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Sovereignty: EU Experience and EU Policy

John B. Richardson*

I should say immediately that I am in agreement with the main thesis of Jeremy Rabkin's paper—the development and experience of the European Union (“EU”) is having a clear impact on the development of multilateral governance. I also agree with the paper's conclusions. There are, however, inaccuracies in the paper, and I will address three of them.

I should make clear where I think the paper is deficient. I see this mainly in one major factual error and in two significant omissions. The error is in the paper's description of the role played by non-governmental organizations (“NGOs”) in the EU's decision-making process. Without going into detail, I will simply say that I do not recognize it at all. It is simply not the EU I know. Logically, I cannot share any of the conclusions based on it. In particular, it is quite incorrect to state that 10 percent of the EU budget is used to fund NGOs. They play a very similar role in our political process to the one they play in Member State politics. Rabkin himself notes that they make up only 20 percent of all registered lobby groups in Brussels.

The two missing elements are the answers to the questions: “Why are the Member States of the EU sharing sovereignty?” and “What alternative approach would be possible?”

In order to answer the first, I will attempt to define sovereignty. The sovereignty of a nation is its ability to take the action necessary to control its own destiny, achieve its aims, and further its interests in an independent manner. In today's world, this ability faces two difficulties, one old and one new. The difficulty that has always existed is greater for smaller nations. Clearly, larger, more powerful nations can more easily act successfully to promote their interests than smaller, weaker ones. The new difficulty is created by the growing interdependence of countries that results from the growth of trade, investment, telecommunications, etc. This increases the number of areas in which a country cannot achieve its aims on its own, but only in concert with,

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or with the acquiescence of others. And if the ability to achieve these aims is constrained by the reality of interdependence, sovereignty becomes an illusion.

The European integration process was not originally designed to deal with this situation. Rather, it was intended to bind the peoples of Europe so tightly together that war between them would become unthinkable, and indeed that has now been achieved. The means chosen to do this were initially economic, and it is precisely in this area that the European states are deeply interdependent. The resulting common project was initially the creation of a customs union, then the realization of a single market, and finally the creation of a common currency.

Let me use the common currency to make a point. The common monetary and fiscal policies, which now accompany it, are little more than the policies that were necessary for economic success before, but with one important difference. They are now the result of conscious, collective decisions, and not simply a shadow of German decision-making dictated by the markets. For all the countries involved, with the exception, I accept, of Germany, the result is a gain in effective sovereignty—effective, shared sovereignty.

It is this idea of the regaining of effective sovereignty through sharing it, that is the key lesson of the EU's integration experience. By the way, it applies only in some areas of policy. Where the conditions for it are not given, we believe that decision-making should remain at the national or local level—that is the principle of subsidiarity. But it is seen to apply in a whole series of areas, including environment, immigration, international crime, etc. I dare say similar arguments were used when the Federal Bureau of Investigation was set up.

So we have moved in Europe to a sharing of sovereignty through a new form of governance in certain areas. Without describing this new form at length, it is here that I wish to comment on three statements in Rabkin's paper: "Member States submit to rules and regulations drawn up by the European Commission in Brussels"; "The [European Court of Justice] ("ECJ") even claims the authority to invalidate enactments of national parliaments"; and "The EU now claims that citizens of the Member States are citizens of the European Union."¹ On points such as this there is really no substitute for reading our Treaty, the Treaty of Rome, as amended by the Single European Act, by the Treaty of Maastricht, and, most recently, by the Treaty of Amsterdam. This quasi-constitutional document, which has been ratified at each stage by all the parliaments of all our Member States, is the basis of the following.

First, EU law now requires the assent of three interacting power centers: the Commission, which prepares the first draft, the Council of Ministers, representing the Member States, which decides by qualified majority, and the Parliament, composed of directly elected representatives, which decides by simple majority. This interplay of

1. Jeremy Rabkin, *Is EU Policy Eroding the Sovereignty of Non-Member States?*, 1 Chi J Intl L 273, 274 (2000).

three institutions should be familiar to anyone who watches US decision-making in Washington.

Second, certainly the ECJ claims jurisdiction over EU law, just as the Supreme Court does over US law. This is how you ensure the rule of law within a complex, federal, or quasi-federal, entity. What was good enough for the founding fathers of your constitution is good enough for us!

Citizens of our Member States retain all their rights as citizens. What they now have, in addition, are citizenship rights in other Member States, in particular the right of residence, the right to vote in their place of residence, and even the right to run for public office there. They have more rights, not fewer.

Let me turn now to the impact of this experience on third countries. Our view is that the same analysis that has led us to embrace shared sovereignty in Europe applies *mutatis mutandis* to the wider world, albeit across a narrower range of policy fields. The growth of global interdependence has led to an increasing inability of nations to act effectively in pursuit of their interests on an independent basis.

There are three possible alternative reactions: to accept growing impotence; to act through partnership, collective action, or multilateral means to pursue common goals effectively; or to allow the strong to impose their will on the weak.

In the last fifty years, the global community, under US leadership, has chosen to pursue the multilateral route and reject the others. More and more areas are now subject to multilateral rules, from trade and finance through telecommunications and global environmental issues to non-proliferation and human rights. All are areas in which the ability of a single state to achieve its aims on its own are severely limited.

Increasingly, in this multilateral system of rules, the issue has become how we are going to enforce the rules. This is true whether we are talking about the Dispute Settlement Understanding of the World Trade Organization or the verification of the obligations under the Comprehensive Test Ban Treaty. Here again the same principles surely apply. Either we accept that the rules go unenforced, or we accept that the strong impose their interpretation of the rules on the weak, or we embrace some form of multilateral governance.

The thesis of the paper under discussion is probably correct—that Europeans are now the foremost proponents of multilateral governance. After all, we have seen that sharing sovereignty is both effective and politically acceptable. We have seen the future and it works!

It is probably also true that this analysis is least palatable to the United States—the world's largest and most powerful nation. It is also the country to which the analysis is least applicable, since its size and power do give it a greater ability to realize its aims. There is also, perhaps, a cultural element: this nation of rugged individualists, like some participants in this symposium, is likely to find it most difficult to accept common rules. It may also be that the idea of being able to act independently is an

important element of American identity, making it difficult to accept that this may no longer be possible in today's interdependent world.

But, to quote Mrs. Thatcher, "there is no alternative." I do not see the United States accepting an increasing inability to pursue its interests, nor do I see it imposing its will by force—it has shown itself to be not just a great, but a benign, power. Therefore, I do not see it leaving the European Union alone in a leadership role in developing the multilateral governance we need. I would be both surprised and disappointed if it did.