

# STATE SOVEREIGNTY AND GLOBAL COMMUNITY IN THE 21ST CENTURY\*

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I approach the question of global community in the context of working on areas of state sovereignty and citizenship, which led me to reconceive the theoretical foundations of what Mohammed Ayoob likes to refer to as the Westphalian system or at least leads me to describe what strikes me as the transition away from the nation state to a more functional criterion for state organization than is implied in the expression, nation state. I have published such reflections in the *Cardozo International Law Review*. Here I want to take on the broader question, to ask a simple question; namely, if the changes I have talked about and through which citizenship comes to be detached from the question of birth or nationality (and the existence of the state equally so), what will be the consequences for sovereignty and what role will those play in expectations of a global community?

This essay, however, elaborates the answer to a question that is entirely uncertain. It consists rather of the answer to the question than the statement of the question or any evidence for the question. Thus, I must at least briefly apostrophize the question, before formally addressing the answer to the question.

The expression “global community” or, for that matter, “international community” I take almost exclusively in our time to mean a reference to the United Nations or what some people call the United Nations system, taking into account all of the coordinated agencies and NGOs that cooperate in establishing approaches to international order. The questions surrounding that work most recently are very much questions regarding the extent to which a proactive role in building global consensus on political, social, and economic issues—or any other issues—may emerge from or within the international system. We all understand that there are reactive roles, and those are not of immediate concern in this conversation. It is nonetheless appropriate to say that we often look upon failures with respect to the reactive roles as having a distinct relationship to the absence of a more proactive posture for international organizations. A reactive role is peace-keeping, for example, or humanitarian relief, certain kinds of human rights questions, or preventive diplomacy. It is easy to see that these kinds of questions will recur indefinitely and some level of reaction will remain necessary. The international system has been designed (or at least assigned the task) to respond to those situations.

Increasingly, however, we speak of the organizational status of the international system in terms of its relative weakness in being able either to provide for these reactive situations or, more importantly, to work proactively so as to avert the reactive situations. People have observed the ineffectiveness of the General Assembly, an outdated committee structure in the United Nations, the lack of powers of leadership within the Secretariat, and lack of control over the organization, among many other matters of importance. Some people even refer to the problem the UN has in regard to public support; they imagine that it would require a great deal more democratic base of support in order to do the kind of job we often demand in our most optimistic moments.

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The question of what the UN should be doing, therefore, constitutes the major question when one is talking about international organization, and especially is this so when one goes beyond the question of functional organization in order to facilitate interstate relations to a discussion of the organization of international community itself. That is, when the question is less what steps may be taken to facilitate interstate relations but rather what steps may be taken to facilitate the development of a broad sense of international community, one has two different questions.

Against that background I have answered the question in the remarks I have offered. One question was posed in a recent forum in the following manner: How can the UN become a forum for managing world public order? That, of course, is a very large question and not merely an old question, such as the familiar question of world federalism. The discussion today has an entirely different foundation than that older discussion. People often come to the conclusion that some kind of political leadership is required in order to force the states to pay attention to international issues as well as domestic issues. There is a general belief that states have a tendency to subordinate international issues to domestic issues, and therefore to prepare for international issues only as crisis management. The goal in discussing an international community is to place the relations among peoples on some footing other than the footing of crisis management. Some people think the UN should provide broad and strategic political guidance, insure policy consistency, help defuse problems over trade, insure that arms deals are compatible with development, and see that capital outflows do not upset political stability – a very ambitious agenda, to say the least. I forgo saying a great deal more about these things with the hope that I have now sufficiently invoked what are often the terms of discussion to show why I take the expression “international community” or “global community” to refer to the United Nations.

What next I ask is, how does one make legally binding the kinds of obligations and hopes that are invested in the United Nations? That, I conceive, is the real question, though I cannot demonstrate it. How does one weigh the political implications of such an approach? For it is plain that every frustration we experience as a frustration with the system results from the fact that much of what we ask of the international system is legally binding only in a metaphorical sense and not in any legitimate sense of the expression.

