STATE SOVEREIGNTY AND PROTECTION OF HUMAN RIGHTS

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ABSTRACT Human Rights law are universal in nature and equally respected and protected by the States throughout the world. Sovereignty is a core of every nation; it's their right which is recognised and respected by the other nations. Every subject in a sovereign State has their fundamental human rights which if violated will be refurbished by the State mechanisms provided for protecting their rights. But what happens if there is a conflict between the State and the protection agency and rampant violations of human rights. It is the duty of the State to protect its subject from victims of these rights as a signatory to the rights guaranteed under the international covenants and treaties and also obligations as they have recognised them in their domestic legislations. In such circumstances there is an open conflict between the sovereignty and human rights protection. What needs to be done with States that refuse to accede to any of these treaties? Can they be fulfilled by enforcing it as a part of the international accepted principles or practices? Does this give any rights to the international community to intervene and if yes, how and how much intervention? Do we need to recognise state subjects or groups as subjects of international law and therefore intervene to protect their rights? The author tries to contemplate through these questions for finding an answer to the concept state sovereignty and human rights violations in an International regime considering the issues that aggravated the violations against the concept of rights of states. This paper also tries to look into the role of international non-state actors in controlling the situation by spreading education and awareness programs among the people of the State to understand and implement their rights through an impartial and independent agency. The author is trying to check his proposition that the common good of mankind and global security and governance is the model theory of rule based on which the human rights protection and the state security is grounded.

Keywords: Sovereignty, Human Rights, Global Governance, Security

I. INTRODUCTION

The coercive power of the state in liberal democracies is justified largely by the claim that the state is the best mechanism for the protection of individual rights. Individual rights are, in turn, founded on assumptions about universal freedom and equality. But if this is the case, how can liberal states disavow the freedom and equality of people outside their borders? Most try not to, for example, by ratifying international instruments such as the *Universal Declaration of Human Rights*. Yet their pursuit of policies guided solely by concern for the so called 'national interest' can lead in effect to behaviour that undermines basic freedoms. Where this happens, a poisonous hypocrisy enters the bloodstream of the nation state, and infects the institutions established to protect the freedom and equality of its own citizens.

Human rights violations occur everywhere, from Saudi Arabia to Cuba and even the United States. The international community watches idly as sovereign states brutally execute their own people. In the twenty-first century filled with advanced technology and a continuously improving standard of living, the world witnesses' human rights violations daily, testaments that this century is not so different form the Middle Ages in such respects. Our reaction must be to take action. What action? What can be done? If we can make the decision to act rather than observe, we have drawn a line in the sand. We will not tolerate the violation of human rights. Within international law, the sovereign state must make this pledge of non toleration. The protection of human rights is a fundamental duty of a sovereign states.

Amnesty international reported serious human rights violations occurring in more than 116 countries[1]. The troubling reality behind this statistic is that the report cited only serious violations, rather than all human rights violations. Peter Berger defines serious human rights violations as the "grossest cases" of abuse infringing on minimal views of decency.[2] Obviously human rights must extend beyond only the minimal, but for now we must begin with the "grossest cases" and proceed further to economic and political rights.

Why should individual or even sovereign states, for that matter, concern themselves with human rights? Western countries, in particular, may fall prey to the bliss of ignorance. In fact, one may be able to go on from day to day without worrying about human rights violations. NIMY, the "not-in-my-backyard" sentiment, summarizes how many Americans feel about human rights. "It is terrible but it's not my business" would probably be a common statement collected from the "man on the street". Unfortunately, many sovereign states claim the same defence. Sovereign states worry that intervention in the "domestic" affairs of a fellow sovereign state may backfire in the long run: Governments seem wary that the sword used against others today could be turns against them tomorrow[3]. Perhaps this is so, but if all states conducted themselves in good faith accord with basic human rights, there would be nothing to worry about in the way of future intervention from other states in the name of human rights.

