TWO CONCEPTIONS OF STATE SOVEREIGNTY, 
AND THEIR IMPLICATIONS FOR GLOBAL INSTITUTIONAL DESIGN 

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1. INTRODUCTION: SOVEREIGNTY, COSMOPOLITANISM, OR BOTH? 

The idea that the problem-solving capacity of the state in our current world is under strain is extremely widespread. What we need, many argue, are global (political) solutions to global (political) problems. Global institutional design – to address such issues as climate change, the violations of human rights by non-state actors, the non-domestic causes of poverty, and the regulation of migration, trade, labour, tax competition, and financial markets – strike many as being the most pressing challenge of our time. Is this the end of the sovereign state? Many, however, believe that the point is overstated, both from a diagnostic and from a normative perspective. Empirically, so the argument goes, the idea that the state in the era of globalization is powerless is a myth;[1] normatively, giving up state sovereignty would entail giving up the important value of self-determination.[2] 

As Katrin Flikschuh has pointed out,[3] this divide reveals a deeper consensus on the premise that one can either have state sovereignty or cosmopolitanism, but not both. Scholars disagree about whether the former or the latter ought to be sacrificed, but agree that a sacrifice is necessary. Flikschuh argues that this is not the case, in that what Kant calls cosmopolitan Right is indeed only made possible by the morality of sovereign states. In so doing, however, she partly reaffirms the dilemma. The crux of her argument is that (Kantian) cosmopolitanism itself disallows the compulsion of states. For Kant, however, cosmopolitanism is not the political project of establishing and sustaining global institutions with independent powers of some sort, but rather the doctrine which unpacks the obligations between states and individual citizens of other states – which can only, in his view, be honoured in a world of independent republics. Flikschuh’s way of solving the dilemma, therefore, is by redefining the very concept of cosmopolitanism in a way that, by returning to Kant’s original argument, moves away from contemporary institutional discourse.

My aim in this paper is to provide some preliminary work as to how the dilemma addressed by Flikschuh could be solved in a different way. I shall make a specular argument to Flikschuh: the dilemma can be solved if we redefine sovereignty, rather than cosmopolitanism. The central claim of this paper is that, under a specific understanding of what state sovereignty and self-determination are and why they matter, only the establishment of supranational institutions with some (limited, but effective) sovereign powers can allow states to exercise sovereignty, and

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peoples self-determination, in a meaningful way when certain empirical circumstances occur. This point, I shall argue, has so far been neglected because political theorists have tended to rely on an unduly narrow conception of sovereignty, understood in purely negative and formal terms – as the legal right to non-interference, which constitutes the crux of international law. My argument will rest on the premise that we should, instead, put more emphasis on the positive and substantive aspects of state sovereignty, which have always been central to the empirical study of statehood in such disciplines as history, international relations, and political science. The positive aspects of sovereignty point to the substantive problem-solving capacity of states and to their ability to make meaningful and genuinely discretionary choices on a range of political, legal, and socio-economic issues. The positive component of sovereignty, I suggest, not only is what allows a proper fulfilment of the value of self-determination, but is also more compatible with a tighter institutional regulation of the global arena than a purely negative understanding.

Before I proceed, a threefold caveat is in order. The paper addresses the project of global institutional design from a normative perspective of justice, but both its aim and its logic significantly differ from the main concerns of the currently most developed literature in this field, namely that on global distributive justice. My fundamental concern, in making a case for global regulatory institutions with some independent power, is one of political, rather than distributive, justice, and this is true in three respects. (1) Firstly, the fundamental normative problem addressed in the argument concerns the problematic power relationships that global political and socio-economic dynamics might generate, rather than their distributive effects. (2) Secondly, insofar as the paper ultimately advocates the establishment of supranational institutions with some independent powers, the rationale for global institutional building is of a political, rather than distributive, nature. (3) Thirdly, and following from (2), the kind of institutions that I shall advocate have political competences, such as limiting the power of certain global actors – rather than distributive ones, such as redistributing global resources.

The paper unfolds as follows. In the next section, I discuss the analytical devise of the domestic analogy, which consists of treating states as agents that are relevantly similar to individual actors in one or more respects, and using our convictions about individual interaction to construe normative arguments on international matters. I shall suggest that, although the domestic analogy should be used with caution, there is one aspect in which it has not been exploited enough, namely to highlight the analogies between individual positive freedom and positive state sovereignty. In section 3, I expound the difference between negative and positive sovereignty in some detail, drawing on Robert Jackson’s work on quasi-states.\(^4\) In section 4, I unpack the central normative argument of the paper, namely 1) that we should pay more attention to threats to positive sovereignty that states must face; and 2) that the establishment of supranational regulatory institutions might well turn out to be the best way to tackle some of the global systemic obstacles to the positive sovereignty of (some) states. Section 5 concludes by pointing out one important qualification to my argument.

