

SOVEREIGNTY AND INTEGRATION

Paradoxes and Development within Europe Today

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Updating Sovereignty

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The notion of sovereignty belongs to the most cherished and mythologized principles, being part of the prevailing political culture. "The political culture of a society in a given state and time is the set of widespread and relatively stable and respected beliefs (a) related to the identity of the society as a political nation that is the constitutionally defined sovereign, (b) expressed in public discourse, and (c) referring to the state as the institutional correlate of that identity, and especially to the constitutional system of policy-making."¹

Among the various ways of treating the sovereignty in Europe there have been recently the following:

Firstly, disregarding it: (a) the Soviet stance restricted the Warsaw Pact state's sovereignty to serve the Soviet Union domination of the Warsaw Pact states and the Soviet right to lead intervention of the Warsaw Pact armed forces in any Warsaw Pact state (the extreme cases: Hungary 1956, Czechoslovakia 1968). However, these were autocratic states. (b) The UN resolution 443/131 codified the right to intervene in countries experiencing humanitarian crises. It implied that such crises would occur in the autocratic states only.

Secondly, developing an idea of sharing the sovereignty as a requirement for joining in, and operating the European Union (ie the process of integration of the democratic states).

Thirdly, rejecting the concept of sovereignty altogether as an obsolete one; and specifically, as a harmful one to the European integration.

I suggest that the concept in question be understood now according to the kinds of the existing states and conditions under which they operate. They are not the same as those prevailing at the time when the concept of sovereignty was formed and acquired its status. The reason for the peculiar status of the notion of sovereignty, as it may be perceived in the public discourse, is that whereas it is related to the Cultural (identity) and the Political (the State), the political culture tends to change slower than the state and the interstate relations. Hence, people typically attempt ahistorically and therefore unsuccessfully to combine the traditional understanding of the notion, one born in the early modern times by the rulers of the autocratic states, with the new requirements of the present identities of the modern societies and the functions of the democratic state under conditions of the global system in the making.

¹ R Stemplowski, 'States and Political Cultures in Latin America' in R Stemplowski (ed), *On the State of Latin American States. Approaching the Bicentenary* (Kraków: Andrzej Frycz Modrzewski, Kraków University 2009) 386-387.

I maintain that the sovereignty of the democratic state is inalienable and therefore indivisible (a holistic concept of sovereignty of a democratic state; sovereignty as a rock monolith, not a basket with a full or partial sovereignty), and it is related to the *raison d'état* of the legitimate government, whereas the sovereignty of the autocratic state is imperfect, partial (in that sense it is a divisible one) and alienable one, and it is related to the *raison d'état* of the illegitimate government.

The *raison d'état* in a democratic state is the lawfully justified requirement for policy-making that is based on the priority of the goals expressing the vital national interests, ie the aims which are permanently

- a) bound up with
 - (i) the national identity (as manifested by political conception of the common good, existential security, justice, peace, and human rights),
 - (ii) the basic functions of the state in law-making/implementation/adjudication,
 - (iii) co-operation among the bodies of the state power,
 - (iv) developing the principles of common policy (in case of the EU members),
- b) combining change with continuity,
- c) tested in the continuous public discourse,
- d) non negotiable in relations with the foreign subjects.

The *raison d'état* in an autocratic state is as a reflection of the goals of the individual (or the inner circle) in power; the national identity may be subdued; public discourse is subject to government directed regulation; there is no effective parliamentary scrutiny; the decision-maker's responsibility is resolved on the basis of the rules of the inner circle, etc.

If an external force exerts pressure upon a democratic state, the democratic government may accept the foreign conditions as long as it has a majority in the Parliament (implying the acceptance of the conditions). The sovereignty of the state/government is intact, if they have accepted the conditions; its scope of action will be limited as a result of the conditions, but the scope of action is always limited, somehow or other. They may reject the conditions, in military self-defence, and continue as a democratic state as long as they persist. However, if an aggressor (an autocratic state) imposes itself upon a democratic country in such a way that its democratic government cannot continue as a legitimate body, and the laws of the democratic state cease to operate, there is no longer a democratic state, its sovereignty disappears automatically and altogether.

Sovereignty is not a synonym for freedom of acting single-handedly and/or without any limitations; sovereignty manifests itself in freedom of action (policy-making) required as indispensable at the level of the *raison d'état*.

The single-handedness, as the kind of action that is traditionally associated with sovereignty of a state, be it autocratic or democratic one, may or may not

be a manifestation of sovereignty. The action of a group of states of any kind to achieve a common goal may or may not result from or in a loss of sovereignty of anyone. Once we disentangle the single-handedness, and/or group functioning, from the notion of sovereignty we may arrive at the proper understanding of sovereignty of a democratic state participating in the processes of the European integration of states.

If the *raison d'état* of a democratic state provides for the policy goals which to be attained require integration with another democratic state (or more such states), the sovereign decision to choose such goals and integrate with such state or states to attain the goals constitute the legitimate basis of the derivative decisions or policies at the executive level. Such derivative decisions and/or policies are enacted and/or acted upon – by the states concerned and the bodies/entities they set up together and equip with the adequate competences - in implementation of the sovereign decision in question. The salient decisions at the level of *raison d'état* are taken by a sovereign state alone, no sharing of sovereignty is admissible here, and later, at the level of the executive orders/actions/competences sovereignty is not an issue. Hence the idea of sharing the sovereignty is misleading.

In fact, it is misleading in more than one way. The notion of shared sovereignty is apparently necessary to distinguish it from the range of sovereignty which is not shared. However, if we consider the institution of the enhanced cooperation in the EU, the logical implication of the notion of shared sovereignty will be the recognition that the participants of the enhanced cooperation share the sovereignty to a greater extent than the remaining members of the EU (as the enhanced cooperation is deepening or extending the integration), hence they should be considered less sovereign than the remaining members of the EU. As a matter of fact, an opposite view might have the same status, if we remember that the enhanced cooperation is related to striving for higher goals of integration, and the very setting of them requires a sovereign act of each of the participating states.

Although the sovereignty of the democratic state cannot be restricted in any way because it is indivisible, it could cease to exist altogether, not only in the case of the foreign imposition mentioned above. It would cease to exist should the state in question become, on the strength of its sovereign decision, a subject of a federation under construction by the parties to the treaty involved. The change would occur in one move, as the sovereignty would then appear as a property of the federation, since the new state would have all the properties of the founding states existing till the initial moment of the federation existence. The same would happen should a unitary state be so created, but not a confederation, as the latter would consist of the member states still in existence (democratic states, that is, and such states are sovereign by definition).

One is free to think that the modern processes of international cooperation, especially those of the integration of states, induce a change of the political culture by embedding in it the adequate understanding of the notion of sovereignty.²

² For a more elaborate discussion of the notion of sovereignty – see R Stemplowski, *Wprowadzenie do analizy polityki zagranicznej RP*, t. 1-2 (2nd edn, Warsaw: PISM, 2007); *ibid*, *Elementy politycznej filozofii integracji państw europejskich w XX-XXI w. Streszczenie teksty źródłowe i bibliografia wykładów w Polskim Instytucie Spraw Międzynarodowych* [Elements of Political Philosophy of the Integration of the European States, 20th-21st CC. A Summary – Select Sources – Bibliography of the Lectures at the Polish Institute of International Affairs] (Warsaw: PISM, 2010) and articles on the website: www.stemplowski.pl.