Let us return, then, to an earlier version of this same conversation, bearing in mind that one of the important distinctions we make when talking about the United Nations is that we have to decide at every step whether seeking increased administrative coordination internationally also requires increased policy coordination internationally. Without answering that question one may assume that, beyond certain minimal levels, there is no prospect of heightened administrative coordination without heightened policy coordination. On the strength of that assumption we may conclude that we cannot deal with the question of the adequacy of the international system without dealing with the question of its relationship to the system of state sovereignty and its relationship to the sovereign states.

Thus are we led back toward the founding of the United States. What commentators frequently refer to as the “global community” constitutes by definition what Alexander Hamilton called in *Federalist Paper* number one a realm of “accident and force.” Matters stand thus for the sufficient reason that the alternative to constructing political institutions by accident and force is to adopt them by “reflection and choice,” where deliberate reflection and choice expressly invoke the role played by natural individuals in instituting the political order. In short, where the architecture of the global community cannot be referred to the collective agency of “citizens of the world,” that architecture must be imposed by accident and force (which includes conventions among states) rather than chosen by popular will.

This paper does not concentrate on the obvious bias of democratic or majority rule in order to render the claims of democracy problematic. It does so rather to demonstrate that the most

interesting questions regarding global community must sooner or later encounter the same questions of legitimacy which bedevil democracy. In that sense, of course, one uses the United Nations as a proxy for the “global community,” not in the form of a straw man but as a reasonable approximation to institutional standards which serve to surface the most crucial issues.

For example, a typical conceptual error is the idea that economic development and political development operate largely as independent if interactive variables. This leads analysts to speak erroneously of market economies, planned economies, capitalist economies, etc. On any accurate account, there is only one economy, namely the market economy, which operates under more or less exiguous constraints dependent on political forms and practices. Accordingly, the variations in politics are much more decisive in the determination of human prospects, whether in the form of separate state I call the state-nation or in some conceivable form of global community.

This matter of technical definition poses a practical problem for the advocates of global order. The problem is illustrated by the persistent discussion of democracy, or rather the absence of democracy, within the United Nations. As it happens even the staunchest advocates of international democracy mean by it nothing more than weight proportioned by respective member populations in international councils, with no design whatever to institute that representation by popular election. Where states, sovereign states, remain the units of membership, even when exercising differential weights of decision based on population, it remains true that what is reflected in the architecture must be the relations of states and not the relations of peoples. The practical problem, therefore, is to know what are the prospects of a global people (where the term global has the same cognitive value as the term national) in whom one would found a global community.

I do not take this question up as an empirical problem and therefore will not mention Thucydides. It is rather a problem of technical organization, a model for which analysis is Hamilton’s *Federalist Paper* number fifteen. There Hamilton analyzes the relations of states in a transcending union and conveys the relevant conditions for weighing the prospects of a global community. Accordingly, the answer to the question of the symposium may be provided in the form of an explication of Hamilton’s answer to a very similar question.

### Contemporary Context

Before launching the explication, we may further survey the context of the question. Recently I wrote that the terms of modern sovereignty have elevated the state above the nation as the fundamental unit of social organization and drawn upon raw humanity as the exclusive source of authorizing political principle. In this account particularity and membership exclusivity persist, but rather as practical conditions for realizing the goals of political community. Thus citizenship has come to mean foremost the extracting of certain humans from lives subjected wholly to the whims of accident force. Yet, the transition from state-organized community to global community would require such a change of conditions as would make protections for “human rights” redundant. This occurs because the terms of modern sovereignty require that one addresses the needs of the individuals in order to generate collective order.