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2. Taking the Domestic Analogy Seriously

The so-called “domestic analogy” is both an extremely controversial concept among scholars of international politics, and one that it is extremely difficult to relinquish. In its strongest form, it is “the argument from the experience of individual men in domestic society to the experience of states, according to which states, like individuals, are capable of orderly social life only if, to use the Hobbesian expression, they stand in awe of a common power.” Bull, who first coined the term, argues that the “domestic analogy” should be abandoned altogether, because international society is unique in character due to features that are specifically pertinent to the status and nature of sovereign states. In several weaker understandings that proliferate in the literature, however, the domestic analogy is not used as a straightforward argument for the establishment of a world state. It consists, instead, in viewing the interaction among states as relevantly similar to that among individuals in one or more relevant respects, without the analogy entailing the necessity to establish a full-blown cosmopolitan institutional order. States are seen as agents in the global arena, and highlighting the features which they share with individual agents is seen as analytically helpful for a better understanding of their nature and behaviour. Addressing this issue in a comprehensive manner is beyond the scope of this article; suffice it to say that I believe Bull to be right in several respects: the domestic analogy has been taken too far in many ways. This article, however, shall analyze one problem that arises from not taking the analogy far enough in one way: if sovereign states are to be understood as agents whose freedom ought to be respected, then attention should be paid to the positive as well as to the negative aspects of their sovereignty.

Statists typically have a more benign account of the state than advocates of the Hobbesian domestic analogy. They see it less as self-interest maximizer and more as a moral agent in the global arena, whose agency should be respected and protected. This is usually achieved by conferring upon them the status of sovereignty, which many statists take to be, at least in some respects, the functional equivalent of what freedom is to individuals. Self-governing polities should, just as free individuals, be respected qua (collective) moral agents. The argument follows that cosmopolitanism, understood as the establishment of robust global institutions with sovereign powers, unacceptably curtails state sovereignty.

In what sense does this argument not take the domestic analogy far enough? Quite straightforwardly, if it is appropriate to take state sovereignty as a proxy for some form of collective freedom, then it should be acknowledged that the debate on individual freedom is rich and multifaceted, and that more than one conception of freedom feature in it. Most of the statists

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5 The term was first introduced by Hedley Bull as a criticism of “Kantian” approaches to International Relations, according to which the international arena must reach a “civil condition” just as the domestic one (see for instance Hedley Bull, “Society and Anarchy in International Relations,” and “The Grotian Conception of International Society” in Herbert Butterfield and Martin Wright (eds), Diplomatic Investigations: Essays in the Theory of International Politics (Harvard (MA): Harvard University Press, 1968)). As Flickschuh has persuasively argued, however, this “Kantian” argument is not Kant’s own argument (Flickschuh, ‘Kant’s Sovereignty Dilemma”).


7 The fact that statists have a more positive view of the state should come as no surprise and is, indeed, another “domestic analogy”: the more one holds a benign view of individuals in the state of nature or in extra-institutional contexts more generally, the less one believes that strong centralized power is necessary to protect peace and security. It is no news that liberals are more optimistic about human nature than Hobbesians, and anarchists more than liberals.

8 In this article, I shall always use the term “freedom” rather than “liberty”; this is a mere convention, without any further meaning. More importantly, I shall speak throughout the paper about conceptions, rather than concepts, of freedom. I endorse MacCallum’s argument that people who disagree about the right interpretation of freedom actually share the same concept of freedom, according to which “a subject, or agent, is free from certain constraints, or preventing conditions, to do or become certain things” (Ian Carter, “Positive and Negative Liberty,” Stanford
literature on global justice, instead, simply takes on, mutatis mutandis, a purely *negative* and *formal* conception of sovereignty from international law.

My argument is that, under certain empirical circumstances, trans- and international dynamics can problematically curtail the positive sovereignty of (some) states, whilst leaving their negative sovereignty untouched – and that, reversely, a carefully designed global institutional order could benefit, rather than endanger, the positive dimension of sovereignty. Once the task of global institutional building is seen through these lenses, it is counterproductive for contemporary statists to oppose it. For some forms of global institutional building – more ambitious than the existing global institutional order, yet still significantly limited in competence and scope – could promote, rather than threaten, the features of state sovereignty that statists themselves have reasons to value. Contemporary statists are not Hegelians; they do not believe that states are ultimate, organic units of moral concerns, whose identity and *Geist* ought to be preserved for their own sake. They are, essentially, *liberals*: they believe that states are good for individuals. States, therefore, ought to be considered as the primary units of moral concern in the global arena because we value what they mean to individuals – in particular, either because we believe that national identity is essential to promote individual autonomy, and nation-states are the best way to preserve nations; or, less controversially, because individual autonomy can best be protected through forms of democracy and collective self-determination that, arguably, only states (and no distant and presumably highly “technical” cosmopolitan institutions) can realize. Moreover, statists argue, commonly binding political institutions generate, in turn, special obligations among the individuals subjected to them, and the preservation of states is the only way of making sure that fellow-citizens can honour such mutual obligations. We need states to obtain certain important moral goods, and states themselves trigger special obligations (often with a robustly egalitarian content) that only their preservation can allow us to honour. According to statists, therefore, a cosmopolitan world order would prevent individuals both from enjoying forms of liberal autonomy as embedded in national institutions, and from complying with the special obligations that they have towards their fellow-citizens. My argument shall be that only positively sovereign states can fulfil the two sets of functions that statists assign to them, and that in current global circumstances states need global institutional support to restore and/or maintain their positive sovereignty.

