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Rethinking Sovereignty, Rethinking Revolution

INTRODUCTION

This article aims to rehabilitate philosophical discussions about the right to political revolution (which have more or less lain fallow for at least two generations[1]) through the articulation of a philosophical paradigm of overlapping forms of political sovereignty.[2] These two tasks at first may seem quite separate, but I will show that they are inextricably linked.

OVERVIEW

I challenge the following positions in this article. First, I challenge what I take to be the standard philosophical view of revolution, which is (i) that revolution is justifiable only in obvious circumstances not worth theorizing about; and (ii) that a legal right to revolution is, in some sense, incoherent. Second, I challenge what I take to be the dominant philosophical understanding of sovereignty, which is (i) that there cannot be two sovereigns simultaneously governing a single territory; and (ii) that sovereignty is paradigmatically realized in centralized and hierarchical authority structures governing well-defined geographical territories.[3]

I thank Susanne Sreedhar, Steven Smith, and the participants of the Yale ISPS political theory seminar for valuable discussion. I am especially grateful to the Editors of *Philosophy & Public Affairs* for their very generous and insightful comments.

1. The primary exceptions are the philosophical anarchists, who cannot duck the question of revolution but who usually quickly dismiss revolution as not a live moral option. For an overview, see A. John Simmons, "Philosophical Anarchism," in A. John Simmons, *Justification and Legitimacy* (New York: Cambridge University Press, 2001), pp. 102–21.

2. For the remainder of this article, when I speak of sovereigns or sovereignty, I am referring to political sovereigns and political sovereignty.

3. For example, consider Thomas Nagel's view of political sovereignty as expressed in Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005):

In their stead, I argue (i) that it is hardly obvious when revolution is unjustifiable; (ii) that if we correctly understand the moral challenge *uniquely* presented by revolution, then we will see that the primary hurdle faced by any defense of revolution is to articulate how there could be a legal right to revolution, i.e., a right articulated and guaranteed by the appropriate sovereign; and (iii) that there could be such a sovereign guaranteeing such a legal right under conditions in which there are overlapping sovereigns, at least one of which is a decentralized global sovereign.

The structure of the article is as follows. In the first part, I canvass two quite common objections to revolution: a consequentialist objection and a Kantian objection. I show that the consequentialist objection both is unconvincing and obscures how the question of the justification of revolution is distinct from the question of the justification of war. I then show how the subtler Kantian objection to revolution identifies the distinctive moral problem faced by revolution, which is that revolution involves the destruction of the very sovereign that grounds a right to revolution. Thus, in order to address the moral hurdle uniquely faced by revolution, I then turn to reflections about sovereignty, and in particular to questions about the possibility of two sovereigns simultaneously governing the same community in which one sovereign authorizes a legal right to revolution against the other. The second part of the article is therefore largely devoted to developing a particular philosophical model of sovereignty that can accommodate two sovereigns simultaneously governing the same community. I dub this model *politically decentralized sovereignty*, and show how a politically decentralized *global* sovereign can coexist with traditional centralized national sovereigns. I then

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113–47, at p. 116: "The kind of all-encompassing collective practice or institution that is capable of being just . . . can only exist under sovereign government," and a sovereign government is a government with "centralized authority to determine the rules and a centralized monopoly on the power of enforcement." There is a long tradition of political philosophers, such as Harold Laski and John Figgis, who challenged this view. Both Laski and Figgis defended a limited form of sovereignty that left space for both formal and informal social institutions having some form of sovereignty. Some may see their views as inchoate versions of the political conception of decentralized sovereignty I articulate below. For a concise volume collecting key papers in English "pluralist" tradition, which rejects this view of sovereignty, see *The Pluralist Theory of the State*, ed. Paul Q. Hirst (New York: Routledge, 1989). I thank an Editor of *Philosophy & Public Affairs* for identifying this source.

show how such a global sovereign could authorize a legal right to revolution against the national sovereign.

Before turning to the substance of the article, let me stress that I only sketchily attempt to identify conditions in which revolution is justifiable. In particular, I argue that there are no conceptual hurdles *distinctive to the nature of revolution* blocking a legal liberty-right to revolution. I do not explore any other moral factors that may count against exercising this right, but there surely are such considerations. Thus, it may turn out that the conditions under which people may legitimately exercise their legal rights to revolution are never realized, and reform is what is always morally required despite the standing legal right to revolution (but this would be a contingent matter that would have to be demonstrated in each case). Regardless, it is not my aim to show when exactly revolution rather than reform would be justifiable. I aim instead both to show that two traditional objections to revolution are quite surmountable and to develop a philosophical framework of politically decentralized sovereignty from within which we can construct responses to these traditional objections to revolution.

I. REVOLUTION REJECTED

A. What is Revolution?

Let us distinguish between revolution and revolutionary activity: the aim of revolutionary activity is successful revolution. One therefore cannot sincerely engage in revolutionary activity without aiming at successful revolution. Thus, establishing the legitimacy of revolution is generally prior to establishing the legitimacy of revolutionary activity (although the latter may be independently justifiable when engaging in revolutionary activity is the only means to achieve some morally valuable end short of revolution, but I shall put such cases aside).

What, then, is revolution? Let us contrast revolution with reform. Reform involves changing institutional rules or structures within a context of continued commitment to the authority of the target institution's rules. Revolution involves the destruction of the governing institution and its replacement with some other set of institutions. Revolutionary activity therefore necessarily *eventually* proceeds without

acceptance of the authority of the targeted institution or the authority of the rules produced by the targeted institution.[4]

Furthermore, revolutions are always public spectacles. What do I mean by this? Revolutions are so massive and transgressive that they inevitably command the attentions even of bystanders and distant foreigners.[5] Thus revolution always involves both local and global spectacle. This spectacle also carries a message, namely that the authority of the governing institution has been rejected.[6] Reform, on the other hand, while perhaps public and sometimes achieved *through* spectacle, is not always a spectacle itself. That is, reform is not, by its nature, the sort of phenomenon that captures people's attentions nor something that loudly and publicly expresses a message (although it *can* do so). Moreover, even when reform does carry a message, its content is essentially different from the message of revolution, for reform does not express a rejection of the authority of governing institutions, but in fact expresses an *acceptance* of their authority.[7]

Let us define revolution, then, as (i) profound and thoroughgoing substitution of one governing sociopolitical institution with another (ii) achieved through means (revolutionary activities) that involve the spectacular rejection of the authority of both the target institution and its rules.

4. For more on what it is to treat a rule as an authority, see Joseph Raz, *Practical Reasons and Norms*, 2d ed. (New York: Oxford University Press, 1999). For another view, see Stephen Perry, "Second-Order Reasons, Uncertainty and Legal Theory," *Southern California Law Review* 62 (1988–89): 913–94. The revolutionaries could get *epistemic* guidance from the rules, though. For more on the distinction between epistemic and practical guidance, see Scott Shapiro, "On Hart's Way Out," *Legal Theory* 4 (1998): 469–507.

5. For more on violent acts as transgressive spectacles, see Matthew Noah Smith, "Terrorism, Shared Rules and Trust" 16 *The Journal of Political Philosophy* 2 (2008): 201–19, esp. pp. 212–13.

6. Interestingly, Kant spoke approvingly of the spectacle of the French Revolution:

> . . . this [French] revolution, I say, nonetheless finds in the hearts of all spectators (who are not engaged in the game themselves) a wishful participation which borders on enthusiasm, the very expression of which is fraught with danger; this sympathy, therefore, can have no other cause than a moral disposition in the human race (Immanuel Kant, "An Old Question Raised Again: Is the Human Race Constantly Progressing?" in Immanuel Kant, *Kant on History*, ed. Lewis White Beck [New York: Macmillan, 1963], p. 85).

7. This point about the spectacle of revolution will be especially significant in the arguments in Section II.d.3.

A natural question to ask at this point is why I have not mentioned violence, since revolutions typically are violent. Although revolutions are often violent, there is no reason to treat violence as an *essential* feature of revolution since peaceful revolutions do occur. The question of the role of violence in revolution is therefore a question of the means of revolution and not a question about the justifiability of revolution *tout court*. Thus, the question of violence in revolutions is one we address only once we have accepted that revolution could, in principle, be justifiable.