Now I demonstrate on the basis of technical analysis that the arguments presented in *The Federalist Papers* constitute a comprehensive account of the prospects for a global state, even if further elaboration is required in order to apply it to discussions of a global community as opposed to the consolidation of the original thirteen United States. Moreover, the paper urges that the presumption that such an analysis is either deliberately or necessarily unfavorable to the pros-

pects of global community strongly misreads the sources of apposition in Publius' argument. For the reality is that an argument which proposed a transcendent union as the specific means required to eliminate differences of interest and power among separate states is precisely what prevailed on Publius' terms. Since the notion of a global community is spurred by a similar or identical motivation, even if its adherents aim at a qualitatively different result, it follows that the constraints which operated in the prior case likely operate in the present case.

Unless the state-nation constitutes the ultimate form of political organization, the Hamiltonian option of a transcending union may apply on a global basis. At a minimum, there will remain scope for the emergence of fewer—and larger—state-nations (which I regard as likely). The remaining question with respect to a global state or community is whether such a development would entail a withering of citizenship. This may happen not only because lesser sovereignties (or civil societies) disappear but also because exclusivity may no longer derive from universal principles. The notion of citizenship declines with declining significance of rights guarantees. While the governed remain the consenting individuals from whose rights the need for political guarantees arises, as governed they would no longer require a form of emotional identification with the state. Indeed, one would think government in this case to be completely subject to the governed. Whatever might be the basis of rights guarantees in such a global state, it could not be citizenship.

To appreciate the implications of this analysis one might envision unorganized human life as a form of shooting white water rapids with no aid beyond individual exertions to keep one's head above water. While less sanguinary, this captures the essence of state of nature theories. If one could envision further a device—say a tether suspended just above the water's course from end to end—to which one could cling throughout the journey, then one would see how it might be possible to avoid being dashed on the rocks or submerged in sudden declivities. Modern sovereignty, the constitutionally organized state, provides just such a tether for the progress through the realms of accident and force, which do not cease to exist on account of reflection and choice but rather become manageable. The individual who becomes the citizen in such an organized community profits in the same manner as the lone swimmer who grasps the tether (no matter how many individuals must do so in order to form a community). While subtle intellects may reflect on the anchoring ends of the tether and doubt the likelihood of engineering such a construction, it remains the case that the metaphor conveys clearly the status of the state in relation to individuals on the terms of modern sovereignty.

Insofar as citizens are tethered to states (and the evolution of passport controls, now serving more often to deny exit than to permit entry, illustrates this perfectly), the world of rapids constitutes a danger from which the tether appears the unique escape. If one were to imagine some device whereby the river's course were smoothed, the tether would lose its hold on individuals. It would take such a transformation in the river itself, the global sphere, however, to produce the opportunity for liberation from states. In other words, there is no possibility of a superior tether, a transcending tether. The transition from state-organized community to global community would require instead such a change of conditions as would make the tether obsolete, the river calm. The terms of modern sovereignty require that one addresses the needs of the individuals in order to generate collective order.

### **Prospects of Global Legislation**

In arguing for the superiority of national union over a confederation of sovereign states in *Federalist Paper* number fifteen, Hamilton opened with “the dark catalogue of our public misfor-

tunes.” These bear the significance of suggesting utilitarian or expedient measures of political sufficiency, leading to the implication that a regime choice might be founded in the response to uncontroversial questions regarding public happiness rather than in what we are wont to call “ideology” in our day. Consider the list of items which express “the last stage of national humiliation”:

1. Routine violation of sworn engagements
2. Non payment of debts honestly and beneficially incurred
3. Foreign occupation of national territory with impunity
4. Lack of treasury, troops, government
5. Lack of right to appeal for justice on account of our own injustices
6. Denial of recourse to natural resources by superior powers
7. Lack of public credit
8. Lack of commerce
9. Lack of respect in the eyes of others
10. Depreciated value of properties
11. Lack of private credit due to failure to secure guarantees of repayment.

Hamilton traced these specific evils not to any intrinsic incapacities among the Americans but to “effects” in their political organization, chief among which was the prejudice against a transcending political community to unite the energies of all in common purpose. “...the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure...which cannot be amended otherwise than by an alteration in the first principles and main pillars...”

Hamilton argued that the very idea of the system of thirteen sovereign states seeking to act in coordination to resolve these problems was flawed:

The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES and as contradistinguished from the INDIVIDUALS of whom they consist.

That this vice inheres in the principle undergirding the confederation and not its circumstances, Hamilton demonstrates by showing next that powers fully adequate to the circumstances have been conveyed to the confederation but remain ineffective. They remain ineffective because it is not possible for the confederation to bind the member sovereigns to performance of their obligations. The very idea of legislating for states instead of individuals, he insists, is “incompatible with the idea of GOVERNMENT.”

Hamilton’s critique does not aim to invalidate every form of alliance among states. He insists only that such leagues can pursue but limited purposes and can rely on nothing for enforcement of their terms but the interests of the contractors or the “sanguinary agency of the sword.” The natural conclusion from such arrangements is that allies exist alternately as friends and enemies as their circumstances dictate. It is only in the case where men aim to eliminate the swings of fortune in such relations that they must adopt “those ingredients which may be consid-

ered as forming the characteristic difference between a league and a government; we must extend the authority of the union to the persons of the citizens,—the only proper objects of government.

To this point the argument is clear: to create government means to erect over individuals “the mild influence of the Magistracy,” which is achievable only through the creation of citizenship on the same plane as the magistracy. At the same time one must note that the presence of consent alone makes possible the creation of citizenship on the same plane as the magistracy. “Reflection and choice” generate the moral authority which makes mild magistracies.

The last portion of *Federalist Paper* number fifteen explains the reasons for this conclusion, namely that “government implies the power of making laws,” laws require “sanctions,” and of sanctions there are but two, “the COERTION of the magistracy, or the COERTION of arms.” Because armed coercion applies properly to collective bodies, states, arrangements which entail enforcement against sovereign states necessarily imply war as the means to ensure compliance. Over individuals, realists would insist, the sword is also the ultimate recourse. Hamilton’s response is decisive, however: Not only may men be nurtured in their obedience through means which have no influence over states (men blush; states do not; and men care about their reputations as individuals in ways to which they pay no heed as members of a collective body), but individual citizens are little likely to feel and less likely to manifest those centrifugal tendencies which commonly spin states out of the orbit of common effort. While the “love of power” animates the individual soul, it requires for its indulgence the soil of collective effort. Thus, ambitious souls holding authority in corollary or subordinate bodies will contend with the lawful requisitions of a central power. Such is the decree “of human nature.”

Alexander Hamilton, then, argues that the only rational design for a transcending political authority is one that diminishes opportunities for organized challenges to that authority. While every political society must avail itself of subordinate bodies and mediating institutions, the idea that a political society can be erected on a framework of sovereign members constitutes a “solecism in politics.”

The application of Hamilton’s analysis to a discussion of state sovereignty and global community will seem immediately obvious. Pessimism regarding any robust form of global community incorporating continuing state sovereignty would be warranted. A distinction requires to be noted at this stage, however. As I have written, the state-nation appears to be the ultimate form of political organization. If that is true, then the Hamiltonian option of a transcending union is foreclosed on a global basis. While there will remain scope for the emergence of fewer—and larger—state-nations (which I regard as likely), there will not emerge a global state for the sufficient reason that such a state would entail a withering of citizenship. This happens not only because lesser sovereignties disappear and exclusivity may no longer derive from universal principles. The notion of citizenship loses significance when it ceases to be the vital occasion of rights guarantees. The governed would remain the consenting individuals from whose rights the need for political guarantees arises, but as governed they would command their government without a need to love it or defend it. On these terms, indeed, one would think of government as completely in subjection to the governed. Whatever might be the basis of rights guarantees in such a global state, it could not be citizenship. To return to the metaphor of the river rapids, the global state would not be a tether because there would be nothing beyond it on which to anchor a tether. If it is still a river, it is a river becalmed.