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CONTRASTING FRANCO-AMERICAN PERSPECTIVES ON SOVEREIGNTY

SOPHIE CLAVIER*

PART I

I. INTRODUCTION

The findings of this paper augment Keohane's argument¹ that sovereignty is a useful "conceptual lens" in the study of International Relations and that understanding divergent conceptions of sovereignty in Europe and in the United States is crucial to shedding light on the formulation of their respective policies. Indeed, the first goal of this paper is to expand on Keohane's premise and to address how France² and the United States understand sovereignty. The second goal is to argue that the current conflicting perspectives on sovereignty displayed by

* Assistant Professor of International Relations, San Francisco State University. This paper was presented at the Centennial Regional Meeting of the American Society of International Law (west) at Golden Gate University School of Law, in April 2006.

1. Robert O Keohane, *Ironies of Sovereignty: The European Union and the United States, in Integration, in AN EXPANDING EUROPEAN UNION: REASSESSING THE FUNDAMENTALS* 307-339 (Iain Begg, John Peterson & JHH Weiler, Eds., Blackwell Publishing 2003). Keohane is the architect of the so-called neoliberal institutionalism. His main argument is that sovereignty needs to be "unbundled" and understood beyond its classical and unitary perspective.

2. While much of the argument pertains to Western Europe and not only to France, the choice to focus on France stems from both historical and recent events: Historically, France and the United States have had intertwined political and philosophical foundations to the building of their democracies, after WWII France became the key architect of the European construction. France is also a permanent member of the Security Council and has vocally opposed the United States on the issue of the conflict in Iraq. Finally, both the United States and France believe they have a special moral role to play in the world.

France and the United States are a departure from a historical pattern whereby, at each key time period, challenges to the shared definition of sovereignty and of the world order it symbolized, came from non-dominant actors within or without the system in question. This paper posits that we are currently witnessing contradictions amongst the dominant actors. The third task of this article is to argue that the United States' current position on sovereignty, its meaning and its function, perpetuate a system that favors the use of force to resolve disputes. By contrast, the "multi-perspective" sovereignty espoused by France within the European context, could provide a new paradigm for a world order guaranteed by international rule of law and not by the use or the threat of the use of force. Finally, this paper concludes that these fundamental differences go beyond an academic debate and carry with them significant normative, economic, and political consequences that make diplomatic confrontations between the two countries unavoidable.

II. RESTATING THE ISSUE

Central to a systematic review of the concept of sovereignty are the following: first, the question of sovereignty, as it was made clear in the Lotus case,³ is one of allocation of authority: who has jurisdiction over what, and what are the mechanisms in place to protect this allocation? Some of the mechanisms are composed of explicit rules and more or less coercive methods of enforcement; other mechanisms are internalized by society in a discrete value system shaping behavior as well as explicit rules. It appears that at each key period of history, the meanings assigned to sovereignty have embodied that the discrete value element necessary to legitimize the explicit mechanisms put in place to preserve the allocation of authority among the main actors in the system. As such, sovereignty is concurrently both a normative concept and a practice. In the words of Samantha Besson:

As a normative concept, the concept of sovereignty expresses and incorporates one or many values that it seeks to implement in practice and according to which political situations should be evaluated [...] Concept determination amounts therefore to more than a mere description of the concept's core application criteria: it

3. S.S. Lotus (France v. Turkey), 1927 P.C.I.J. (Ser. A) No. 10.

*implies an evaluation of a state of affairs on the basis of sovereignty's incorporated values.*⁴

This statement is in agreement with Walker's position that:

*sovereignty works by giving authority to definitions [...], the whole point of [modern] sovereignty is that it does not exist and yet it has tremendous effects; it does not exist and yet it is constantly enacted; it has no foundations yet is always foundational. Whatever it is, it is perhaps the strongest term in the modern political world.*⁵

This point is adequately reinforced by Elshtain's statement that the "development of the political notion of sovereignty has been characterized as a process of ideology creation, the use of an abstract theological structure to describe the temporal political structure."⁶ In that sense, the contextual meaning of discourse is as relevant as the rules themselves and, while the use of the term "sovereignty" has persisted, the subjective values assigned to it have varied over time. Krassner synthesizes this approach by asserting that "the meaning of sovereignty and the actions that can be undertaken or directed by a sovereign are and have always been, both contested and ambiguous."⁷

Of equal concern is that the allocation of authority, the mechanisms to protect it, and the values assigned to sovereignty as a way to conceptualize and legitimize it, belong to the dominant powers whose survival is ensured by the system they themselves create. As a result, at each distinctive era, there is fighting and rivalry for control - what is fought for is more authority or even hegemony in the system. There is no conflict over the system of meaning that sovereignty carries. Indeed, until recently, sovereignty was what Paul Kahn calls a "club of victors."

Why is there no sovereignty for Quebec, Catalonia, Scotland, Burgundy, or Provence? Why is there

4. Samantha Besson quoted in Dan Sarooshi, *The Essential Contested Nature of the Concept of Sovereignty: Implications for the Exercise by International Organizations of Delegated Powers of Government*, 25 MICH. J. INT'L J. 1107, 1115 (2004).

5. R.B.J. Walker, *Peace in the Wake of Sovereign Subjectivities*, in THINKING PEACE, MAKING PEACE 26 (Barry Hindess & Margaret Jolly, Eds., Canberra: Academy of the Social Sciences in Australia, 2002).

6. See Jean Bethke Elshtain, *Sovereign God, Sovereign State, Sovereign Self*, 66 NOTRE DAME L. REV. 1355 (1991).

7. Stephen D. Krassner, *The Hole in the Whole: Sovereignty, Shared Sovereignty and International Law*, 25 MICH. J. INT'L L. 1075, (2004).

*sovereignty in the Democratic Republic of the Congo, the Islamic Republic of Pakistan, and a single Federal Republic of Germany? Each question is answered by a narrative of battles lost or of power successfully asserted.*⁸

Undeniably, the following historical review will assert that up until this juncture, the dominant powers have been remarkably consistent in forming an implicit consensus as to the subjective meaning they assigned to sovereignty. Challenges to the meaning of sovereignty have, up until the recent transatlantic alliance crisis, which is partly the object of this paper, come from individuals within the system who were excluded from decision making, or from forces outside the system.

III. HISTORICAL REVIEW

It is common in the literature on sovereignty to use the Peace of Westphalia as a pivotal date for the study of modern politics. There is a Eurocentric bias to this framework, especially taking into account many other civilizations' considerations on sovereignty,⁹ but considering the influence of Western ideology on international politics and law, it is a necessary task indeed to concentrate on European history. It is always a challenge to identify the appropriate starting point of a historical overview. Within the context of a study on sovereignty in the European space, it appears judicious to begin when sovereignty started to embody an iron clad value system.¹⁰ Thus, the Middle Ages seems the most appropriate starting point when sovereignty was defined as God's sovereignty.¹¹ Not surprisingly, the King of the Franks, Clovis' conversion to Christianity and baptism in 496 is commonly accepted as the onset of the Middle Ages in Western continental Europe.¹² Clovis' conversion gave him the support of the Church in his territorial conquests and perpetuated the belief that he had a divine mandate. For

8. