

Sovereignty: a concept creating confusion

Throughout Europe and indeed the world there are frequent references in political discussion in the media and elsewhere to some outside body or state interfering with national sovereignty. The writer or speaker often takes it as self evident that the concept of sovereignty is clear and that any interference with his nation's sovereignty is a bad thing. In the next few minutes I shall suggest that the concept of sovereignty is too vague and general to be a helpful decision making tool when deciding as a nation on how we should deal with any particular problems which confront us.

People like to make decisions for themselves and the concept of sovereignty expresses this desire. It is used in several contexts but I shall concentrate on national sovereignty - the alleged international independence of a state combined with the right and power to regulate its internal affairs without interference by any other state. Underlying the concept of national sovereignty which appears in political discourse in every nation is the notion that the possessor of sovereignty has or should have absolute power to prevent others from interfering with his exercise of his sovereignty.

We should be clear that sovereignty is a man made concept designed to prevent or limit the horrors of war. In the 16th century it expressed an idea that the sovereign could do what he liked in his territory but in return must let other sovereigns do what they liked in their territories. This was useful during the wars of religion but many have been horrified by the mass slaughters carried out within their

borders by certain states in the exercise of their sovereignty. So nowadays it is widely accepted that some interference by outsiders in the internal affairs of sovereign states is at times desirable as a matter of humanity even in the teeth of opposition by the state concerned. But in the context of Europe that is not the current problem and I leave it aside.

In the European context the problems arise because the Member States of the Union signed Treaties and set up institutions to make laws and agreed to abide by the laws as made by those bodies. One can have a fruitless debate as to whether in so doing member states were exercising their individual sovereignty or limiting their sovereignty. The fact is that the treaties were the result of decisions to cooperate, to achieve aims **jointly** which no state was in a position to achieve on its own. But one must recognise that since Member States created law making institutions and gave those institutions powers to make laws the contents of which were not known to the member States at the time, Member States lost what power they had in those fields to act on their own.

One facet of this situation is the temporal one. Previous governments entered into these agreements. Are present governments to be bound by them? It is at this point that appeals are made to doctrines of sovereignty which, it is said, can not be given away by one generation at the expense of the next. But it is obvious that agreements from which anyone can escape at any time are pretty well useless. If you wish to obtain the certainty that your partner will be bound by the agreement even when he finds it inconvenient than you have to live with the fact that you must agree to be bound even when you find it inconvenient.

Statements at a high level of abstraction - all men are equal, all nations are equally sovereign - have a superficial attraction. However, when people start talking about sovereignty we should be on our intellectual guard. Sometimes one has the impression that they have not considered the matter in depth. One suspects that at other times they may be consciously pulling the wool over our eyes.

In any event all useful discussion in this field must start with reality. It is clear that some countries are more powerful than others. But it is equally clear that even the most powerful can not achieve all that it wishes to achieve without the cooperation of others. A state's domestic law may permit it to **export** nuclear goods or sausages with a large bread content or beer with a small hop content but this is not of practical value unless other states permit the **import** of those goods. So agreement has to be reached. A state may design its own road signs but this is of little practical value unless drivers from other states easily recognise the meaning of those road signs. So uniform practice is desirable. A state's domestic laws may prescribe air quality of a particular purity but this is of limited practical value if air of inferior quality comes in from the state next door. So you must try and persuade the state next door to raise its standards. A state may wish to encourage its companies to establish subsidiaries in other states but this is of little practical value unless the other states in question allow the establishment of such subsidiaries. So you must try and persuade it to do so.

Now in order to reach agreement one can either act in a series of bilateral negotiations or have multilateral negotiations. In either case the process is a voluntary one on all sides. Any state can in the last analysis block any other state's desires. Each state can impose different conditions and so it becomes a bureaucratic nightmare if, when you are exporting goods through several countries, you need to comply with them all - particularly if the different countries impose mutually incompatible requirements. If by contrast one has such a system as the European Union with its own law making powers governing the whole area of the Union then you may be in a position to achieve your goals and simplicity by legislating with the appropriate majority. That is delightful if it enables you to get your way in the face of opposition. The downside is that the same technique can enable another state to get its way in the face of your opposition.

Different problems require different solutions and therefore it is unhelpful to treat a doctrine of sovereignty as imposing a solution independent of our volition and as allocating all power to one source. The truth of the matter is that decisions have to be made in all sorts of different fields as to what institutions should regulate what problems. In each of those fields different procedural requirements can be prescribed.

The sovereignty debate tends to obscure the underlying issues in any particular case. What lawyers are, or should be good at, is separating problems out (analysing them) thus helping in the choice of decisions.

The lawyer must also recognise the problem facing the politician. A politician seeking election must believe, or at the least, give the impression that he believes, that he will and should have power to do good if he is elected. Otherwise why should anyone elect him? The more power he can plausibly lay claim to the more will voters flock to his banner. In consequence politicians tend to oppose those who assert that politicians have less power than they claim or who seek to remove from the politicians some of the power he in truth has. This is understandable In truth, we all like to think that we have some influence on matters.

If, like me, one is not seeking election it is easier to talk frankly about things as they are. And the truth of the matter is that politicians have far less power to do good than they claim. Political memoirs written in old age repeatedly recount how the author found himself out of reach of levers which he wished to pull and powerlessly pulling those levers which were within his reach. Experience tends to show that cooperation - a bit of give and take - is often the best way of achieving some desired goal and that the occasional shortfall in one's desires is compensated by some gain in another field.

In my judgment it is not wise to put this at risk because of an inflexible application of doctrines of national sovereignty to all issues. We should look at each problem separately, identify what we are trying to achieve and what is the best way of achieving it. This will seldom turn out to be an appeal to national sovereignty which by its very nature is likely to antagonise and give rise to equal and opposite appeals.