B. The Consequentialist Rejection of Revolution

(1) The Argument Summarized. In order to defend the plausibility of a right to revolution, it is useful first to show that there are not overwhelming consequentialist grounds establishing the moral impermissibility of revolution. Consequentialist arguments against revolution, though, possess a very impressive pedigree, having been, for example, put forward by Enlightenment political theorists such as Thomas Hobbes and David Hume.[8] Hume, for example, wrote that

> . . . there is nothing but a great present advantage, that can lead us to rebellion, by making us over-look the remote interest, which we have in the preserving of peace and order in society. But tho' a present interest may thus blind us with regard to our own actions, it takes not place with regard to those of others; nor hinders them from appearing in their true colours, as highly prejudicial to public interest, and to our own in particular.[9]

A consequentialist rejection of revolution may not be surprising coming from the cautious Hume or the arch-positivist Hobbes. Even that greatest of natural rights theorists, Hugo Grotius, argued however that, in the face of terrible abuses by a sovereign, revolution must still be ruled out

8. Both the overall structure of Hobbes's justification of the state and his argument against revolution are consequentialist. For a recapitulation of Hobbes's views with some caveats, see Gregory Kavka, *Hobbesian Moral and Political Theory* (Princeton, N.J.: Princeton University Press, 1986), pp. 279–84. For an alternative view, see Sharon Lloyd, *Ideals as Interests in Hobbes' "Leviathan": the Power of Mind over Matter* (New York: Cambridge University Press, 1992). For Hume's views, see David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge and rev. P. H. Nidditch (NewYork: Oxford University Press, 1978), book 3, part 2, section 8, pp. 539–49.

9. Hume, *A Treatise of Human Nature*, p. 545.

since "the Resistance would infallibly occasion great Disturbance in the State, or prove the Destruction of many Innocents."[10]

An important contemporary proponent of the consequentialist argument is John Simmons. Simmons argues that all existing states are illegitimate political authorities and so, he says, no one is under a general political obligation to obey the laws of any state. Yet Simmons is quick to point out that this does not justify mass disobedience of the law. For, it is quite often the case that "our illegal actions would cause widespread suffering, unhappiness, and frustrated reasonable actions."[11] This fact, Simmons concludes, "surely makes these [law-breaking] actions morally suspect, even if their being merely illegal does not."[12] This, in turn, entails the strong conclusion that "[revolutionary] acts aimed at producing massive and violent social upheaval [are] *morally indefensible*."[13] So, even though no one has a duty to obey any state's laws, and even though every state that is the author of these laws is illegitimate, Simmons concludes anarchists must thoroughly reject the "revolutionary stance" in favor of (more or less) legal reform.

Let me sum up the consequentialist argument against revolution as follows: revolutions are remarkably violent; they usually suffer through periods of both a Jacobin terror and then what Leon Trotsky dubbed "Thermidorian degeneration." Thus, revolutionaries always run a risk that, once they initiate a revolution, they will unleash a hell on Earth. So, would-be revolutionaries ought attempt to seek change through reform, and not through revolution.

10. Hugo Grotius, *De Jure Belli ac Pacis* 1.4.7.2. It was the privilege of *other* sovereigns to rescue the subjects of an illegitimate sovereign from the despotism under which the subjects suffered. Grotius was an absolutist, but he never went as far as Jean Bodin in defending an extreme form of absolutism.

11. Simmons, "Philosophical Anarchism," p. 114.

12. Simmons, "Philosophical Anarchism," p. 114. Simmons prefaced this by saying that "[e]ven . . . if the law has no moral standing, the conduct required by law is often morally obligatory." He later does acknowledge that anarchists "do allow for justifiable disobedience in many cases . . ." (p. 115). For example, Simmons does not utterly reject resistance to the state: disobedience that does not cause "widespread suffering, unhappiness, and frustrated reasonable actions" is acceptable. Thus, "many distinctively political legal requirements—such as payment of certain taxes or military service—along with many paternalistic and moralistic laws and laws creating victimless crimes may be disobeyed without moral impropriety" (Ibid., p. 115).

13. Simmons, "Philosophical Anarchism," p. 115 (italics added).

(2) Responding to the Consequentialist Rejection of Revolution. The consequentialist rejection of revolution suffers from all the usual problems of consequentialist arguments. They are well known enough so I will not summarize them all here.[14] One familiar (although not particularly philosophically deep) problem is surely worth mentioning, though: any immediate negative effects of revolution might be massively offset by the positive effects experienced by future generations who are freed from having to be subject to a deeply objectionable political institution. However horrifyingly awful Robespierre's Reign of Terror might have been, for example, a case can be made that the French Revolution is nonetheless fully morally vindicated as viewed from the appropriate geographical and generational distance. Similarly powerful cases can be made with respect to many other revolutions in which grave harms were suffered by those who were caught up in the maelstrom of radical, violent political change: the generation that fought the revolution may have suffered greatly, but had the revolution not occurred, the generations that followed may have been much, much worse off. It is well beyond the scope of this article to engage with this or any of the other thorny problems besetting consequentialism. Yet it is the responsibility of those who make consequentialist arguments against revolution to identify and address at least some of these problems. In the face of such worries, the Burkean attitude found in, for example, Simmons's dismissal of revolution simply does not establish, on any philosophical grounds at least, that revolution is unjustifiable.

Let us grant, for the sake of argument, however, that there might be something to the consequentialist rejection of revolution. We can still object that the consequences of revolution are not in any obvious way worse than the consequences of war and humanitarian military intervention. Thus, the appeal to the bad consequences of revolution that rule out revolution except in obvious cases would apply equally well to war and so the consequentialist has not really made an argument against *revolution* but against a *genus* of action, of which war and revolution are species. For, just as with revolution, wars also often degenerate into

14. See Samuel Scheffler, ed., *Consequentialism and Its Critics* (New York: Oxford University Press, 1988). See also Amartya Sen and Bernard Williams, "Introduction: Utilitarianism and Beyond," in *Utilitarianism and Beyond*, ed. Sen and Williams (New York: Cambridge University Press, 1982), pp. 1–22.

maelstroms of pointless violence and destruction. Additionally, perhaps even more than in revolution, civilian noncombatants usually pay as high a price (if not a higher price) in war as do combatants since not only are civilian noncombatants brutally assaulted and often killed by enemy soldiers, but the thick fabrics of their lives are also shredded to pieces by bombs and landmines. The same can be said with respect to many humanitarian military interventions: even carefully targeted bombing campaigns, such as the NATO bombing campaign against Serbia during the 1999 Kosovo War, can lead to widespread destruction, significant loss of life and massive economic upheaval (such as long-term food shortages and a huge rise in unemployment).[15] In short, wars, as Locke pointedly noted, can be worse than revolutions insofar as wars "cut up Governments by the Roots, and mangle Societies to pieces, [and] separate the subdued or scattered Multitude. . . ."[16] Wars leave a society's parts "scattered, and dissipated by a Whirlwind, or jumbled into a confused heap by an Earthquake."[17] Thus, not fighting the war and seeking some peaceful alternative solution will lead to less destruction than initiating a war. So, the default rule with war should be isomorphic with the default rule with revolution: don't fight any wars (except in obvious and uncontroversial cases, if there are any).

One can conclude from this that the only live option is to be a blanket pacifist and claim, paralleling Simmons on revolution, that war is "morally indefensible." But, we have much subtler philosophical accounts of war than just blanket rejections of its permissibility. That is, many philosophers accept that war is morally permissible in some cases and, most importantly, that determining when war is permissible is a deeply perplexing philosophical problem. So, if anything is obvious, it is that it is *not* obvious when war is justified.

The consequentialist who offers a blanket rejection of revolution as "morally indefensible" therefore faces a serious philosophical problem. For, in order to avoid the implausible position of radical, total pacifism, one must identify grounds for the asymmetry between war and revolution. But, there do not seem to be any such grounds. In fact, those with a

15. Or consider the failed 1993 U.S. intervention in Somalia in which a single infamous battle caused the deaths of approximately 4,000 noncombatants.

16. Locke, *Second Treatise of Government*, §211.

17. Ibid.

contractualist bent might treat revolution as *more likely* to be justifiable than war since revolutions, if they are to get off the ground at all, require a level of popular support that starting wars does not require. Thus, if there is an asymmetry, it is an asymmetry suggesting that the question of the moral status of revolution is a far more difficult philosophical puzzle than the question of the moral status of war.

These conclusions suggest that the consequentialist has not properly appreciated the unique moral character of revolution. We ought, then, to turn to a more philosophically nuanced set of reflections about both revolution and the question of the justifiability of revolution. We find just this in Kant's deep reflections on revolution, even though Kant also argues for a blanket rejection of revolution. Nonetheless, Kant's observations about why revolution is so morally disastrous provide us with the keys to unlocking a contemporary justification of revolution.

C. The Kantian Rejection of Revolution

(1) The Argument Summarized. Kant's arguments against revolution are complex and disputed.[18] I will not be able to do them justice here, although I hope this brief summary will be sufficient to suggest both the outline and force of Kant's position.[19]

Let us begin with a clear expression of Kant's view of revolution:

> . . . all resistance against the supreme legislative power, all incitement of subjects to actively express discontent, all revolt that breaks forth into rebellion, is the highest and most punishable crime in the commonwealth, for it destroys its foundation. And this prohibition is absolute, so that even if that power or its agent, the nation's leader, may have broken the original contract, thereby forfeiting in the subject's eyes the right of legislator, since he has authorized the

18. Kant's objections to revolution are complex, especially given his very public admiration of the French Revolution. For an overview, see Christine Korsgaard, "Kant on the Right of Revolution," in *Reclaiming the History of Ethics: Essays for John Rawls*, ed. Andrews Reath, Barbara Herman, and Christine Korsgaard (New York: Cambridge University Press, 1997), pp. 297–328. See also Thomas E. Hill Jr., "Questions About Kant's Opposition to Revolution," *Journal of Value Inquiry* 36 (2002): 283–98, and Ryan W. Davis, "Is Revolution Morally Revolting?" *Journal of Value Inquiry* 38 (2004): 561–68.

