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Sovereignty and Environmental Protection: Not Incompatible Values

The biological, chemical, and ecological systems of the Earth operate without paying heed to the artificial distinctions between nations that have arisen historically and been cemented under the Westphalian system¹. The condition of the Earth is in the hands of all nations to maintain and risks being unbalanced by the actions of a careless or reckless few. How then should the concept of state autonomy, foundational aspect of the modern international system, be resolved with the new concerns that have come along with the technology and sheer human numbers that make the choices of humanity felt upon the whole world? Ironically, the best mechanism by which human beings can address environmental problems is to adopt a strong norm of the sovereign autonomy of states. The reasons for this stance are multiple, but centre primarily around issues of responsibility, ownership, and pragmatics. As intuitively appealing as some purely multilateral system may seem, considerable dangers exist in denying sovereignty as an operating principle of the international system and seeking a purely multilateral mechanism for addressing environmental problems. That said, there are circumstances where the norm of state sovereignty can be justly violated for the sake of the environment.

The sovereign state has many features that recommend it as the best agent to serve as environmental regulator. States have a moral claim to legal and physical authority within their borders. They are capable of creating and enforcing binding laws and of holding both individuals and companies responsible for their actions in a non-arbitrary way. States are continuous, accessible institutions that can be contacted by other states and international organization, and taken to task for their mistakes. Perhaps most importantly, the concept that each state is sovereign is necessary for the drafting of international agreements between equals and the expectation that those agreements

¹ The Peace of Westphalia, in 1648, brought an end to the Eighty Years' War between Spain and the Dutch. This treaty, which formed the basis of all subsequent treaties prior to the fall of the Holy Roman Empire, established the sovereignty of princes as prior to the power of the empire. In so doing, it is seen by many as the start of international legal recognition of state sovereignty.

will be carried out. A clear contracting party exists when, for example, Canada ratifies an international environmental protocol. Far from precluding the possibility of international co-operation, in most cases national sovereignty is an essential pre-requisite for it.

To begin to assess the role of the state in environmental decision-making, it is worthwhile to consider the question with regards to domestic environmental policies. Particularly in democratic states, there has been a correlation between economic development and the demand for more rigorous environmental controls. One need only consider the toxicity of the Thames River today with that which it had during the initial stages of industrialization to understand that development can lead to improved environmental standards and conditions. The example is important internationally, and from a perspective of justice, because one must consider the fact that today's industrialized nations have had the chance to pass through a highly polluting phase in order to reach a level of comparative cleanliness today. Luckily, today's developing countries do not have to endure the same errors as were committed by others during their industrialization. Also, they have access to numerous cleaner technological options as the result of science done largely in the developed world. Still, in the interests of fairness, it is important that developing countries be allowed to make the same kind of choices that the developed world had the ability to make previously. While superior scientific knowledge about the environmental impact of particular choices should certainly be considered in formulating the environmental policies of developing nations, it should not necessarily be the case that standards identical to those in the rich world are the most moral choice. If a relatively brief and dirty period of industrialization can lead to a significant improvement in the lives of current and future generations, such a one-off 'investment' might be justifiable. By being able to gauge the particular needs of their citizens, especially in the case of democratic states, the governments of nations are best placed to tailor policies to their condition. In so doing, they have

the opportunity to maximize the likelihood of their citizens living good lives. That freedom is one that should not lightly be cast aside.

Responsible states, willing to co-operate with their neighbours, are capable of resolving complex environmental disagreements by means of negotiation and compromise. A prime example of such an event is the Trail Smelter Arbitration of 1928-1941 between the United States and Canada. Lead and Zinc production by a Canadian corporation was leading to significant sulphur dioxide emissions which were, in turn, leading to acid rain causing damage downwind in the United States. An International Tribunal was established to assess the situation and award damages. Ultimately, damages were paid to the United States by the Canadian company in question and restrictions were imposed upon the manner in which sulphur dioxide was to be treated and how much was to be released². In the absence of an assumption of national sovereignty between Canada and the United States with regards to environmental issues, it may have proven far more difficult to reach a negotiated and binding compromise. Particularly in cases where private enterprise is involved, the capacity of the state to act as a reasonably fair dealer is essential. The role of the state as a fair dealer can be seen in innumerable situations where domestic environmental policy corrects for market failures such as imperfect information or common property problems. Numerous historical examples demonstrate the efficacy of assigning control of resources initially to a government, and then having that government licence or assign the usage of those resources to other parties. These parties are then compelled to employ those resources in a sustainable way, whether because of regulation or because of their own self interest as long-time stakeholders in the resource in question.

