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Legitimate Political Authority and Sovereignty: Why States Cannot be the Whole Story

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Abstract States are believed to be the paradigmatic instances of legitimate political authority. But is their prominence justified? The classic concept of state sovereignty predicts the danger of a fatal deadlock among conflicting authorities unless there is an ultimate authority within a given jurisdiction. This scenario is misguided because the notion of an ultimate authority is conceptually unclear. The exercise of authority is multidimensional and multiattributive, and to understand the relations among authorities we need to analyse this complexity into its different aspects. Instead of ultimate authorities we can have actors endowed with superior authority over others in one regard, but not necessarily in another. And this limited superiority is sufficient for resolving conflicts. There is no need for ultimate authorities. Having discarded the notion of sovereignty we can embrace a different conception of legitimate authority, one that is not interested in the pedigree of actors, but in their capacity to serve its subjects. If states wish to retain their central role in the domain of political authority, they will have to earn it.

Keywords Legitimacy · Authority · Sovereignty · States · International organisations · Joseph Raz

Introduction

States are believed to be the paradigmatic instances of political authority. Debates on the legitimacy of political authority are often limited to the role of states.[1] The prominence of states is even more obvious in the domain of Public International Law,

[1] For instance Wellman (1996), Christiano (2004), Estlund (2008).

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where states retain their exclusive and foundational role (Warbrick 2003, p. 206). This state-centeredness is a peculiar fact in the light of actual challenges. Global crime, epidemics, migration, poverty, and massive human rights violations painfully illustrate the limits of the state. In this article, I suggest a different approach for understanding political authority. Joseph Raz's conception of legitimate political authority is not tailored to the form of states, but to the reasons for action which are relevant in the political domain. According to this account, political authority is justified[2] if it can help its subjects to improve conformity with those reasons. Depending on the circumstances, states may be the appropriate candidates for this job. But there is no prejudication, no default assumption in favour of states.

The first part of this essay presents an outline of Raz's concept of authority. The second confronts his account with the notion of sovereignty, which is often invoked in defence of the central role of states. The classic justification of sovereignty affirms that the danger of a fatal deadlock among authorities can only be avoided by having one ultimate authority within a given jurisdiction. We shall see that this strategy is misguided, not only because the notion of ultimate authority is obscure and unnecessary, but also because of its excessive reliance on the pedigree of authority. To make legitimate authority depend on formal characteristics such as ultimate authority is problematic because it precludes other, non-state actors, which could have done better than states. The right to rule should rather be determined by substantive criteria related to the specifics of the issue to be dealt with. Suppose that a state fails in helping its citizens after a natural catastrophe has ravaged the land. According to the approach defended in this article, there is a prima facie reason for preferring an institution which is able to fare better in the domain of disaster relief.[3] Thus, the legitimacy of authority would not depend on its pedigree. Our approach can admit international organisations, and even non-governmental organisations, as legitimate political authorities. Legitimacy should not depend on sophisticated rules of membership for the exclusive club of states, but be open for whichever entity is best fitted for doing the right thing.

The Razian Account of Authority

Political authority is legitimate if it *serves* some of the reasons for action that apply to its subjects. A reason is served if the authority makes it more likely for the subjects to conform to one of their reasons for action. Here is an example. Suppose that I have a reason to be in London tomorrow at 7 in the morning. In order to conform to that reason, I need to take several intermediate steps, one of which is to wake up at 4 am in order to catch a train 1 h later. Using an alarm clock makes it more likely for me to wake up at 4 am than if I hoped to wake up by myself. In that sense, the alarm clock has served my reason to wake up at 4 am, and also my reason to be in London at 7 am. Practical authorities such as doctors, parents, or political

[2] I use 'legitimate' and 'justified' interchangeably.

[3] Other reasons such as the cost of switching from one authority to another would, of course, also have to be considered before denying legitimacy to the state in this affair and assigning it to another institution.

authorities serve our reasons in a similar sense. By following the directives of a doctor, I am more likely to be healthy than if I decided what to do on my own.

