On Legitimate Sovereignty

Abstract

The concept of legitimate sovereignty remains underspecified, largely circularly defined to the extent conceptual definitions do exist and implemented primarily towards the direction of increasing formal sovereignty which, once gained, cannot be easily lost even if the preconditions which had to be met in order to gain legitimate sovereignty were no longer fulfilled. This article identifies two necessary but not sufficient preconditions for legitimate sovereignty: protection of the inalienable human rights of every human being and transparency of the legitimate sovereign entity's entire technological, economic and social governance structure. It is argued that once these – and other potentially relevant – conditions are fulfilled, claims to sovereignty are legitimate independently of the presence or absence of external recognition or power-based considerations which may prevent legitimate sovereign entities from exercising some or all aspects of their sovereignty. In case some of these or other potentially relevant conditions are not fulfilled, an entity loses some or all of its legitimate sovereign authority and functions or status irrespective of any potential external recognition or monopoly power over certain territories or populations. Given legitimate sovereignty's role in political, economic and social inclusion and exclusion and the formation of domestic and international law, it is further argued that every legitimate sovereign entity should explicitly articulate its view on the appropriate criteria for legitimate sovereignty. Explicitly articulated preconditions for legitimate sovereignty would allow external scrutiny of the extent to which any specific self-declared sovereign entity fulfils its own criteria for legitimate sovereignty and provide a transparent roadmap for non-state or sub-state entities or actors who might wish to obtain any specific sovereign entity's de facto recognition by fulfilling its publicly stated preconditions for legitimate sovereignty.

1. Introduction

The concept of legitimate sovereignty remains underspecified, largely circularly defined to the extent conceptual definitions do exist and implemented primarily towards the direction of increasing formal sovereignty which, once gained, cannot be easily lost even if the preconditions which had to be met in order to gain legitimate sovereignty were no longer fulfilled. Without explicitly stated comprehensive criteria for legitimate sovereignty, the concept of sovereignty is circular: whatever significance the most powerful political, economic or social entities or actors may or may not attribute to sovereignty and enforce against less powerful – but clearly not necessarily less correct, deserving or meritorious – entities, communities, actors or

interpretations may often become recognized as sovereignty, "imposing barriers to those actions that intend to undermine, intervene or not follow […] the International Law" (Carpizo, 2004, 117). To the extent specific criteria for legitimate sovereignty do exist, conditionality may often be applied only to non-state or sub-state entities seeking sovereignty as opposed to existing formally sovereign entities. In the words of Williams and Heymann (2004, 441):

> "Conditionality may be applied to the accumulation of increasing sovereign authority and functions by the sub-state entity, or it may be applied to the determination of the sub-state entity's final status. In either case, the sub-state entity is required to meet certain benchmarks before it may acquire increased sovereignty. These benchmarks may include conditions such as protecting human and minority rights, developing democratic institutions, instituting the rule of law, and promoting regional stability."

Yet for a substantive, non-circular definition of legitimate sovereignty to remain universally valid, one might expect such conditionality to be applied to both directions: sovereign entities which do not fulfil "conditions such as protecting human and minority rights, developing democratic institutions, instituting the rule of law, and promoting regional stability" might be expected to be subjected to either decreasing sovereign authority and functions or loss of sovereign status.

This article identifies two necessary but not sufficient preconditions for legitimate sovereignty: protection of the inalienable human rights of every human being and transparency of the legitimate sovereign entity's entire technological, economic and social governance structure. It is argued that once these – and other potentially relevant – conditions are fulfilled, claims to sovereignty are legitimate independently of the presence or absence of external recognition or power-based considerations which may prevent specific legitimate sovereign entities from exercising some or all aspects of their sovereignty. In case some of these or other potentially relevant conditions are not fulfilled, an entity is not legitimately sovereign irrespective of any potential external recognition or monopoly power over certain territories or populations. Given legitimate sovereignty's role in political, economic and social inclusion and exclusion and the formation of domestic and international law, it is further argued that every legitimate sovereign entity should explicitly articulate its view on the appropriate criteria for legitimate sovereignty. Explicitly articulated preconditions for legitimate sovereignty would allow external scrutiny of the extent to which any specific self-declared sovereign entity fulfils its own criteria for legitimate sovereignty and provide a transparent roadmap for non-state or sub-state entities or actors who might wish to obtain any specific sovereign entity's de facto recognition by fulfilling its publicly stated preconditions for legitimate sovereignty. In the absence of such explicitly articulated definition(s) of legitimate sovereignty, sovereignty may amount to little more than a substantively vacuous or indeterminate manifestation of disorganized or anarchic hypocrisy (see Auvinen, 2016c).

2. A Legitimate Sovereign Entity Must Protect the Inalienable Human Rights of Every Human Being

Universal and unconditional respect for and enforcement of inalienable human rights are preconditions for the possibility of legitimate sovereignty. While it is quite possible to, for instance, "[p]romot[e] human rights as an international policy for world peace" (Sánchez-Cordero Grossmann, 2009, 111), the justification for human rights does not depend on utilitarian considerations or their potential instrumental value in the pursuit of other objectives, nor do they require or presuppose any specific form of political or social organization, let alone a "unity of the human species" (ibid., 127) or "universal state of inclusion that builds solid normative unity" (ibid.). As human rights "exist and are standards of justification whether or not they are recognized or implemented by the legal system of a certain country" (ibid., 115), it is the country, "normative unity" or whatever the prevailing governance structure might be that loses legitimacy in case each individual's inalienable human rights are not universally and unconditionally protected.