19. For an extremely sophisticated and clear discussion of Kant's account of political authority and associated political obligations, see Arthur Ripstein, "Authority and Coercion" *Philosophy & Public Affairs* 23 (2004): 2–35.

> government to proceed in a thoroughly brutal (tyrannical) fashion, the citizen is nonetheless not to resist him in any way whatsoever.[20]

Kant gets to this conclusion by arguing first that all persons have an innate right to freedom, conceived of as a right to choose to pursue certain ends. Furthermore, all persons can have, at least provisionally, some right of possession of things (see §§15, 44).[21] But, in the state of nature, i.e., a state without an effective political authority, there are no further rights with determinate contents, i.e., with contents that are publicly settled. This makes for a cacophony of multiply incompatible claims of right leveled by each against each within the state of nature. This finds clear expression in Kant's discussion of conflicts in rights of possession:

> No one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint towards him. No one, therefore, need wait until he has learned by bitter experience of the other's contrary disposition; for what should bind him to wait till he has suffered a loss before he becomes prudent, when he can quite well perceive within himself the inclination of human beings generally to lord it over others as their masters . . . [therefore] one is authorized to use coercion against someone who already, by his nature, threatens him with coercion (§42).

Kant's point here may appear to be a recapitulation of a Hobbesian prisoners' dilemma, but that is not quite what is going on. For, Kant recognizes both a right to external freedom, i.e., a right to choose to live as one wishes in the state of nature and a right to coerce those who threaten that right to external freedom. Thus, the problem in the state of nature is that there are no *moral* prohibitions on others acting as they wish, which means that there is no moral prohibition on others acting in manners that limit the horizons of one's "life-options." It is therefore neither just a matter of the dark, greedy hearts of human beings leading people to attack one another nor just a matter of an epistemological

20. Immanuel Kant, "On the Proverb: 'That May Be True in Theory but is of No Practical Use'," in *Perpetual Peace and Other Essays on Politics, History and Morals*, trans. Ted Humphrey (Indianapolis, Ind.: Hackett, 1983), p. 79.

21. All citations in this section, unless otherwise noted, are from Immanuel Kant, *The Metaphysics of Morals*, trans. and ed. Mary Gregor (New York: Cambridge University Press, 1996). I will give just the section numbers unless otherwise necessary.

deficit regarding others' intentions leading people to fall into prisoners' dilemmas. Rather, "each has a right to do *what seems right and good to it* and not to be dependent upon another's opinion about this" (§44). The problem, then, is that there are radically conflicting *moral* claims, not deficiencies in human nature.

This becomes especially problematic because we cannot avoid interacting with one another and therefore we cannot avoid entering into situations in which we will be in *moral conflict* and not just physical conflict with one another. Although the state of nature may not be as awful as a Hobbesian state of war, it will be, in Kant's words, "devoid of justice" since "there would be no judge competent to render a verdict having rightful force" (§44). For, all disputes would be subject to the private will of some individual agent, whether or not that individual is party to the initial conflicting claims of right. Importantly, however, Kant rejects even Lockean common judges and his own famous Universalizability Test for moral duty as sufficient for *morally* securing equal domains of external freedom. Absent some public, shared system of right—a system of rights (i) whose contents can be known by all and (ii) whose enforcement is institutionalized such that people can reasonably be expected to conform with them—there is only the *private* right of the each to enforce his will, which amounts to the *private* right of the stronger to enforce his will. People who find themselves subject to such a shared system of right, though, live in a *juridical state* or in a *juridical condition*, which is condition in which "the free choice of each [accords] with the freedom of all" (§14). That is, the only way for there to be any right other than private right, Kant concludes, is to establish a state governed by laws—a juridical state—that, through a system of laws, restricts the freedom of all in the name of the freedom of all.[22]

So, according to Kant, the sovereign resolves the moral peril of the state of nature by setting itself up as the ultimate, absolute and public

22. Kant writes:

> *Right* is the limitation of each person's freedom so that it is compatible with the freedom of everyone, insofar as this is possible in accord with a universal law; and *public right* is the totality of external laws that makes such a thoroughgoing compatibility possible (In Immanuel Kant, "On the Proverb: 'That May Be True in Theory but is of No Practical Use," p. 72).

On the basis of this, Kant concludes that "each may impel the other by force to leave this state and enter into a rightful condition. . . ." (*Metaphysics of Morals*, §44).

arbiter of right. Revolution is therefore distinctively problematic since revolutionaries claim a particularistic exception to the sovereign's authority to speak and judge for all. For, pursuing revolution amounts to the elevation of each individual's private judgment to the level of public right. Yet that would just dissolve the very condition—the juridical condition—that establishes publicly recognizable rights in the first place! Kant therefore argues that "to permit any resistance to this absolute power [of the state] (resistance that would limit that supreme power) would be self-contradictory; for then this supreme power (which may be resisted) would not be the lawful supreme power which first determines what is to be publicly right or not. . . ." (6:372). In short, if each subject (or any group of subjects) has a standing liberty-right to engage in revolutionary activity, then "each has a right to do *what seems right and good to it*." But, this just annihilates the very juridical condition that was supposed to establish and enforce rights, i.e., it would put everyone back into "a state devoid of justice" (§44). Consequently, "a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority" (6:320).[23]

(2) Reflections on the Kantian Rejection of Revolution. Upon reflection, we can see that Kant's objection to revolution is fundamentally that there cannot be a *legal* right to revolution. For, if legislation by political authorities is the only way to generate rights populating the juridical condition that allows us to escape both the mortal and the moral peril of the state of nature, which, in turn, is a necessary condition for respectful, noncoercive coexistence, then legislation is the only possible source of a meaningful right to revolution. That is, if there is to be a right to revolution worth the name, then it must be a *legal* right to revolution. But, revolution necessarily destroys the legal order. So, a legal right to revolution amounts to a legal right to reject the juridical order whenever one

23. One need not endorse Kant's blanket rejection of revolution to recognize the significance of his point about the role of political authorities in establishing a valuable form of order. For example, Nagel, in "The Problem of Global Justice," writes, in both an endorsement and recapitulation of Kant's views on the importance of the state, that

> . . . all humans have to create and support a state of some kind—to leave and stay out of the state of nature. It is not an obligation to all other persons, in fact it has no clear boundaries; it is merely an obligation to create the conditions of peace and a legal order, with whatever community offers itself. This requirement is based . . . on the importance of securing basic rights (p. 133).

chooses. But, that would be a self-undermining right since the ground of the authority of such a legal right to revolution is the authority of the legal order and it is that very authority one rejects (and ultimately destroys) through revolution. So, for the Kantian, there is no *moral* right to revolution because there cannot be a *legal* right to revolution.[24]

I find this formulation of the Kantian position to be quite compelling. In fact, this line of argument need not be viewed as distinctively Kantian, as we can divine a similar view in David Hume's discussion of the emergence of the artificial virtues in Book Three of the *Treatise of Human Nature*: the right to property, the power to transfer, and the power to contract are constituted by conventional social norms, and so, in a sense, are like the rights established by a Kantian juridical order because they depend for their existence on stable social practices.[25] It is no big leap to conclude that for a Humean the *right* to destroy the state would also depend upon certain sociopolitical structures, and so that a right to destroy these structures would be self-undermining and therefore incoherent.[26]

This suggests that perhaps at the core of even the consequentialist objection to revolution are Kantian-like insights about both the roles that juridical orders and the sovereigns that establish and support these orders play in our lives and the ways in which revolutions disrupt these systems. These juridical orders are the sources of the rights in whose names we coerce others, and in whose names we submit to the force others exert on us. That is, these juridical orders constitute a public moral order that has a deep and distinctive value (although Kantians and consequentialists might disagree about the *source* of this value). Thus, the moral worry that is *distinctive to revolution* for *both* Kantians and consequentialists may boil down to the fact revolution is a direct attack

24. This argument therefore does not depend upon acceptance of the Kantian injunctions to establish juridical systems, nor does it depend upon accepting that a brutal tyranny could function as such a system.

