

Josep M. Colomer

National Sovereignty and Multiple Governments

Introduction

To make the complexity of the current globalised world governable, the processes of decision-making must be simplified. Each of the multiple levels and sectors of government should deal with specific policy issues. None of them should claim jurisdiction over all policy and collective issues.

The model of multiple levels of government militates against the claim of unity of powers or ‘sovereignty’, which has become one of the most obsolete political concepts in the current world. The concept of sovereignty was coined long ago, by the mid-seventeenth century, by such luminaries like the English Thomas Hobbes and the French Jean Bodin, with the intention of justifying the strengthening of the central powers of the monarchy. The root ‘sover-’ comes from the Latin ‘super’, or supreme. The monarch’s sovereignty or supremacy was conceived as ‘absolute’ and the subsequent political regime as ‘absolutism’. That is why we still sometimes call – a current king or queen the ‘mon-arch’, that is, the only or ‘mono-’ holder of decision power, or ‘the sovereign’, even if almost nobody enjoys such monistic or absolute powers nowadays.

Redefining national sovereignty in a globalised world

Many currently existing constitutions enshrine ‘sovereignty’ of the ‘people’, the ‘parliament’, the ‘nation’ or the ‘state’, but the concept is the same as it was created centuries ago for the monarchs, only allocated now to somewhat different subjects. Sovereignty continues to be conceived as ‘absolute’. It implies that one single political body has the prerogative to make final decisions on all public issues within a clearly-bordered territory. In reality, almost no monarch, dictator, president, parliament, people, state or nation has this power nowadays.

Sovereignty is not what it was nor what it was assumed it would be. Today, international law is claimed to have direct effect on the citizens of every country; the global institutions’ work consists precisely in coordinating, shaping, approving and making public policies enforceable by the states, for which tasks they frequently interfere in domestic affairs; almost all the states are deprived from the unlimited power to produce laws, which was implied by the notion of sovereignty.

The current world is not one in which states interact as independent entities but one of interdependence. When the campaigners for the United Kingdom to leave the European Union or Brexit spread the slogan ‘take back control’, they implicitly acknowledged that the British Government had lost the absolute control of its internal affairs, mainly



although not only at the hands of the European Union. But the Brexiters discovered very soon that in a globalised world the government cannot control many public issues as it was presumed it would be.

Some politicians talk of ‘limited’, ‘shared’, ‘divided’ or ‘partial’ sovereignty when they face undeniable international memberships and commitments. Similar expressions are used sometimes to deal with internal divisions of powers between central and territorial governments in federal-type countries. Yet those expressions are an oxymoron. Sovereignty is absolute or it is not sovereignty; it cannot be shared or divided. The president of the European Commission, Jean-Claude Juncker, as well as the president of France Emmanuel Macron, sometimes encouraged a ‘European sovereignty’. With this, they acknowledged the erosion of nation states’ sovereignty. But obviously, they did not mean that the states of Europe should submit all public policies to final decisions by the EU. What these and similar expressions by politicians at different levels intend to transmit is the wish that some level of government – local, national, continental or global – should be able to make final decisions on *some* issues. They are different issues for each level of government – which is the opposite of sovereignty as traditionally and legally conceived as the power to make final decisions on everything.

Most states of the world have exerted their legal sovereignty to give up the actual exercise of their sovereignty on many policy issues. Yielding some part of sovereignty to an international power destroys the very meaning of sovereignty. Formally, once inside an international institution, each state keeps the legal right to exert its formal sovereignty and leave. But this rarely happens. Indonesia withdrew from the United Nations, but only for 20 months in 1965–1966, its absence being registered as a ‘cessation of cooperation’. The United States left the UNESCO in 1984 after accusing it of advancing Soviet interests; it returned, only to leave again, together with Israel, in 2017 after Palestine was voted in full membership. The United Kingdom voted to leave the European Union in 2016 with catastrophic consequences. As these few experiences suggest, the costs of leaving or backing away from international organisations or commitments are very high.