This argument brings out one crucial reason why, for Bull and others, the domestic analogy is mistaken. States are not individuals because they are Janus-faced: they interact both, externally, with other states, and, internally, with their own citizens or subject. However, precisely because this is true – precisely because the domestic analogy is not perfect – a richer package of conceptions of individual freedom should inform the debate on sovereignty. The domestic

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10 See again D Miller, *On Nationality*.


12 R. Jackson, *Quasi-states*, p. 28.

13 This paper deals with the extent to which positive sovereignty may help us understand what, if anything, is politically unjust about the international order. Somewhere else, I argue that relevantly similar findings emerge if one
analogy should be taken further for the sake of highlighting the very difference between persons and states. If statists care about sovereignty because they care about internal self-determination, they should put more emphasis on the positive aspects of sovereignty, for these focus on the effective internal capacity of states to solve internal problems, and to do so with a sufficient degree of autonomy and discretion. In so doing, positive sovereignty enables states to be more responsive to their citizens (and to their mutual special obligations) and less to external pressures. As Jackson argued, negative sovereignty is focused on sovereigns, whereas positive sovereignty is more responsive to those who are subject to sovereign power.

3. NEGATIVE AND POSITIVE SOVEREIGNTY

In this section, I unpack how the distinction between the negative and the positive aspects of freedom might contribute to our understanding of state sovereignty. In so doing, I shall draw upon Robert Jackson’s work on quasi-states.

Jackson describes negative sovereignty as a “formal-legal condition” indicating the immunity from external interference that a sovereign state enjoys. Negative sovereignty is arguably the central concept of contemporary international law; it is “the legal foundation upon which a society of independent and formally equal states fundamentally rests.” The rights/immunities that negative sovereignty confers over a state correspond to duties of nonintervention that other states bear. Like individual negative freedom, negative sovereignty can helpfully be described as a “freedom from” and as an “external” kind of freedom: a state is negatively sovereign when it enjoys immunity from external intervention, whether or not it is capable and has the necessary resources to use such an immunity to self-assigned ends.

Positive sovereignty, instead, indicates a dimension of (institutional) self-mastery; it is, once again like its individual counterpart, a “freedom to,” and, crucially, an internally enabling condition; a state is positively sovereign when it possesses the internal resources to decide which kind of polity it wants to become and acts on it successfully. Unlike negative sovereignty, it is a substantive and empirical dimension, which negatively sovereign states may or may not enjoy. For this reason, it does not feature very prominently in international legal discourse but is, instead, central to those disciplines which study the empirical dimension of statehood and state-building, such as history, political science, and international relations. Positive sovereignty concentrates on statehood as a complex empirical phenomenon: it is something that a polity possesses in virtue of its empirical attributes, rather than a status which other states confer upon it as a matter of right. It indicates the capacity of states to be their own masters by making, and effectively implementing, meaningful discretionary choices on institutional, political, socio-economic, and foreign policy matters. It is what “enables states to take advantage of their own independence.”

Positively sovereign states are able to provide fundamental political goods (such as welfare, security, and the rule of law) to their own citizens, and to take advantage of their negative sovereignty in order to choose, pursue, and realize self-imposed goals by means of effective looks at statehood through the lenses of republican freedom (Cécile Laborde and Miriam Ronzoni, “What is a Free State? A Republican Account of State Sovereignty and International Justice,” manuscript).

16 R. Jackson, Quasi-states. For a partially different definition of the difference between positive and negative sovereignty, see also Georg Schwarzenberger, A Manual of International Law (London: Stevens, 1967), pp. 52, 564.
18 R. Jackson, Quasi-states, Ibid.
19 Ibid., p. 29, emphasis added.
public policies. This should clarify why positive sovereignty is necessary to self-determination (which is what statists ultimately care about). It is positive sovereignty that enables the people to take advantage of the immunities conferred upon their state by means of negative sovereignty in order to achieve and nurture the political goods that statists value. Moreover, it is thanks to positive sovereignty that citizens can honour their mutual special obligations by establishing and upholding the appropriate institutional structures that allow them to do so.

In analyzing the discourse around the concept of sovereignty, Jackson argues that the interpretation of state sovereignty as a mainly negative, formal-legal attribute is a rather new concept.20 A more empirical, positive conception of sovereignty used to dominate the discourse of international society from the rise of the nation-state in the Westphalian era up the whole first half of the 20th century. The negative conception of sovereignty started to come to the forefront after the end of WWII, to become truly prominent only with the start of the decolonization process. Of course, this does not mean that the idea of negative sovereignty did not exist – on the contrary, from the Peace of Westphalia onward, the international society of states has been characterized by a mutual, legal or quasi-legal, system based on the principles of territoriality and mutual non-interference. Indeed, this is what the Peace of Westphalia is famous for, and the concept of Westphalian sovereignty is, after all, another term for negative sovereignty. However, according to Jackson’s reconstruction, negative sovereignty did not identify, back then, the very core of state sovereignty. Rather, the conferral of negative sovereignty was perceived as the acknowledgment, on the part of the international community, of a polity’s success in achieving positive sovereignty; states which had proven themselves as securely in possession of empirical statehood were recognised as free as equals by the community of states, and therefore granted the immunity of non-intervention. Negative sovereignty, then, was construed as a legal or quasi-legal act of recognition of empirical sovereignty: positive sovereignty was the core of statehood, and negative sovereignty its reward. Nonintervention from other states was seen as something that political communities could become entitled to in virtue of having achieved positive sovereignty. Sovereignty was associated with a specific package of institutional qualities – effective control over territory, capacity to provide public goods and effectively implement the rule of law, substantive problem-solving capacity in socio-economic matters, etc. – that only one type of polity, the modern European state, was seen as possessing.21 This is why the Westphalian system of nonintervention was not perceived as being in any tension whatsoever with the processes of imperial expansion, and later colonialism proper, that characterized the foreign policy of most European states up to the beginning of the 20th century. Alien control of extra-European territories, through processes of colonization, was not seen as a violation of sovereignty: to the extent that certain polities were not seen as capable of ruling themselves through the complex institutional web of modern European statehood, they were simply not recognized as sovereign states, and no violation could therefore occur.

