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## The European Union and diminished state sovereignty

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### ABSTRACT

In *A Republican Europe of States*, Richard Bellamy embraces neither the anti-internationalism of the sovereign statist, nor the unbounded trust in international institutions of the European federalists. He proposes instead a model for the European union he calls 'republican intergovernmentalism.' This model seeks to preserve internal state sovereignty while arguing that mutually agreed rules for regulating external sovereignty are necessary and beneficial. I argue instead that creating a supranational structure like the European Union cannot be accomplished without a reduction in the internal sovereign authority of member states. This a potentially legitimate reduction of sovereign authority for states, but a reduction nonetheless. The most important consequence of the conceptual claim that state sovereignty is diminished is that the delegation of authority to supranational institutions which has this cost ought to be publicly discussed and negotiated at the national level in member states to avoid misunderstandings and backlash against the legitimate authority of the EU.

**KEYWORDS** European union; sovereignty; republicanism; republican intergovernmentalism; differentiated integration

Richard Bellamy has contributed to and shaped an impressive range of research areas in normative political and legal theory: the history of the idea of non-domination, republican citizenship, political constitutionalism, state sovereignty, and the normative evaluation of the European Union to name just a few. *A Republican Europe of States* integrates his insights developed over a number of decades. The book combines his deep interest in the evolving political project of the European Union with a keen analysis of its consequences for the sovereignty of the member states.

From the perspective of defenders of state sovereignty, the EU is a somewhat unintended and ultimately unwelcomed evolution of a treaty to create a common economic area. The EU could be seen as unintended since once set in motion, individual states lost unilateral control over the many changes brought about by successive treaties, and unwelcomed since it encroached on larger and larger areas of domestic policymaking. The state signatories of the

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Treaty of Rome of 1957 set in motion a process which culminated with a regional organization which gradually asserted legal supremacy over member states, thus attenuating the ability of those states to make decisions regarding the governance of their own economies and other associated policies (Isiksel, 2016; Kumm, 2005). Civic nationalist perspectives which defend the idea of national self-determination and the value of state sovereignty (Miller, 1997; Moore, 2001; Tamir, 1995) can be interpreted to endorse this more skeptical perspective about the EU. 'Taking back control' is a reaction to this process, and Brexit a good illustration of the unease certain strong defenders of state sovereignty feel at the direction of travel of European integration (Great Britain and Department for Exiting the European Union, 2018).

If for some the European project goes too far, for others it does not go far enough. Functional integration is needed because states today face a number of challenges which they cannot face alone (Habermas, 2012; Held, 1995). The perpetual threat of one state interfering with another, the globalization of economic activity, regional security threats and cross-border externalities require strengthening not eviscerating the authority of European institutions. The interstate nature of many governance problems and the need for reciprocal commitment and mutual assurance demands institutions that are federative in character, which can overcome some of the collective problems voluntary cooperation among states engenders (Hix, 2008; Van Parijs, 2016)

Bellamy embraces neither the anti-internationalism of the sovereign statist, nor the unbounded trust in international institutions of the European federalists. He proposes instead a model for the European union he calls 'republican intergovernmentalism.' Republican intergovernmentalism captures a system of interstate cooperation by which 'polities and their people preserve their internal sovereignty by agreeing on mutually agreeable institutions and laws for the regulation of their external sovereignty, including the movement of citizens between their respective states' (Bellamy, 2019, p. 91).

State sovereignty matters, in Bellamy's view, because the people living in states have long histories of self-government. Liberal democratic states in particular provide the space for their citizens to design and mold the institutions regulating their social and economic life in order to secure liberty and justice, including political and social rights. But a proper appreciation of state sovereignty does not call for a rejection of supranational institutional schemes that bind states together. Indeed, supranational institutions like the EU provide a number of crucial benefits for states, including regulating their interaction with the aim of avoiding inter-state domination, resolving collective action problems, and cooperating to better satisfy the needs of their citizens. But in order to be consistent with respect for state sovereignty, cooperation among states is best realized through a 'consensual agreement among democratic states,' who act credibly as the democratic representatives of their citizens (Bellamy, 2019, p. 11).

Crucially, Bellamy believes that far from detracting from the sovereignty of member states and their people, institutionalized cooperation among states is able to preserve it and enhance it. It does so in two ways: 1. by creating the conditions of external sovereignty, which involves states being protected from the undue interference from other states, and 2. by enabling states to increase their internal capacity of promoting and protecting the interests of their citizens.

I am in broad agreement with the normative foundation of the book and with the need to define more precisely the relationship between state sovereignty and supranational institutions. But unlike the argument of the book, I cannot see how creating a supranational structure like the European Union can be accomplished without a reduction in the sovereign authority of member states. In my view, this a potentially legitimate reduction of sovereign authority for states, but a reduction nonetheless.

Let us better understand republican intergovernmentalism. Its most basic premise is that state sovereignty is an essential mechanism for securing the nondomination of individuals. Bellamy has defended this premise in numerous works and it also receives substantial treatment in this book. Citizens agree to create democratic institutions to govern themselves and avoid insidious impositions of each other's arbitrary will. Democratic institutions ensure security and peace, and a wide range of public services and goods. These institutions are the result of long histories of political conflict and compromise, and because of this history they command legitimacy for the citizens of each state (Bellamy, 2019, pp. 8–9).

Institutions like the EU play a role, Bellamy argues, in securing both internal and external sovereignty. They do so by preventing domination among states, and by limiting negative externalities across geographical borders. States co-author regulations that facilitate domestic policy goals. To ensure nondomination, supranational institutions must treat polities with equal concern and respect. This means that states are equally situated with respect to the authority of the EU, and can decide to participate in some areas of regulation on a more voluntary basis via differentiated integration. Differentiated integration allows states to buy in to core commitments of the EU, but refrain from participating in other commitments or to customize them to fit their domestic needs. For example, leaving membership in the Eurozone optional enables member EU countries to engage in differentiated integration in the area of monetary policy.

For Bellamy (2019), a double form of delegation of authority will be required first to domestic institutions by citizens exercising popular sovereignty, and then from domestic representatives to international ones. Citizens thus delegate and devolve authority upward to appropriate regulatory bodies. Yet for Bellamy, citizens retain final and supreme authority. And both popular and polity sovereignty is preserved: 'In both cases, the sovereign authority of the people remains in the last analysis final, supreme and comprehensive with respect to themselves' (p. 90).

Delegation can preserve and even enhance some dimensions of state sovereignty. But it also diminishes it in important respects, as I will argue below. Pretending that it does not can do a real disservice to the legitimacy of both domestic and international institutions and to the trade-offs necessary to help them function and fulfil their roles properly.

Delegation can preserve popular sovereignty in the same way political representation at the national level preserves individual liberty. Through representatives, individuals are collectively the authors of laws binding on them. Representation preserves liberty as self-government. Similarly, delegation to supranational institutions enables states to collectively determine the rules binding on them, and so it maintains state sovereignty to the extent that states are the ultimate co-authors of the rules. Supranational institutions can also augment state sovereignty, namely the ability of states to govern themselves internally more effectively, by removing unjustified interference from other states, by reducing negative externalities, and by providing new economic opportunities via interstate cooperation.

However, delegation and integration via supranational institutions such as the EU achieves these benefits for states at a clear cost; it removes certain areas of decision-making from the purview of domestic institutions. Member states of the EU give up supreme and ultimate control over a whole range of policies concerned with the common EU market, which the EU now has ultimate authority over. A common market means that regulations taken at the EU level are no longer up to individual states, and to that extent their internal sovereignty is diminished. State authority becomes divided between the state and the international institutions to which new powers are delegated.

When states decide together to create a permanent institutional body that makes decisions on their behalf, those decisions are taken from the realm of a single state. The member states no longer have exclusive and supreme authority with respect to the delegated issue. Take the movement of citizens between states, which Bellamy believes is an appropriate area of regulation by the EU. When states delegate authority to the EU via appropriate democratic processes to regulate freedom of movement in the common market, they no longer have final exclusive authority to regulate certain areas of their immigration policy. The same is true of environmental regulation, human rights, and monetary policy, the last one especially for countries which become part of the Eurozone. Just as when individuals delegate some authority to public domestic institutions, they lose the freedom to decide those issues for themselves, so too states diminish sovereignty when they delegate authority to intergovernmental institutions. In delegating authority, sovereign states will in effect divide authority between national and international institutions. By necessity, this entails that national institutions will no longer have the final say on matters which are delegated upward.

There is both an empirical/conceptual and a normative dimension to this process. The normative dimension refers to whether the process of delegating authority by sovereign states to supranational institutions is justified or legitimate. I agree with Bellamy that normatively speaking, states are justified in thinking that avoiding public bads and creating public goods requires international cooperation backed by supranational institutions. Therefore, our disagreement is descriptive/conceptual, but it has important practical and normative implications.

The empirical dimension captures the transfer of authority from individual states to supranational institutions. My conceptual claim is that this transfer of authority upward to the EU cannot take place without a corresponding transfer in sovereignty. This is because sovereignty is in part the authority to make decisions that concern a state. When that authority no longer rests exclusively with the institutions of the state, but instead resides with supranational institutions, the state loses sovereignty.

Despite my reservation about the idea that sovereignty is preserved when states join the EU, there is an important sense in which Bellamy is right. If states do retain the freedom to customize certain legal commitments, and if complete exit of the kind the United Kingdom exercised continues to remain a live option, then states retain an important measure of state sovereignty. They are in this sense the ultimate deciders. But this is compatible with the idea that they lose sovereign authority in other ways. My claim is not that states lose sovereignty completely by joining the EU, just that they do not retain all of it. They lose sovereignty to the extent that they delegate decision-making authority to EU institutions. Whatever sovereign authority they do not delegate continues to reside with member states exclusively.

If the claim that states both retain and lose sovereignty seems paradoxical, this is because we have not differentiated sufficiently between two important senses of sovereignty. The first is popular sovereignty, the idea that citizens exercise sovereignty in constitutive moments of a democratic republic, and delegate authority expressly to political institutions which protect their interests and welfare. The second is political or state sovereignty, which refers to the institutions of a state that make decisions on behalf of the popular sovereign and represent it in interactions with other states. Popular sovereignty can be preserved even when state sovereignty can be diminished, either by the popular sovereign taking away authority from state institutions, or by delegating it to supranational institutions. Political sovereignty can be divided and separated because it is a bundle of functions which can be distributed across different levels of governance (Pavel, 2015, pp. 12–24). Keeping the two senses of sovereignty apart will help us dissolve the paradox.

The most important consequence of the conceptual claim that state sovereignty is diminished is that the delegation of authority to supranational institutions which has this cost ought to be publicly discussed and negotiated at the national level. It seems that the act of delegating authority to international institutions, be they the EU or other supranational bodies, encounters everywhere a huge public relations problem. Government officials take momentous foreign policy decision, such as joining a particular treaty or international organization, without giving an adequate public justification to their citizens, and without giving the latter an opportunity to question, debate, compromise or endorse the trade-offs needed for such a delegation of authority and sovereignty. Citizens ought to better understand when these decisions are made, why are they made, support them for the right reasons, and hold representatives accountable for their effects.

What member states delegate upward to European institutions is not always immediately clear, because the nature of that authority is negotiated with other states in processes that span years or even decades, which are subject to interpretive disagreements from states, the institutions themselves and the Court of Justice of the European Union as the constitutional gatekeeper of the treaties. This means that at any one point, different states, their citizens, and European bodies might have different interpretations of the competencies that states retain or delegate. The treaties themselves are to an important extent incomplete contracts, and the public discussion at both the national and international levels about the appropriate division of authority between states and the European Union will be unfinished and ongoing. 1

Nonetheless, without acknowledging and justifying the costs of creating international institutions, and the concurrent diminishing of internal political autonomy, political officials encourage confusion and ultimately sow the seeds of distrust of international institutions. Without a proper recognition of the costs to state sovereignty, national constituencies expect to have their cake and eat it too, i.e. to delegate authority upward but retain that authority unchanged and unchallenged at the state level.

This confusion may be at the heart of some states' contentious relationship with the EU. When such relationships rest on the assumption that delegation preserves intact the authority of states to decide on any matter they choose, their citizens will be frustrated to discover that it does not. This assumption should be questioned: a state cannot become part of a collective body larger than itself, which makes decisions not only on its people's behalf, but on behalf of all other peoples which are now under its umbrella, yet somehow retain exclusive authority to decide on any issues it chooses. If I am right, claiming that full state sovereignty is compatible with the authority of the EU sells short the difficult trade-offs states must make when becoming part of structures of international decision-making.



A related concern regards the voluntary character of states submitting to the authority of international institutions. The book uses the words 'consensual' and 'voluntary' to describe the relationship of states to supranational institutions. Yet for processes of republican intergovernmentalism to work, presumably any kind of stable association must require some commitments which are not optional, such as the requirement for states to participate in the common market and to respect each other's boundaries or political independence. Certain kinds of public goods or the avoidance of public bads require not just widespread, but full participation. The common market and its pillars will be in that category. Projects of republican intergovernmentalism cannot be voluntary across all the range of issues which are delegated upwards to a set of international institutions.

Presumably this is the case in the European Union. Even if we agree that states should have some freedom to customize their commitments to the various EU regulatory packages, a question remains as to whether the margin of differentiated integration should be very wide, or if there are issues over which states should not be free to opt out? There is probably a core area of EU rules which should not be subject to opt out. We can imagine that with other institutional set-ups, the exact combination of optional versus non-optional commitments will vary. Yet some delegation of sovereignty will be non-optional.

These questions should not detract from an otherwise impressive work encouraging us to think carefully about the conditions of external sovereignty and the possibilities and limits of republican intergovernmentalism. The book's value rests in providing a theory of legitimacy for institutional structures beyond the state. It argues that, at the European level, something more than mere toleration among states is required, but something much less than creating a comprehensive European level democratic polity which absorbs member states.

*A Republican Europe of States* has given us a great exemplar on how to do political theory which is grounded in actual practices without being too concessive to them. The book serves as a skilled overview of debates in political theory among statist and cosmopolitans and of debates on the law and politics of the European Union, but also makes a distinctive contribution to a way of thinking about interstate cooperation. The political theory with the highest practical payoff is motivated often by this concern with actual existing institutional practices, and the EU provides a fertile ground to ask some of the most important questions about the relationships states have with supranational institutions, and the ways in which those relationships serve or undermine the interests of the people living in those states. This book fits unequivocally in that category.

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## Disclosure statement

No potential conflict of interest was reported by the author(s).

## Notes on contributor

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