At one time, the international community may have been able to evade its responsibility to protect human rights under the guise of non-interference in the domestic affairs of sovereign states, essentially the NIMBY argument at the international level. This argument is nothing more than a weak excuse on the part of sovereign state to shirk their fundamental responsibility to protect human rights in the international arena. This fundamental responsibility devolves from a universal moral code common to all people, regardless of culture. The concern of international law should be codifying this moral code, to this end, the Universal Declaration of Human Rights represents an unequivocal step in the right direction. Professor Gerhard has noted that, "*Many writers, as well as the International Law Commission, have asserted that there exits a twelfth duty requiring each state to treat all persons in its jurisdiction with respect for their human rights and fundamental freedoms, without distinction as to race, sex, language or religion*"[4]. Reflecting the growing majority view, the international community of sovereign states must accept enforcement of human rights as a fundamental duty and an essential first step in ending the rampant violation of human rights in the international arena.

II. SOVEREIGN AND SOVEREIGNTY

Confusion over the term sovereignty is a common lament. No one meaningful word has become more misunderstood and misused.[5] At the core of most well established uses, however, is the idea of supreme authority.[6]

"Sovereign" comes from the Old French word *soverain*, from the Latin *superanus*, from *super*, above. A sovereign is superior, supreme, or pre-eminent. The *Oxford English Dictionary*[7] thus defines sovereign as "one who has supremacy or rank above, or authority over, others; a superior; a ruler, governor, lord, or master;" "the recognized supreme ruler of a people or country;" "of power, authority, etc.: supreme." Put more negatively, to be sovereign is to be subject to no higher authority. Alan James[8] account of sovereignty as constitutional independence nicely captures this central idea. Or, else we can put it as, sovereignty means never having to say you are sorry.

International law replicates this ordinary understanding. "Sovereignty is supreme authority."[9] "Sovereignty is the supreme power by which any State is governed."[10] "The sovereign is the person to

[1] Falk, Richard, Human Rights and State Sovereignty, Holmes and Meier Publisher, Inc. New York, 1981, p. 143.
[2] *Ibid* at p.153
[3] *Ibid* at pp. 153-15
[4] Glahn von Gerhad, Law Among Nations: An Introduction to Public International Law, Macmillan Publishing Company 6th Edn., New York, 1992.
[5] Best, Geoffrey "Justice, International Relations and Human Rights," *International Affairs* 71 (4) October 1995 p. 778; Henkin, Louis, "That 'S' Word: Sovereignty, and Globalization, and Human Rights, et cetera," *Fordham Law Review* 68 (1) October 1999 p. 1; Brownlie Ian, *Principles of Public International Law*. 6th ed. Oxford University Press, Oxford, 2003, pp. 105-106; Crook Clive, "When Confusion about Sovereignty Reigns," *National Journal* 33 (28) July 14, 2001, pp. 2215-2216.
[6] Philpott, Daniel, Revolutions in Sovereignty: How Ideas Shaped Modern International Relations. Princeton: Princeton University Press, 2001 p. 16
[7] *Black's Law Dictionary*, 7th edition, 1999.
[8] James Alan, Sovereign Statehood: The Basis of International Society. London: Allen & Unwin, 1986, p. 1999.
[9] Jennings, Robert, and Arthur Watts, *Oppenheim's International Law*. 9th ed. Harlow: Longmans, 1992, p. 122.
[10] Wheaton, Henry, *Elements of International Law*. 8th ed. Little, Brown, and Company Boston,1866, p. 31.

whom the Nation has confided the supreme power and the duty of governing."[11] Thus we can say that the Sovereignty means:

1) Supreme dominion, authority, or rule.
2) The supreme political authority of an independent state

The term Supremacy means the right to demand obedience.

