Paula Olearnik-Szydłowska

Jesuit University Ignatianum in Krakow
Institute of Political Science
olearnikpaula@gmail.com

Two Concepts of Sovereignty: Explaining Divergent Attitudes on EU Integration[1]

Summary

This paper begins with Isaiah Berlin's two concepts of liberty – negative and positive – and uses them as a lens to bring two different notions of sovereignty into clearer focus. Moreover it aims at explaining how these differing notions of sovereignty provoke divergent and often counterintuitive responses to the question of EU integration. In particular it considers the attitudes of Poland and the United Kingdom as examples of the difference views between one new accession state and one founding member.

Keywords

Sovereignty, EU integration, Freedom,
Poland, United Kingdom

DWA POJĘCIA SUWERENNOŚCI: JAK WYTŁUMACZYĆ ODMIENNE NASTAWIENIA DO INTEGRACJI UNIJNEJ

Streszczenie

Artykuł rozpoczyna się od zdefiniowania dwóch pojęć wolności Isaiaha Berlina – mianowicie wolności pozytywnej i negatywnej, służących głębszej analizie pojęcia suwerenności. Tekst podejmuje próbę wyjaśnienia, dlaczego te różne pojęcia suwerenności prowokują odmienne i czasem niespodziewane reakcje na temat integracji unijnej. W sposób szczególny analiza skupia się na różnicy między poglądami wobec integracji w Polsce – nowym państwie unijnym – oraz Wielkiej Brytanii – państwie dawnej Unii.

Słowa kluczowe
   suwerenność, integracja UE, wolność, Polska, Wielka Brytania

INTRODUCTION

In 1958 Isaiah Berlin captured a foundational distinction between two notions of liberty. It has subsequently been reduced by generations of undergraduates to the difference between "freedom from" and "freedom to." In fact, Berlin's negative liberty refers to the sphere in which an individual ought to be able to do or be what he sees fit, without interference from other persons or from the state. In other words, negative freedom means that the individual – as far as possible – should not be prevented from choosing. Positive liberty, by contrast, relates to who is doing the ruling. It describes the desire to be self-directed, the master of one's own destiny, but at the same time states that this kind of freedom is achieved only when the individual is ruled by objective reason and not the passions [Berlin 1969, p. 9].

The aim of this paper is not to provide an exhaustive appraisal of Berlin's two concepts of liberty, rather it hopes to use them as a lens to bring two different notions of sovereignty into clearer focus. And, more importantly, to explain how these differing notions of sovereignty provoke divergent and often counterintuitive responses to the question of EU integration. It will in particular consider the attitudes of Poland and the United Kingdom as examples of a new accession state and one founding member.

I. SOVEREIGNTY AND EU INTEGRATION

Many believe that the time of national sovereignty is over, at least in its Westphalian iteration. Some view this as an irrevocable loss; others as a threat to be defended against, others still as a sign of progress and cause for celebration. There are finally those who believe that membership in the European Union need not constitute a violation of sovereignty but simply a rethinking of the traditional concept into a postmodern form, one which is fully compatible with supranational institutions [Ward 2003]. What makes the question of national sovereignty and EU integration so intractable however – at both the level of theory and policy – is the fact that different conceptions of sovereignty are simultaneously employed thus compounding the problem of differing opinions with a lack of definitional clarity.

Of course, the problem is not *merely* a definitional one however, providing conceptual clarity in the discussion of sovereignty is much needed in order to fully understand the political positions being taken up on the issue of EU integration and to hope to come to some kind of consensus – if not on the outcome, then at least on what is at stake. Indeed I submit that instead of focusing on whether the advent of the European Union has put an end to the era Westphalian sovereignty or not and whether we should be happy about this or not, it should first be asked what are the dominant concepts of political sovereignty in our current context and what do they entail for public policy in general and the question of EU integration in particular?

Before drawing the fault-line, which will distinguish our two major conceptions of sovereignty it is worth recalling Stephan Krasner's typography of the term. He provides us with the following fourfold distinction.[2] First – international legal sovereignty – understood as the mutual recognition between territories of formal juridical independence. Second and most prominently – Westphalian sovereignty – describing political organization based on the exclusion of external actors from authority structures within a given territory.