25. See Hume, *Treatise of Human Nature*, Book 3, part 2, sections 1–5.

26. We can see it in Thucydides, as well, who, in his discussion of domestic revolution, reminds us how

> . . . men too often take upon themselves in the prosecution of their revenge to set the example of doing away with these general laws to which all alike can look for salvation in adversity, instead of allowing them to subsist against the day of danger when their aid may be required (Thucydides, *The History of the Peloponnesian War*, trans. Rex Warner [New York: Penguin Classics, 1954], III.84.2).

on the very sovereigns who establish and maintain juridical orders. In particular, that revolution aims to destroy and thereby expresses a practical rejection of the source of the very rights in whose name the revolution is waged.

Thus, if we can show that there can be a *legal* right to revolution and that exercising such a right would not destroy the juridical condition that is so valuable, then we can resolve many of the deepest moral worries that are distinctive to the question of the permissibility of revolution. This is not to say that other serious moral worries about coercion and violence might remain. These worries apply in a wide range of related cases, such as political authority, punishment, and war, and so are not distinctive to revolution. In short, the primary task in any defense of revolution must be to answer the moral worries that are *distinctive* to revolution. Turning to these more general worries makes sense only if we can achieve this primary goal.

So, in order to achieve this goal of answering the moral objections that are *distinctive* to revolution, we must show how the destruction of a national sovereign through revolution would not destroy a basic framework of a juridical order, i.e., a sovereign that can both sustain a public moral order *and* legislate a right to revolution. This seems paradoxical, but if we take an extended look at sovereignty itself, we find that a legal right to revolution is not incoherent at all.

II. DECENTRALIZED GLOBAL SOVEREIGNTY AND A LEGAL RIGHT TO REVOLUTION

A. Summary

In Section I show how two sovereigns can simultaneously govern the same community, and that one sovereign can coherently authorize a legal right to revolution, thereby eliminating the core worry about how a right to revolution is self-undermining. In particular, I propose the following model: a decentralized global sovereign and a traditional centralized national sovereign simultaneously governing the same population, with the decentralized global sovereign authorizing a legal right to revolution against the national sovereign.[27] Thus, much of this section is a

27. Furthermore, it is worth noting that the legitimate exercise of this legal right to revolution would, because revolutions are public spectacles, amount to a spectacular

discussion of a decentralized model of sovereignty and a sketch of a model of a decentralized global sovereign. Once this is completed, we will have the resources available for a renewed look at the moral problem posed by revolution.

This is not the only solution to the Kantian worry canvassed above. For, there can also be multiple decentralized sovereigns simultaneously governing a population (as was perhaps the case during the Feudal period in Europe). However, given the fact that national sovereigns are not likely to disappear any time soon, and given the fact that global institutions are both emerging and claiming some forms of sovereignty, it seems worthwhile to follow these historical developments and develop a philosophical model of a decentralized *global* sovereignty that can exist concurrently with traditional centralized *national* sovereigns in order to respond to the distinctive moral worries associated with revolution.[28] The puzzle that drives this section, then, is serious conceptual challenge faced by this proposal. That puzzle, which I shall articulate at greater length below, is, quite simply, that the existence of a global sovereign is inconsistent with the existence of national sovereigns. Dissolving this puzzle, I believe, will clear the way for my proposed resolution of the distinctive moral worries faced by revolution.[29]

B. A Global Sovereign

(1) Sovereignty and Political Authority. According to many significant early modern social contract theorists (Hobbes, Locke, Hume, and Kant, to name four prominent cases), a fundamental problem faced by indi-

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endorsement of the legal authority of certain political institutions by the revolutionaries. That is, if my arguments succeed, then, a legal right to revolution would not only be possible, but its exercise would be a spectacular *affirmation* of the juridical order.

28. For more on a Kantian approach to an international legal order, see Jürgen Habermas, "Kant's Idea of a Perpetual Peace: At Two Hundred Years Historical Remove," in Jürgen Habermas, *The Inclusion of the Other*, ed. Ciaran Cronin and Pablo De Greiff (Cambridge, Mass.: MIT Press, 2000), pp. 165–201.

29. Would two parallel *national* sovereigns resolve this distinctive moral worry? No. For, two parallel national sovereigns would be competitors for authority and therefore would not simultaneously hold authority. This would then precipitate a political crisis that could be resolved only by eliminating one of the purported sovereigns (the great Papal Schism between Avignon and Rome is a case of parallel sovereigns that generated a political crisis of this sort), and this would allow the Kantian objection to regain its purchase. I thank an Editor of *Philosophy & Pubic Affairs* for urging me to address this question.

viduals in the state of nature is the lack of intersubjective agreement about (both or either) the good and/or the right and(/or) about the application (and enforcement) of determinations of the right. This lack of agreement, whether due to epistemological deficits, natural partiality, or the simple absence of an objective juridical order positing rights and duties about which there even could be agreement (and, in some cases, coherent *disagreement*), coupled with an assumption about the natural freedom of individuals to make judgments for themselves about the good and/or the right generates the conditions of disorder and moral peril that a sovereign is supposed to resolve. In fact, many argued that instituting a sovereign that produces publicly recognizable and accessible rules governing individuals' daily lives and their interactions with one another is the only way to facilitate intersubjective agreement about how to live. Such intersubjective agreement is, in turn, a necessary condition for (or, in some cases, partially constitutes) positive values such as (i) any (as Hobbes and Bentham thought) or almost all (as Hume and Adam Smith thought) valuable cooperatively generated surpluses; or (ii) a morally righteous existence (as Kant thought); or (iii) both (as Locke seemed to think).[30] Thus, the sovereign is understood *functionally*, i.e., as playing a certain role in people's lives. Further, it is in virtue of the importance of this role that sovereignty *in general* (as opposed to the sovereign around here) is often justified in the face of each individual's presumptive natural right to liberty.[31]

This strongly suggests that conceiving of sovereignty merely in terms of a monopoly of raw power over a territory fails to capture the core features of sovereignty. We should instead conceive of sovereignty in terms of the authority to provide, through legislation, public practical guidance for certain domain of persons on a range of matters. If one believes that this authority must be de facto authority and not just de jure authority, then it may be (although it is hardly necessarily) the case

30. Locke argued that establishing a state is a necessary condition for living in accordance with the Law of Nature since partiality is a natural human trait that carries all of us to act contrary to the Law of Nature. The state, by promulgating and enforcing positive law that is presumably in accordance with the Law of Nature thereby facilitates a morally "safe" existence as well as facilitates the production of valuable cooperatively generated surpluses.

31. For more on the distinction between the justification of political authority in general and the legitimacy of a particular political authority, see A. John Simmons, "Justification and Legitimacy," pp. 122–57.

that a monopoly of raw power over a territory is a requirement for sovereignty. But, this would just be a contingent requirement on the existence of a sovereign and not part of the concept of sovereignty. On this view, then, human (as opposed to God's) sovereignty is, for all intents and purposes, identical with political authority.[32]

This quite sketchy account, which obviously leaves out a great deal, suggests that a global sovereign would simply be a global political authority. So, even if there is no president or prime minister of the world, or no single world legislature, or no single world supreme court, the existence of a global political authority *of some sort* (e.g., a decentralized political authority, as I shall argue below) would be sufficient for the existence of a global sovereign.[33]

(2) A Conceptual Challenge. Turning now to the conceptual problem mentioned above. As already noted, my strategy is to argue that there could be a global sovereign existing simultaneously with national sovereigns and that this global sovereign could legislate a liberty-right to engage in revolution. Such a global sovereign would embody a juridical order parallel to the juridical order established by the national state. This, in turn, would allow revolutionaries to escape the force of what I shall call the *Kantian objection* to revolution, but which I have urged can be treated as the basic objection to revolution regardless of whether one accepts the whole of Kantian moral and political theory. The conceptual threat faced by this response to the Kantian objection is that it seems that instituting a global sovereign would destroy all traditional national sovereigns. Consequently, there could be no revolution against national sovereigns, since such sovereigns would no longer exist, and the familiar Kantian objection would apply to revolution against sole remaining sovereign, namely the global sovereign.

This objection rests on the following argument. (1) If there were a global sovereign then all national sovereigns would be subject to the governance of the global sovereign. (2) But, if one sovereign is subject to

32. For more on authority, see Joseph Raz, *The Morality of Freedom* (New York: Oxford University Press, 1986), and see his recent restatement Joseph Raz, "The Problem of Authority: Revisiting the Service Conception," *Minnesota Law Review* 90 (2005): 1003–44.

33. For the sake of space, I leave aside a conceptual objection, based upon the impossibility of exit from a global sovereign, to very possibility of a legitimate global sovereign. For what it is worth, I do not think that this is a serious objection—or at least I think that it is an objection faced by all national sovereigns as well.

the governance of another, then it is not a sovereign at all. (3) So, a global sovereign cannot exist concurrently with national sovereigns.

The next section of this article is devoted to showing how the plausibility of premises (1) and (2) rests on an overly simplistic conception of sovereignty. I do this by articulating what I call *the political conception of decentralized global sovereignty* that I contrast with traditional centralized national sovereignty. I then show how a politically decentralized global sovereign does not render all centralized national sovereigns subject to its governance in a way that eliminates the sovereignty of centralized national sovereigns.

C. A Decentralized Global Sovereign

This section contains four parts: (1) the introduction of the concept of decentralization; (2) the articulation a conception of decentralized sovereignty, namely the political conception of decentralized sovereignty; (3) the development of a political conception of a decentralized *global* sovereign; and (4) an argument showing how a decentralized global sovereign is co-realizable with centralized national sovereigns.

(1) Decentralization. Among political scientists, economists, management theorists, and government- and nongovernment agencies, decentralization is understood largely as a form of devolution of control from the national or corporate level to the local level.[34] This is not a sufficiently general characterization of decentralization, though, since the concept of decentralization is also quite commonly used among network theorists to refer to a specific architecture of networks for which the concepts of the national, the corporate, or the geographically local are not apt.[35] I therefore offer in this section a suitably general explication of the concept of decentralization, which I will then articulate below in Section II.c.2 into a conception of decentralized sovereignty.

Let us begin by contrasting the centralized with the decentralized. That which is centralized is, paradigmatically, rigidly hierarchical. We can represent this as a pyramid with an ultimate authority at the topmost

34. For an overview of these uses, see *The Architecture of Government: Rethinking Political Decentralization*, ed. Daniel Treisman (New York: Cambridge University Press, 2007).

35. For more, see Alexander Galloway, *Protocol: Or How Control Exists After Decentralization* (Cambridge, Mass.: MIT Press, 2004).

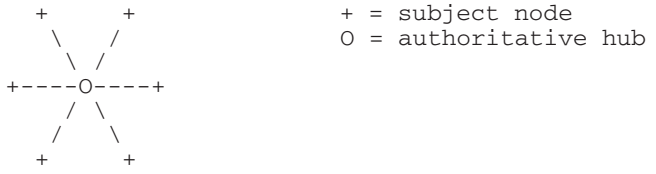

FIGURE 1. Centralization

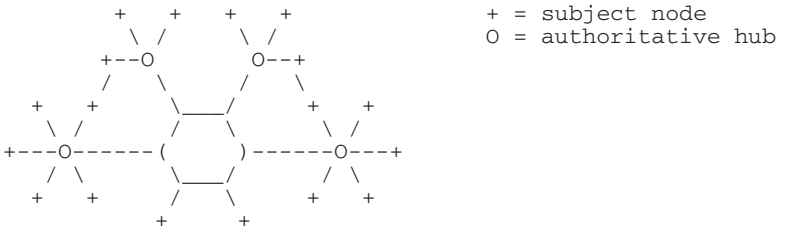

FIGURE 2. Decentralization

point or as a wheel with the ultimate authority at a central, infinitely strong hub. Where there is decentralization, on the other hand, instead of a single authoritative position located at the top of a pyramidical hierarchy or at the center of a sprawling institution, there are many authoritative loci (many "hubs"), each governing its own domain of practical matters (its "nodes"). That is, there is no "zenith point" that ultimately has authority over every other hub and, ipso facto, every node. Thus, decentralized sovereignty is "polyarchical" in the sense that there is no single hierarchy that encompasses the entire political order, but instead there are a series of related hierarchies. A useful metaphor that has been employed before is that between a tree (which is hierarchical, with a central trunk from which there are many branches) and a rhizome (which is decentralized, being a root system with no single trunk root).[36] See Figs. 1 and 2 for graphical representations of centralization and decentralization.

It would be useful here to reflect on two examples of decentralization.[37]

36. Strictly speaking, the rhizome is a distributed network, but I shall, for the purposes of this article, put aside the distinction between decentralized and distributed networks.

37. These figures are reconstructions of figures found in Galloway, *Protocol*, p. 25.

First, one of the most ubiquitous realizations of decentralization is the global communication system, the Internet.[38] There is no topmost hub from which emanates all commands governing the transfer of data between nodes (e.g., individual laptops) over the Internet. Rather, there are multiple hubs—servers—governing the transfer of data from one laptop to another over the Internet. Each server therefore effectively operates independently of every other server, except in cases in which two servers must interact, when independence must be subordinated to coordination, although once again this coordination is not achieved via a command issued by a higher-level hub but instead via bilateral 'negotiation' governed by shared protocols.

A second form of decentralization is that form of decentralization so vehemently defended by F. A. Hayek, namely *economic* decentralization, which is characterized by privatization and deregulation of markets.[39] Economic decentralization replaces centralized governance of production and prices with governance by aggregation of individual choice with respect to production and prices. In a centralized economy, a univocal authority dictates what, how much, and how to produce, as well as what, how much, and at what price to sell that which is produced (if selling is permitted). In a decentralized economy, on the other hand, informational feedback loops, usually gathered in economic *hubs* like the U.S. Stock Exchange or the U.S. Commodities Exchange, determine prices. These prices are publicly accessible, authoritative points of practical significance that in turn shape behavior by individual producers and consumers (i.e., economic *nodes*). For example, the price of a commodity on an exchange market is publicly accessible information that can resolve many of the same problems sovereigns are meant to resolve, but in this case without a centralized authoritative political body imposing or restricting the price.

(2) Decentralized Sovereignty: Political not Physical.[40] Recall that for the purposes of this article, a sovereign is an institution with political authority. Thus, following the paradigm introduced above, a common way of understanding decentralized sovereignty is in terms of devolution

38. Actually, the Internet is largely a distributed network, but for the purposes of this article I shall ignore the distinction between distributed and decentralized networks.

39. See, e.g., F. A. Hayek, "The Use of Knowledge in Society," *American Economic Review* 35 (1945): 519–30.

40. I owe this turn of phrase to Andrew March.

of legal or political authority from a national body to a local body. This is usually articulated in terms of a distinction between a larger physical territory and a smaller physical territory fully incorporated within the larger territory. Thus, the hubs and nodes of sovereignty are understood such that decentralization is accomplished quite literally via a *geographical redistribution* of authority.[41] In this way, both decentralized sovereignty and centralized sovereignty are cashed out in terms of a binary relationship between the geographically local (or the geographically smaller) sovereign and the geographically national sovereign (or the sovereign over a geographically larger area that physically incorporates all of the smaller area).[42] Geographically local elections of officials, geographically local control of resources, geographically local decision making, and so forth, are all ways to realize this form of decentralized sovereignty. On the other hand, appointment of officials, apportionment of resources, and policy making controlled by a body that has authority over the entire geographical territory are ways to realize centralized sovereignty. Let us call the form of decentralized sovereignty under discussion here the *physical conception of decentralized sovereignty* (and the correlative form of centralized sovereignty to physical conception of centralized sovereignty).[43]

41. See, e.g., *The Architecture of Government: Rethinking Political Decentralization*, ed. Daniel Treisman, pp. 21–27; Kathleen O'Neill, *Decentralizing the State: Elections, Parties and Local Power in the Andes* (New York: Cambridge University Press, 2005); Jonathan Rodden, "Comparative Federalism and Decentralization: On Meaning and Measurement," *Comparative Politics* 26 (2004): 481–500; *Decentralization, Democratic Governance in Comparative Perspective*, ed. Philip Oxhorn, Joseph C. Tulchin, and Andrew D. Selee (Washington, D.C.: Woodrow Wilson Center Press, 2004). See also Robert Dahl's classic work on federalism, which many treat as one canonical statement on decentralization. Dahl defines federalism as "a system in which some matters are exclusively *within* the competence of certain local units—cantons, states, provinces—and are constitutionally *beyond* the scope of the authority of the national government; and where certain other matters are constitutionally outside the scope of the authority of the smaller units" (Robert Dahl, "Federalism and the Democratic Process," reprinted in Robert Dahl, *Democracy, Liberty, and Equality* [New York: Norwegian University Press, 1986], pp. 114–26, italics in the original at p. 114).

42. I shall put aside corporate decentralization, where the local-national binary relationship is not altogether apt, but instead something more like the local-corporate headquarters binary relationship applies.

43. Importantly, it is consistent with the physical conception of decentralized sovereignty for the subnational units to which authority is devolved to have the authority to decide almost every political question for the subjects in that region. For example, just

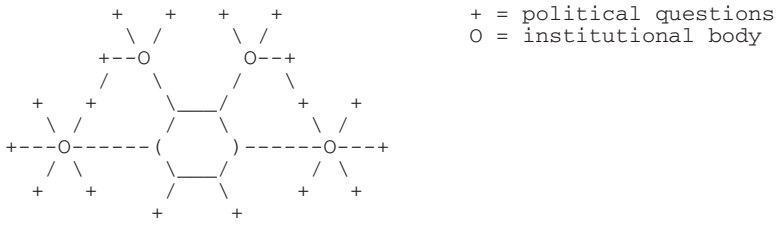

FIGURE 3. Political Conception of Decentralized Sovereignty

This is not the sole way in which to understand decentralized sovereignty. In what follows, I propose a form of decentralized sovereignty that meets the criteria of decentralization introduced in the previous section but that does not require geographical redistribution of authority. Instead, sovereignty can be decentralized through the redistribution of *the domains of practical questions* over which institutions have authority.[44] Since I am concerned with practical deliberation about political questions, let us call this form of decentralized sovereignty the *political conception of decentralized sovereignty* (See Fig. 3).[45] On the political conception of decentralized sovereignty, a single group of individuals is governed by multiple, largely autonomous institutions, each of which has the authority to decide matters with respect to highly restricted, generally non-overlapping domains of political questions.[46] In

this kind of decentralized sovereignty existed in the United States immediately after its founding (i.e., under both the Articles of Confederation and during the early years of the Constitution).

44. Bruno S. Frey and Reiner Eichenberger have proposed a similar model of sovereignty for the European Union, which they call Functional Overlapping Competing Jurisdictions (FOCJ). See Bruno Frey and Reiner Eichenberger, "FOCJ: Competitive Governments for Europe," *International Review of Law and Economics* 16 (1996): 315–27. I thank an Editor of *Philosophy & Public Affairs* for alerting me to this literature. See also Saskia Sassen, *Losing Control?* (New York: Columbia University Press, 1996), chap. 1, esp. pp. 29–30. What separates my proposal from both Frey and Eichenberger's and Sassen's proposals is that I argue explicitly for the simultaneous realization of both centralized and decentralized sovereignty. They see these two as mutually incompatible.

45. This may be slightly confusing to those familiar with Treisman's use of the term "political decentralization" to describe a form of physically decentralized sovereignty. See Treisman, ed., *The Architecture of Government*, pp. 23ff. My terminological choice is meant to represent the deeper distinction between the physical and political that has heretofore gone largely unrecognized.

46. The institutions must be largely autonomous lest they all come under the governance of a single authority, thereby centralizing the institutions under a single authority.

this way, the problem that sovereignty (or political authority) is meant to solve, namely the lack of intersubjective agreement about the good and/or the right, is solved, although not by a political authority organized into a centralized hierarchy.

Whereas the physical conception of political decentralization involves the distribution of authority from a body that governs the entire physical territory to bodies that govern smaller subterritories, the political conception of political decentralization involves the distribution of authority from a single hierarchical institution that has the authority to decide all political questions to many institutions that have the authority to decide only a limited domain of questions. It is consistent with the political conception of political decentralization for these "sub-institutions" to have the authority to settle *for the entire population* whatever questions are in those institutions' limited domain of authority. That is, the institutions could have authority over all subjects (and so they share this feature with a centralized authority), but each would necessarily have authority only with respect to a limited domain of political questions.

The political conception of decentralized sovereignty faces (at least) the following two conceptual threats: the domain overlap threat and the unity threat. I shall discuss each in turn.

What would happen when there is domain overlap, i.e., when two institutions claim authority over the same political question? In such cases, there would be conflicts over which institution has authority to decide that question. Wouldn't resolution of this conflict require appeal to some higher authority, e.g., appeal to some kind of Hobbesian sovereign or a Lockean common judge, thereby bringing the two institutions under a single authority, and revealing that what was thought to be a form of decentralized sovereignty was in fact centralized sovereignty? This seems especially to be the case if there is overlap over particularly pressing political questions, i.e., the sorts of questions dispute over which makes the establishment of a political authority attractive in the first place. Surely in these instances, appeal to a higher-level authority is necessary lest the population subject to the decentralized sovereign fall into a state of war.

The domains of political questions over which the institutions have authority must be mostly nonoverlapping so that the multiple institutions do not collapse into a single institution, which would also thereby yield centralization.

The response to the domain overlap threat is twofold. First, there is no conceptual ground for requiring that the method of resolution of conflict over domain overlap involve appeal to some higher-level authority. Bilateral negotiation or default rules that are conventional in the Lewisean sense are just two possible ways in which domain conflict could be resolved without appeal to a higher-level authority.[47] This is especially the case when disputes spurred by domain overlap are embedded in broader social practices that constitute the institutional structures of the politically decentralized sovereign. Thus, domain overlap is not *in principle* an insurmountable hurdle for political decentralization.

Second, in cases where there is overlap with respect to particularly pressing *moral* questions, i.e., the kinds of questions that are behind traditional justifications for sovereignty, there is *still* no reason to suppose that a lack of resolution would generate either a Hobbesian or Kantian state of war. For, the problem is that there are two institutions to which agents in conflict may turn, i.e., the problem is that there are too many institutional alternatives for conflict resolution, *not* that there are competing institutions that can function, much less survive, only if one dominates the other. Thus, although domain overlap may generate a kind of rule shopping, where disputants seek to be governed by institutions whose governance over the shared domain is most conducive to their (i.e., the disputants') interests, such rule-shopping neither is a state of war nor is likely to generate a state of war. At worst, rule shopping is usually just a source of inefficiency. If conflict were to arise between individuals (and so threaten to generate state-of-war-like conditions), it would require subjects disagreeing among themselves about which institution to obey with respect to the overlapping domain. But, if in each case subjects agree about which institution governs their affairs, then even if subjects end up alternating between institutions on a case-by-case basis, domain overlap will not produce significant conflict.

On the other hand, persistent domain overlap *without* agreement by parties about which institution to which they ought to submit their disagreement for resolution may generate a crisis in which all overlapping institutions lose competency with respect to the overlapping domain. This would be a crisis only with respect to the questions in the

47. See David Lewis, *Convention* (Cambridge, Mass.: Harvard University Press, 1969).

overlapping domain, however. There is no reason to *presume* that this crisis in competency would always metastasize into comprehensive crises infecting the entirety of every institution involved in the domain overlap, much less that the crisis in competency would metastasize to infect the entire decentralized sovereign (although if crises of these sort accrue, then some systemic failure may be in the offing). So, the problem of overlapping domains is not quite the serious threat it at first appeared to be.

Turning now to the unity threat: what unifies these institutions into a single, albeit decentralized sovereign? On its face, what unites these institutions is the body of subjects they claim to govern. That is, although decentralized, the sovereign nonetheless is sovereign over a single body politic. But, this seems to be too cheap a form of unity if it is unity at all. What seems necessary for unity worth the name is some kind of systematization of all the institutions. Fortunately, in the case of the political conception of a decentralized *global* sovereign (which is the kind of sovereign we are here concerned with anyway), there is another available manner of systematization that facilitates integration of the disparate and heterogeneous institutions of a politically decentralized sovereign, namely a consensus commitment to a juridical human rights regime as constitutive regulative norms.

(3) The Decentralized Global Sovereign and the Juridical Human Rights Regime. Before turning to the role of human rights in the decentralized global sovereign, let us first consider what institutions might constitute a politically decentralized global sovereign.[48] Such institutions must be literally global in their aims (i.e., they aim to have authority over the entire globe), each must claim authority over restricted domains of political questions that do not excessively overlap (so that they are decentralized), and they must somehow be unified into a single sovereign.[49] There are many institutions that are good candidates for constitutive members of the decentralized global sovereign. The most prominent is, of course, the United Nations (UN). But, the World Trade

48. From here on out, when I talk of decentralization, I am talking of the political conception of decentralized sovereignty, except where obviously noted.

49. The theory of a decentralized global sovereign here is radically distinct from Anne-Marie Slaughter's conception of disaggregated sovereignty, which leaves no room for traditional centralized national sovereigns. See Anne-Marie Slaughter, *A New World Order* (Princeton, N.J.: Princeton University Press, 2004), pp. 266–71.

Organization (WTO), the World Health Organization (WHO), the International Court of Justice (ICJ), the International Criminal Court (ICC), the International Labor Organization (ILO), the International Organization for Standardization (ISO), the International Corporation for Assigned Names and Numbers (ICANN), and the Organization for Economic Cooperation and Development (OECD) and its independent partners, the Trade Union Advisory Committee (TUAC) and the Business Industry Advisory Committee (BIAC) are all candidate global institutions.[50] Some of these institutions are public (e.g., the UN), some are hybrid public-private (e.g., the ISO), and some are private nongovernmental organizations (e.g., ICANN).

Turning now to the unity threat: why not treat each of these institutions as one institution governing some domain of political questions utterly distinct from all other similar institutions instead of as one element of single, unified decentralized global sovereign?[51] That is: isn't my proposal really a proposal for the disintegration of sovereignty and not the decentralization of sovereignty? My proposal is that what could unite these institutions into a single decentralized global sovereign—or at least the most important necessary condition for unification into a single decentralized sovereign—is that each institution commits to a common legal framework of the right kind. The relevant existing legal framework (although other possible legal frameworks could surely do the job) is the global legal human rights regime. To be clear: My claim is not that there *is* a decentralized global sovereign, but only that given a group of international institutions of the sort I have described, if they all commit, in a certain way, to the global legal human rights regime, then we would have a decentralized global sovereign.[52] In what way would they have to commit?