The most important inalienable human rights are self-ownership of one's body, personhood and personal information and, consequently, the actually enforced opportunity for free, private and autonomous exercise of human agency. In the absence of free, private and autonomous exercise of human agency, individuals will never have an opportunity to form and express their informed consent for the prevailing definitions of community, social contract, sovereignty or any other potentially relevant forms of community or governance – let alone to shatter any potential illusions about the alleged existence of such legitimate forms of community, sovereignty or governance through the identification of even one potential "community" member, citizen, subject or a self-declared victim of misuses of "communal" or sovereign forms of power disagreeing with or refusing to adhere to some aspects of the prevailing definitions of community or sovereignty.

Without universal and unconditional respect for and enforcement of the most important inalienable human rights which override all other alleged rights in case of conflict, there is no legitimate sovereign entity or nation that could actually or allegedly be defended, secured or governed. One might expect, for instance, the national security of a legitimate sovereign entity to conceptually consist of securing the inalienable human rights of every human being and be practically subservient to such pursuits. Consequently, "State terrorism" (see e.g. Alcaide Fernández, 2009) – let alone "the State terrorism of the World Dictatorship of National Security" (Acosta, 2007, 57) – might well be oxymorons: as soon as the state engages in terrorism against humanity, humanness or other sovereign entities by, for instance, violating inalienable human rights, there is no longer legitimate sovereign state that could shield such terrorism from liability.

Wilful or negligent human rights violations thus eliminate legitimate claims to sovereignty – potentially on the part of both the government and the state – rather than fall within the legitimate scope of discretion or self-determination of a sovereign entity. Individuals who, for instance, have not had an opportunity for free, private and autonomous exercise of human agency are not necessarily part of any actual or alleged polity or unit of governance. In case any specific political entity's claims to sovereignty are extended to some individuals who have not given their informed consent to such forms of authority, it may not be obvious how any individuals in the world could be excluded from the purview of the sovereign claims of sufficiently powerful political entities. In other words, in case informed consent is not deemed to

be necessary in the case of specific individuals merely due to, for instance, their place of birth or current physical location within the territorial borders of any alleged sovereign entity, it may be difficult to see how sufficiently powerful political entities could be prevented from extending their sovereign claims also to other individuals or groups irrespective of, for instance, their place of birth or current physical location. In case utilitarian considerations are regarded as relevant, how, for instance, might a polity with, say, ten times the population of its neighboring polity – which is, for the sake of the argument, essentially occupying exactly ten percent of its "own" smaller population through actual or latent non-consensual subjection to its sovereign claims – be prevented from legitimately annexing its smaller neighbour based on the concept of sovereignty only in case sovereignty has no substantive preconditions, such as the universal and unconditional respect for and enforcement of inalienable human rights? Under some circumstances or assumptions the proportion of actually or latently non-consenting subjects might, after all, be precisely the same, if not even smaller, in the post-annexation polity that would have occupied the smaller polity with one tenth of its original population. One might well, however, argue that utilitarian considerations are not relevant and it is only the principle – requirement for freely, privately and autonomously conceived and communicated informed consent from each and every member of a legitimate sovereign entity – that counts. While it might sometimes be implicitly or explicitly argued that some individuals' lack of informed consent or inalienable human rights allegedly do not matter or count on, for instance, pragmatic grounds, why pretend that such claims would be consistent with legitimate – rather than, for instance, pragmatic – forms of sovereignty?

One might well argue that a legitimate sovereign entity's duty to universally and unconditionally respect and enforce inalienable human rights extends also to non-members of the legitimate sovereign entity. Such a duty may be related to both the internal and external defensibility of legitimate sovereignty. Internally, each polity is bound by its own interpretation of inalienable human rights. Rights which are conceptually applicable to or enforced only in respect of members of one's domestic polity constitute domestic positive law, not inalienable human rights. One might well argue that even in a legitimate sovereign entity that respects and enforces inalienable human rights, such rights would have to be recognized as inalienable human rights – and thus be applied also to non-members – rather than merely legal or constitutional rights under domestic positive law in order to justify the entity's claims to legitimate sovereignty in the first place.

Externally, it may be difficult to see how an international system based on national sovereignty could gain legitimacy without a requirement for each legitimate sovereign entity to respect and enforce the inalienable human rights of also non-members. According to Koller (2009, 315):

> "The external defensibility of a political community means that its practices appear to be tolerable for other communities and their members. This requires that these practices do not have negative external effects that appear impermissible in consideration of the interests of all people concerned from an impartial point of view. So a community's practices must be generalisable in the sense that they appear generally acceptable, even if they were adopted by all communities."

Recognizing or protecting the inalienable human rights of only the citizens or members of one's own polity while, say, exploiting, enslaving, experimenting with or otherwise violating the human rights of others may hardly be regarded as an externally defensible, tolerable, permissible or generalizable practice. Without a substantive, human rights based justification for legitimate sovereignty, the concept of sovereignty may be quite incapable of concealing the potentially alegal or anarchist – in the positive law sense – or illegal – in the natural law sense – foundations of the international (dis)order.