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2   C.f. [Mik 2003, p. 394]: "The so-called Brezhnev doctrine of limited sovereignty… stipulated that if communism was endangered, the Soviet army and, sometimes, the armies of its allies had the right to intervene in a State which was part to the (Warsaw) Pact regardless of the will of the national government in question."

Third – domestic sovereignty – referring to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within their own borders. And finally – interdependence – sovereignty understood as the ability of public authorities to regulate the flow of information, ideas, goods, services, people, pollutants or capital across the borders of their state [Krasner 1999, pp. 3-4].

These can be more succinctly characterized as international recognition, external autonomy, internal control and practical capabilities. Krasner goes on argue that states can possess some though not necessarily all of these types of sovereignty [Krasner 1999, pp. 8-16]. Failed states such as the Sudan may enjoy international recognition but their central government is so ineffective that it has practically no control of much of its territory, thus lacking internal control and practical capabilities. Eastern bloc countries such as Poland, Czechoslovakia and Yugoslavia may have also been internationally recognized during communist rule and possessed a degree of internal control and capabilities, but they were not autonomous in the full Westphalian sense since the Soviet Union had decision-making authority within these territories, which formally lay outside of its boundaries.[3]

Some have criticized Krasner for muddying the waters. Neil Walker for one believes that sovereignty is ultimately not a matter of degrees but an all or nothing proposition [Walker 2003]. You can be partially sovereign as much as you can be partially married, which is to say, not at all. Either you are married or you're not. Either a state is sovereign or it's not. To think otherwise, maintains Walker, is to reduce sovereignty to its various operationalisations [Walker 1998]. Walker may well be right that although sovereignty is sometimes invoked selectively, and self-servingly, at the core of the concept there lies an essential claim about how the world of international politics is ordered which has "real consequences for the overall configuration of authority" [Walker 2003]. And this core cannot be parsed out, as Krasner seems to do, into four separate, independent measures.

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3   C.f. [Mik 2003, p. 394]: "The so–called Brezhnev doctrine of limited sovereignty…stipulated that if communism was endangered, the Soviet army and, sometimes, the armies of its allies had the right to intervene in a State which was part to the (Warsaw) Pact regardless of the will of the national government in question."

There is, however, something salient in Krasner's typography which at least attempts to answer the question – "when is sovereignty transgressed?" Everyone is agreed that sovereignty is violated through the unwanted intervention of external actors, as is the case in interstate wars. The question in the EU context however is whether sovereignty can be compromised by invitation. Many believe that membership in the EU necessarily constitutes a loss in sovereignty – at least in the Westphalian sense [Walker 2003, pp. 19-25]. Others agree, but continue to maintain that it is fully compatible with a postmodern conception of sovereignty, one which is not tied to the nation-state [Albi 2003, p. 401].

Krasner's response is a sophisticated one. Voluntary policies that cede authority to supranational juridical structures or international financial agreements although not inconsistent with international legal sovereignty do indeed compromise Westphalian sovereignty. However, and this is the interesting part of the argument, because of great power asymmetries between states leaders often voluntarily renege their state's sovereignty in order to secure greater capabilities:

At times rulers adhere to conventional norms or rules because it provides them with resources and support…At other times, rulers have violated these norms, for the same reasons. If rulers want to stay in power and promote the security, material, and ideational interests of their constituents, following the conventional practices of Westphalian and international legal sovereignty might or might not be an optimal policy [Krasner 1999, p. 24].

Krasner characterises this as a maximisation of utility – the surrendering of autonomy for the securing of greater power. Stated thus it is highly reminiscent of the Hobbesian account of the state of nature in which individuals trade their liberty for the benefit of greater security [Hobbes 1994].

The problem with Krasner's account is that it does not fully explain the positions of certain states vis-à-vis EU integration – an issue that will be taken up in more detail in the section III of this paper. I believe it is more accurate to say that sovereignty is not being exchanged for power, but that two competing notions of sovereignty are being operated upon. State leaders adhering to one conception over another (often unwittingly) are moved to hold very different positions on the question of European integration. And it is only by understanding

what these two competing conceptions are that we will be able to make sense of the positions held, policy decisions made, and more importantly to offer normative suggestions about how states would best secure their national interests.