50. Additional candidate institutions include the Basle Committee, the Codex Alimentarius Commission, the International Standards Association, the Atomic Energy Agency, the Financial Action Task Force, the International Olympic Committee, the World Anti-Doping Agency, and the International Court of Arbitration for Sport.

51. My aim to show how there can be a *single* decentralized global sovereign separates the conception of decentralized sovereignty articulated here form Frey and Eichenberger's FOCJ conception of decentralized sovereignty, which is a theory of overlapping by *distinct* sovereigns. See Frey and Eichenberger, "FOCJ: Competitive Governments for Europe."

52. There are defenses of the positive claim that an international legal order exists (and that it governs largely through issuing administrative regulations and not through treaties). Such claims strongly suggest that my account of a decentralized global sovereign is not a

In order to answer this question, and to provide a more general answer to the question of what brings unity to the politically decentralized sovereign, let us once again consider the Internet as an instructive example. The Internet is a highly decentralized network composed of autonomous servers, personal computers, and cellular telephones (to name a few forms of hardware). These machines run on quite different and often mutually incompatible operating systems. Yet these machines and their operating systems are nonetheless successfully unified by a single decentralized system. What facilitates this unification? What facilitates the unification of a widely disparate number of computers into a single decentralized network is that every computer's operating system—every computer's "constitution"[53]—recognizes at least one shared set of norms as authoritative. This shared set of norms is TCP/IP, i.e., transmission control protocol/internet protocol that governs interoperating-system communication worldwide. Thus, in virtue of every computer recognizing the authority of TCP/IP, the highly decentralized but unified network of the Internet is realized.

The same can apply to the international order. If each relevant international institution recognizes the same particular system of norms as authoritative, and in particular recognizes the system as among its constitutive regulative norms (i.e., as among the norms that play a constitutively central role in regulating the operation of the institution), then the heterogeneous and disparate institutions will be organized into a single decentralized network. The most plausible system of norms that can do this work is the system of norms composing the human rights regime, largely because of both its claim to universality and its focus on the individual. The universality of the human rights norms makes them ideally suited for unifying institutions into a *global* sovereign, and the fact that the rights are *individual* rights, focuses, as a

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mere conceptual possibility but may currently exist. See Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, "The Emergence of Global Administrative Law," *Law and Contemporary Problems* 68 (2005): 15–61. For an in-depth discussion of examples of global administrative law at work, see James Salzman, "Decentralized Administrative Law in the Organization for Economic Cooperation and Development," *Law and Contemporary Problems* 68 (2004): 189–224.

53. This is an imperfect analogy since the true "constitution" of a computer is written directly into its physical hardware. There is no felicitous analogue to that in a human institution.

constitutive matter, the attention of the global institutions at least some of the time on the individual as opposed to a focus on states or other corporate bodies.

So what is the global legal human rights regime? This is a highly contested question. But, at its core, the global legal human rights regime involves (a) a juridical conception of the individual (b) as source of valid claims against other individual and corporate agents (c) regardless of the *verbally expressed* political commitments of the nation-state to which that individual happens to be subject. The claim I am making, then, is that if all elements of the international legal order, to some degree or another, take this legal doctrine of human rights as a shared normative framework, then, even if they differ on many other matters, all these institutional elements would be unified into a single decentralized network by a core human rights protocol.[54]

I focus on this particular juridical system of human rights as a candidate system of norms that could unify the disparate collection of institutions listed above because it is so widely recognized and has a history stretching back to the foundational documents of the post-World War II global order, which are among the closest things that has ever existed to global texts. In particular, the UN Declaration of Human Rights and the International Labor Standards Agreements (the ILSAs) governing the World Trade Organization have established publicly accessible fixed points of legal and political doctrine to which all parties worldwide can appeal in place of their own subjective judgments of right.[55] In sum, then, all these institutions, although governing different domains of political questions, although operating in structurally quite heterogeneous ways, and although usually autonomous from one another, could nonetheless be united together into a single decentralized global sovereign (at least partially) in virtue of each of them being committed to this single set of norms as constitutively regulative norms.

54. A defense of treating the rights established by international human rights regime as protocols (or pledges) governing the operation of states is found in Lea Brilmayer, "From 'Contract' to 'Pledge': The Structure of International Human Rights Agreements," *British Year Book of International Law* 77 (2007): 163–202.

55. For a discussion of how the WTO incorporates the legal human rights regime into its constitutive operations, see Gabrielle Marceau, "WTO Dispute Settlement and Human Rights," 13 *European Journal of International Law* 4 (2002): 253–314.

(4) How a Decentralized Global Sovereign is Consistent with National Sovereigns.[56] While many have defended physical decentralization of sovereignty, it is always proposed as the *preferred alternative* to the physically centralized sovereign. But, my account of a *politically* decentralized *global* sovereign does not require this choice when the contrast is with *physically* centralized *national* sovereigns. For, the politically decentralized global sovereign is in fact co-realizable with physically centralized national sovereigns.

To see why, we need only see that in order to demonstrate a fatal conceptual tension between national sovereigns and a decentralized global sovereign, one would need to demonstrate, at the very least, that the establishment of a decentralized global sovereign necessarily generates paradigmatic cases of gross violations of the sovereignty of a national state. One paradigm case is violent coercion of a state by institutions that are external to that state. Would a decentralized global sovereign function in this manner, though? At the very least, if any state voluntarily committed itself to governance by certain international norms (e.g., suppose the state commits itself to governance by IAEA norms governing the production of nuclear energy, or suppose a state agrees to admit all persons who have received refugee status from the UNHCR), and then proceeded to self-enforce these norms, there is no reason to suppose that the sovereignty of the state had been compromised (since both the adoption and the enforcement of the norms are autonomous actions of the state—the only thing that came from without is the *content* of some of the norms by which the state governs itself). We can conclude that so long as enforcement of many of the norms produced by the global sovereign is left to traditional national sovereigns or their agents (including international agents that have been authorized by the national sovereigns), as is almost always the case when it comes to trade deals, economic development, and the setting of international standards, at least one source of incompatibility

56. The arguments in this section further separate the view expressed in this article from the positions defended by the English "pluralists" like John Figgis and and Harold Laski who were opposed to highly centralized sovereignty. My view is explicitly formulated in order to create conceptual space for both a legitimate centralized sovereign and a legitimate global sovereign.

between a decentralized global sovereign and national sovereigns has been neutralized.[57]

Another reason why a politically decentralized global sovereign is co-realizable with national states is that the political "territory" governed by global decentralized sovereigns is determined by the extent of the domains of political questions governed by the institutions that constitute the global sovereign. If these domains are limited enough, then there is ample political space in the interstices between these domains for robust national sovereigns understood on the traditional model of physically centralized sovereignty. For example, there is no reason to suppose that the entire property regime, the entire criminal justice system, or the entire system of private law in every state would be settled by the institutions of the global sovereign. Vast, vast political domains would remain within the authority of the traditional state.

What would need to be shown, then, is that *any* encroachment on one of these domains of political questions is incompatible with national sovereignty. But, short of simply defining national sovereignty in such a way as to rule out such encroachment (and thereby begging the question), it is quite difficult to identify (or sustain) strong conceptual grounds motivating this position. To illustrate this point, consider the analogous case of the person.[58] A person's autonomy is not *entirely eliminated* if she recognizes the authority of another person to make, regarding a restricted domain of issues, decisions upon her behalf.[59] Rather, she has merely compromised her autonomy with respect to a restricted domain of affairs (and this could even be in the service of *extending* her capacity to make decisions for herself with respect to other, weightier issues). Similarly, a state's sovereignty is not *entirely*

57. International lawyers recognize two forms of legal rules that can be issued by international institutions: "hard law" and "soft law." There is not space to recapitulate fully the distinction, although it is sufficient to note that soft law involves the issuing of regulations that are either limited in the obligations imposed or limited in the precision of the regulations or delegate interpretation and enforcement to traditional national state actors (this is not an exclusive disjunction). For an overview, see Kenneth W. Abbott and Duncan Snidal, "Hard Law and Soft Law in International Governance," *International Governance* 54 (2000): 421–56. The examples in Salzman, "Decentralized Administrative Law in the Organization for Economic Cooperation and Development" are examples of international "soft law."

58. Here I employ a strategy Michael Walzer famously called the "domestic analogy" in Michael Walzer, *Just and Unjust Wars*, 3d ed. (New York: Basic Books, 2000).

59. *Pace* R. P. Wolff, *In Defense of Anarchism* (New York: Harper and Row, 1970).

eliminated if it recognizes the authority of the institutions constituting the decentralized global sovereign to issue binding norms resolving many political questions.

This does reveal a tension: the more domains of political questions regulated by the decentralized global sovereign, the less space there is for traditional national sovereigns.[60] On the other hand, I have shown that a traditional national sovereign and a restricted decentralized global sovereign are co-realizable. Thus, I conclude that the simultaneous realization of decentralized global sovereign and national state sovereigns is not a conceptual impossibility.