After looking at the meaning of the terms Sovereignty and supremacy it's the turn of the word sovereign state and it is "*not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law other than public international law.*"[12]

III. HUMAN RIGHTS

Human Rights, this is an ambiguous term. Sometime it means natural Rights, at other times it means rights that humans have, and at still other times it means moral rights.[13] In the most basic sense, rights allow us to act in a certain way. Without rights we would not have been able to perform such an act. Louis Pojman explains that. "Rights give us special advantage. If you have a right, then others require special justification for overriding or limiting your right; and conversely, if you have a right, you have a justification for limiting the freedom of others in regard to exercising that right".[14] Definition of rights bound, but by exploring various interpretations, an underlying understanding emerges. Immanuel Kant defines, "Right can never be an appearance; it is a concept in the understanding, and represents a property, the moral property, of actions, which belongs to them in themselves".[15] Alan Gewrith defines rights as justified claims, "In the briefest compass, a right is an individual's interest that ought to be respected and protected and this 'ought' involves, on the one side, that the interest in question is something that is due or owed to the subject or right-holder as her personal property, as what she is personally entitled to have and control for her own sake; and, on the other side, that other persons, as respondents, have a mandatory duty at least not to infringe on this property".[16] Gerwith notes a pivotal aspect of a right. One cannot posses a right in any sense unless others respect the person's possession of the right under consideration.

Rights according to *The Cambridge Dictionary* of Philosophy are defined as "advantageous positions conferred on some possessor by law, moral rules or other norms. There is no agreement on the sense in which rights are advantageous".[17] Human Rights are the most basic sense in which requires that the life of one person be preserved. William Banner notes that, "A right is a claim upon an intrinsic or instrumental good. This claim has its foundation in the human inclination to happiness, as indicated in the range of one's own interests and the interests of others".[18]

Rights of Sovereigns: The original meaning of the word is simply 'superiority', without any connotation of absoluteness or illimitability.[19] In practice, modern sovereigns have never had total license or absolute authority over everything. As no less a realist than Georg Schwarzenberger put it, "*State practice is unanimous in its affirmation of the existence of legal rules … in the relations between sovereign States.*"[20] "Sovereignty is a legal status within but not above public international law. … As a juridical status protected by international law, it is embedded within the normative order of this law."[21]

From 1648 onwards sovereigns have been restricted in what they could legitimately do even to their own nationals in their own realms. The Treaty of Westphalia, while mandating religious non-

[11] Vattel, Emerich de, The Law of Nations or the Principles of Natural Law Applied to the Conduct of the Affairs of Nations and of Sovereigns, The Carnegie Institution of Washington Washington, D.C., 1916.
[12] Steinberger, Helmut. "Sovereignty." In *Encyclopedia of Public International Law*, edited by Rudolf Bernhardt. North-Holland Elsevier Amsterdam, 2000, p. 512.
[13] Pojman Louis P. Ethical Theory: Classical and Contemporary Readings. Belmont, , Wadsworth Publishing Co., California 1989, p. 592.
[14] *Ibid.*
[15] Kant Immanuel, "Transcendental Aesthetic", Critique of pure Reason, Tans Norman Kemp Smith, , St. Martin's Press, New York 1929, p. 83.
[16] Gerwith Alan, Community of Rights, University of Chicago Press, Chicago, 1996, p. 9.
[17] Audi Robert, ed. The Cambridge Dictionary of Philosophy, Cambridge University Press, New York 1995, p. 695
[18] Banner William A, Ethics: An Introduction to Moral Philosophy, Charles Scriber's Sons, New York 1968, pp.154-155.
[19] Brierly James Leslie, *The Basis of Obligation in International Law and Other Papers*, The Clarendon Press Oxford 1958, pp. 19-20
[20] Schwarzenberger, Georg, *Power Politics: A Study of International Society*, 2nd ed. Stevens /F. A. Praeger, London/ New York 1951, p.89
[21] Steinberger, Helmut, "Sovereignty" In *Encyclopedia of Public International Law*, edited by Rudolf Bernhardt North-Holland Elsevier, Amsterdam 2000, pp.512, 518.

interference, the foundation for a broader principle of non-intervention, imposed substantive restrictions on sovereigns.

The rights of the sovereign are not only limited but contingent and variable. The status of statehood can be associated with various sets of rights and duties. It carries no given, determinate, normative implications.[22] The international societal constitution of sovereignty has changed substantially throughout the Westphalian era. New rights are recognized. Old rights are lost. But through it all, sovereigns have remained fully sovereign.

