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The New World Order: Sovereignty, Human Rights and the Self-Determination of Peoples

Mortimer N.S. Sellers

University of Baltimore School of Law, msellers@ubalt.edu

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Nira Wickramasinghe is a Senior Lecturer at the Department of History and Political Science, University of Colombo and a consultant at the International Centre for Ethnic Studies in Colombo, Sri Lanka.

Introduction

Mortimer Sellers

Sovereignty, human rights and the self-determination of peoples were all taken into consideration and in some sense protected under the international order that grew out of World War II, as embodied in the Charter of the United Nations. They represented three central purposes of the United Nations Organization, laid out in the Charter's first Article – to “suppress” aggression, to “respect” self-determination and to “promote” human rights. The order in which they appear and the descending strength of the verbs reveal the relative importance of each concept in the postwar order. Sovereignty is the oldest and most established of the three concepts, having been broadly defined by Emmerich de Vattel as long ago as 1758. Self-determination acquired primary significance only after World War I and the interventions of President Woodrow Wilson. Human rights hardly played a role in international law before the Nuremberg trials.

Vattel's broad conception of state sovereignty made sense in an international order dominated by dangerous and self-interested tyrants. National autonomy protected human rights and self-determination by defending the freedom of the world's few liberal states to develop their own domestic bills of rights and democratic institutions. But the fall of the Berlin Wall and the disintegration of the Soviet Empire now open the possibility that strong state sovereignty no longer serves the purposes it first emerged to protect. Has the world entered a new era in which human rights and national self-determination should modify or supersede state sovereignty in the interests of national liberty and justice?

The idea that a New World Order must inevitably replace the old state system has gained wide currency, even among those who fear its implications. Human rights and national self-determination affect not only conceptions of state sovereignty but also each other. Human rights may challenge democratic mandates. Democracy may threaten human rights. Or democracy may threaten itself as new “peoples”

claim autonomy from old nations and empires.

This volume considers the fundamental moral questions of the international legal order through the eyes of ten young scholars from nine different nations and legal traditions. Their purpose has been to define the proper relationship between national and international institutions after the Cold War, with particular reference to the protection of human rights in different local situations. More general essays begin the collection, followed by several detailed discussions of specific applications and histories. All ten authors examine the moral basis of international institutions from new perspectives, in the light of dramatically changed contemporary circumstances.

Robert McCorquodale (Chapter 2) sets out the modern conflict between state sovereignty and the self-determination of peoples, beginning with Versailles, and proposes a reconciliation grounded in human rights doctrine. McCorquodale suggests that the recent international recognition of human rights protections also entails protecting rights to "internal" self-determination as a necessary foundation for other fundamental freedoms. This usually does not mean the right to secession, but rather the opportunity to participate fully in the state's political, economic, and social processes. A state must protect all the inhabitants of its territory or face restricted sovereignty. But the existing international order properly privileges territorial integrity in the absence of serious human rights violations. McCorquodale concludes that basing self-determination on human rights protections removes some of the most contentious aspects of the (self-)identification of "peoples" and that human rights doctrine provides the best legal framework for the peaceful resolution of disputes involving the right to self-determination.

Gerry Simpson (Chapter 3) challenges the dominant "colonial" conception of self-determination in international law. He reviews rival "national," "democratic," "devolutionary" and "secessionist" senses of self-determination and concludes that each contains a disabling contradiction caused by its failure to accommodate the others. Simpson goes on to propose a new "participatory" understanding of self-determination based on the legal recognition of various forms of sovereignty. The end of empire has revealed that *all* states are imperial. Simpson's participatory self-determination rests on the idea of protecting the collective human and democratic rights of minorities and unrepresented peoples rather than encouraging claims to territorial separation or assertions of national and racial exceptionalism. By widening the possible meanings of sovereignty, Simpson hopes to facilitate the process of negotiation and accommodation that alone can reconcile competing claims to national and cultural self-expression.