Several things follow from this view. The first thing to note is that the reasons for action contained in authoritative directives are pre-emptive and content-independent. We have said that following an authority improves the likelihood of conformity to one's reasons for action. This is achieved if subjects accept directives as reasons that displace or *pre-empt* some of their own, conflicting reasons for action. I have a reason for believing that I am fit for running a marathon tomorrow, but my doctor believes the contrary. Given that she is more likely to be right, I should follow her and disregard my own, conflicting reason in order to preserve my health. Authoritative directives are not only pre-emptive, but also *content-independent*. My decision to do what my doctor tells me to does not need to be based on me being able to establish any direct connection between the directive and the reason it is meant to serve, i.e., the promotion of my health. If I know that, all things considered, the doctor makes it more likely for me to be healthy, I should follow her directive for the simple reason that she says so, even if I am unable to assess the soundness of that directive.

The special nature of authoritative directives becomes clearer when we compare them to giving advice. In accepting someone's advice, I agree to include the relevant considerations in my deliberations. If the advice is a very good one, it may eventually tip my balance of reasons in favour or against doing something. In that case, the advice would provide the decisive reason for action. But none of this means that accepting advice should be pre-emptive or content-independent. Suppose that the person who tells me not to run the marathon is not my doctor, but just a very good friend who knows no more than I do about sports medicine. Accepting her advice does not require me to disregard my conflicting reasons for action, nor does it require me to do what she says for the simple fact that she has said so. Quite the contrary, since I am interested in making a sound assessment of the situation I am also required to consider *all* the relevant reasons I have.

A second implication that follows from Raz's characterisation of practical authority is that the scope of legitimate practical authority is limited to the type of reasons and the type of persons it can serve. Raz calls this a 'piecemeal approach' (Raz 1986, pp. 79–80). My doctor has authority over practical reasons related to my health, but not over reasons related, for instance, to the education of my children. In addition, practical authority is justified only to the extent that it succeeds in increasing the likelihood of conformity with my reasons for action. This means that practical authority does not extend to everyone's health. The doctor has no authority over me if I am as likely (or more likely) to conform to my reason for action when acting on my own assessment of the situation.

The doctor's authority is based on epistemic considerations. The doctor is an expert in the field of healthcare. The fact that she knows better enables her to serve my reason to be healthy. But practical authority is not confined to expertise. We all agree that it is important to have a rule stating whether we should all drive on the left or on the right side of the road. Making that rule has nothing to do with expertise, since both options represent equally plausible solutions. What is crucial here is that once a decision has been made it should be followed by everyone. An authority can solve this

coordination problem by commanding its subjects to drive, say, on the left side of the road. In doing so, it creates a new reason for action. The subjects had no reason to drive on the left side of the road *before* the authority said so. *Now* they have a good reason to do so because coordinated driving on the left side of the road makes them more likely to conform to their reason not to harm others. The coordination case shows that the legitimacy of practical authority sometimes depends on its capacity to secure obedience. An alleged authority whose directive to drive on the left side is only followed by 5% of the drivers does not qualify as legitimate because following it is not likely to improve compliance with the relevant reason.

Another aspect in which practical authority can serve the reasons of its subjects is that of impartiality. Referring a dispute to a judge does not always have to be based on her expertise. Imagine a dispute in which both parties are legal experts. They may decide to submit to the authority of a judge not because she is more likely to take the right decision, but because she is more likely to decide the case in an impartial way. It is, I believe, not hard to see how a strong personal interest in a certain outcome can distort one's judgement.

Is it mere coincidence that we have not really touched upon political authority so far? No. Political authority is like all other practical authorities in that its justification depends on its ability to serve certain reasons applying to its subjects. At the same time, it is different because it claims the right to rule, that is, the right to impose on its subjects an obligation to obey the directives of the authority. Nothing of what we have said so far justifies the right to rule. All that we have been able to show is that following a practical authority is a rational thing to do. The authority's ability to raise the likelihood of compliance with one of my reasons gives me a (prima facie) reason to follow the authority (Korsgaard 1997). My reason to be healthy gives me a reason to perform the actions which (best) promote that reason. But this falls short of establishing an *obligation* to obey the authority (Sadurski 2006, pp. 388–389; Buchanan 2002, p. 692).

The obligatoriness of directives in the realm of political authority (and that of other authorities such as parents in relation to their children) can only be explained with recourse to moral duties. Disregarding the directive of a doctor is seen as a legitimate option. Of course, we can (and usually do) try to persuade friends or relatives who refuse to undergo treatment when this is considered necessary from a medical point of view. We hope that she will be able to overcome whatever reasons are holding her back, and eventually decide to follow the doctor's directive as the result of her own decision. If, however, she decides to refuse treatment, we do not see ourselves as having the right to blame her for that.[4] Quite the contrary, we tend to feel that her decision should be respected. To use Raz's own terminology, this would be a situation in which the independence condition applies. That is, deciding for oneself is regarded as more valuable than achieving the right outcome (Raz 1986, p. 57; 2001, p. 123; 2006, p. 2014). The reasons for being healthy are subordinated to the reasons for acting autonomously.