It is the process of decolonization itself, Jackson argues, that made the notion of negative sovereignty so central, thereby transforming sovereign statehood into a normative, rather than empirical, concept – that is, into an entitlement which every people has, rather than a status to be

20 Ibid., pp. 13-49.
21 Jackson illustrates this point through a poignant imaginary story of time traveling. A British civil servant in 1936, he tells us, would be less surprised by our claim that we are time travelers from the late 20th century (used as he is to eccentricity) than by the fact that all former colonies of the British Empire are now “sovereign” states. It would take us a while to understand that he cannot get his head around what it even means for a colony with extremely poor institutional capacity to become a sovereign state, because he operates with an entirely positive account of sovereignty (Ibid., p. 13-15).
earned on the field by proving one’s capacity to self-govern. Undoubtedly, those processes of
decolonization that resulted from a successful revolt against the colonial West suggest a large
level of positive sovereignty as being already achieved. Many colonies, however (especially, but
not exclusively, in Sub-Saharan Africa) could not reasonably claim to possess the empirical quality
of positive sovereignty; therefore, the case for the end of their colonial oppression could not rest
on that. The status of sovereign state came therefore to be seen as a right to non-interference that
every people has on the basis of an underlying right to self-determination, rather than as an
empirical quality to be then rewarded with a legal status. Achieving positive sovereignty was now
seen as an utmost important political goal for every sovereign state to pursue, rather than a
precondition for political independence. Understanding the reasons underlying this change in
norms and beliefs is beyond the scope of this article; what matters here is to point out that an
exclusive focus on negative sovereignty is a relatively recent phenomenon originating from a very
specific historical conjuncture.

The “new sovereignty game,” Jackson argues, has given rise to a very specific set of
international political actors: quasi-states, which are characterized by the fact of possessing
negative, but not positive, sovereignty. Quasi-states largely overlap with, but are not coextensive
to, developing countries; several former colonies, as already mentioned, proved indeed their
positive sovereignty in their very struggle for independence, whilst several others managed to gain
it afterwards, thanks to internal efforts and/or international conjunctures. Quasi-states are
recognized as equals in the new sovereignty game, yet their lack of positive sovereignty prevents
them from taking advantage of their juridical statehood.

4. PROTECTING POSITIVE SOVEREIGNTY IN A GLOBALIZED WORLD
Having analysed the concepts of negative and positive sovereignty in some detail, it is now time
to ask whether the concept of positive sovereignty can be helpful in understanding which
problems of global political justice the current international setting raises, and which new
institutional solutions, if any, might tackle them successfully. I shall answer the question
positively; my argument shall proceed in three steps. (1) First, I shall argue that, on balance, the
most promising view to hold with respect to the contrast between negative and positive freedom
is a mixed one. (2) Secondly, I shall – as promised – take the domestic analogy further and argue
that, just as in the individual case, positive sovereignty must contribute to informing our account
of sovereignty. A purely negative conception of sovereignty is just as empty, and ultimately
counterproductive, as a purely negative conception of freedom. (3) Thirdly, I shall argue that a
renewed, and revised, emphasis on positive sovereignty might highlight what is problematic
about the current global order – namely the fact that it creates global systemic obstacles to the
positive sovereignty of (some) states. If this is the case, supranational regulatory institutions can be seen as
a way of supplementing, rather than replacing, state sovereignty.

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22 Ibid., pp. 82-83.
23 Jackson himself remains rather open on the matter, although he shows a certain predisposition towards the view
that this also was, at least to a certain degree, a genuine change in normative beliefs (Ibid. pp. 78-81).
24 Ibid., pp. 40-47.
4.1. FREEDOM: DEFENDING A MIXED VIEW

In “Two Concepts of Liberty”, Isaiah Berlin famously argued that the idea of freedom as an internally enabling condition might suggest that one’s empirical will and aims – influenced as they are by social and environmental factors – are not necessarily one’s “true” will and aims. Thus, oppressive policies can be justified in the name of positive sovereignty, in order to “force people to be free.” Most scholars nowadays agree, however, that “Two Concepts” must neither be read as a full-blown rejection of positive freedom altogether, nor as an unqualified defence of negative liberty. Berlin himself later clarified that monism, not positive liberty as such, had been his intended target in “Two Concepts”; his worry was directed at an account of positive liberty that did not leave space for any other political values. His historically contextualized concern was with how the rhetoric of positive liberty had been abused by totalitarian regimes during the first half of the 20th century to deny both negative liberty and, indeed, the genuine core of positive sovereignty, as well. Berlin went so far as to admit his regret about not having discussed how negative liberty itself, if considered the only worthy political value, could be used to justify great evils, such as exploitation under laissez-faire capitalism.