Vladimir Rudnitsky (Chapter 4) shares Simpson's view that anticolonial conceptions of self-determination have limited relevance to modern political realities. But Rudnitsky regards the United Nations as the salient source of coordinated new approaches to the human rights, development and security issues raised by claims to national liberation. In his view, as global interdependence undermines the traditional autonomy of sovereign states, only the United Nations has the position and moral authority needed to develop consistent and coherent standards of self-determination. Rudnitsky suggests that this process is already under way, as reflected in the General Assembly's Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (adopted on 18 December 1992). But the declaration did not specify which social groups should be considered holders of internationally protected rights, including the right to self-determination. Rudnitsky proposes that the proper balance between self-determination and state sovereignty requires an institutional framework rather than rigid legal prescriptions. Self-determination need not necessarily imply statehood or sovereignty at all. Properly designed democratic institutions obviate the need for political separation. Rudnitsky concludes that the creation of new sovereign states should be a last resort, when all other social remedies have been applied by the United Nations.

Nergis Canefe (Chapter 5) questions the "nation-state" model of unified political community. She doubts the value of nationalism and its natural corollary, the principle of sovereignty. Instead Canefe proposes to transcend the old European identification of nationality with citizenship by distinguishing the "territorial state" from the nation. She argues that traditional state nationalism views ethnic and other minorities as (at best) anomalies to be integrated into the homogeneous nation and that the "one-state, one-nation" model promotes an endless cycle of secession and repression that transforms all minority rights into fundamental threats to the state. Canefe proposes a purely territorial allocation of civil and political rights, coupled with international protections for the identity claims of individual citizens. While granting that liberal democracy has moderated the internal excesses of some European nation-states, she holds that constitutional pluralism will not emerge elsewhere until unitary European concepts of political identity give way to more inclusive conceptions of the state.

Sohail Hashmi (Chapter 6) provides one such conception with his analysis of self-determination and secession in Islamic thought. Islamic ethics embraces the normative goal of universal community among the faithful, transcending ethnic, tribal, racial, and other national or

territorial distinctions. This makes claims to national self-determination and secession problematic, at least within existing Muslim states. Islam holds that the ethical norms of justice, fraternity and peace should supersede narrow tribal identities, limiting the right to secede if secession means carving out a separate territory and not admitting other national or ethnic groups within it. Hashmi suggests that the proper Islamic remedy for oppressive regimes is revolution, not separation or departure.

Stephanie Lawson (Chapter 7) considers the same problems from the perspective of the South Pacific. In places such as Fiji and Papua New Guinea, political entities formed by European colonization brought together people of very different ethnic and cultural backgrounds. United Nations-sponsored decolonization often maximized the territorial "viability" of new states at the expense of ethnic or tribal unity. This has prevented any easy equivalence between ethnic "nations" and the state, so South Pacific ethno-nationalism has sought to unite territories with peoples by treating some citizens as outsiders. Lawson endorses a more pluralistic and inclusionary conception of "the people," which would extend political equality to all citizens regardless of religious, linguistic, or cultural identity. This should not mean denial of indigenous rights, but rather their association with other basic human rights, so that no one will suffer oppression for reasons of ethnicity, color, religion, language, gender or any other single aspect of human identity. Lawson concludes that internal sovereignty and self-determination require the inclusion not simply of "a" people, but of "the" people, in all their complexity.

René Provost (Chapter 8) compares wars of national liberation with other armed conflicts and considers the problems of "indeterminacy" and "characterization" that arise in the application of humanitarian law to conflicts that may be either "internal" or "international," depending on one's perspective. Provost explores the nature and effect of characterization by various agents. The degree of indeterminacy of a norm conditions the need for procedural mechanisms to make it more certain. Characterization may be performed by the state itself, by other states, by political organs of international organizations or by specialized bodies such as the International Committee of the Red Cross. Provost concludes that when recourse to specialized bodies offering guarantees of neutrality and legality is impossible, each of these characterizations remains valid within its proper sphere of authority. He proposes consensus-building as a solution to disagreements about characterization. Prior to consensus, agents would have to bear the risk of their own mischaracterizations. This admittedly

unsatisfactory conclusion reflects the current state of international law. Provost suggests that international norms have outrun the mechanisms created to enforce them. Until the international community develops permanent bodies capable of guiding the development and application of international law, inconsistencies will be unavoidable.

