sovereignty either exists absolutely or it vanishes totally according as the nations of the world are independent states or subordinate members of federation. It should be self-evident that a state must either be part of some larger political whole or be a whole which is not part of any other. There can be no middle ground between subordination and independence.

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The Editors of *Time* have performed a great public service by their effort to make Americans realize the difference in *kind*, not *degree*, between confederation (any sort of international organization, such as a League) and world government through federation. In a recent "Background for Peace," they wrote:

Experts in the field use two confusingly like-sounding names to describe the two very different kinds of organization that can be established by a group of states or nations. One is a "federation"—a real union like the United States today. The other and far looser kind of group government is called a "confederation." In a confederation, states are represented as states, rather than citizens as citizens. So in a confederation the real sovereignty, the ultimate power, remains in the national governments, which give up little or none of their sovereignty in the process of uniting. . . . This country was a confederation—and as such was fast falling apart—during the few years that intervened between the Revolution and the adoption of the Constitution. The League of Nations was a confederation. And despite the name, Culbertson's World Federation Plan is another. [Elsewhere they say of the Culbertson Plan that "for all its fine phrasing, it boils down to domination of the globe by the four victorious major powers."] . . . A confederation is forever the creature, never the master of its members. It amounts to little more than an intricately formulated war-&-peace alliance.

If and when world government exists, both external sovereignty and political independence will become meaningless. Suppose that world government is federal in structure. Then neither the world community as a whole nor any of its parts under local government will stand as a sovereign in external relation to other communities.

Within the world community there will, of course, be divisions between federal and local authority. Accordingly there will be limitations upon the internal sovereignty of world government, as well as

upon the internal sovereignty of the various local governments—the governments of the member communities. But such words as “foreign affairs,” “foreign policy,” “diplomacy” will become as meaningless as “independence.”

What they refer to will become as nonexistent as the armaments needed by a sovereign state to protect its independence.

Let no one who does not wish to fool himself think that his nation can remain an independent state or a sovereign community, in any external significance of these words, without leaving the world completely anarchic.

This is not a more or less proposition. There are no degrees of anarchy, as there are no degrees of external sovereignty. Any league of *independent* nations would leave the anarchy intact. Nothing less than world government would reduce the anarchy, and world government would reduce it to the vanishing point.

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All this being understood, does Hegel’s objection still hold? We must admit that states cling to their sovereignty, as individuals to their lives. But is it their natural right, as it is the natural right of individuals to preserve themselves?

The great political thinkers of modern times are in complete agreement on the relation of anarchy and sovereignty to war and peace. Yet except for Rousseau, they did not draw the implication that wars can be avoided. The issue raised by Hegel in, criticism of Kant has had to wait for our own day to be resolved in favor of the possibility of peace.

It is worth while to examine the steps by which the issue of war versus peace reached its sharpest formulation.

In his *Leviathan* (1651), Thomas Hobbes pointed out that a state or condition of war is like the nature of weather. Foul weather consists

. . . not in a shower or two of rain, but in an inclination thereto of many days together. . . . Though there has never been a time wherein particular men were in a condition of war against one another; yet in all times Kings and Persons of Sovereign authority, because of their Independence, are in continual jealousy, and in the state and posture of Gladiators . . . which is a posture of War.

John Locke, in his second essay *Of Civil Government* (1690), defined the state of war as the use of “force between persons who have no known superior on earth.” Since this is contrary to the condition of men living together in civil society, Locke identified the state of war with the state of nature, which is anarchy. It is often asked,

Where are, or ever were, there any men in such a state of Nature? To which it may suffice as an answer at present that . . . all princes and rulers of “independent” governments all through the world are in a state of Nature.

Anarchy, according to Locke, can be viewed in two ways. On the one hand, it results from the sovereignty of independent princes or states. On the other, it occurs wherever sovereign government is lacking for a group of men whose lives interact. In any community where law and force are shorn of one another, government ceases and anarchy begins.

If the laws already made can no longer be put in execution, this [reduces] all to anarchy.

Whosoever uses force without right—as everyone does in society who does it without law—puts himself in a state of war with those against whom he so uses it.

Writing about Saint-Pierre’s scheme in his essay on *A Lasting Peace Through the Federation of Europe* (1761), Rousseau argued for federation as the only way to procure such peace on the continent. We must admit, he declared,

that the powers of Europe stand to each other strictly in a state of war, and that all the separate treaties between them are in the nature of a temporary truce rather than a real peace.

This is due to the fact that the only

recognized method of settling, disputes between one prince and another [is] the appeal to the sword; a method inseparable from the state of anarchy and war, which necessarily springs from the absolute independence conceded to all sovereigns under the imperfect conditions now prevailing in Europe.