The most striking example lies at the heart of realist high politics. In the nineteenth century a sovereign state was the sole judge of what was necessary for self-preservation. This was taken to imply a right to go to war when, where, and for whatever reason it chose. The prevailing view was that resort to war was an attribute of statehood and it was accepted that conquest produced title.[23] Today the legitimate use of force is restricted to self-defense. But we certainly would not say that the United States was less sovereign in 1990 than 1890 because it had no right to launch a war for national gain or territorial conquest.

The variability of sovereignty extends even to sovereign equality, which with some justice has been described as "the essence of our understanding of the Westfalian [sic] system[24], a principle that has attained an almost ontological status in the structure of the international legal system[25]. Sovereign equality has meant very different things in the seventeenth century world of dynastic sovereignty, the nineteenth century world of Great Power politics, and the post-colonial world of the late twentieth century. And throughout the Westphalian era, sovereign equality has been understood to be fully compatible with different states possessing different rights.

Honors, titles, and status differences were of considerable importance in the seventeenth and eighteenth centuries. Great Powers in the nineteenth century had special rights and responsibilities – a practice that lingers today in the veto in the Security Council. Many states created in the nineteenth century operated under treaty restrictions that limited the range of their rights. The League Minorities System imposed obligations on some states but not others. And so forth.

Of course, not every change in rights would leave sovereignty undiminished. Were states to lose authority over a wide range of activities central to prevailing conceptions of the nature of politics we might be justified, even compelled, to talk of a loss of sovereignty. Nonetheless, the rights of sovereigns are and always have been variable. And sovereignty – except perhaps the sovereignty of God – never has been absolute and over everything.

The rights of sovereigns are determined by the practices of, the society of, sovereign states, not by theoretical or conceptual logic. It is widely accepted that no subject is irrevocably fixed within the reserved domain[26] of sovereign prerogative. As the Permanent Court of International Justice authoritatively put it, "whether a certain matter is or is not solely within the jurisdiction of a state is essentially a relative question; it depends upon the development of international relations."[27]

"*Sovereignty is not merely a bundle of rights, but consists in a status (being sovereign) and in the use of this status to legitimize certain rights, duties and competences (the sovereign rights).*"[28] The status of recognized supremacy defines sovereignty and has remained constant through variations in the details of sovereign rights.

The specific bundle of rights, which is contingent and variable, determines only the particular character of sovereignty. So long as states are not constitutionally subordinated to another actor they remain sovereign. So long as rights previously held are not transferred to a "higher" authority, no sovereignty supremacy has been lost.

IV HUMAN RIGHTS AND STATE SOVEREIGNTY

Human rights, far from undermining or eroding state sovereignty, are embedded within sovereignty. Dominant understandings of sovereignty, and human rights, have indeed been significantly reshaped. But sovereignty remains robust and, at least with respect to human rights, largely unchallenged.

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[22] Koskenniemi Martti, "The Future of Statehood," *Harvard International Law Journal* 32 (2) Spring 1991, pp. 397-410.
[23] Brownlie Ian, *Principles of Public International Law* 6th ed. Oxford: Oxford University Press, 2003, p. 697.
[24] Rosas, Allan "State Sovereignty and Human Rights: Towards a Global Constitutional Project," *Political Studies* 43 1995, (4): pp.61-78.
[25] Kingsbury Benedict, "Sovereignty and Inequality," *European Journal of International Law* 9 1998, (4), pp.599-625.
[26] Brownlie Ian p.291.
[27] *Nationality Decrees Issued in Tunis and Morocco* (1923) P.C.I.J. Ser. B., no. 4, p. 24.
[28] Werner Wouter G., and Jaap H. De Wilde, "The Endurance of Sovereignty," *European Journal of International Relations* 7 2001 (3), pp. 283-313.