Indeed, much of contemporary liberal theory accepts, either explicitly or implicitly, that some degree of both positive and negative freedom must be part of an appropriate account of freedom, and that this is not necessarily as dangerous as some of Berlin’s remarks seem to suggest. If we shift the focus from liberal theory to the actual structure of liberal societies, the consensus becomes almost unanimous. Virtually all liberal societies are characterized by a package of institutions and policies aimed at promoting different variations on, and degrees of, a mixed model of freedom. Even in the most laissez-faire societies, institutions and policies acknowledge the need for individuals to be able to effectively take advantage of one’s negative freedom – many welfare policies are justified on these grounds. At the level of academic debate, distinctions between formal and effective freedom, and the promotion of “real freedom” through, for instance, a universal basic income, suggest that immunity from interference is not enough for most liberals. Admittedly, these policies and proposals can be interpreted as attempts to provide a richer interpretation of negative freedom itself, by relying on a more plausible and wider account of what count as “constraints.” However, some policies are more uncontroversially inspired by ideas of self-mastery and positive freedom proper. For instance,

26 Ibid.
27 There are exceptions, and both purely negative and purely positive libertarian positions do survive in academic debates (see, respectively, Robert Nozick, Anarchy, State and Utopia (Oxford: Blackwell, 1974); and Charles Taylor, “What’s Wrong with Negative Liberty,” in D. Miller, Liberty (Oxford: Oxford University Press, 1991), pp. 141-162).
28 Those who are familiar with the debate on freedom will probably find my remarks here naïve and superficial. It is not my aim here to make an informed argument within that rich and complex discussion, and I cannot possible make justice to it here. The debate has moved on immensely from the publication of Berlin’s seminal essay. Indeed, several different interpretations of positive and negative literature are currently put forward in the literature (see, for instance, C. Taylor, “What’s Wrong with Negative Liberty?”); several attempts to reconcile the two exist (see, for instance, John Christman, “Liberalism and Individual Positive Freedom,” Ethics 101 (1991): 343-59); and several schools of thought (most notably neorepublicanism) have tried to overcome the distinction altogether by proposing alternative conceptions of freedom (Philipp Pettit, Republicanism: A Theory of Freedom and Government (Oxford: Oxford University Press, 1997); Quentin Skinner, “A Third Concept of Liberty,” Proceedings of the British Academy, 117 (202): 237-268). My aim here is, much more modestly, to see whether the broad distinction between negative and positive liberty can be of some use to highlight different conceptions of state sovereignty.
although the idea of one’s “true self” is dealt with caution in liberal milieus, the idea that each of
us needs to “become” the kind of agent who can make effective use of one’s negative freedom to
pursue self-assigned ends underlies many of the most widely shared policies among liberal-
democracies, such as the compulsory education of children and/or teenager up to a certain age
and the rehabilitation of criminal convicts. In sum, the idea that negative freedom alone is as
problematic as an exclusive reliance on positive freedom seems to be the object of an underlying
(if implicit and vague in its precise contours) consensus at least in the actual institutional structure
of liberal societies and in their public discourses – although, as mentioned earlier, some purely
negative and positive libertarian positions survive in intellectual debates. There is, this should be
granted, nothing even remotely similar to a consensus regarding how exactly freedom should be
defined, understood, and, consequently, promoted. But few would deny that some crucial aspects
of what Berlin called positive sovereignty freedom and self-mastery – even when the terms as
such are not accepted – must inform, in some way, our understanding of freedom. Negative
freedom without any attention being paid to self-mastery, processes of preference formation, and
the effective capacity to act on one’s formal freedom is not only an empty concept, but one that
can be used to justify unacceptable forms of exploitation and false consciousness. Berlin, as a
fervent advocate of pluralism, would probably agree.

4.2. TAKING THE DOMESTIC ANALOGY FURTHER: THE BENEFITS OF POSITIVE SOVEREIGNTY
I suggest that, just as in the individual case, an account of sovereignty should be informed by its
positive as well as by the negative dimension. Just as in the individual case, monism in both
directions can be dangerous, and a mixed model seems most promising.