II. TWO CONCEPTS OF SOVEREIGNTY: DECISION-MAKING AUTHORITY VS. PRACTICAL CAPABILITIES

This first concept of sovereignty mirrors Berlin's concept of negative liberty. "Political liberty in this sense is simply the area within which a man can act unobstructed by others" [Berlin 1969, p. 3]. On the international level to be sovereign means to be the highest authority over a given territory and to have the autonomy to decide upon the institutions and policies regarded as optimal. In other words, negative sovereignty would denote the area in which a state could act unobstructed by others states and non-state actors. The scope of the decision-making authority is both legal and political in nature, internal and external [Kwiecien 2013].

To have negative sovereignty does not mean that the rulers of states have absolute capabilities; these are often constrained, sometimes severely, by the external environment. A state's size, wealth, terrain, population size, resources will all determine how far it is able to realise its wishes and interests. However the inability of a state to achieve its goals is not equivalent to a lack of negative sovereignty. Negative sovereignty is therefore not compatible with an absolute theory of sovereignty according to which the authority of the state is unlimited. As Cesary Mik states, this one time popular definition thought sovereignty to be "…absolute, indivisible, temporally and territorially unlimited, and it is not a transferable power, but rather an inherent attribute of the state" [Mik 2003, p. 369]. However, by way of analogy to Berlin's concept of freedom, if an individual's lack of material means are due to a lack in physical or mental capacity and not due to the arrangements that other individuals have made, then it is wrong to say that the poor man's inability to buy bread is as much an assault on his freedom as it would be if he were forbidden to do so by law. The same is true of sovereignty.

Berlin's second concept of liberty is harder to grasp. And although it is termed "positive," the author himself is highly critical of it. Positive liberty refers to the desire for all an individual's decisions to depend on himself and not on external forces of whatever kind. It therefore entails both that the individual is free of the constraints of his own baser instincts and that he has certain capacities (power). One might criticise Berlin here on the grounds that he conflates two separate notions into his characterisation of positive liberty; first of freedom understood as choosing according to the objective good, and second of freedom as the power to achieve one's own ends or goals.

Regardless of what we consider of this conflation of terms at least the second element of positive liberty carries with it a totalitarian threat, and this according to Berlin, is the undoing of liberty. "Freedom is self-mastery, the elimination of obstacles to my will, whatever they may be – the resistance of nature, of my ungoverned passions, of irrational institutions, of the opposing wills or behaviour of others" [Berlin 1969, p. 17]. The peril of understanding liberty in this way is that it opens the door for oppression under the pretext of "doing what is in the true best interest" of the individual [Berlin 1969, p. 9]. And it encourages individuals to limit the sphere of their autonomous decision-making in order to gain the supposed benefits of increased power. The same is true of sovereignty, which can be understood as the maximization of a state's desired capabilities allowing it to achieve its national interests. This can manifest itself in two ways: first, it is good for country X to do Y even if country X is too blind to see that it is in its best interest; second, country X should give up some of its decision-making autonomy in order to secure greater desired capabilities.

This may be as far as the analogy with Berlin's two conceptions of liberty can take us. However it helps to shed light on a few important matters. That sovereignty, like liberty, can be understood as the absence of internal intervention, but also as a certain power to carry out one's interests and even that these interests can be objectively catalogued regardless of whether or not they represent the *expressed* desires of the individual or the state.

According to Berlin both of these conceptions of liberty are not equally valid. He firmly maintains that the "incapacity to attain a goal is not lack of political freedom" [Berlin 1969, p. 3]. The same may be

true in the case of sovereignty. Liberty, even understood as "freedom from coercion," is never wholly unbounded; otherwise the liberties of the weak continually would be supressed by those of the strong. Berlin makes quite clear that lack of possibilities does not mean lack of political freedom. The same is true of national sovereignty understood as decision-making authority rather than practical capabilities. The fact that the United States has a Global Firepower ranking eight times that of Switzerland,[4] and over twenty four times the size of its GDP[5] does not mean the former is more sovereign than the later, at least not if one adheres to the negative conception of sovereignty. Both nations, despite vast demographic, military and economic differences are the ultimate arbiters of justice in their territories as well as being internal and external decision makers. Of course, it goes without saying that having more capabilities gives you more decision-making power, just as a the CEO of petroleum company has more dining options than the gas-pump attendant who works at one of his stations. But just as both the CEO and the attendant have the same political freedom, so too America and Switzerland have the same decision-making autonomy.