[4] We can think of exceptions: the father of a newborn baby can be said to act irresponsibly when refusing to undergo medical treatment. But then the blame would be related to the moral obligation he has towards the newborn infant, not to some free-standing duty to preserve one's health.

Things are different when we have a moral obligation. At this level it is wrong to say, without further qualifications, that choosing by oneself is more important than achieving the right outcome. The subject is *not* free to choose among different options in the same way as she is free to disregard the doctor's directives. Failing to do what is morally right is, exculpating circumstances apart, considered unacceptable. Unlike the example of the doctor's authority, the rejection of moral directives cannot be justified with recourse to the agent's autonomy. The stickiness of moral reasons, their persistent bindingness helps us to understand why, on this level, there can be rules that adopt a categorical form: 'Help your neighbour when he appears to be in dire need [regardless of what you want]!'

We can now begin to see how political authority is justified in claiming a right to rule. The relation between political authority and its subjects is not one of authorization, but one of intermediation between duty-holders and right-holders. The rationale for having an obligation to obey does not depend on the consent of the authority's subjects, but follows directly from the normative relation established by moral reasons. A moral right can be sufficient to place others under a duty to perform or refrain from performing a certain action. This is *owed* by the duty-holder to the right-holder. My moral duty not to put others at risk while driving *entails* an obligation to follow the rules of the road to the extent that this is the most promising way of discharging my moral duty.

Of course, that cannot be the whole story when it comes to political authority. On the level of content we need to ask what class of moral reasons should be picked up by a political authority in order to impose obligations. Many actions regarded as immoral do not enter the sphere of political authority. To break up a friendship in a perfidious manner may be morally condemnable but it is not regarded as a reason for establishing a legal rule on the conduct of friendships. Nor is it the case that all moral duties give raise to moral rights. These substantial questions, important as they are, cannot be considered here as we are mainly concerned with a conceptual account of legitimate political authority.

Having considered the basic features of the Razian account, we are now able to formulate some critical questions with regard to the state-centred view that dominates academic discussions and international law. States typically claim an (almost) unrestricted scope of authority over all of its subjects. It is hard to see how that claim could be justified if we take the Razian approach seriously. Why should states have the right to rule over issues which are better resolved by other authorities? And why should states enjoy authority over subjects that do not need the help of an authority in order to conform to their reasons for action? One popular defence of sweeping state authority is provided by the notion of sovereignty. This we shall examine in the second part of this article.

Sovereignty

On 1 March 2008, Colombia's police and military forces invaded Ecuadorian territory and killed one of the leaders of the Fuerzas Armadas Revolucionarias de Colombia (FARC), an armed group classified as a terrorist organisation by the

United States and the European Union, amongst others. The intervention, which took place in the jungle, did not last more than one hour. Despite its success in terms of military strategy, the action prompted a resolution by the Organisation of American States (OAS) which reaffirmed the principle of territorial sovereignty:

> [T]he territory of a state is inviolable and may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatsoever.[5]

The same intervention would have raised no objections had it been carried out two miles further north, within Colombian territory, or by Ecuadorian forces within their own territory. But the principle of territorial inviolability, a core element of sovereignty, affirms that states have a right to exclusive rule over a territory which, in addition, is recognised as *their* territory. Is there a way of justifying such type of claims? Where does the alleged normative force of sovereignty stem from? Let us start by clarifying the many meanings of the word 'sovereignty' and the usage of the word we are interested in.

Sovereignty is normally related to political authority. In the usual understanding of the concept, sovereignty refers not to any political authority, but to the authority of states. We do not attribute sovereignty to the United Nations or to the World Trade Organisation despite the fact that these organs are political authorities to the extent that they create, apply, and interpret international law. Another thing to note is that sovereignty has always had a comparative element denoting not just any form of state authority, but superior or exclusive, though not necessarily unrestricted, state authority.[6] State-centeredness and authoritative primacy, two central notions of sovereignty, have been defended on conceptual grounds for a long time. According to this classic justification, sovereignty is necessary in avoiding an infinite regress or a deadlock between different, competing authorities. Another justification has emerged in modern times. It is not based on conceptual claims, but on the value of self-determination. According to this second justification, the relationship between a state and its political community grounds a right to external non-interference and to internal exclusive authority.