National Implementation of Internationally Recognized Human Rights: If human rights are universal rights held equally and inalienably by all individuals, how could they not be fundamentally opposed to the supreme authority of states? The simple answer is that actual legal and political practice has made human rights and state sovereignty fully compatible.

The Universal Declaration on Human Rights (1948), the International Human Rights Covenants (1966), and several single-issue treaties and declarations establish an impressive body of international legal obligations.[29] These instruments regularly use the language of universal rights: "No one shall be …," "Everyone has the right …" But universal human rights have been embedded in a statist system of national implementation.

The international human rights obligations of states are solely to their own nationals, and others under their territorial jurisdiction. States have neither a right nor a responsibility to implement or enforce the human rights of foreigners on foreign territory. And international supervision of national human rights practices is extremely restricted.

Considerable international monitoring takes place. Numerous human rights treaties require periodic reports to an international committee of experts. With the six principal international human rights treaties having an average of 161 parties,[30] this amounts to a not negligible quantity of formal international scrutiny. The United Nations Commission on Human Rights also examines human rights situations in countries of concern and for selected rights. National and transnational NGOs assure a surprisingly free flow of information on human rights practices. Some states have made monitoring human rights an integral part of their foreign policy. But with very limited exceptions, primarily weak and rarely used individual complaint mechanisms and a strong system of regional judicial enforcement in Europe, implementation and enforcement are left to states in their own territories.[31]

There is nothing particularly surprising about this sovereignty-respecting construction of international human rights. International society remains largely a society of sovereign states. Most international law is implemented and enforced nationally. Human rights have simply been incorporated into the established state-based system of international law and politics.

How states treat their own nationals on their own territory has become a legitimate, and increasingly regular and important, topic in bilateral, multilateral, and transnational international politics. States and other international actors are free to use most ordinary policy instruments short of the threat of force to influence national human rights practices. But the society of states has, with very few and extremely limited exceptions, no significant role in the enforcement of human rights. It simply is not true that human rights claims no longer depend on geographic limitations, and may be as appropriately addressed to the broader international community as they are to a nation state's sovereign[32] – if those claims are for implementation, enforcement, or legal remedy, which remain the domain of states exercising their sovereign prerogatives within their own territories.

It simply is not true that human right is an issue area in which conventional notions of sovereignty have been compromised[33]. States still retain final authority – sovereignty – over human rights within their territories. State authority to implement and enforce human rights has neither been lost nor, with the limited exception of Europe, transferred to another actor.

Constancy and Change in Sovereignty and Human Rights: The struggle to establish international rules that compel leaders to treat their subjects in a certain way has been going on for a long time.[34] This is not untrue. But it obscures the no less important fact that the form and consequences of these efforts have changed substantially in the past half century.

The contemporary global human rights regime is not without precursors. Largely effective international prohibition regimes were established for the slave trade and slavery.[35] Minority rights issues were recurrently addressed and regulated in limited ways in new states.[36]But such isolated, ad hoc and sporadic efforts were quantitatively and qualitatively different, in both substance and impact, from

[29] For an extensively hyper-linked collection of approximately one hundred instruments, see http:// www.unhchr.ch/html/intlinst.htm.

[30] See http://www.unhchr.ch/pdf/report.pdf, which records ratifications through 2 November 2003.

[31] For overviews of the multilateral human rights machinery, see Donnelly, Jack, *Universal Human Rights in Theory and Practice*. 2nd ed., Cornell University Press, Ithaca, 2003, Ch.8.

[32] Stacy Helen, "Relational Sovereignty," *Stanford Law Review* 5 (5) May 2003 pp.2029-2059.

[33] *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press 1999 p.125.

[34] Krasner Stephen D, "Sovereignty," *Foreign Policy* (122) January-February200, pp. 20-26.

[35] Nadelman Ethan A, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization* 44 (4) Autumn1990, pp. 479-526.

[36] Claude Inis Jr., *National Minorities: An International Problem*. Cambridge, MA, Harvard University Press 1955.

the activities of the past half century. There simply was nothing even vaguely like today's comprehensive and extensive international concern with human rights.