In federal countries, attempts by central governments to regain their sovereignty by taking back powers that are in the hands of local governments also tend to involve bitter political crises. As long as the economic, technological and human trends keep developing as they have done for decades, the loss of sovereignty of any single unit will become irreversible.

Multiple level unions

The member states of the largest continental or multi-state unions, such as the United States of America and the European Union, have largely given up their sovereignty even in legal terms.

Let us look at the evolution of the concept over time. During the campaign for the initial thirteen independent states to ratify the U.S. Constitution in the late eighteenth century, one of its main authors, James Madison, argued that ‘each State, in ratifying the

Constitution, is considered as a sovereign body, independent of all others'. He assured that 'the States will retain under the proposed Constitution *a very extensive portion* of active sovereignty', and upheld that 'the power delegated by the proposed Constitution to the federal government are few and defined, [while] those which are to remain in the State governments are numerous and indefinite'.

Yet when the Constitutional Convention submitted the constitutional text to Congress, it noted that: 'It is obviously impracticable to secure all rights of independent sovereignty to state, and yet provide for the interest and safety of all.' An early Amendment clarified that 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States'. But the word 'sovereignty', which was initially associated with the states, does not appear in the Constitution of the U.S. It holds, rather the other way around, that: 'This Constitution, and the Laws of the United States [...] shall be the supreme Law of the Land.'

The tension between the two levels of government was durable. By the early nineteenth century, the Supreme Court confirmed that 'the Constitution and the laws made in pursuance are supreme, they control the Constitution and laws of the respective states, and cannot be controlled by them'. In reaction, several states defended their rights to enforce their own rules on numerous issues, much beyond the basic affairs related with taxes, police or the expropriation of private property for public services – including, most ominously, the right to own slaves. This strain triggered the Civil War in 1860.

The European Union was initially conceived in the aftermath of the bloodbath of the Second World War with the aim of the 'definitive abolition of division of Europe into national, sovereign states', in the words of Altiero Spinelli, one of its Founding Fathers. Since then, the EU has been following several steps which mirror the historical process of building the United States of America.

The EU has greatly expanded its powers over time. It has approved thousands of regulations which are directly binding on all the European citizens, as well as high numbers of directives which are confirmed by the state parliaments. The European Court of Justice early affirmed the primacy of European Union law over the law of the member states; when there is conflict between them, the European law prevails and the norms of national law, including the constitutions of member states, have to be set aside. The Treaty of Lisbon, enforced since 2009, confirmed that 'the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States'.

In the EU's multi-level structure of governance, nobody is actually sovereign anymore: neither the traditional states, which are 'member' states of the Union, are deprived of competence on important policy issues, and are submitted to the primacy of European law, nor any local or regional government that might claim such an ambition. The member states of the EU have pooled powers derived from their previous sovereignties, but they have not created a new European sovereignty either. The citizens of Europe live under multiple jurisdictions of different scopes and breadths.

In the written constitutions of ten EU member states, the word 'sovereignty' is not even mentioned (Austria, Belgium, the Czech Republic, Cyprus, Denmark, Germany, Italy, Luxembourg, the Netherlands, Sweden). Rhetorical references to the sovereignty

of ‘the people’ are made, as a simple synonym of democracy, in seven states (Estonia, Finland, France, Greece, Hungary, Latvia, Portugal). The sovereignty of the ‘nation’ is affirmed in only five countries and that of the ‘state’ in another four (Bulgaria, Croatia, Lithuania, Romania and Spain for the former, and Ireland, Malta, Poland and Slovakia for the latter).

Lending further support to EU power, the Constitution of Ireland asserts that: ‘No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities.’ The Constitution of Slovenia, which is a more recent democracy that aimed from the beginning to become a member of the EU and took the issue as a leitmotif, proclaims no less than eight times that the republic will ‘transfer the exercise of sovereign rights to international organizations’.

The notion of sovereignty is also alien to many other countries. In the constitutions of Commonwealth members such as Australia, Canada, Jamaica or New Zealand, the words ‘sovereign’ or ‘sovereignty’ are not even written.

These examples could provide new inspiration to move further on towards – to paraphrase Spinelli – the definitive abolition of division of the world into national, sovereign states.