Sovereignty is a heterogeneous concept not only in terms of its justification, but also with regard to its contexts of application (Lapidoth 1995). It can be divided into internal and external sovereignty, where the former refers to the superior authority of a state over its territory and citizens while the latter refers, broadly speaking, to the independence of a state in relation to other states or the community of states. This is not the only distinction available. By sovereignty we can either mean the authority of a state which does not need to be representative, or that of a people whose interests are to some degree represented by the state (this is often called popular sovereignty). Sovereignty can be used descriptively to point out the power and recognition a state actually enjoys (its de facto authority), but it can also be used normatively to point out either the rules that ought to be applied according to valid

[5] http://www.oas.org/consejo/resolutions/res930.asp. Accessed 18 March 2008.

[6] The etymology of 'sovereignty' can be tracked back to the Latin word 'superanus' which roughly means 'superior' (Ilgen 2003, pp. 9–10).

law, or the conditions under which we consider sovereignty to be justified from a moral point of view. The assertion: 'the sovereignty of Ecuador was violated by the invasion of Colombia' can be understood in all three senses, and none of them needs to entail the other.

In order to avoid confusions, it is important to keep in mind these different meanings of sovereignty. It is often argued that the process of globalisation has eroded sovereignty by placing states in a situation where they depend on the benefits of international cooperation. That may be true as a descriptive account, but it does not necessarily entail, from a normative point of view, that the concept of sovereignty should be modified or even given up. Quite the contrary, a defender of sovereignty might wish to argue that this is a reason, not for giving up sovereignty, but for fighting against those aspects of globalisation which undermine sovereignty. Our concern is with sovereignty from the normative perspective of morality. Under which conditions, if any, can sovereignty be justified?

The classical account of sovereignty justifies the primacy of one, and only one authority, as a necessary means for avoiding an infinite regress and a potential deadlock between authorities. I shall argue, along with Christopher W. Morris, that the notion of ultimate authority is conceptually unclear since the relations among authorities can be both multiattributive and multidimensional. Let us go through this in detail.

'Classical sovereignty' is a model of sovereignty attributed to Thomas Hobbes and Jean-Jacques Rousseau, among others (Morris 1998, p. 174). This model rests on the assumption that state authority should be *ultimate*, which implies several conditions. A sovereign state has the *highest* authority within a hierarchy of authorities. It rules *directly*, permeating every level on this hierarchy, and there is no intermediate authority able to interfere. This feature becomes especially clear when contrasted with the medieval system where political authority was fragmented and decentralised (Morris 1998, pp. 33–36). Its rule is *final*, which means that its decisions are not open to further appeal. The authority of a sovereign state is also said to be *supreme*, meaning that it is entitled to regulate all other authorities within its jurisdiction, as well as human behaviour (Raz 1990, pp. 150–152). And, finally, the classical account of sovereignty holds authority to be *absolute*, i.e., *unconstrained*, *inalienable* and *indivisible*, which means that it cannot be delegated or divided (Morris 1998, p. 177).

The question is not whether there has ever been a state with all these characteristics. We are interested in knowing why these conditions are postulated in the first place. What is its underlying rationale? The classical demand for an ultimate authority has often been defended as necessary in order to avoid an infinite regress. The argument goes like this. A law cannot be put into practice without agents. It needs to be interpreted, applied, and eventually enforced by an authority. If that authority is itself constrained by laws, those constraining laws must be interpreted, applied, and enforced by another authority. Because of its constraining power over the former, the latter authority is to be considered ultimate—unless it is itself constrained, in which case there would need to be a third authority, and so on (Pogge 1992, p. 59; 2002, pp. 178–179). We need an ultimate authority, which itself

is not subject to any constraining laws, in order to stop the infinite regress. Or so it would seem.

The argument for an ultimate authority is closely related to the need for having a mechanism for the resolution of conflicts. The underlying idea is that only an ultimate authority (in the senses described above) will be capable of resolving a conflict. For it is easy to imagine a struggle between two political actors, both having authority over a certain jurisdiction, and both claiming the right to deal with a case. In the absence of an ultimate authority, it would seem that a deadlock is indeed inevitable. Unless one of the parties is prepared to abandon its claim, the situation will be one of inertia. Such a system is said to have a fatal flaw given that the situation of inertia cannot be overcome unless there is a third actor able to settle the conflict in a way which is itself not subject to dispute. Thus, the argument goes, there needs to be an ultimate authority which does not have to respond to any other authority.