Immanuel Kant followed Rousseau, and less directly Locke and Hobbes, in stating the thesis basic to his essay on *Perpetual Peace* (1795):

With men the state of nature is not a state of peace, but of war; though not of open war, at least of war ever ready to break out. . . . Nations, like individuals, if they live in a state of nature and without laws, by their vicinity alone commit an act of lesion. . . . Though a treaty of peace [between them] puts an end to the present war, it does not abolish a state of war, a state where continually new pretenses for war are found; which one cannot affirm to be unjust., since being their own judges, they have no other means of terminating their differences.

What is needed, Kant tells us, is

something which might be called a pacific alliance, different from a treaty of peace inasmuch as it would for ever terminate all wars, whereas the latter only finishes one. . . .

At the tribunal of reason, there is but one way of extricating states from this turbulent situation, in which they are constantly menaced by war, namely, to renounce, like individuals, the anarchic liberty of savages, in order to submit themselves to coercive laws, and thus form a society of peoples which would gradually embrace all the peoples of the earth.

At this point Kant exhibits a turn of thought which will be found prevalent today. His own premises lead to the conclusion that a lasting and universal peace requires the renunciation of international anarchy and, with it, the external sovereignty of independent states. But, says Kant, men are unwilling to go that far.

This prevents the realization of the plan and makes “them reject in practice what is true in theory.” For “the positive idea of a universal republic” which would ensure world peace, we must substitute the negative alternative of “a permanent alliance, which, since it cannot be stronger than the best treaty, will merely prevent some wars and postpone others.

It is not entirely clear whether Kant thought the abolition of external sovereignty utterly impossible or just highly improbable. Most interpreters of Kant hold that, for him, perpetual peace was an ideal, a goal the world might approach, but never reach. Against this we should note that Kant fails to give a satisfactory reason for thinking sovereignty cannot be abolished.

He says only that most men have “ideas of public right” which make them hold on to the independence of their respective states. He does not say that external sovereignty is inseparable from the very nature of a political community. The reason Kant gives makes

perpetual peace seem highly improbable. It does not make it impossible.

Other and later German philosophers argued differently. Hegel agreed that states are in a condition of nature or of war “because their relation to one another has sovereignty as its principle.” This principle of (external) sovereignty cannot be altered. It belongs to the very nature of states as political entities.

Hegel pointed out that Kant’s proposed alliance would not settle disputes. It does not and cannot provide a judge over states. “Therefore, when the wills of particular states come to no agreement, the controversy can be settled only by war.”

Using Kant’s premises, but adding the qualification that sovereignty must remain, Hegel concluded that international wars are unavoidable in perpetuity. International law cannot exert force. It can be no more binding than good intentions. The relation of states to one another cannot be restricted by the notions of morality or of private right. “As against the state there is no power to decide what is intrinsically right or to realize such a decision.

. . . States in their relations to one another are independent and can, therefore, look upon the stipulations they make with one another as provisional.”

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The dilemma with which Hegel confronts us offers no loopholes.

Either the multiplicity of sovereign and independent states can be done away with or sovereign states, remaining above all positive law, remain judges of their own rights, and agents of force, responsive only to superior force.

It does no good to express abhorrence at Fichte’s statement that “between states there is neither law nor right unless it be the right of the stronger.” Anyone who thinks that the sovereignty of independent nations cannot be totally abolished must agree with Hegel, Fichte, and also von Clausewitz, even though he does so with a heavy heart.

Calling their points of view “Prussian” becomes an *ad hominem* which returns like a boomerang if we have nothing but fine sentiments to prevent us from agreeing with them *openly*. We should remember that the Englishman and liberal, John Locke, also

thought that there would always be a multiplicity of independent states. Conceding thereby that anarchy and war must always prevail among nations, Locke would not disallow the further implications which Hegel and Fichte draw concerning international conduct.


There is only one way to disagree with Hegel—using his name to represent the position most men accept in heart and mind, though not in word.

Hegel's doctrine accurately describes the existing state of world affairs. It describes the whole of human history up to the present. About these things there can be no question.

But is Hegel right in assuming, or can he prove, that sovereignty is inseparable from the nature of a political community? I think the answer is doubly no.

Internal sovereignty is inseparable from effective and legitimate government, whether that be world government or the government of one among many independent states. But external sovereignty need remain the attribute of a political community only so long as it is one among many. The community founded by world government would have no external sovereignty.

The sharp separation of these two aspects of sovereignty uncovers the specious step in Hegel's reasoning. Because one aspect of sovereignty is inseparable from government, he allows himself to conclude, without cogency, that the other aspect must also be inseparable from the nature of a political community.

There are no grounds whatsoever for arguing that world government or a world political community is *impossible*. Certainly nothing in the facts or in the theory of sovereignty renders it impossible. But the question of its probable occurrence still remains. 

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