However, just as individuals place high values on goals such as security and access to material goods, states place high value on the expansion of their capabilities, be these economic, cultural or military in nature. And the belief driving EU integration is that these desirable capabilities and powers can be increased to the extent that national sovereignty is given up or pooled. Nevertheless, the question for the crafters of the European Union remains the same as the one faced by early modern liberals – is there a minimal sphere of negative sovereignty that can never be violated regardless of the circumstances or what other benefits can be achieved by ceding it, and if so where is that line to be drawn?

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4   C.f <http://www.globalfirepower.com/countries-listing.asp>.

5   C.f. <https://www.cia.gov/library/publications/the-world-factbook/>.

III. HOW THESE TWO CONCEPTS OF SOVEREIGNTY EXPLAIN THE DIVERGENCE OF ATTITUDES OVER EU INTEGRATION

At this juncture it is worth pausing over the actual divergence of attitudes regarding sovereignty and EU integration. Cesary Mik rightly asserts that European integration is perceived as a serious challenge to state sovereignty. It poses fundamental questions as to whether Member States retain their sovereignty through the integration process and whether sovereignty can be attributed to the European Union [Mik 2003, p. 367]. The question with which this paper is concerned is not whether the loss of sovereignty or its shifting from state to supranational body is a good or bad thing or whether Member States can retain their sovereignty in the process of EU integration, but what explains the divergence of the attitudes of States regarding this subject. Much comparative work on the attitudes towards sovereignty has been conducted between Western European States and the new accession counties of Central and Eastern Europe (CCEE) [Sokolewicz 1995]. The prevailing opinion is that Western European states having had fifty years of European integration have come to adopt a postmodern notion of sovereignty which is referred to either as a form of federalism or multi-level constitutionalism [Albi 2003, p. 410]. By contrast it is thought that CCEEs still operate firmly in the "traditional language of sovereignty, independence, ethnically defined nation-state and national self-determination" [Albi 2005, p. 122]. It is assumed therefore that these "souverainist" states having only established or re-established autonomous control or statehood in the 1990's are unwilling to transfer their powers to international organizations. Indeed, as Annali Albi makes clear, in nine out of ten of the constitutions of the new accession countries there is an absence of provisions for this kind of transfer [Albi 2003, pp. 138-162]. Wyrzkowski makes a similar claim when he states that European integration requires a relinquishing of traditional notions of sovereignty, i.e. of the value most appreciated today in Eastern Europe as one of the greatest successes achieved due to the collapse of communism [Wyrzkowski 1995, p. 161]. The prediction of theses theorists is that "traditionally conceived" state sovereignty and EU integration are

incompatible, and this differences in attitudes causes a rift between "Old" and "New" Europe.

These predictions, though theoretically persuasive, are not borne out by the facts. It seems that many advocates of "federalist type" EU integration do *not* discount the importance of state sovereignty – as their opponents often claim – rather they believe that their sovereignty will not only be retained in the context of EU integration, but even increased. Justynski makes the claim that by losing legislative power "Poland gains a broad power in the field of co-establishing law for the whole European Union" [Justynski 2001, p. 283]. At the same time, critics of EU integration and its threat to sovereignty do not necessarily operate on a traditionalist conception of the term due to their short history of sovereignty.

The divergence in attitude, I believe, is due rather to the fact that the opponents of integration are operating on a negative conception of sovereignty, whereas the advocates on a positive one. And though not exhaustive, the examples below show the opposite of what is predicted by the "Old vs. New Europe" theory.

In December 2011 British Prime Minister David Cameron vetoed the proposed EU treaty change aimed towards averting the eurozone crisis and creating a "genuine fiscally stable union" [European Union 2007].[6] The entire rhetoric of Cameron's veto decision centered on the fact that signing onto the treaty was not in Britain's national interest and that the countries, which did sign on would have to "give up some of their sovereignty." And it should be assumed that Britain's reaction was not purely explicable by the fact that it is not a member of the eurozone. Quite different was the reaction of the Polish Foreign Minister, Radosław Sikorski, whose country is, like Britain, also not a member of the single currency. Although they didn't couch it in these terms Cameron was working on a definition of negative sovereignty: Sikorski, positive sovereignty.