An effective democracy requires multiple governments

All formulas for democratic governance are hybrids with different combinations of direct participation, representative elections and expert rule, which imply different degrees of openness, transparency and accountability. Even in a town hall assembly a few advisors, officers or councillors prepare the discussion and shape how the issues are going to be debated, while political parties remain on the side.

At the state level, parliaments, governments and presidencies are formed on the basis of partisan elections, while the members of the judiciary, most officers in the administration, the rulers of the central banks and specialised agencies are usually selected by non-elective means. In international or global organisations, the assemblies and councils representing elected (and non-elected) governments of the member countries are replicated with boards formed by highly-qualified professionals who need proven experience and pass demanding tests to get their jobs.

All these formulas tend to complement each other at the different governance levels. Representative governments enrich their background with people’s direct participation in consultative or advisory events. Global institutions mostly ruled by experts heavily rely their legitimacy on the participation of national democratic governments.

Would be a good or bad way of governing your country?

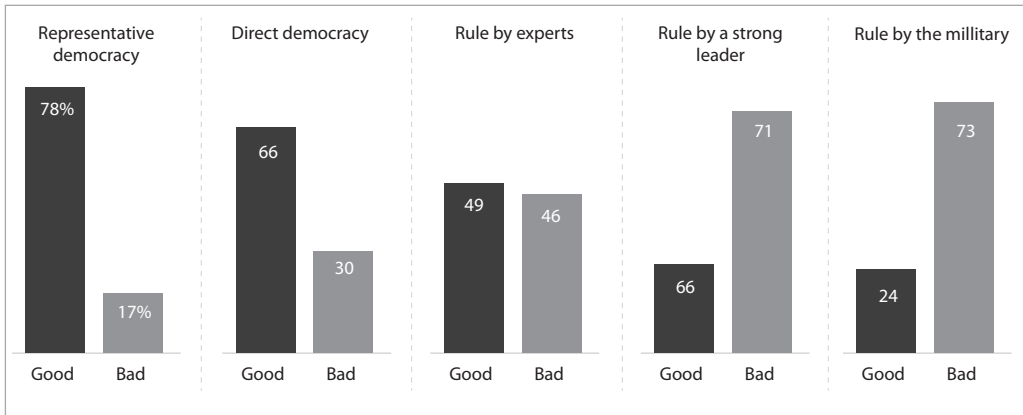


Figure 1: Support for direct democracy, representative government and rule by experts

Note: Percentages are global medians based on 38 countries.

Source: Pew Research Center 2017, Global Attitudes Survey, Q29a-e.

There is broad popular support for these different formulas of government across the world, in contrast with broad rejections of personalist and military dictatorships, as reported by a Global Attitudes Survey by the Pew Research Center summarised in the Figure.

Yet the smaller the community, the higher the opportunities are for direct democracy. The broader the public, the more important elections of representatives are. And the more complex the issue, the more influential the role of unelected specialists selected for their expertise tends to be.

Summary notes

For democracy in the present day, there is not a single institutional master key able to open all doors. On public affairs, one size does not fit all. The assumption that it does was, and still is, the main mistake implied in the modern notion of national state sovereignty, by which the performance of democracy in the current world is strongly wounded. Recent economic, technological and human developments are promoting critical revisions of the issues allocated to each level of government and a major restructuring of democratic regimes.

This text is adapted from the book by Josep M Colomer and Ashley L Beale, *Democracy and Globalization: Anger, Fear, and Hope*. New York: Routledge, 2020. Online: <https://doi.org/10.4324/9781003027492>

Literature

- Colomer, Josep M, *How Global Institutions Rule de World*. London: Palgrave Macmillan, 2014. Online: <https://doi.org/10.1057/9781137475084>
- Colomer, Josep M, *Strategic Transitions*. Baltimore: The Johns Hopkins University Press, 2000, 33–36.
- Colomer, Josep M, ‘Transition by Agreement: Modeling the Spanish Way’. *American Political Science Review* 85, no 4 (1991), 1283–1302. Online: <https://doi.org/10.2307/1963946>