Nothing that has been said so far is necessarily related to states. We could imagine a non-state actor, such as the United Nations, endowed with ultimate authority. But the notion of ultimate authority appears to be inextricably linked to the claims of states. It is therefore hard to see how an international organisation, such as the United Nations, could become anything less than a global state were it to have ultimate authority. The classic justification of sovereignty presents us with a crude dichotomy both at the domestic and at the international level. At the domestic level, the alternative is between a situation of potential anarchy, in which authorities come to an insurmountable deadlock, and a scenario in which one single actor enjoys all the political authority there is to have. At the international level, the dichotomy is between a global state of nature in which no state is subjected to the claims of other authorities, and a regional/global state with ultimate authority over all/some of the nation states (Horn 1996). This approach is insensitive to a multi-level conception of authority where the exercise of authority is genuinely shared between local governments, states, regional systems of cooperation, and international organisations (Hooghe and Marks 2001).

In the following, I shall argue that this justification for sovereignty is misguided for two reasons. First, there do not seem to be criteria sufficiently clear for determining whether an authority is ultimate. Secondly, the concept of an ultimate authority paints the wrong picture of the way in which authorities relate to each other. The right to rule of authorities, i.e., their moral entitlement to place subjects and institutions (including other political authorities) under an obligation to obey, can be unbundled into the domains in which the authority operates and the attributes it has for the exercise of that right. With this insight, we will be able to defuse the danger of a fatal deadlock among authorities. Instead of a fatal deadlock, we should expect a conflict limited to the specific area in which it occurs. Conflicts then are not global in nature. They do not have to infect the whole scope of authority over a given jurisdiction. Rather, they can be localised, so that other aspects of the right to rule remain unaffected. Let us take a close look at this.

Imagine a state, say Peru, which is a member of the International Criminal Court (ICC). It has subscribed to, and ratified, the Rome Statute and has therefore submitted itself to the ICC's jurisdiction to investigate, prosecute, and take legally

binding decisions regarding crimes against humanity, war crimes, and genocide committed in Peruvian territory or by Peruvians abroad, unless the alleged crime is genuinely being investigated or prosecuted by the domestic courts. How can we, adhering to the catalogue of criteria listed by Morris, determine who has *ultimate* authority in this case? The answer seems to depend on the criterion we use. The ICC can be said to have *final* authority because a sentence passed by Peru's courts can be reversed by the ICC, whereas Peru cannot reverse a sentence passed by the court of the ICC. But then the ICC cannot be said to have *supreme* authority over Peru since the latter clearly has exclusive jurisdiction, even with regard to crimes against humanity, war crimes, and genocide. Peru is entitled to investigate, prosecute, and decide a case on its own, i.e., independently of the ICC. It is not only entitled to conduct such processes by its own rules and procedures, but also to legislate on these matters without interference from the ICC. Even once a verdict has been reached, the ICC is bound to respect it unless it considers that Peru did not carry out a genuine process (art. 17). Only then can the ICC re-open the case, investigate on its own, and eventually pass a sentence overruling Peru's verdict. The authority of the ICC cannot therefore be said to be supreme since its right to circumscribe the authority of Peru is limited to an extremely narrow range of events. Neither does the ICC have *direct* rule, at least not in the sense that no other authority is able to interfere. The Rome Statute enables the Security Council to stop the ICC from investigating or prosecuting a case for a whole year (art. 16).