At the same time, it must be recognized that there will be states that are heedless to the well being of their citizens or to the impact of their choices upon their neighbours. In most cases,

² "Report of the Directors of The Consolidated Mining and Smelting Company of Canada, Limited." 1955. p.5

however, it is these exceptions that demonstrate the value of the norm of state autonomy. These governments can rightly be taken to task by neighbouring countries, non-governmental organizations, and intergovernmental organizations such as the United Nations. The justification for such intervention is intuitive and can be explained most simply using Mill's Harm Principle. Nations do have freedom to make choices within their own borders³. They do not have the right to make choices that harm the prospects of people in other countries, whether that harm comes in the form of a military attack or a reckless environmental policy. The powerful sense of responsibility for the environmental choices made by states, as well as the companies and individuals within them, is a necessary consequence of state sovereignty. At the same time, the limits of state power must be, and are, recognised by the international community. Many environmental problems, such as illegal resource exploitation (i.e. poaching), are extremely difficult to deal with – particularly for states of limited financial means. Dealing with these problems, however, does not require an abandonment of the norm of autonomy. The very complexity of environmental issues often calls for widespread co-operation between scientists, businesses, governments, and others. To do so within a context that acknowledges the political realities of the world is to do so in a way far more likely to be effective than the alternatives. By treating state autonomy as a norm and not a hard and fast rule, the conditions for outside intervention are therefore established. The failure of a government to deal effectively with environmental problems can serve as justification for influence or intervention on the part of others. Such intervention can take place in an incremental manner, starting with attempts at co-operation and escalating towards more aggressive methods of persuasion.

Having a norm of sovereignty helps assure that intervention will take place in an incremental fashion, lest those intervening fall into disrepute internationally for ignoring the rules under which the international system operates. An example of such a progression could begin with a description

³ ignoring, for the moment, cosmopolitan notions of human rights and limited sovereignty even within state boundaries

of the problem to the government responsible, accompanied by a polite request to have it corrected, followed, perhaps, by the creation of a multinational commission like that used during the Trail Smelter Arbitration, and, finally, there would remain more extreme options like sanctions for egregious and continuous environmental recklessness. Ideally, a norm of consultation would begin to develop between co-operating states that would allow for potential problems and disputes to be dealt with pro-actively by means of an ongoing dialogue. Clearly, such a mechanism is well suited to deal with some problems, namely those of a well understood nature and within a distinct geographic area. Also, such a method works far better between friendly, co-operative states. Obviously, in situations of hostility between states, a mechanism based on consultation would likely be ineffective, though one could question whether any system for resolving environmental difficulties could work under such conditions. In such situations, environmental demands may even become a destabilizing force in an atmosphere of fragile peace. Tact, and the recognition that one-size-fits-all solutions are generally inappropriate for complex environmental issues, is clearly a necessary quality in a moral and effective environmental policy based on respect for states.

Of course, a difficulty exists with intervention in the form of states not acting in good faith. It is entirely possible to mask political or selfish economic calculations in the language of environmental concern, as can be seen in many 'Sanitary and Phyto-Sanitary Regulations' on trade that are oftentimes more motivated by protection of domestic industry than predicated on valid environmental concern. At the same time, the example of these SPS regulations is an enlightening one because of the manner in which they are treated by the World Trade Organization. The WTO requires that SPS regulations be based on sound scientific analyses, thereby limiting the potential of states to abuse what ought to be a tool of environmental protection. Thus, the WTO is a good example of a mechanism through which state sovereignty and international co-operation can be harmonized. National governments must ratify the regulations of the WTO as a condition for

membership and, as such, are bound to them not in spite of, but because of their sovereign power. The resulting potential, on the part of the organization, to temper selfish attempts to undermine the trading system for individual gain, is a model that could be profitably emulated in addressing environmental problems within a context of state autonomy. As stated previously, the sheer complexity of environmental questions speaks for the establishment of numerous institutions and vehicles through which complimentary actions can be taken. By maintaining a policy of not superseding governments until such a time as intervention is clearly necessary, organizations and international agreements have a chance at being accepted by powerful nations who would otherwise be hesitant to cede any authority to an outside body.

An additional difficulty lies in states that simply have the power to ignore the opinions of the majority of other states, either by reason of wilful political, diplomatic, and economic isolation or by reason of hegemonic power. Such states obviously have the power to either assist or stymie an international environmental regime based on respect and co-operation. It is fair to say that it is both moral and pragmatic for such a state to pursue a fair and effective environmental policy, but problems of short-sightedness and scientific uncertainty can make it unclear exactly what such a policy ought to be. Additionally, there is a danger, as in many other domains, of powerful states simply exporting their problems to those less capable of advocating their positions. In addition to defending the morality of environmental intervention on the basis of the Harm Principle, it is possible to apply a Rawlsian ethic insofar as a concern for the least advantaged ought to be central. Such a mechanism could be used, for example, to justify lower requirements for developing and least developed nations in multilateral environmental accords. Coupled with the argument that, after being allowed to develop as the rich nations have, they may also develop the leisure required to establish and maintain an interest in the state of the planet, this provides insurance against excessive demands being made of those nations least capable of meeting them.

Perhaps the greatest test of the viability of any international environmental system that seeks to be ethical is its effectiveness at dealing with the most intractable problems: those that are deeply mired in scientific uncertainty and that would require a long-term commitment on the part of the majority of the world to correct. Foremost among this category of problems is global warming. To understand the level of scientific uncertainty that underpins global warming, it is enlightening to examine the fascinating debate that has arisen during the past year between Danish statistician Bjørn Lomborg, author of The Sceptical Environmentalist and members of the scientific community. Lomborg's re-assessment of statistical data has called into question much of the scientific orthodoxy surrounding climate change and other environmental issues. Whether his figures and conclusions are accurate or not, his challenge seems to warrant a significant rethinking of the "liturgy" of current thought on climate change. The sheer hostility that has emerged from the scientific community towards Lomborg and his book betrays at the minimum a lack of collegiality and, more worrisomely, the possibility that the scientific community is ossified to a dangerous degree and unwilling to consider new perspectives⁴. On an issue as potentially costly to resolve as global warming, an imperative exists to properly gauge the problem and not waste resources that could be better diverted towards other environmental issues or general human welfare. In his book, One world, Peter Singer responds to Lomborg's ideas. He criticizes Lomborg's view that money spent fighting global warming would otherwise be spent dealing with more pressing environmental problems of the poor, probably a fair statement. A more important criticism is that of the discounting of future costs: a matter that extends far beyond modelling and math and into the realm of how we consider the utility of future generations. Singer rightly points out that: "An ethical, not an economic, justification would be needed for discounting suffering and death, or the extinction of species,

⁴ "The litany and the heretic." The Economist, 31 January 2003.
<http://www.economist.com/displaystory.cfm?story_id=965520>

simply because the losses will not occur for 40 years.”⁵ This question of intergenerational justice and state sovereignty is an essential one that shall be returned to.

Assume that global warming is a significant problem that will, if unchecked, cause severe harm to humanity in general, and the poorest nations in particular (owing to their lesser ability to adapt to climate change). Would a system based on sovereignty capable of addressing the problem? The view of global warming assumed above is not an unfounded one, but rather one commonly advocated by prominent scientists and bodies such as the Intergovernmental Panel on Climate Change⁶ (IPCC). The assessments of Lomborg, as well as Ian Castles, Mike Henderson⁷, and others, give reason to doubt that the veracity of the figures employed by these bodies is correct. However, it seems fitting to evaluate the potential of the Westphalian state system to develop an effective response to an environmental problem of the magnitude of global warming as portrayed according to these assumptions. Historically, a mixed record seems to exist. Significant successes include the Montreal Protocol on ozone depleting substances negotiated in 1987, when the science of ozone depletion was still uncertain⁸. Despite that, most of the nations of the world have signed the protocol, leading to a peaking of ozone-depleting chemicals in the atmosphere in 1994: a number which is now falling.⁹ Most importantly, the ozone layer is recovering and is on track to be restored to its level prior to humans having an impact upon it. This treaty was negotiated entirely between sovereign states, and under the constraints of imperfect information, political considerations, and highly uneven levels of power between states; it serves to show that, even under such adverse conditions, international environmental protocols that meet their goals are possible. In Environment

⁵ Peter Singer. One world: The ethics of globalization. Boston: Yale University Press, 2002.

⁶ This panel played a significant role in providing the scientific basis for the Kyoto Protocol. See “A cooling off period.” The Economist. 27 November 1997. <http://www.economist.com/displaystory.cfm?story_id=107456>

⁷ “Hot Potato Revisited.” The Economist. 6 November 2003. <http://www.economist.com/displaystory.cfm?story_id=2189568>

⁸ “Atmospheric pressure.” The Economist. 17 April 2003. <http://www.economist.com/displaystory.cfm?story_id=1715055>

⁹ “Atmospheric pressure.” Ibid.

and Statecraft: the Strategy of Environmental Treaty Making, Scott Barrett¹⁰ argues that a sort of prisoner's dilemma exists among states negotiating about world environmental problems. Unlike the standard formulation of the dilemma, however, each country knows that, in the absence of a treaty, every other country would behave in an unrestrained fashion. It is therefore better for any country to adopt the treaty and limitations on its own choices than face the danger of everyone simply doing as they wish. Such an equilibrium can only be reached under conditions of state sovereignty where, barring agreement between states, the result would be a kind of international anarchy that acts as an incentive to reach agreement. The existence of such incentives helps to explain why co-operation in the world community of states exists at all.

Barrett makes reference to the 1911 North Pacific Seal Fur Treaty as another example of an environmental agreement within a system of sovereign states that functions explicitly by linking the success of the treaty with the way in which states make decisions¹¹. The treaty banned seal hunting in the open ocean, an area not owned by any state, and thereby created conditions under which it was possible for each state to maintain a seal population for sustainable harvesting. Had open ocean seal hunting still been in effect, any nation that chose a restrained path would suffer as other nations exploited the opportunities afforded by its restraint. Barrett identifies the presence of an enforcement mechanism as an essential component of the success of both this treaty and the Montreal Protocol. Other factors that contributed to the success of the Montreal Protocol included the relatively low cost and high benefits of compliance and the creation of a fund to compensate poor countries for their losses: a method that could profitably be employed in other treaties seeking to correct environmental problems in a moral and empathetic way. Barrett is less confident about the viability of a treaty to deal with climate change: the costs of compliance are high and the

¹⁰ Scott Barrett. Environment and Statecraft: The Strategy of Environmental Treaty-Making. Oxford: Oxford University Press, 2003.

¹¹ "Atmospheric pressure." Ibid.

potential benefits are uncertain and, in any case, small in the short term. To an extent, this is an indictment of the state system where only those policies that produce clear and immediate gains have a good chance of adoption. The problem of short-sightedness arises wherever politicians think from election to election or where autocratic leaders are concerned with staying in power now, not securing benefits for a distant future. If climate change is as serious a problem as the pessimists envision, it seems that it will not be until more visible signs of its destructiveness emerge that a political will for an agreement to deal with it will develop.

The question of the distant future calls into attention the previously bracketed criticism made by Singer of Lomborg: namely that any discounting of future generations must be justified in a moral way. This question will be the final one that I discuss here, namely: does an ethical stance towards future generations remain compatible with the norm of state sovereignty which has, thus far, been described as an effective tool for environmental protection? States, unlike individuals, do not conceive themselves to be in existence for only a finite time. States, like corporations, can be killed by strife or internal discord, but not by old age. That said, those in control of states must answer to those alive inside them now, people who may be short or long-sighted, who may be benevolent or selfish, who may have a communitarian spirit or be fiercely individualistic. Regardless, most people have a concern for the welfare of future generations and an aversion to living in a rapaciously destructive way. The state does not, and should not, exist merely to take people's pre-conceived ideas and desires and formulate them into laws and other policies. Through its role as an educator, a fair dealer, and a moralizing agent, the state has an obligation to create an awareness of justice among those who live under it. Such an obligation is not incompatible with tolerance and the acceptance of other people's views. Rather, it takes the form of a requirement to maintain a longer-term focus than that maintained by people in their daily lives and to help those people remain cognizant of the long-term implications of their choices. This role does not necessarily require state

sovereignty, but it is arguably considerably strengthened by it. Having sovereign power is tied both pragmatically and psychologically to notions of legitimacy. Likewise, it is the possession of that power in perpetuity that helps to extend the timescale considered by the state.

Sovereignty can be used well or ill, a simple fact that justifies it not being absolutely inalienable. When sovereignty is thought of as a norm, maintained provided a state's behaviour is not harming others, its usefulness with regards to environmental issues is clear. While the development of states was a historical progression, as advocated by Hume in opposition to those who postulated the idea of a social contract marking a sea-change between utter statelessness and sovereignty, that progression has mirrored our moral development. Whether seeking to justify the power of the state or deal with global problems one can point out that the existence of states generally serves to improve the chances of people living good lives. State failure can rightly be seen as one of the most prevalent scourges in a world where no major interstate wars are ongoing, but dozens of civil wars rage: to the detriment of people both within and without those states, and the environment itself. This is not to say that no other system is possible or potentially just but rather that ethical behaviour is possible and, in many ways, encouraged by the Westphalian system of sovereign states. The particular features of environmental problems: their generally long-term nature, their complexity, the requirement for tact and skill in their resolution, and the need for accountability and responsibility in that process all recommend states as the agents best placed to deal with them.

Sources Cited and Consulted¹²:

“A cooling off period.” The Economist. 27 November 1997.
<http://www.economist.com/displaystory.cfm?story_id=107456>

“Atmospheric pressure.” The Economist. 17 April 2003.
<http://www.economist.com/displaystory.cfm?story_id=1715055>

Barrett, Scott. Environment and Statecraft: The Strategy of Environmental Treaty-Making. Oxford: Oxford University Press, 2003.

Dyer, Hugh. “The environment in international relations.” The British Journal of Politics and International Relations. 3 (2001): 105-114.

Hochstetler, Kathryn and Ann Marie Clark. “Sovereignty in the Balance: Claims and Bargains at the UN Conferences on the Environment, Human Rights, and Women.” International Studies Quarterly. 44 (2000): 591-614.

“Hot Potato Revisited.” The Economist. 6 November 2003.
<http://www.economist.com/displaystory.cfm?story_id=2189568>

“The litany and the heretic.” The Economist. 31 January 2003.
<http://www.economist.com/displaystory.cfm?story_id=965520>

Lomborg, Bjørn. The Sceptical Environmentalist: Measuring the Real State of the World. Cambridge: Cambridge University Press, 2001.

Lomborg, Bjørn. “The Truth About the Environment.” The Economist. 21 November 2003.
<http://www.economist.com/displaystory.cfm?story_id=718860>

“Misleading Math about the Earth” Scientific American. Feature Article, 2 January 2002.
<<http://www.sciam.com/article.cfm?articleID=000F3D47-C6D2-1CEB-93F6809EC5880000&catID=2>>

Piddington, Kenneth W. “Sovereignty and the Environment.” Environment. 31 (1989): 18-26.

Rawls, John. A Theory of Justice: Revised Edition. Boston: Harvard University Press, 1999.

“Report of the Directors of The Consolidated Mining and Smelting Company of Canada, Limited.” 1955.

Singer, Peter. One world: The ethics of globalization. Boston: Yale University Press, 2002.

¹² Please note that this is the third entirely new version of this essay and that, while not quoted explicitly in this edition, numerous works from this list were quoted in the previous two. Ideas contained therein therefore played a role in directing the overall focus of this essay, though no ideas concrete enough to require a citation were employed.