Prior to World War II, even talking about human rights violations in other countries, except in very limited contexts, was considered an unjustified infringement of states' sovereign prerogatives. Human rights are not mentioned in the notoriously "idealist" Covenant of the League of Nations. There were no multilateral treaties, let alone multilateral institutions, devoted to human rights, as opposed to particular rights that we today consider human rights. No states regularly addressed human rights in their foreign policy. Transnational action was extremely limited in both quantity and impact.

Much as the sovereign right of self-preservation left states at liberty to launch aggressive wars, the sovereign right of political independence left them at liberty to violate, what we today call, human rights. Until the middle of the twentieth century, States had succeeded in juridically protecting their free will; or more precisely, their free willfulness. International law required no behavioral norms, and no obligation of tolerance, in regard to a State's own nationals.[37] Today, however, states can no longer claim sovereign rights to violate human rights. Authoritative international human rights norms require certain kinds of behavior and prohibit others. We should neither underestimate nor overestimate the significance of this change.

The considerable normative power of the global human rights regime has dramatically facilitated the work of human rights advocacy, both by altering domestic conceptions of legitimacy and by opening multiple avenues of international and transnational support. The spread of international human rights norms is even part of the explanation for the collapse of the Soviet Union and its empire[38], the demise of military and civilian dictatorships in Latin America, and processes of political liberalization that are taking place in most of Africa and Asia.

Normative strength, however, is matched by procedural weakness. The international community lacks the authority to stop even gross and systematic violations, except in the case of genocide. Final authority, sovereignty, still resides with states.

International Norms and State Sovereignty: Authoritative international norms have always been part of modern international relations. International legal obligations restrict a States' freedom of action and thereby the exercise of its sovereignty, but they do not diminish or deprive it of its sovereignty as a legal status.[39]

During the first two centuries of the Westphalian era sovereigns were held to be under a variety of natural law obligations. This was not seen as in any way incompatible with sovereignty. Sovereigns remained supreme within their domains, subject answerable only to God.

In the nineteenth century, the so-called standard of civilization set substantive requirements for fully equal participation in international relations. But the prohibition of 'barbarous' behavior was completely compatible with the 'full sovereignty' of civilized states a status that was available to 'barbarous' states that changed their practices to meet the standard, as Japan did in the 1890s. Again, despite normative restrictions on the range of legitimate action of states, there was no subordination to a higher legal or political authority. And any inequality that arose from the doctrine was a matter of some sovereign states not meeting 'universal' substantive standards.

Today, in addition to international human rights norms, states, largely irrespective of their will, are bound by the norms of customary international law, obligations *erga omnes*, and *jus cogens*. And they are bound by a wide range of treaty-based obligations. So long as international obligations do not subordinate states to a higher authority, and they clearly do not in the case of the global human rights regime, they are completely compatible with full sovereignty. Supremacy means that one is subject to no higher authority, not that one's authority is absolute and unlimited.

Sovereignty is always changing, as states, individually and collectively, grapples with new problems and opportunities, pursue new interests, elaborate new norms, and learn from their past practices. Transformations of sovereignty reflect a process of articulating new norms, and new understandings of old norms, into the framework of international law and politics. Over the past half century, human rights have been widely, and increasingly deeply, incorporated into the practices of international law and politics, and thus insinuated into our understanding of sovereignty.

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[37] Bettati, Mario, "The International Community and Limitations of Sovereignty," *Diogenes* 44 1996 (4) Winter, pp. 91-109.

[38] Thomas, Daniel C, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*. Princeton University Press, Princeton 2001.

[39] Steinberger, Helmut, "Sovereignty" In *Encyclopedia of Public International Law*, edited by Rudolf Bernhardt. North-Holland Elsevier Amsterdam, 2000, p. 512

No less importantly, though, sovereignty has been insinuated into our understandings of internationally recognized human rights. Implementation lies ultimately with sovereign states. The politics of international human rights still is largely about influencing sovereign states.