We can conclude that the notion of ultimate authority, as presented above, misses the reality of relations among authorities. It is highly unlikely that any authority will be able to fulfil all the conditions enumerated by Morris. But there is a more modest understanding of ultimate authority, an understanding which may seem attractive to the defenders of sovereignty. While admitting that the ICC has authority over Peru in some respects but not in others, our opponent could come forward with a second best strategy. She could argue that not all conditions enumerated by Morris need to be fulfilled in order to determine whether an authority is ultimate or not. Our opponent could instead ask us to perform an overall assessment, where the different criteria for sovereignty are weighted against each other, and then decide who has ultimate authority in a relative sense. An authority would be ultimate not to the extent that it fulfils all the criteria stipulated above, but enough of them so as to trump the authority of its competitors in the case of conflict. But this presupposes transitivity amongst the different criteria. It presupposes, that is, the possibility of comparing all the criteria on a single scale. Suppose that having final authority is valued with 2, supreme authority with 1, and direct authority with 0.5. In that case, an authority which has final authority, but lacks supreme and direct authority, would trump over an authority which has supreme and direct authority, but lacks final authority. In order to find out which authority is ultimate, we would have to consider all criteria, and ensure that all of them are fully comparable amongst each other. It is not hard to see why the possibility of full comparability seems to be rather improbable. How to compare the significance of supreme authority with that of direct authority with regard to the avoidance of a deadlock? But there is another, decisive reason for rejecting the possibility of ultimate authority, namely the complex nature of the right to rule enjoyed by political authorities. Even if authorities do enjoy the superiority

envisaged by the concept of an ultimate authority, they do so with regard to only *some* aspects of their right to rule. An authority can be ultimate in one respect but not so in another. Once we start to analyse the right to rule into its different components the idea of ultimate authority becomes useless for several reasons.

The first thing to note is that every statement about an authority enjoying greater authority over another needs to be qualified. Imagine a situation in which the ICC, having followed all the procedures established in the Rome Statute, asks for the extradition of a Peruvian citizen, but meets with disapproval of the Peruvian government. Here, it would seem clear that the ICC enjoys superior authority over Peru. The ICC's right to rule comprises an entitlement to request an extradition. Peru could object to this request for different reasons, but article 119 of the Rome Statute assigns the settlement of such disputes to the Court of the ICC.

However, the ICC can request the extradition of suspects to *some* other authorities, namely those states which have subscribed to the Rome Statute. It can do so with regard to only *some* specific situations, namely those in which citizens of the member states are officially suspected to be involved in certain crimes, and where the domestic courts have been unwilling or unable to prosecute the relevant case in a genuine way. This assertion of superiority says very little about the overall relation between the ICC and Peru. It is certainly insufficient for assigning ultimate authority to the ICC. The high level of specificity innate to claims of superior authority shows that relations among authorities are not properly assessed in an overall manner encompassing the whole scope of authority, but have to be evaluated with regard to the specific ways in which a right to rule manifests itself (Morris 1998, pp. 183–184).

This argument should come as no surprise. One of the central features of modern states is the division of powers. Here, again, any assessment of the right to rule will have to begin by disentangling the complex nature of the right to rule and its relation to other authorities within the same jurisdiction. Claims of superiority will therefore be true only with respect to a certain aspect of the exercise of authority. The legislative power is bound to respect, and not interfere with, the interpretation and application of the law as performed by the judicative power, whereas the latter has an obligation to respect, and not interfere with, the law-making capacity of the legislative power.

Considering the previous arguments, we are now in a position to see why the recourse to an ultimate authority for avoiding a deadlock between different, non-ultimate authorities is ill-conceived. Thomas Pogge has argued that the successful history of the division of powers on the level of states has proven that 'what cannot work in theory works quite well in practice' (Pogge 1992, p. 59). Having considered the complexity of the right to rule and the plurality of power relations among authorities that follows, we can now add that, even in theory, sovereignty, understood as ultimate authority, is condemned to failure. The plurality of aspects in which relations among authorities can be divided into explains why it is possible to have several authorities, none of them ultimate, working in different or even the same domain without there ever being the danger of a deadlock.

This does not, of course, mean that the possibility of conflicts can be banned. We can imagine a conflict between authorities disputing their competences in deciding a case. We can imagine both the ICC and Peru claiming authority in a situation where

the competences are not clearly assigned by the Rome Statute or by any other relevant international treaty. For the defenders of classical sovereignty, such a conflict would have to be interpreted as a fatal flaw that can only be remedied by the introduction of an ultimate authority. In the absence of it, we would have to face a state of inertia in which both Peru and the ICC are rendered incapable of action. This picture would be a frightening one were it accurate. Fortunately, it is not. The notion of an authority being ultimate, i.e., enjoying a strong degree of superiority over all other authorities, and in all regards, is conceptually unclear. Its obscurity is no coincidence, but results from the complexity of the right to rule. Examining the right to rule of an authority involves analysing it into the dimensions in which the authority operates and the attributes it is endowed with. This unbundling of the right to rule allows for qualified comparisons among authorities, but not for the overall comparison required by the defenders of sovereignty. Two authorities in the same territorial jurisdiction may operate in completely different dimensions. Imagine, for that case, one authority regulating telecommunications and another one regulating public swimming pools. It goes without saying that the former has superior authority over the latter with regard to issues of telecommunications within that territory. But because of the different dimensions these authorities operate in, any attempt to determine which of them qualifies, all things considered, as the ultimate, would be a sterile enterprise.