D. A Legal Right to Revolution: The Kantian Worry Resolved

(1) Global Decentralized Sovereign as a Juridical Order. The global decentralized sovereign can be a source of the determinate, institutionalized rights that are the essential products of a juridical order in two ways: first, there are the norms associated with each institution concerning that institution's relevant domain of political questions (e.g., the OECD's standards governing laboratory and chemical safety tests); second, there is the international human rights regime, which governs all political questions. Many of the norms of the first sort may take the form of international law traditionally understood (namely law produced by treaty, i.e., contracts between states), and many may also take the form of administrative regulations, which can take the form of public articulations of legal rights, liberties, duties, and powers that individuals, substate collectivities, and states have against one another. These first sorts of norms merely administered (as in the case of treaties) or both produced and administered (as in the case of administrative regulations) by the global sovereign generate a patchwork system of rights. The second system of norms, the international human rights regime, because it is recognized as constitutively regulative by all component institutions of the global sovereign, is the *framework* of an international juridical order. No matter what the political question is, the human rights norms apply when deciding it. This could be manifested either, in the maximal case,

60. But, if the international sovereign becomes centralized, then the traditional centralized national sovereigns will cease to exist, since it will simply become a canton subject to the ultimate authority of the centralized global sovereign (i.e., national states will cease to be 'hubs' and instead become 'nodes').

in the decision procedures employed by the international institutions, such that, even when dealing with questions apparently unrelated to human rights—such as what the chemical safety standards should be—their deliberations would be governed by or, in the minimal case, the substance of decisions themselves would be consistent with the requirements of the human rights norms, even if the deliberations themselves did not reflect deep commitment to the human rights regime.

(2) A Legal Right to Revolution. A legal right to revolution could be established if all the institutions of the decentralized global sovereign recognized, along with the human rights norms, a norm granting a liberty-right to revolution against national state sovereigns that failed, in some relevantly significant way, to govern in a manner consistent with the human rights norms. This norm would be part of the global system of determinate rights legislated and institutionalized by the global sovereign. So, insofar as any norm that is an element of the global system is, the norm establishing the right to revolution would be a *legal* norm.

In this way, all individuals would have *a legal liberty-right [to attempt revolution if their national state fails to respect human rights that have been both explicitly articulated by and realized in the international legal order]*. The square brackets indicate the wide scope reading of the content of the liberty-right. The wide scope guarantees that although each person would have a liberty-right to revolution, its exercise would be constrained such that exercising the right requires being so unfortunate as to be subject to a regime systematically violating human rights.[61]

(3) Responding to the Kantian Objection. Recall that the hurdle that must be overcome in order to defend the claim that there could be a right to revolution is the Kantian worry that a right to revolution both would be self-undermining and would destroy a profoundly and uniquely valuable juridical order.

Since the authority of the decentralized global sovereign would neither be challenged nor destroyed in the case of a national revolution, the sole juridical order would not be destroyed. Instead, only one of two juridical orders governing the revolutionaries would be destroyed.

61. So far, I have not addressed the question of whether there could be a legal right to revolution against a decentralized global sovereign. It seems that there could be, although I haven't space to discuss this.

Furthermore, since the ground of the authority of the legal right to revolution is the authority of the decentralized global sovereign, and since this authority is not challenged in the revolution authorized by the legal right to revolution, the legal right to revolution described above is not self-undermining. This possibility could not be imagined by Kant, who had available only the traditional view of sovereignty as necessarily physically centralized. Thus, he naturally argued that a legal right to revolution is self-undermining since he could not conceive that there would be any difference between a legal right to revolution against the legislator of that right, and a legal right to revolution *tout court*. Our reflections about sovereignty have revealed, however, that sovereignty can be far more complex than a sole centralized political authority governing a determinate geographical territory. Our reflections about the moral status of the right to revolution ought to reflect that complexity.

It is worth now noting how revolution in the name of the rights guaranteed by the decentralized global sovereign not only does not express rejection of the rule of law, but in fact expresses *endorsement* of both the rule of law in general (and so is a rejection of the kind of anarchy that so exercised such Enlightenment social contract theorists as Hobbes and Kant), and at least one *existing* juridical order (i.e., the global legal order as realized in the juridical human rights regime and, in particular, the legal right to revolution). Furthermore, because revolutions are spectacles, a revolution that is loudly proclaimed as being in the name of the legal right to revolution articulated above (and the concomitant international juridical human rights regime) would amount to a spectacle of *law-abidingness*, i.e., a profound spectacle of commitment to the legal order embodied by the decentralized global sovereign. This line of argument, then, shows how a legal right to revolution not only would not threaten the collapse of the juridical condition, but might even *strengthen* a juridical order!

E. Two Objections

(1) The Loss of Right at the National Level Due to Revolution.[62] There are many rights not established by the global sovereign. For example, most

62. I thank an Editor of *Philosophy & Public Affairs* for urging me to address this point.

property rules are established locally and not globally. A revolution at the national level would eliminate the institutions grounding these rights. Would this, in turn, reinvigorate something in the spirit of the Kantian objection? It seems so: the possibility of an ethical coexistence does not depend upon being subject to just any system of rights, but upon being subject to a system of rights that has a certain domain (i.e., that resolves determinately certain practical questions). And, *ex hypothesi*, the domain of the rights institutionalized by the global sovereign does not resolve a vast number of crucial practical questions. So, the objection goes, either revolution would plunge people back into the moral peril of the state of nature, or the decentralized global sovereign would be so ambitious as to leave no room for a meaningful centralized national sovereign, thereby re-raising the specter of the conceptual challenge just dispatched.

This objection has great merit, although largely because it highlights a very deep question which, in turn, must be resolved in order for this objection to pose a serious threat to my line of argument. The deep question is the following: if the problem in the state of nature is that it is "devoid of justice," what is, to put it awkwardly, the minimum number of rights that must be institutionalized to put us in a minimally (morally) satisfactory juridical condition with respect to one another?

Actual public laws (that meet certain a priori standards of morality) are minimally necessary to fix the content of our rights. In particular, Kant argued that perhaps the most fundamental legislation by the sovereigns is legislation settling questions of property rights. But, here, the global sovereign is on solid ground: there is a fairly well articulated legal formulation of a doctrine of property rights in international law. In particular, some coarse-grained determinations about private property rights are fairly uniform throughout the global order. Of course, many of the more technical instruments of property law (such as easement and zoning regulations) are missing. It is not clear, however, that these instruments are necessary to escape the state of nature. Furthermore, as I argued above, a necessary condition for the unity of the decentralized global sovereign is the universal commitment to the juridical doctrine of human rights, which would get us a long way towards the specification of a determinate content of some quite basic ground floor rights, which is just the sort of thing that Kant believed was necessary in order to avoid the moral peril of the state of nature.

Therefore, so long as there is a sufficiently robust global juridical order guaranteeing both human rights and basic property rights, this objection loses much of its urgency.

(2) Is This an Effective Liberty-Right to Revolution? Even if one, in the end, agrees with the arguments presented in this article and concedes that a decentralized global sovereign is possible, and that such a sovereign is co-realizable with national sovereigns, and so that a legal right to revolution is a real possibility, one might still ask whether such a right would be useful. For, would-be revolutionaries face particularly severe collective action problems, especially if they are organizing a revolution against a brutal, totalitarian regime.[63] So, most attempts at exercising this legal right would end up a failure. This legal right to revolution is therefore an *ineffective* right and so neither philosophically interesting nor politically significant.

This objection has its merits, but it is not fatal. The mere existence of a legal right to revolution could serve as a disincentive to a despot seeking to oppress his or her subjects. So, even if the right is ineffective, it might at least have a salutary effect on the lives of people suffering under brutal dictators. This mitigates the charge that such a right is philosophically uninteresting and politically insignificant. This, though, is surely cold comfort for would-be revolutionaries whose attempts at exercising their right to revolution always end up clothed in bloodshed and failure. Furthermore, after decades of ineffectiveness, the right to revolution might eventually lose its deterrent effect.

But, this is not a concern that threatens my defense of a right to revolution. Rather, it simply raises a question of implementation: an effective legal right to revolution would have to be backed up by a network of global institutions on which revolutionaries could call if, after successfully making their case for exercising their right to revolution, they nonetheless face certain defeat at the hands of the oppressive national state against which they are revolting. That is, revolutionaries who successfully make their case on the world stage but who are thwarted or certain to be thwarted in their efforts at home would have to have some kind of *claim-right* to support from the international community in their struggle to overcome a vicious regime at home. Spelling out this tricky form of enforcement would require a substantial

63. For more on this, see Kavka, *Hobbesian Moral and Political Theory.*

amount of further discussion for which there isn't space here. Nonetheless, serious discussion about the enforcement by a decentralized global sovereign of a legal right to revolution would be a new project in political philosophy.