Sovereignty and Economic and Social Rights: The relationship between sovereignty and economic and social rights in contemporary international relations is complex. The globalization and structural adjustment both of which are regularly seen as eroding sovereignty and threatens the economic and social rights. But the threats to human rights are very real but not connected to eroding sovereignty.

The threats to economic and social rights posed by internationally-mandated programs of structural adjustment[40] arise from weakness not lack of authority. States voluntarily accept loans and grants that impose economic and political conditions. They are free to refuse assistance under such terms, as a few states have. Yet many governments are so desperate that they feel as if they have no real choice.

Sovereign authority, however, is no guarantee that exercising that authority will be without costs. If A allies with B because it fears C, A's sovereignty has not been compromised, violated, or infringed. An inventor who gives a substantial share of the stock in her company to venture capitalists because she cannot get bank financing has not had her rights violated. And it is no more a violation of sovereign equality that only poor and weak states must accept conditional assistance than it is a violation of equal protection of the laws that wealthy private borrowers often get better terms than ordinary borrowers.

Coercion, whether it arises from internal desperation or external pressure, is, up to a point, compatible with voluntary choice. At some point, of course, it is not. But coercion per se no more violates sovereignty than offering positive inducements to behave in a particular way. Only external imposition -- particularly imposition through the threat or use of force -- violates sovereign autonomy. There is a clear qualitative difference between "Take it or leave it" and "Your money or your life!"

Sovereignty is (only) the authority to decide, the right to choose among alternative courses of action the one that appears most beneficial or least harmful. So long as the compulsion under which states operate is a matter of choosing between alternatives, even if all the options are unattractive, sovereignty has not been infringed. If borrowers have a significant say in negotiating the terms of conditionality we might even say that their sovereignty has been actively respected.

The IMF, for all its power, is not a global central bank. Nor is the Bank for International Settlements. National central banks still have the authority to set national monetary policy. Whether their decisions have negative externalities or will be swamped by those of international markets and institutions are questions of capabilities not authority. The Group of 7/8 is a mechanism for leading sovereign states to coordinate policies, not an authoritative policy-making body. The Paris Club is an "informal", that is, voluntary, mechanism for creditor countries to coordinate their relations with each other and common debtor countries. And so forth.

Globalization presents a very similar picture. By reducing the ability of states to control and tax large firms and capital, globalization has restricted the ability of many states to implement economic and social rights.[41] But this has nothing to do with eroding economic sovereignty.

Firms have always had the right to operate globally. Recently they have begun to acquire the ability to take advantage of that right. States have always had the authority to regulate and tax businesses. Recently they have faced increasing difficulty in using that authority to extract resources sufficient to fund social programs at desired levels.

The balance of power has shifted. But neither firms nor states have gained or lost rights/authority/sovereignty. The right/authority of states to regulate banks and businesses has not been renounced, transferred, or taken away. The threat to economic and social rights posed by globalization cannot be remedied by enhancing state sovereignty. States already have supreme and essentially unregulated authority.

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[40] Although some groups may benefit even in the short run from structural adjustment programs -- for example, farmers and rural laborers may be helped by reductions in food price subsidies -- structural adjustment almost always involves significant declines in the enjoyment of some economic and social rights for some significant segments of society, often the poor and the marginalized. See, Sadasivam Bharati, "The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda," *Human Rights Quarterly* 19 (3) August 1997, pp. 630-665.

[41] Although the distributional consequences of globalization are extremely complex, at least some groups have suffered and will continue to endure both absolute and relative declines in the enjoyment of economic and social rights. The reports of the Special Rapporteurs on Globalization and its Impact on the Full Realization of Human Rights (UN documents E/CN.4/Sub.2/2000/13, E/CN.4/Sub.2/2001/10, and E/CN.4/Sub.2/2003/14) provide wide-ranging negative assessments. See also McCorquodale Robert and Richard Fairbrother, "Globalization and Human Rights," *Human Rights Quarterly* 21 (3) August 1999, pp.735-766.