As seen above, an exclusive focus on negative sovereignty does not allow us to appreciate that
an international society characterized by the co-existence of positively sovereign states and quasi-
states is not a true society of equals. Negative sovereignty by itself is just as purely formal, and
more often than not as impossible to take advantage of, as negative individual freedom. Individuals who enjoy formal negative freedom but are not otherwise empowered in any way usually cannot resist informal pressures from stronger actors, and offer end up trapped in relations of exploitation. Moreover, negative freedom can feel useless even when I am not exposed to active attempts of exploitation, for individuals who entirely lack any positive freedom cannot use their right to non-interference to choose and pursue their own ends – since they lack the physical, psychological, intellectual, and social resources to do so. Something relevantly similar happens with negative sovereignty. Quasi-states have a formal equal status with other states, but are often forced to accept deals and agreements that they are not, objectively, in a position to refuse. They are often highly pressurized not only into accepting international agreements that favour stronger states, but also to run their internal affairs in a way that pleases them – by opening their markets, reforming their own institutions according to specific and far from uncontroversial development agendas, and modifying their foreign policies in such a way as to please global and regional powers. In other words, their exercise of internal, empirical

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31 See footnote nr. 25.
32 It has been pointed out to me that a closer attention to the variety of ways in which freedom (and sovereignty) can be hindered is a task that a revised account of negative freedom (and sovereignty) can fulfill on its own, by having a richer and more pluralistic account of what count as constraints and acts of interference (for instance, by including internal –psychological and intellectual – constraints). I see the force of this point, but I do think that relying on it exclusively lead us to overlooking the importance of distinguishing, as Berlin’s language allows to do, between the dimension of freedom that concentrates on not having external constraints, and the one which focuses of being a certain kind of agent.
sovereignty is often guided by agendas that are not their own – the clearest sign of poor positive sovereignty. Finally, even when stronger states leave them in peace, quasi-states often cannot do much, if anything at all, with their negative sovereignty. Given their lack of empirical sovereignty, they cannot use their juridical statehood to pursue those goals for which sovereignty is deemed valuable to begin with. More often than not, lacking functioning institutions, they cannot even initiate successful processes of collective will formation, let alone execution. Therefore, like in the individual case, positive sovereignty needs to supplement purely juridical statehood; a certain degree of positive sovereignty is a precondition to be able to enjoy the immunities granted by negative sovereignty.

Moreover, whereas a closer attention to positive sovereignty is a way of taking the domestic analogy further, it is also a way of doing justice to the difference between individuals and states, and acknowledging that states have individual citizens to respond to. Positive sovereignty allows us to pay more attention to how being a sovereign state actually benefits the citizens of that very state, and allows them to honour their mutual special obligations of justice – in Robert Jackson’s terms, negative sovereignty is biased in favour of sovereigns and against subjects, in a way that positive sovereignty is not. Positive sovereignty, unlike its negative counterpart, allows us to look inside states.

Many readers might worry, at this point, that just as positive freedom has been used to promote illiberal ideologies, positive sovereignty has its own not fully clean pedigree and sinister sides. The idea that only one kind of polity – conveniently, the European modern state – could be seen as having positive sovereignty, and therefore an entitlement to juridical statehood, has traditionally been one of the most candid justifications for imperialism and colonialism (“these people cannot rule themselves!”). Positive sovereignty creates, perhaps, fewer biases in favour of sovereigns and against their subjects, but does potentially create biases in favour of some states.

We should, indeed, use the notion of positive sovereignty with caution, yet not fully dismiss it – just as in the individual case. The justification of colonialism derives from a monistic interpretation of positive sovereignty as the only normatively relevant consideration – and indeed, most likely, on a narrow definition of positive sovereignty itself, excessively biased in favour of European-style institutions. This does not mean that the lack of positive sovereignty ceases to remain a problem; we should instead opt for a mixed model as our regulative ideal. Recognizing the crucial importance of positive sovereignty does not entail abandoning the normative language of the new sovereignty game, according to which sovereignty is a matter of right rather than of fact. A monistic approach towards positive sovereignty led to a paradigm where only empirically sovereign states were entitled to juridical statehood; a pluralistic model allows us to acknowledge that all polities are entitled to independence as a matter of right whilst defining independence in a richer sense. Moreover, it is worth noting that it is the “new sovereignty games” itself, in current global circumstances, that generates biases in favour of stronger states, by obscuring not only real interstate inequalities behind equal juridical statehood, but also the variety of ways in which the sovereignty of quasi-states can be jeopardized other than through direct interference.

We must, therefore, acknowledge the lack of positive sovereignty as a very serious obstacle to the effective exercise of negative sovereignty – yet, learning from the domestic case, find ways to support and promote positive sovereignty, rather than consider it a precondition to juridical

33 Some readers might object that these remarks can be taken onboard by an account of negative sovereignty that is not purely legal, but which focuses on a rich view of what count as constraints. See my reply to this objection at footnote n. 32.

independence. In the following sub-section, I shall argue that one way in which we could do so is by identifying specific global systemic obstacles to positive sovereignty and designing global regulatory institutions to tackle these negative externalities.

4.3 GLOBAL BACKGROUND CONDITIONS AND POSITIVE SOVEREIGNTY: ADDRESSING GLOBAL POLITICAL INJUSTICE

In the previous two sub-sections, I have reached the intermediate conclusion that an account of state sovereignty cannot avoid taking its positive dimension into account. The argument I shall put forward in this subsection, which concludes my argument, is that the global order might be politically unjust in that it creates unjustifiable systemic obstacles to positive sovereignty. As highlighted in my initial caveats, this is a form of political – rather than distributive – injustice: making a state’s access to positive sovereignty unjustifiably difficult means making its people’s access to self-determination – to the determination of its own political fate – equally hard. Of course, one way in which the global order might do so, as highlighted most notably by Thomas Pogge, is by generating and perpetuating extreme poverty; but my focus here, to the extent that poverty might be one way in which positive sovereignty is hindered, is on how quasi-states are thereby denied their right to exercise the political goods of sovereignty and self-determination.