The same reasoning applies to authorities which, in addition to operating in the same jurisdiction, also operate in the same subject area. Both the ICC and Peru have certain competences for judging international crimes such as genocide and crimes against humanity. But they differ in the attributes they have for doing so. The ICC can be said to have superior authority over Peru to the extent that its sentences cannot be reversed by the domestic courts of Peru. Other examples are easy to devise. In a modern state, the judicative branch has superior authority over the legislative one with regard to the interpretation and enforcement of laws. But all these finding are of little use for the defenders of sovereignty. They want to assess the whole relation between Peru and the ICC, or between the judicative and the legislative branches, so as to find out which of them will have the final say in every case of conflict. But this goal is illusory because the only way of performing assessments of superiority is by comparing authorities in a specific regard. In one regard the authority of the ICC in the domain of international criminal law is superior to that of Peru, but in others it is not. In one regard the authority of the judicative branch is superior to that of the legislative one, but in others it is not.

This fragmentation resulting from the multidimensionality and multiattributivity of relations among authorities does not only reveal the failures of sovereignty. It also discloses the solution to the problem which motivates defenders of sovereignty, namely the possibility of a deadlock among authorities.[7] We have seen that a deadlock is a possibility under the assumption that a conflict among authorities always concerns the entire right to rule of those authorities. The assumption

[7] My arguments here draw heavily on the analysis of authority into different dimensions, and its implications for the theory of sovereignty, developed in an unpublished paper by Bas van der Vossen.

becomes untenable once we accept that a conflict with regard to one aspect of the right to rule can be entirely unrelated to other aspects. So the ghost of a fatal deadlock evaporates. We should rather expect local conflicts which do not have the potential of threatening all the operations of an authority.

Moreover, these conflicts can be submitted to a third party with final authority to solve the dispute. Since the right to rule can be analysed into its different components, it follows that this third party does not need to have ultimate authority in order to be able to settle the conflict. Its only superiority over the other two authorities may consist in its power of arbitration for this one conflict. The Rome Statute provides for such a mechanism in article 119, which entitles the Assembly of States Parties to refer disputes between member states related to the Rome Statute to the International Court of Justice.

This article started with Joseph Raz's conception of legitimate political authority. Let us recall its basic tenet so that we can see its differences with the notion of sovereignty. Political authority is said to be legitimate to the extent that it can help its subjects to improve conformity with some of their reasons for action. Raz's approach is substantial in the sense that the legitimacy of authority is said to depend on its capacity to assist subjects in relation to a specific range of problems. The right to rule is never a blank cheque, but limited to the range of issues for which the authority is qualified. Someone has authority over road safety to the extent that following its directives reduces the rate of accidents. The right to rule does not extend beyond the domain of road safety—if it did, it would have to be justified by other considerations related to that other domain.

The defenders of the classic notion of state sovereignty, as examined in the second part of this article, follow a different logic. They argue that all substantial considerations à la Raz need to be preceded by the formal question of which entity is to have ultimate authority within a given jurisdiction. Unless that question is solved, they argue, the coexistence of more than one authority within a given jurisdiction will always entail the danger of a fatal deadlock that threatens the functioning of the political system.

Having exposed the shortcomings of this view we can now jettison the notion of sovereignty understood as ultimate authority. We have seen that the quest for ultimate authority is both misguided and unnecessary. But our conclusions are not merely negative. Once we abandon the idea that there always needs to be an ultimate authority within a given jurisdiction we are well placed for discovering the charms of a system of multi-level governance. Legitimate political authority would then be a predicate reserved for the actor which is best fitted for serving a set of reasons applying to the subjects. If the ICC had the best available credentials for dealing with international crimes (for certain areas of action) then it would have legitimate authority (over those areas of action) to deal with international crimes. If Médecins Sans Frontières happens to be the most promising candidate for organising vaccination campaigns in a number of countries, then it would have legitimate authority to implement those campaigns. Legitimate authority is not inherited by tradition, but has to be deserved in the light of the problems to be solved. If implemented, this model could give way to a deep transformation in the global political landscape. We could witness the emergence of a new system in

which states would no longer play the foundation role, but would have to compete for every aspect of their right to rule with other actors at the local, regional, and global level. The permanence of states as we know them would depend on their ability to deliver satisfactory results as compared to alternative candidates.