Some analysts[42] suggest that globalization is changing the character of the state, or state-society complexes, to a transnational or global state oriented towards protecting global, rather than national, capital and the interests of an emerging transnational capitalist class. Here too erosion of sovereignty is not the issue. These threats to economic and social rights arise from the purposes for which states exercise their sovereignty.

V. CONCLUSION

The preceding discussion suggests a limited decentering of the state. This might involve changes in or transfers of sovereignty. But states and their sovereignty might simply be bypassed or marginalized. What are the implications for human rights?

Human rights advocates typically see the state as the problem, which it often is. But the state is also the principal protector of human rights. Until we develop alternative mechanisms to deliver goods, services, opportunities, and protections to large numbers of people, and it must be emphasized that no substantial progress seems likely in the next couple decades,[43] states, for all their problems, are pretty much what we have in the way of legal and political institutions for implementing human rights.

States per se are neither good nor bad for human rights. It depends on what particular states do in particular circumstances. Today, in part because of the growth of the global human rights regime, more states than ever before respect a wider range of human rights, and fewer states than ever before engage in the sort of gross and persistent human rights violations that were the statistical norm just a quarter century ago.

Sovereignty per se is neither good nor bad for human rights. It depends on which particular sovereign rights states have and how they exercise them. The global human rights situation today, although by no means good, is significantly less bad than it has been, in some measure because of the way in which human rights have become incorporated into our understandings of state sovereignty.

For all the, amply justified, complaints about the current system of national implementation of international human rights, only a small minority of citizens, and few if any states, are willing to transfer final authority to other actors over the wide range of important and sensitive issues covered by internationally recognized human rights. People, states, and the society of states increasingly value human rights. But they also value states and sovereignty. In the end, they seem satisfied to leave sovereignty tempered and modestly humanized by, but in no serious way subordinated to or eroded by, human rights. This has left human rights not a challenger to but deeply embedded within state sovereignty.

Although my focus here has been analytical rather than normative, I would like to conclude by suggesting that this is not, all things considered, such a bad thing. I agree with Henry Shue that "provisions for non-intervention and sovereignty ought to be judged by how well they serve fundamental human values, like the protection of rights."[44] But that judgment must take into account not only ideal standards. It must also consider practical possibilities, including both where we have come from and what alternatives are realistically available in the coming years and decades.

The current situation is hardly ideal, far from it. But it certainly is preferable to what prevailed before sovereignty was transformed by human rights. And until we develop alternative institutions capable of implementing internationally recognized human rights, the prudent course is to continue to insist on the combined rights and obligations of states to implement and enforce internationally recognized human rights; that is, on the particular coordination of human rights and state sovereignty represented by the global human rights regime.

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[42] Cox Robert W, *Production, Power, and World Order: Social Forces and the Making of History*.: Columbia University Press, New York, 1987; Panitch Leo, "Globalisation and the State" In *Between Globalism and Nationalism: Socialist Register 1994*, edited by Ralph Miliband and Leo Panitch.: The Merlin Press London, 1994; Robinson William I, "Capitalist Globalization and the Transnationalization of the State." In *Historical Materialism and Globalization*, edited by Mark Rupert and Hazel Smith.: Routledge London, 2002

[43] A growing body of literature addresses the human rights responsibilities of national and especially transnational businesses. Most of the discussion, however, focuses on corporate violations rather than making firms direct providers of internationally recognized economic and social rights. And the American experience with employer-based access to health care -- not to mention the marketplace logic of efficiency that dominates the activities of firms -- suggests that we should not place much hope in this alternative. See Ratner Steven C,. "Corporations and Human Rights: A Theory of Legal Responsibility," *Yale Law Journal* 111 December 2000, pp. 443-545.

[44] Shue, Henry, "Let Whatever is Smouldering Erupt?" In *Between Sovereignty and Global Governance: The United Nations, the State and Civil Society*, edited by Albert J. Paolini, Anthony P. Jarvis and Christian Reus-Smit, Macmillan, Basingstoke, 1998, p. 78.

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