The very possibility of law might well be expected to require explicit articulation of the circumstances in which sovereignty is being misconstrued or misused as a mere alter ego for immoral, illegal or terrorist activities. Even in case sovereignty is seen, for instance, merely as a means to structure violence, conflict or competition for resources, one might expect the preconditions for legitimate sovereignty to be precisely defined in order to, for instance, distinguish legitimate sovereignty from mere crime, terror, "cultism" (see Auvinen, 2016c) or nihilism in an externally defensible, tolerable, permissible and generalizable manner. For how many years, for instance, must a mere criminal, terrorist or "cultist" group occupy any given territory in order to be recognized as a legitimately sovereign member of the international community? What is the maximum proportion, if any, of the citizens or subjects of any given sovereign entity who have not given their freely, privately and autonomously conceived and communicated informed consent for sovereign governance that any given polity may have at any given point in time while still allegedly maintaining its legitimate claim to sovereignty? Are there any temporal or methodological limits on how any given polity may attempt to reduce the proportion of actually or potentially non-consenting subjects? Can they be exterminated immediately at will or are perhaps some longer-term discrimination, undermining of their livelihoods or genocidal campaigns necessary to retain allegedly legitimate sovereignty while doing so? Can allegedly legitimate sovereign entities move on to different targeted individuals as soon as some have been successfully exterminated as long as the overall proportion of living targeted individuals of the total population is below any given threshold at any given point in time? In other words, can allegedly legitimate sovereign entities successively move on to different human traits that will be exterminated as soon as the proportion of actually or potentially non-consenting living subjects has fallen below any given threshold, or perhaps randomly select individuals for, for instance, human experimentation as long as the proportion of living victims is below any given threshold of the total population?

One might well expect legitimate sovereign entities which universally and unconditionally respect and enforce the inalienable human rights of both members and non-members to, at the minimum, derecognize the alleged sovereignty of any given polities – potentially both governments and states – which do not respect or make their best efforts to enforce inalienable human rights. In other words, legitimate sovereign entities might, at the minimum, be expected not to willingly and knowingly support violations of inalienable human rights anywhere in the world by, for instance, granting potential legal protection to violators of inalienable human rights through alleged sovereignty or any other means. It would, however, also be quite possible to argue that the concept of legitimate sovereignty requires active enforcement of the inalienable human rights of also non-members irrespective of, for instance, their place of birth or physical location. Otherwise the rights in question might not be regarded as

inalienable in the relevant polity, thus potentially challenging also its own claim to legitimate sovereignty.

Unconditional respect for and enforcement of the inalienable human rights of every human being may be a necessary but not a sufficient condition for legitimate sovereignty. Flack et al. (1992), for instance, have summarized the "conceptual approaches in which legal claims to self-determination may be grounded" (ibid., 189) as follows:

> "Under the colonial school, self-determination is limited to 'peoples' under colonial rule ([…]this is the traditional approach to self determination). The historical school considers 'peoples' as any historical collectivity whether under formal colonial rule or not. The human rights school defines 'peoples' as oppressed collectivities. The political school (or anti-school) grants self-determination to 'peoples' according to the dictates of *realpolitik*" (ibid., 190).

According to the human rights approach to legitimate self-determination, for instance, "human beings possess an inherent 'right' to determine how they are governed" (ibid.). According to such an approach, informed consent from, at the minimum, each and every "peoples", if not in all cases also each and every individual, is required over and above the universal and unconditional respect for and enforcement of inalienable human rights in order for any claims to sovereignty to gain potential legitimacy.

3. A Legitimate Sovereign Entity Must Make Its Entire Technological, Economic and Social[1] Governance structure transparent

It may never have been entirely obvious to non-co-opted observers, how precisely anything less than fully transparent national security policies and commercial activities could reasonably be expected not to lead to egregious human rights violations. In a Canadian case from 2010, the court defined national defence as "all measures taken by a nation to protect itself against its enemies" and national security as "the preservation of the Canadian way of life including the safeguarding of the security of persons, institutions and freedoms in Canada" (Justice Mosley in Canada [Attorney General] v Almalki, quoted in Friedman, 2015, 5). As long as human rights violations committed or facilitated by states do not lead to elimination of the relevant governments' and states' legitimate sovereignty, egregious human rights violations are an entirely foreseeable consequence of secrecy in security or commercial affairs. At the minimum, such secrecy might be expected to result in human rights violations

[1] The transparency requirement for social structures might be justified by, for instance, a desire to prevent non-transparent state-coordinated, non-state, transnational or global social networks, groups or "cults" from exercising influence or control, at the minimum, beyond the borders of any specific sovereign entity, if not also within the territory of that entity as a precondition for others to recognize its claims to sovereignty as legitimate. In the absence of strictly enforced legislation and continuous and extensive public scrutiny aiming to eliminate non-transparent forms of social organization, "the absolute power of the […] King on other organs of state responsible for upholding human rights, such as the judiciary" (Gumedze, 2005, 266) which may be evident in some less "developed" countries may simply be implemented less transparently in "developed" countries through perhaps equally absolutist forms of social organization which might exert influence, domination or control domestically, internationally, transnationally or globally – potentially also through absolute control over the transparently absolutist kings of some less "developed" nations.