Gian Luca Burci (Chapter 9) describes some international mechanisms that may serve to avert disagreements about characterization and ameliorate situations of internal conflict. The United Nations already finds itself embroiled in peacemaking as well as peacekeeping operations in the aftermath of the Cold War. Burci analyzes these activities in the light of emerging law and practice by the United Nations in the fields of security and humanitarian assistance. States that fail to fulfill basic duties to their citizens may find their sovereign rights temporarily attenuated or held in abeyance, subject to multilateral decision-making processes. Burci concludes, however, that the secretary-general and forces under his command should concentrate on what they are naturally inclined and best suited to do: negotiate, assist, persuade and try to draw conflicting parties into a political process that can be advanced, but should not be coerced, by an external peacekeeping and humanitarian presence.

Philippe Guillot (Chapter 10) compares current practice of the United Nations to the international order of sovereign states developed since the Peace of Westphalia in 1648. Now a new directorate under the five permanent members of the Security Council seeks to advance liberal democratic solutions to internal conflicts, promoting Western standards of governance worldwide. Guillot suggests that "assistance-to-transition" operations can be found throughout the history of United Nations peacekeeping but that pro-democracy constitutional engineering developed more recently. The price of United Nations assistance and protection has become the limitation of constitutional sovereignty. Guillot concludes that the surest way to build peace is through the choice and agreement of the people concerned, ratified by a plebiscite. Nations will eventually reject imposed legal and political institutions. United Nations "solutions" not guided by local circumstances and cultural context inevitably fail and could bring the Organization down with them.

Nira Wickramasinghe (Chapter 11) also considers the risks of imposed solutions to local and regional problems, with special reference to the aid regime in Sri Lanka. The international mobility of capital, ideas, technologies, and persons has reduced the real importance of statehood and dramatically eroded the significance of nominal state sovereignty. Donor countries increasingly link development aid to human rights and other political and moral

considerations. Wickramasinghe recognizes the importance of human rights, but questions the recent emergence of "good governance" as a decisive factor in aid policy and development assistance. Nations subscribing to the International Covenant on Civil and Political Rights or to the International Covenant on Economic, Social and Cultural Rights agree, in effect, to cede part of their sovereignty to world institutions. But "good governance" as defined by the World Bank would relocate authority towards subnational collectives. Wickramasinghe proposes a new role for the United Nations as a watchdog over insensitive world economic institutions, making development programs more mindful of the social, cultural, and political consequences of their intervention.

All ten of the essays collected in this volume see significant links between sovereignty, human rights, and national self-determination. Most would condition some aspects of state autonomy on respect for individual liberties and the sovereignty of the people. Vattel's basic insight that every nation must create its own system and laws survives, modified by new conceptions of what constitutes a nation. Very briefly, self-determination means that the people decide their own fate. The "people," for political purposes, should mean the inhabitants of a given territory. Yet self-determination cannot exist without the protection of certain basic human rights, including the right to develop one's group identity within the larger political community. These seem to be the basic conditions of sovereignty after the end of the Cold War.

The role of international institutions in safeguarding this New World Order is much less certain. On the one hand, the United Nations and other organizations seem to promise an impartial application of evolving doctrine against local tyrants. On the other, they threaten outside interference, without sensitivity to specific conditions and cultural context. Perhaps the common ground among contributors to this volume is a shared propensity to encourage broad international cooperation and movement, by consent, toward a shared agenda. But there remains considerable reluctance to let institutions move ahead of the consensus. The United Nations may play a leading role in developing standards, provided it respects the self-determination of its constituent states.

How, then, do younger scholars and post-Cold War attitudes differ from what went before? Perhaps in their new willingness to take human rights and self-determination seriously, even at the expense of de facto power. National and international law exist to unite the interests of states and individuals with the interests of the whole.¹ Whenever anyone is shut out of this discourse, truth is lost, justice

suffers, and no one enjoys the peace and security that flow from the mutual respect of our shared humanity.

Note

1. Cf. Cicero, *De officiis* III.vi.26.