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Post-Lecture Discussion

SPEAKER: JEAN BETHKE ELSHTAIN
MODERATOR: JOHN H. ROBINSON
SPEECH: "SOVEREIGN GOD, SOVEREIGN STATE, SOVEREIGN
SELF"
DATE: MARCH 2, 1991

Professor Robinson: It seems that what Ms. Elshtain has done is to ransack history for a set of propositions leading to a powerful conclusion. First, cosmos has been thought to be better than chaos for some time now, since day one you might say. Or, to use her own language, symphony is better than cacophony. Second, there is a need for what I would like to call salience to achieve either symphony or cosmos, which is the Greek word for order. Now the question is: How salient does the salience have to be? The thrust of the question is: To what extent does salience require unity? This is the universalism/particularism issue that Professor Elshtain refers to.

As I understand Ms. Elshtain's work, she finds that sovereignty, as classically understood, leverages off of the recognized need for a salience and asserts or takes too much. This is where we conflate power with violence without understanding what we are up to. What she wants to do, in accord with a significant Polish figure now living in a nation inside the city of Rome, is to understand sovereignty functionally, such that the purpose that it serves determines the limit of the claim of sovereignty in any case. This would give us a relatively new notion of sovereignty. If we accept and understand this notion of sovereignty, it would provide a context in which the kinds of questions that we have been addressing at the conference over the past two days would be more resolvable than they are under sovereignty classically and rigidly understood.

Participant: It is interesting that the noted philosopher residing in Rome, as well as other philosophers, are all coming out of a tradition of philosophizing that is very much in tension with the State. Also, there are people who came out of a set of political recognitions where they suffered the deprivation of overweening state sovereignty, and, at the same time, they suffered the dislocations of not having viable civic identity.

It is interesting that the combination of philosophical and political current that have come together here yield this alternative that I have been trying to play with in some way that I hope is fruitful.

Participant: The concept of sovereignty has had much more of a gradual development than your presentation indicates. It is a long, long process of evolution. It is true, of course, that the concept of sovereignty has been organized, and that it further identifies the external side of sovereignty.

The internal side of sovereignty requires you to know where the power of interest lies. Over time, part of the confidence of sovereignty has mentally changed, particularly because the human rights concern has changed so much.

The internal side of sovereignty is no longer a question of the unified will as a center; rather, its limitations are on the part of the State, which flows from the freedoms that are recognized in the human rights system.

As to the external side of sovereignty, there also have been very fundamental changes as a consequence of the development of international human rights. States no longer have the possibility of unlimited internal control, at least if they want to be part of the international society. The states must conform to another set of rules which limit the number of internal options of the sovereignty. As a consequence of this, we have a much more open and flexible concept of sovereignty which is very different from the earlier views of sovereignty.

On the other hand, we also have to understand the complex circumstances of the time. At a time when they were trying to find some structure, there was very frightening chaos and terrible fighting. It is also a question of the development of the whole mentality of trying to live together. The human rights system in itself is contributing to a new way of thinking of how we can live together.

Professor Elshtain: You have offered many points, and you are quite right about the development. Let me just offer a few very brief comments on what you have said. It is interesting to note the different emphasis placed on the alternative sides of the questions. Some emphasize the disorder and the deaths that may result when there is no secure locus of political control or final arbiter of what counts as order. Others stress the "mounds of bodies," sacrificed in the name of the creation of sovereignty.

For example, in Eugene Weber's *Peasants into Frenchmen*, Weber focuses on the many people suffering horribly because of the requirements of the notion of sovereignty. In order to create a nation state, sovereignty does not permit the particularity of certain groups.

You are a bit over optimistic about the constraints on internal sovereignty. Certainly, you have articulated an ideal that states do not have unlimited power, since there is an international community out there, a watchdog organization of sorts. All of that is true. Nonetheless, nothing stopped Saddam Hussein from gassing the Kurds. Nothing stopped three military hunters in Argentina from causing a minimal 9,000 people to disappear.

Human rights came in as a powerful way to call those regimes to task in the aftermath of those degradations. But when the violations are actually happening, it is very difficult to intervene. It is no surprise that it is the human rights group in Argentina that had the most success in helping stop the hunters.

It seems to me that many of the concerns, which are almost a fantasy of total control, have not gone away. They did get encoded in a version of sovereignty that can have a rather more benign or rather more despotic face. Even in societies like our own that are supposed to prevent that despotic face from being displaced and working its will, the protection has not served as an entire break on those in power. We have seen this on a number of occasions, especially in times of war.

Participant: I think it is wise to try to avoid the use of the term "sovereignty." Quite outside the restraints that the human rights movement imposed, there is a fundamental and profound reason to avoid the term "sovereignty." If "sovereignty" is sovereign authority—supreme authority—then you have the question of who is going to restrain the supreme authority. Especially when you have so many nation states—160, 170, or 180—all claiming to be sovereign.