of both domestic and foreign citizens by governments or states which, for the sake of the argument, implement the presumed majority preferences of their populations for such human rights violations with perfect accuracy. It is, however, conceivable, if not likely, that the entire domestic and global "security" apparatuses would ultimately be overtaken by essentially criminal, terrorist or "cultist" elements, potentially resulting in drastic discrepancies between the alleged and actual objectives or operating practices of states while any and all individuals who might attempt to inform the public of the ongoing criminal, terrorist or "cultist" travesties of sovereignty or security might simply be eliminated. Under such circumstances any alleged whistleblowers who consensually receive and accept widespread media coverage might often be co-opted insiders or essentially actors exposing trivial, relatively low technology surveillance practices, while genuine whistleblowers might be either eliminated before being able to gather, produce or disseminate potentially relevant material or be too well aware of the media's own willing and knowing participation in egregious human rights violations to be co-opted by the perpetrators in staged public relations performances. Statements, according to which "no media outlet has ever been prosecuted for publishing a classified secret" (Harvard Law Review, 2009, 2230) in the United States may merely indicate the level of the media's complicity in egregious human rights violations, illegalities, misconduct or carefully coordinated regime-wide – if not global – public relations performances in which the media's role has so far not involved being prosecuted for alleged or actual publication of classified information.[2] Any classified information that might be disclosed or allowed to be disclosed by an alleged "Leaky Leviathan" (Pozen, 2013) state might merely be part of such a performance, while genuine whistleblowers attempting to gather, produce or disseminate more incriminating information might well be persecuted or eliminated with full knowledge and active participation of the state-media-military-law enforcement nexus behind the scenes of such regime-wide or global public relations performances.

According to Welsh (2012, 1, 3-4, 9, 17, 22, footnotes omitted), for instance:

> "in 1994 […] the U.S. General Accounting Office reported that hundreds of thousands of Americans were used in military-related experiments involving radiation, blister and nerve agents, biological agents, and LSD between 1940 and 1974 […] The 1957 report of a CIA inspector general concluded that the mind manipulation programs were unethical and illegal, but should be continued and kept secret not only from the enemy but also from the American public to avoid public and international outcry […] In 2010, military veterans sued the CIA over experiments involving brain implants 'to turn humans into robot-like assassins.' The lawsuit included a request for the CIA to produce further information on a 1961 CIA document written by a top scientist who

[2] Such a potential interpretation may not be entirely inconsistent with "the source/distributor divide" (Pozen, 2013, 516) in the United States. According to Pozen:

> "the First Amendment has been construed to provide so little protection for the leaker and yet so much protection for the journalist who knowingly publishes the fruits of the leaker's illicit conduct and thereby enables the very harm — revelation of sensitive information to the public and to foreign adversaries — that the leak laws were designed to combat. In other areas of criminal law, downstream users of illegally obtained material are not similarly insulated from liability" (ibid.).

> described successful remote control animal experiments and plans for experiments to determine if the same could be done on humans. The CIA responded that any related CIA documents must remain classified to protect national security […] the CIA was not a rogue agency; rather most historians now conclude that the White House or executive branch gave orders for mind control experiments and other CIA misdeeds […] Since the 1950s, the U.S. military and the CIA have funded and conducted research on mind control; including EMR [electromagnetic radiation] neuroweapons that can target and control human behaviour."

In the United States, "Psychologists, psychiatrists physicians, prison officials, scientists, lawyers and politicians have, for decades, been involved in mind-control research in hospitals, laboratories, universities, mental institutions, medical offices, prisons and schools" (Welsh, 1998). Accounts of, for instance, "an electromagnetic mind-control technique which can take full control of the person's body and mind permanently" (Rai, 2010) have been reported even in "a tiny underdeveloped country like Bhutan that depends on foreign aid to feed its population and for development" (Joshy, 2010), although it does not necessarily follow that a Bhutanese victim reporting intensifying torture[3] while in the United States would necessarily be "under the control of the Bhutanese regime" (Rizal, 2010) – it is quite possible that some of the technologically more advanced expressions of the "sick fascist mentality" (ibid.) emanate primarily from some of the technologically more advanced states irrespective of the victims' physical locations.

It is, however, remarkable that thematically similar accounts often refer to non-consensual "experiments", as if decades of experimentation would never mature into actual products or systems of governance or reverse eugenics – involving "the state […] choosing the governed" (Harvard Law Review, 2008, 1597) by exterminating or "killing softly" (see Rizal, 2010), for instance, non-co-opted or incorruptible individuals – that would be widely deployed against the general population under the veil of alleged national security or trade secrecy. With decades or centuries of national security or trade secrecy, it is quite possible that, say, the entire world is essentially controlled by non-transparent social structures or "cults" through technologies that are either universally deployed or targeted at actual or potential political, economic, academic etc. competitors or opponents or commercially lucrative targets on a case by case basis under the veil of alleged national security or trade secrecy. It is also remarkable that some of the earlier attempts to ban, for instance, the "development" of "beam, radio-wave, infrasonic, geophysical and genetic weapons" (Mikhail Gorbachev, quoted in Welsh, 2003-2006), claims of being personally targeted by mind control weaponry or releases of information on electromagnetic radiation weapons arms race have been associated with "sovereign" entities or heads of state that are currently either defunct or dead (See e.g. Welsh, 1998 and 2003-2006, respectively, for Saddam Hussein's allegations that "the CIA targeted him with mind

[3] While all forms of mind control might well be classified as torture, mind control is not a logically necessary element of torture implemented through what has sometimes been referred to as a "mind control device" (Rai, 2010). It may be quite possible to use technologies potentially suitable for mind-reading, -modeling, -influencing and -control for, for instance, torture with no external mind control or other objectives than the infliction of pain or injury or torture without mind control precisely because one of the purposes of such torture might be to observe or model the victim's autonomously produced cognitive or bodily reactions to physical torture.

control" and the observation that "a classified emr [electromagnetic radiation] arms race between Russia and the US became public knowledge with the momentous event of the breakup of the Soviet Union in 1989"). In other words, to the extent some of the aforementioned speculations or allegations are correct, dead political leaders or defunct "sovereign" entities may have been willing and able to convey more relevant, accurate and complete information on potentially crucial technologies for the very possibility of legitimate sovereignty compared to some – if not all – of the prevailing criminal, terrorist or "cultist" entities that currently lay claim to sovereignty.