In describing the status of quasi-states in international society, Jackson observes how state-building is a highly complex and primarily domestic process occurring over a prolonged period of time. Negative sovereignty can simply be conferred upon a state by one legal or diplomatic act; positive sovereignty, instead, cannot be bestowed by other actors. It is the outcome of a long and complex process, and achieving it is each state’s own task - although several forms of international development aid can be interpreted as attempts to assist quasi-states in achieving positive sovereignty. I do not wish to challenge this assumption. I agree that, if we want to take self-determination seriously, each country must be deemed responsible for achieving positive sovereignty and that this cannot but be a complex domestic institutional process. However, each country should enjoy reasonably favourable conditions for putting such a process into motion and following it through; in other words, global background conditions should not be such that undermine the capacity of states to achieve or maintain positive sovereignty. As I have argued elsewhere, this might be precisely what is problematic about the current global order: its systemic role in imposing obstacles to an effective exercise of domestic sovereignty. This happens both (1) through the imposition of international rules and norms, and (2) through the absence of international rules and norms when these are needed.

35 For an insightful and broadly similar perspective, although within a slightly different conceptual framework, see also Laura Valentini, Justice in a Globalized World: A Normative Framework (Oxford: Oxford University Press, forthcoming).


37 See also Mathias Risse’s “institutional thesis”, according to which the main cause of poverty are poor domestic institutions (“How Does the Global Order Harm the Poor?”, Philosophy and Public Affairs 33(4): 349-76).

38 And indeed, development skeptics may argue, the fact that development aid often fails demonstrates that positive sovereignty can only be achieved internally by one’s own means, over time.

39 This argument has a similar structure to Pogge’s case about the causes of global poverty. Pogge does not deny the role of domestic factors, and in particular corruption and poor domestic politics, in perpetuating extreme poverty. His argument, however, is that we should acknowledge how much the global order systemically incentivizes such domestic politics (T. Pogge, Ibid, esp. chs. 4 and 5).

1) The positive form is embodied in the rules of existing global institutions. Some of these are biased in such a way that unduly limits the capacity of quasi-states to build their way out of poor positive sovereignty. Two examples could clarify this point. Firstly, forms of institutional aid and foreign assistance are very often conditional on borrowing countries opening their markets to lending ones (often to the detriment of a more balanced domestic economic development) or on implementing stringent and fit-for-all ‘recipes for growth’, usually characterized by a clear neoliberal agenda of controlled inflation, budget spending containment, and large-scale processes of privatization. Scholars have questioned whether this is truly the best route for fragile countries to find their way out of poverty and poor institutional functioning, but what is equally if not even more important from the point of view of positive sovereignty is that these solutions prevent states from experimenting with institutions and policies. Such a process of trial and error is both a means towards, and an expression of, positive sovereignty. On the one hand, the freedom to experiment with institutions and policies is considered by many as the only effective way to gain knowledge as to what works best in a specific national context, in order to achieve the effective control over a territory and the capacity those provide public goods that are the hallmark of positive sovereignty. On the other hand, positive sovereignty itself consists in the very capacity to tackle issues of domestic prosperity and justice with an acceptable degree of autonomy, discretion, and flexibility – to assign oneself ends and pursue them with freely chosen, and revisable, means.

A second example is the existence of a regime of global trade that allows escalating trade tariffs. Escalating tariffs are a specific kind of tariffs that a country can impose on imported goods; what characterizes them is that the tariff burden increases progressively as we move from unprocessed raw materials towards technology-intensive processed goods. Trade tariffs are meant to defend one’s own domestic productive sector. Quasi-states are most likely to fall into the trap of escalating tariffs. A complex and internally differentiated economy is a typical indicator, and milestone, of positive sovereignty, and it is precisely what quasi-states lack. A regime of escalating tariffs highly incentivizes resource-rich quasi-states to structure their economy around the production of one or several raw materials, in order to obtain immediate gains. When this happens, a country’s economy becomes highly vulnerable to economic crises and shocks, highly dependent on trade and export trends, and significantly impaired in its capacity to build a complex, stable, and internally diversified domestic economy.

2) The second way in which the current global order might create systemic obstacles to positive sovereignty is constituted by the lack of regulation of some of the most important political and socio-economic dynamics that characterize it. As mentioned at the beginning of this article, one of the most pressing problems that international politics must face is the fact that several trans- and international dynamics undermine the problem-solving capacity of the state in domestic matters. In other words: problematic forms of power are being exercised across borders, in the absence of any appropriate institutional way to bind and control them. This

41 Ngaire Woods argues that this has remained relatively unchanged even after the financial and then economic crisis of the last few years (Ngaire Woods, “Global Governance after the Financial Crisis: A New Multilateralism or the Last Gasp of the Great Powers?”, Global Policy 1 (2010): 51-63.
44 Ibid.
45 I have discussed this case in some more detail in M. Ronzoni, “The Global Order.”
happens both in an international and in a transnational manner. Internationally, powerful states are often capable of deeply influencing the domestic policies of weaker ones to their own interests, thus severely limiting their positive sovereignty. Transnationally, several kinds of powerful non-state actors are capable of acting in the global area in ways that favour their own interest and severely undermine the capacity of states to resist them.