Global interdependencies cause a functional necessity of cooperation. When nation states cooperate and interact with one another across state boundaries, they just cannot assert sovereignty. Third World countries claimed to welcome foreign investment; but the moment you invest and take certain advantages, the countries claim that the investors infringe on foreign sovereignty. When we talk about sovereignty as an abstract term, it is very important contextually to clearly define what we are talking about. It is prob-

ably a term that is subject to more abuse and misuse than even the doctrine of intimidation.

The notion of "human rights" significantly changes the contemporary meaning of "sovereignty." "Sovereignty," as developed back in the 16th and 17th century, emphasized the personal sovereignty of monarchy. Today we talk about sovereignty of the people—popular sovereignty. The Universal Declaration of Human Rights, article 21, paragraph 2, exactly reflects this notion. It emphasizes that the people should be the very basis of determining the power of the government by genuine free elections. Popular sovereignty is not something to be invoked in absolute, abstract terms. Consider Saddam Hussein. He invokes the name of sovereignty, but he means his own personal sovereignty. He was not acting in the real best interest of the people of Iraq. Hussein did not give the people of Iraq the opportunity to express their popular will. If we take this notion of sovereignty seriously, the authority comes from the people, and the ultimate risk is upon the people rather than a few self-proclaimed rulers. Sovereignty is still based upon human rights in the sense of authority of the people. That notion of sovereignty also would justify self-determination.

When a group of people attempts to become self-independent and has the government's consent, then we can see a significant contemporary meaning. This should be the basis of how this new world should be governed and how different territorial communities should be organized, to the extent that sovereignty is an expression of such human rights. Then we can really see a very significant contemporary meaning.

Professor Elshtain: First of all, in the case of President Hussein, I think he has been responding to functional necessities, as you put them. But, this is a principle—dare I say, philosophical—position that he has taken which I am not going to spend time spinning out.

In my talk, I raised some alarms about the notion of popular sovereignty as encoded in the aftermath of the French Revolution—the people speaking with one will. I get a little nervous when I hear "will of the people," because almost every territorial entity is a mixed population; the territorial entity is not pure. Various religious and political commitments define a variety of different folks. I become concerned when we start talking about the "will of the people," because it suggests that those who stand apart from that will are somehow defined outside the boundary of

the polity itself, or can be so construed. I know that is not what you mean. I think we must be very cautious when talking about the "will of the people," and manifest that we are also talking about constraints on the "will of the people."

Participant: I think that point is very well taken. I do not mean to say "one people—one will." This is exactly what the Universal Declaration sets out. The people can best express their popular wishes through genuine free elections.

Professor Elshtain: Right. Thank you.

Participant: Theorizing to a totalitarian state, serenity in some way is between a state's given authority and the external serenity that has locked other states to the community, and acquires serenity in order to act. Leaders are shifting. They are giving this serenity to the states because a society with this serenity allows human rights.

Participant: I think you really have developed the concept of sovereignty to apply to completely different situations. Sovereignty is a mighty powerful thing. It is social to allow human rights protection, and it is not unvalued per se. Speaking of both internal sovereignty and external sovereignty, the question is in the human rights movement, in philosophies which are evasive of natural law. Rights recognized by states are still not given. It is an obvious reaction to North v. East, but I think that is something we should see and deal with on the national level with the national governments.

How does that confer with the idea of unlimited sovereignty? Also, regarding the European communities you mentioned, you have to find your decision makers within the European communities.

Professor Elshtain: As you were talking, I was thinking of why it is that many insist that the identification of freedom with sovereignty is a problem. Hannah Arendt debunks this at some length.

Applied to human beings both individually and as members of groups, she claims: "[W]e are never sovereign." She opposes the assumption that we are free-standing, free-willing selves, which is for her what sovereignty historically meant. That assumption leads to the view that the freedom of one man or group can be purchased only at the price of another's freedom.

That is, if I am sovereign, to the extent that I am sovereign, you are less so. She goes on: "The famous sovereignty of political bodies has always been an illusion which moreover can be obtained only through the instruments of violence."

It strikes me that what she is getting at here is what you say is already happening: we cling to a notion of sovereignty, which, in its classical formulations, have been thoroughly softened. We hold on to the term primarily because it continues to have functional purposes—tell me if I am overstating your point—not so much because there is a final willing, or saying, or absolute authority, but because there are certain things that need to be done. We require sovereignty to do those things.

That is the point that I think is compatible with some of the concerns I raised toward the end of my paper, which have to do with the softening of sovereignty in practice. Hopefully, I have done it in a way that does not lead to the recurrence of all those fears that so often get expressed if you begin to soften it too much, such as the fear that, finally, the only answer is, or the only possibility at the other end, is some kind of terrible dissolution or disorder.