It is not the responsibility of the actual, potential or alleged victims or other potentially interested non-state parties to prove the veracity of any specific speculations or claims regarding what precisely might be taking place under the veil of alleged national security or trade secrecy. The fact that actual, potential or alleged victims or other potentially interested parties are able to present speculations or claims which cannot be proven wrong by transparently examining any and all potentially relevant forms of technological developments or social formations in any specific alleged sovereign entity indicates that the preconditions for legitimate sovereignty are not fulfilled. If, for instance, "[s]tate secrets […] supersede the obligation to prosecute and the right of full disclosure to the defendant regarding the charges against him" (Danisi, 2011, 192), it is the state's legitimate claim to sovereignty which must be abolished rather than pretending that a "possible absolute and incontrollable exception to the rule of Law" (Judge Magi, quoted in Danisi, 2011, 195, footnote 36) is consistent with the rule of law or legitimate sovereignty in general.

The responsibility for enforcing the protection of human rights through, among other things, complete transparency of a sovereign entity's entire technological, economic and social governance structures lies, at the minimum, on all citizens of the sovereign entity in question, if not every human being. According to Clark (2010, 51, original emphasis), for instance, "Since governments are the agents that must comply with the law, and since democracy by definition places the responsibility for governance with the people, *it is ultimately the citizens of a state who are responsible for their government's compliance or non-compliance with law*." One might well add that, since legitimate sovereignty and humanness in general by definition place the responsibility for derecognizing illegitimate alleged sovereign entities and protecting inalienable human rights on every human being and legitimate sovereign entity, it is ultimately the responsibility of every human being and legitimate sovereign entity to ensure that inalienable human rights are protected and illegitimate sovereignty abolished. Derecognition of sovereignty does not necessarily entail isolation of the entity whose legitimate claims to sovereignty are eliminated. It may, however, expose or challenge any potential attempts to, for instance, associate some rights – if not even inalienable human rights – with citizenship of a recognized sovereign entity or to confine one's interaction or diplomatic or communicative efforts only to some illegitimate, criminal or terrorist entities or organizations while excluding others ostensibly based on precisely the alleged illegitimacy, criminality or terrorism of such entities or organizations.

4. A Legitimate Sovereign Entity Must Explicitly State Its Own Criteria for Legitimate Sovereignty

Based on some of the prevailing interpretations of the rule of law, one might expect each self-declared or alleged sovereign entity to explicitly state its own complete criteria for recognizing legitimate sovereignty – the circumstances in which it would have a legal duty, according to its own domestic positive law and thus ultimately potentially also international law, to recognize other entities' claims to sovereignty as legitimate irrespective of any other considerations. In other words, in case some self-declared or alleged sovereign entity disagrees with the aforementioned conditions or wishes to impose some additional criteria, one might expect it to have a duty to explicitly state so. Any potential failure to do so by an entity which does not self-classify itself as, for instance, criminal, terrorist, "cultist" or nihilist might appear to extend the duty of explication to the jurisdiction's entire conceptualization of the rule of law.

Yet comprehensive definitions of the criteria for recognizing legitimate sovereignty may be relatively rare. According to Gadoury (2001, 404, 407, footnote omitted), for instance, in reference to the world's most powerful self-declared or alleged sovereign entity:

> "There are few subjects in international law which are of greater significance than the question of recognition of governments […] Hersh Lauterpacht's assessment regarding U.S. recognition policy, which was made in 1947, that 'It is not easy to characterize in a simple formula the practice of the United States in the matter of recognition of governments. Isolated pronouncements – of which there is an abundance – provide material for contradictory conclusions' is still appropriate today."

In how many alleged "legal" systems might abundant "[i]solated pronouncements" providing "material for contradictory conclusions" in matters where "few subjects … are of greater significance" be legitimately and credibly regarded as being consistent with the rule of law? Would such alleged "legal" peculiarities not, perhaps even by definition, place the entities in question outside the rule of law? Would the entities in question not, at the minimum, have a duty to provide complete explanations of their views on the rule of law in case they wish to, for instance, gain others' recognition for their claims to legitimate sovereignty or legitimately and credibly recognize the sovereignty of others?

Merely stating one's actual or alleged views on legitimate sovereignty does not, of course, necessarily imply that such criteria would indeed accurately and adequately define legitimate sovereignty – even when all sovereign entities might actually or allegedly agree on some criteria for legitimate sovereignty. Sovereignty has, for instance, sometimes been compared to property. According to one articulation of such a view:

> "conceptually, property and sovereignty are understood to reduce transaction costs, hence the common justification […] public international law as a system that regulates the behaviour of sovereign states may be seen as not much more than regulation of property" (Urueña, 2006, 225-226, 227).