According to some, the threats to positive sovereignty caused by the lack of accountability of powerful non-state actors are increasingly affecting not only quasi-states, but also – at least to some extent – affluent and established ones. Domestic welfare states, for instance, are suffering under the pressure of various forms of international tax competition. Established systems of labour rights protections, on the other hand, are increasingly undermined by the strategic decisions of transnational corporations, which can move their business elsewhere without much warning and consequences. Transnational corporations can more or less freely move their production where it is most convenient to them, thus forcing even wealthy democratic countries to dismount established structures of progressive taxation, labour rights, and market control, in order not to lose jobs and capital. The extent to which this is happening is controversial, and European welfare states are far from being, and unlikely to become, quasi-states; but if positive sovereignty is a matter of degree, then their positive sovereignty has not remained immune from the increased public power, and still virtually absent accountability, of non-state actors.

Both positive and negative obstacles to positive sovereignty point, broadly speaking, to the same direction: **global institutional design**, aimed at catering for global negative externalities through global institutional regulation, in order to free states from some of the most important threats to their positive sovereignty. We need 1) better rules (different rules from the existing ones to regulate trade, international aid, and other areas such as, for instance, intellectual property law); and we need 2) more rules, to regulate global dynamics where lack of accountability dominates (e.g. limiting or prohibiting harmful tax and labour competition). Yet, this is not a full blown cosmopolitan argument. The domestic analogy is imperfect. The appropriate supranational regulatory institutions are those which, by putting constraints on all countries, give effective problem solving capacities back to them. If, for instance, binding global rules against harmful tax competition were to be implemented, then countries would lose the freedom to deviate from such rules, but would gain back the power to design and implement fiscal policies at their discretion within the constraints of those rules. States would lose part – but not all – of their negative sovereignty in order to gain in terms of positive sovereignty. Moreover (and as already highlighted above), if it is true that the positive sovereignty of wealthy and established democracies can also be under strain under current global circumstances, an emphasis on positive sovereignty-promoting global institutional design has an additional strategic advantage that more traditional global justice arguments lack. At least in some areas, both strong states and quasi-states might have, for instance, a joint interest in binding the power of transnational corporations and other non-state actors through global rules regulating tax breaks and labour conditions.

Which systemic global obstacles to positive sovereignty are the most serious ones, and which specific institutional solutions could tackle them, is a task for another day – and, crucially, a

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47 Using Barbara Buckinx language, I am therefore subscribing to an incrementalist, rather than XXX, model of global institutional design (see XXX).

48 The idea that the traditional winners and the perceived losers of globalization might have an overlapping long-term interest in global institutional design is also suggested by Dani Rodrik (see D. Rodrik, “How Far Will International Economic Integration Go?”,* Journal of Economic Perspectives* 14 (2000): 177-186.
complex interdisciplinary enterprise. The argument made in this paper, I hope, has nevertheless provided a sufficient initial grasp on what our general agenda should be.

5. CONCLUSION

In this paper, I have argued that more attention ought to be paid to the positive aspects of sovereignty; that positive sovereignty can be hindered by globally systemic, as well as internal, factors; and that in order to tackle these, the establishment of more powerful and more independent global regulatory institutions might be needed.

By way of a conclusion, I shall point out one crucial way in which this argument should be qualified. Positive sovereignty can be exercised for evil ends. Although positive sovereignty allows us to look inside states and to pay attention to subjects as well as to sovereigns, states can be positively sovereign yet oppressive, undemocratic, and deeply unjust (the Third Reich was by all means a positively sovereign state). Thus, critics might raise the concern that I am not paying sufficient attention to the whole array of ways in which positively sovereign states could harm their own citizens and commit domestic injustices. This is true only to some extent. Admittedly, a focus on positive sovereignty envisages the possibility for polities to genuinely make different choices, responding to context-sensitive needs, but also to different democratic outcomes and, indeed, views about justice. Yet, the problem of establishing the limits of state sovereignty remains for advocates of positive sovereignty as well as for those who favour a purely negative account of statehood. My point is not that, when states are capable of being positively sovereign, their positive sovereignty should not be bound and controlled in any way. Favouring positive sovereignty does not entail that sovereignty should not be limited through, for instance, international regimes of human rights and international criminal law.

Yet, even within those limits, positively sovereign states surely can and will take different paths (that’s the whole point!) and these paths will fare differently when assessed, for instance, through the lenses of specific conceptions of distributive justice. This might well be where distributive and political justice come apart. If we believe in the good of political justice and hold the view that accountable, not too distant institutions are necessary to achieve it, then we must bite an important bullet: there can be no political justice without positive sovereignty, even if this entails a less than perfect performance in terms of distributive justice according to one’s favoured theory.

49 Thus, we ought to distinguish between positive sovereignty understood as an empirical quality that we have normative reasons to value, and the normative constraints that empirically sovereign states must respect in order to be normatively entitled to negative sovereignty, i.e. to the juridical entitlement to non-interference (see Valentini Justice in a Globalized World, chapter 8).