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6   The measures of "the treaty within a treaty" included the adoption of a new fiscal rule that the annual structural deficit could not exceed 0.5% of GDP, an automatic correction mechanism that would be triggered in the event of a deviation and a requirement for member states to submit their national budgets to the European Commission, which would have the power to request that they be revised [European Union 2007].

Sikorski argued that the treaty change was essential not just to the salvation of the eurozone but also to the salvaging of the European project at large. And he forwarded some bold proposals: a stronger European Commission, which would however reduce its personnel from 27 to a more manageable dozen, power of supervision of national budgets given to the European Parliament, and a combined President of the Council and Commission. Beyond that, he stressed the need to create a stronger European identity and to forge a new Europe federalism on the Hamiltonian model [Sikorski 2011]. Interestingly, however, these remarks were phrased in the language of national interest not cosmopolitan values. Poland would be willing to compromise, and even "pool sovereignty," he declared, in order to gain a "fair role in a stronger Europe" – in order to leverage its power and be taken seriously as an equal partner, in other words.

Upon closer inspection these divergent responses over the question of sovereignty betray a single common feature; they are primarily concerned with national interest. Would the interest of my country best be served or not served were the eurozone to collapse? Even in calling for greater political union in Europe – the driving motivation is not what would be best for the union as a whole, but what would be best *for* the sovereign state I represent. And so it is not the case that national sovereignty is being eschewed in favour of cosmopolitan values, solidarity or new humanism as proposed by Habermas.

In his most recent work on the subject, Habermas draws our attention to the fact that: Defenders of the nation state are seeing their worst fears confirmed and are now barricading themselves more than ever behind the facades of state sovereignty… on the other side, the long-mute advocates of the "United States of Europe" have again found their voice [Habermas 2012, pp. viii-ix]. The problem, however, with this understanding of the state of affairs is that he sees it as a battle between the supporters of state sovereignty and national interest against the latter day disciples of Kant's perpetual peace. In this same vein Ian Ward posits that the end of the sovereign state and the demise of the Westphalian era represent the possibility of creating a transnational humanism [Ward 2003]. In other words, now universal justice and humanitarian laws will prevail over national interests. But this is naïve. Rhetoric aside, the tendency towards greater European integration can be explained by the fact that economic and

security concerns are more highly valued in today's political environment than liberty and the possibility of autonomous decision-making. The aforementioned example shows that this is not the case. And it can be multiplied.

CONCLUSION

We must resist the urge to understand sovereignty in terms of power or capabilities because by doing so the essence of sovereignty ends up being sacrificed, namely the ability to be have a wide space of unencumbered decision-making. However, it is also important to understand that sovereignty in its negative sense – as decision-making authority maybe necessary but it is not sufficient. It may be the minimum for a modern state, but it is not enough by any means for a successful state. Love and life-long commitment may be more important to a marriage than legal recognition. However the legal recognition is a necessary aspect of marriage, even though it is obviously not sufficient for a *successful* marriage.

This is the mistake that Berlin makes with liberty. He is correct that positive liberty can be and often is actually a disguise for paternalism and servitude. But he is wrong to think that negative liberty is enough to satisfy us. It may be a precondition of happiness – but the more pressing question remains – how do I best make use of my liberty in order to make the choices that will make me happy. Or in the context of sovereignty – how does a state best make use of its sovereignty in order to secure its national interests? How does it not give up too much autonomy even under the lure of equalizing its power capabilities in relation to other states?

This question is yet to be answered, but it ought the purpose of this essay has been served, namely, to undermine the idea that divergent attitudes on the future of EU integration depend upon the length of the State's membership in the EU. Instead it has shown that two different conceptions of sovereignty are being operated upon, leading to quite divergent policy prescriptions. There need not be absolute consensus, but the question of the shape of future integration will not be answered unless there is greater awareness of meaning of sovereignty.

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