This account of legitimate authority will be good news for all those who mistrust the sweeping claims of authority which states claim for themselves. Others might be less happy. After all, states are not only there to deliver satisfactory results. To the extent that they are representative, they also embody the will of a political community. Anyone prepared to recognise the value of collectively deciding by oneself may want to endorse decisions that result from self-determination, and do so independently of their substantial merits (Waldron 1999, p. 101). The legitimacy of states might then be thought to depend on their ability to capture the will of their citizens, and not, or not primarily, on their ability to solve problems. This line of reasoning is right in pointing out the value of deciding for oneself, but it arrives at the wrong kind of conclusions. In the first part of this article, we saw that there is an important difference between situations in which agents are free to disregard the right option and those in which they have a moral obligation to do the right thing. Consider a scenario in which a majority of citizens decides to ignore the interests of a minority, interests which are essential to their well-being and constitute sufficient grounds for placing the majority under an obligation. We saw in the first part that the presence of moral obligations makes a difference. Disregarding the directives of a doctor as the result of autonomous deliberation is acceptable; disregarding the rights of others is not. In both cases, the element of choice is important. But in the latter, the value of deciding for oneself cannot be conceived of separately from the value of making the right choice.

The argument for collective self-determination in the political domain cannot ignore the significance of moral obligations. Members of a political community have a responsibility for the well-being of others as expressed by their moral duties and rights. Treating citizens as responsible agents involves giving them a say when it comes to make decisions in the domain of political authority. This is an argument in favour of the transparency and accountability of political authorities in general. It is sensitive to the discomforts with the 'democratic deficits' of some states and international organisations. It is not, however, an argument for the exclusive rule of states. On the contrary, citizens have a responsibility to follow whatever authority makes them more likely to discharge their duties in the political domain.

This article focussed on two strategies for justifying sovereignty. The first strategy defends the ultimateness of one authority as conceptually necessary for avoiding a fatal deadlock between different authorities. I have tried to show why this is wrong. Authorities operate in different domains and with different attributes. Because of this, any hierarchical ordering between authorities will have to disentangle the different aspects of the right rule. The notion of ultimate authority is not only ill-conceived, but unnecessary. Conflicts between authorities cannot be ruled out. But there is no reason for assuming that they will affect all the aspects in which authorities relate to each other. And their resolution can be entrusted to a third authority which, of course, does not need to have ultimate authority. The

second strategy in defence of sovereignty regards popular sovereignty as a way of respecting the will of a political community. Deciding for oneself is though to be more important than achieving the right outcome.

The Razian account of authority is an attractive alternative to both strategies of state sovereignty. Its primary focus is not on the ultimateness of political authority, but on the capacity of an authority in serving the right reasons. It is problem-oriented. It opens the way for innovation by shifting the focus from formal requirements to substantial considerations. The central question when it comes to determine the legitimacy of authority should be one of values. What values do we want to pursue, and who should be in charge of serving them? The answer to the Colombian military intervention in Ecuador should thus transcend the question of territorial inviolability and consider the substantial issue at stake: what is the best security policy for Latin America? Such a problem-oriented approach opens the way for innovative answers beyond the traditional state-centred thinking. Perhaps we would find out that legitimate authority in the domain of regional security is not limited to states, but encompasses regional organisations which would be in charge of co-ordinating, supervising, and implementing security policies amongst the different states. The answer will depend, of course, on considerations that are beyond the scope of this article.

States are believed to be the paradigmatic instances of political authority. Once we abandon the belief that the presence of one ultimate authority is essential to the agency of authorities, we can judge states for what they really are worth. There is no denying that, in many areas, states are good at providing services, and probably better than alternative candidates. But states do much more. They arrogate to themselves the right to rule over a vast domain of issues within their territory. Worse than that, they claim the right to exclude any competitors. We no longer have to accept those claims given that their justification, embodied in the notion of sovereignty, has proven unfounded. States will have to work harder if they are to retain their authority legitimately. Let them earn every inch of their right to rule.

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