According to another interpretation of the property metaphor, sovereign entities might in some circumstances be seen as, for instance, a gatekeeping oligopoly or oligarchy –

if not a centrally controlled monopolist or autocracy – which owns all formal sovereignty in the world, extracts economic value from its possessions and determines whether and to whom to grant access to the self-selecting and self-perpetuating class or "cult" of sovereign entities. Under such circumstances it might be quite possible for the gatekeepers of sovereignty to produce a number of explicitly stated and relatively stable and coherent definitions for sovereignty, which perhaps in most – if not all – cases might nonetheless be transparently illegitimate as long as they would be designed to perpetuate the gatekeepers' monopoly on the definition, possession and distribution of sovereignty.

While each legitimate sovereign entity might be expected to have a duty to, at the minimum, state its own criteria for recognizing others' sovereignty – if not in all cases also to include the protection of inalienable human rights and the transparency of technological, economic and social governance structures among such criteria – legitimate sovereignty does not depend on external recognition by any other actual or alleged sovereign or other type of political or social entity. In other words, the legitimate sovereignty of any potential entities which do, for instance, protect inalienable human rights and provide complete domestic and international transparency of their technological, economic and social governance structures cannot be eliminated by others' potential failure to acknowledge the fulfilment of the relevant criteria for legitimate sovereignty. Some of the dominant approaches to the recognition of sovereignty (see e.g. Gadoury, 2001, 405-407) may thus have more to do with power than legitimate sovereignty. Yet, from the perspective of legitimacy, it may not be obvious why some entities should be penalized for the mere lack of power. One might well, for instance, argue that an entity which is not "in de facto control of the territory and in possession of the machinery of the state" (ibid., 406) but nonetheless expresses its wish to protect inalienable human rights and to make its governance structures transparent and utilizes whatever power it may or may not have to pursue such objectives potentially does constitute a legitimate sovereign entity, while the entities "in de facto control of the territory and in possession of the machinery of the state" potentially do not. It is thus not any potential "lack of governability and stability" (Ruiz Medrano, 2011, 87) that defines a failed state – another potential oxymoron in case legitimate sovereignty is seen to have been eliminated at the moment the state in question might have willingly ceased to pursue its obligations – but any potential lack of will to utilize whatever power the state may or may not have to fulfil the preconditions for legitimate sovereignty.

It is not "obvious" (Carpizo, 2004, 127) that "the idea of sovereignty cannot be in the beginning of the 21st century the same" (ibid., translation by the author) that it may or may not have been for centuries. It is, for instance, quite possible that either the idea of sovereignty has been incorrectly or insufficiently specified in the first place or changing power relations have limited access to or distorted interpretations of the original correct and complete idea. Neither alternative should be confused with changes in the underlying idea of sovereignty itself.

There may also be no obvious or necessary reason why legitimate forms of sovereignty or governance should necessarily exist. According to Ku and Yoo (2013, 227), for instance:

> "While many scholars argue that […] absolute state sovereignty is eroding, this claim is overstated. Global governance may be more dream than certainty. Westphalian sovereignty may be merely a shibboleth for neoisolationists, rather than a value worth protecting. As we readily admit, the institutions of global governance are only now emerging from their infancy."

Yet there is no necessary relationship between Westphalian sovereignty and global governance that would conceptually or practically require or guarantee that any actual or alleged erosion of Westphalian sovereignty would necessarily be compensated by increasing global governance or vice versa. While "global sovereign institutions" (Shebaya, 2009, 134-135) may well be "sorely needed in two general arenas: the arena of fundamental individual interests (or basic rights), and the arena of common concerns" (ibid.), it is quite possible that any and all actually existing past and present forms of sovereignty or governance have been and continue to be profoundly illegitimate. In other words, any potential "sore need" for global, international, transnational or some other forms of sovereignty, authority or institutions in order to protect human rights or to address common concerns does not imply that such sovereignty, authority or institutions exist or can be legitimately constructed irrespective of the extent to which legitimate or illegitimate national sovereignty may or may not exist at any given point in time. Under such circumstances any potential erosion of Westphalian sovereignty might simply liberate at least some parts of humanity from illegitimate forms of sovereignty or governance rather than replace one profoundly illegitimate form of sovereignty or governance with another. There might thus be no automatic presumption of continuity or state succession according to the "five cases to which International Law attributes the effects of a legal succession: the transference of a part of a territory (cession), decolonization, unification, separation (secession) and dissolution" (Andaluz Vegacenteno, 2007, 396-397). Sovereignty might simply be dissolved when the preconditions for legitimate sovereignty are not fulfilled without presupposing that some of the rights or obligations of the dissolved sovereign entities would necessarily be applicable to the successor territories or populations. Even in the case of state succession, one might expect the rights and obligations and degree of sovereignty of the successor states to be based on the extent to which the succeeding entities fulfil the preconditions for legitimate sovereignty rather than being automatically inherited from potentially materially different types of sovereign entities.

Nor does it necessarily follow from "the fact of reasonable pluralism" (Rawls, 1996, 36-38, quoted in Shebaya, 2009, 132) or some other potential justifications for sovereignty that "[a] central reason for global sovereignties is the exemption provided by the convention of state sovereignty for states and state actors to consider only or primarily the interests of their citizens" (Shebaya, 2009, 134). According to Shebaya (ibid., 132):

> "There are a plurality of reasonable conceptions of the good life, and therefore a plurality of legitimate but different, and potentially incompatible, ways of organizing political life. Insisting on total legal cosmopolitanism -that is, on a single unified body of cosmopolitan law deriving its authority from one single source -may limit the ability of different communities to consensually organize their lives in multiple ways. Local sovereignty provides an effective means for facilitating such differences in organization, civil law, and other

> social and political arrangements. One might characterize the flaw with total legal cosmopolitanism as overemphatic paternalism about the good for individuals. While some measure of paternalism is to be expected when it comes to social justice, there must also be room for an accompanying principle of autonomous choice and responsibility. State sovereignty, accompanied by reinforced global restrictions with regard to narrowly circumscribed subject-matters, provides a better model in this respect."

There may be nothing inherently paternalistic about excluding an actual or alleged ability "to consider only or primarily the interests of […] citizens" from the purview of "reasonable conceptions of the good life". Any criminal or terrorist organization may consider only or primarily the interests of its members. It may be quite unnecessary to attempt to legitimate such pursuits by recognizing members of essentially criminal or terrorist organizations as citizens of alleged sovereign entities. Furthermore, any criminal or terrorist organization may actually or allegedly have the interests of every human being or the humanity in general in mind when, say, attempting to violently impose its "reasonable conception of the good life" on others. One might thus well argue that the primary or exclusive pursuit of citizens' self-interest falls within the scope of the "narrowly circumscribed subject-matters" which call for "global restrictions" or, at the minimum, derecognition of any specific entity's claims to legitimate sovereignty. It is quite possible – if not necessary – to restrict the legitimate "plurality of reasonable conceptions of the good life" exclusively to non-self-interest promoting forms without unduly interfering with different communities' capacity "to consensually organize their lives in multiple ways" which do not have as their aim or effect, for instance, the exploitation, enslavement, oppression, taking advantage of or experimentation with others. Legitimate sovereignty might thus well be deemed to involve "outlawing the exclusive pursuit of self-interest in all areas of life – including 'politics' – by the citizens of the nation in question everywhere in the universe" (Auvinen, 2016a, 197). Such a conclusion may well remain valid even in the hypothetical case that every individual and legitimate sovereign entity would – under the presence of perfect information, for the sake of the argument – initially agree on an appropriate legal framework to govern the pursuit of each individual's and sovereign entity's otherwise unrestrained self-interest: as the emerging wealth and power disparities might be highly likely to lead to subversion of the initially agreed upon legal framework by some of the more powerful individuals or sovereign entities, the appropriate legal framework might well involve outlawing rather than (initially) regulating exclusive pursuit of self-interest.

Any potential exclusion of "basic rights" (Shebaya, 2009, 135) and "environmental issues" (ibid.) – or the pursuit of self-interest, for that matter – from the purview of state sovereignty does not, however, necessarily entail "need for permanent, stable, global institutions that have supreme authority" (ibid.). It is, for instance, possible that some objectives may be achieved – or their potential conceptual or practical unattainability illustrated – more effectively in the absence of any form of legitimate authority that falls short of the ideals. In the absence of perfectly just sovereign power, freedom of speech, for instance, may well be attainable to a greater extent when no imperfect sovereign or other form of institutional authority is given a legitimate opportunity to interfere with the pursuits of individuals, groups or communities who might be able to resist illegitimate meddling or violence for sufficient periods of time to gather, produce and distribute potentially relevant material.

The potential absence of past or present legitimate sovereign entities is not necessarily conceptually related to dogmatic anarchism. It is quite possible to regard, for instance, national sovereignty as a legitimate and desirable objective. Once, however, the potentially ubiquitous non-fulfilment of the preconditions for legitimate sovereignty has become evident, either the hypocrisy of sovereignty's presumed legitimacy will have to be abandoned – essentially choosing to adhere to the concept of sovereignty while acknowledging its illegitimacy – or the prevailing forms of international (dis)organization explained on some other grounds. In other words, one can either acknowledge the illegitimacy of the substance of the prevailing forms of international organization while nonetheless continuing to adhere to its legally and normatively hollow form or abandon the concept of sovereignty altogether based on such an acknowledgement.

5. Conclusion

Legitimate sovereignty requires, at the minimum, universal and unconditional protection of inalienable human rights and transparency of the sovereign entity's entire technological, economic and social governance structure in order to enable both internal and external observers to ascertain that no-one's inalienable human rights are being violated. Should some or all self-declared or alleged sovereign entities fail to meet the aforementioned and other potentially relevant criteria, it is the legitimacy of the entities' claims to sovereignty which is eliminated and must thus be derecognized by any potential remaining legitimate sovereign entities rather than continuing to provide essentially criminal or terrorist organizations potential legal protection under the disguise of "sovereignty" as long as a sufficiently large number of sufficiently powerful fellow accomplices continue to provide mutual recognition and support for each other. According to Luban (1986, 10):

> "If the law is to be anything humane, it must guide our moral imaginations; and since it is now imperative that our moral imaginations include the awareness of criminal states, the law must also include the awareness of criminal states. For this reason alone, the classical doctrine of sovereignty, which acknowledges the authority of criminal states, is no longer feasible. And so, Article 6(a) [of the Nuremberg Charter] -which protects the sovereignty of all states, even criminal states, so long as they do not launch wars- should be seen as a mistake."

A self-declared political, social, economic or military – although perhaps not quite, for instance, "legal" – entity in which the "law does not admit any circumstance in which whistleblowers can legally make illegal activities known to the public" (Friedman, 2015, 22-23) might well be regarded as a criminal or terrorist organization rather than a legitimate sovereign entity that could participate in international relations, diplomacy or "realpolitik" among legitimately sovereign nations – if any. The suggestion – made in reference to the Taliban for recognizing Chechnya – that "one terrorist group supports another – they are seeking solidarity" (General Leonid Ivashov, the international relations chief in the Russian defense ministry, quoted in Gadoury, 2001, 398) may well have wider applicability to "international" relations

between self-declared or alleged sovereign entities, potentially none of which fulfil the preconditions for legitimate sovereignty.

Once the potential illegitimacy of perhaps most – if not all – prevailing forms of sovereignty has been acknowledged, one can either continue to adhere to some of the prevailing nihilistic or substantively vacuous interpretations of sovereignty – essentially recognizing any and all manifestations of criminality or terrorism that are sufficiently powerful to elicit mutual recognition from the most powerful criminal or terrorist organizations as sovereign entities – or abandon the concept of sovereignty altogether based on such an acknowledgement. In case legality, the rule of law, justice or non-nihilism are to be restored to the maximum feasible extent – if any – one might well argue that it is exclusively the victims of the "sovereign" criminality or terror – individuals who have not pretended that sufficiently powerful forms of criminality or terrorism are miraculously converted into sovereignty as a part of sufficiently sinister or conspiratorial criminal, terrorist or cultist rites – who are in the position to deliver justice for the perpetrators. Whether the victims are able or inclined to organize themselves into legitimate sovereign entities while doing so may be irrelevant to any potential delivery of justice. Any and all legitimate sovereign entities which might or might not emerge would, however, have to be based on, at the minimum, unconditional protection of inalienable human rights and transparency of their entire technological, economic and social governance structures, thus potentially making non-recognition of the prevailing self-declared or alleged sovereign entities' sovereignty a necessary but not a sufficient precondition for the possibility of legitimate sovereignty.

Insufficiently or incorrectly specified or enforced sovereignty may well come to be seen as one of the most significant and irremediable mistakes that humanity has ever made. Given the nature and scope of some of the criminal offences or human rights violations committed, another Nuremberg[4] or Tokyo Trials might be quite incapable of attaining sufficient relevance and legitimacy to restore legality or the rule of law – to the extent such objectives might ever have been realistically attainable (Auvinen, 2016c) – or to persuade potentially eternally dominated or exploited individuals or nations "to submit to eternal domination only in the name of peace" (Justice Pal,

[4] According to Annas (2009, 19, 24), in reference to "the Doctors' Trial" in Nuremberg, "By valuing the liberty and welfare of research subjects above the promise of medical progress, the Nuremberg judges sought to place the interests of individual humans above the interests of society in medical progress." While the principle may be correct, it may no longer be easily implemented after the human body's informational integrity has been breached through, for instance, non-consensual mind-reading, -modeling, -influencing or -control. Even with perfect accuracy and success rate with no collateral damage, the destruction of all non-consensually extracted thoughts, elements of personhood and other forms of personal information and their derivative works might entail the destruction of a substantial proportion of perhaps most – if not all – aspects of a "society" from an extended period of time as well as the execution of perhaps most – if not all – societal power-wielders. Given the nature and scope of the required destruction and executions, sufficiently persistent attempts to achieve such objectives might well result in the extinction of humanity (Auvinen, 2016c; Auvinen, 2016b). Furthermore, given, for instance, the nature and scope of the crimes or human rights violations committed, the prevailing distribution of power and some of the potentially inherent difficulties or indeterminacies involved in delivering justice in a manner that might genuinely merit to be described as being legal in nature (ibid.), any potential global trials might to a non-negligible extent be "emblematic of the United States's *Nineteen Eighty-Four* syndrome" (Annas, 2009, 39) rather than constituting the implementation of justice without the victims having to incur any additional human rights violations in the process of doing so.

quoted in Luban, 1986, 11).[5] Any potential "controlled demolition of the State" (Hinojosa Martínez, 2005, 9, translation by the author) may thus well be both self-inflicted and amply deserved. If legitimate sovereign entities are to ever emerge from the ruins of the prevailing self-declared or alleged sovereign states, they will have to justify their existence and legitimate security needs through, at the minimum, universal and unconditional protection of inalienable human rights and transparency of technological, economic and social governance structures before being able to legitimately pursue security, "good life" or any other potentially relevant objectives exclusively through means which do not violate the preconditions for legitimate sovereignty. There may, however, be no guarantee that criminality, terrorism, "cultism", nihilism or warfare through all available means would necessarily at some point in time end and politics within or between legitimate sovereign entities begin.

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[5] "Eternal domination" may well be deliberate understatement. It is the dominators who would be fighting a perpetual war of extermination against, at the minimum, victims who do not willingly submit to such domination. Such a perpetual war will not substantively amount to peace regardless of what suggested or alleged names the perpetrators might attempt to give to such war efforts and warmongering. What Justice Pal may have meant or unintentionally emphasized is that the victims cannot be expected to remain eternally submissive in the face of an essentially genocidal assault.

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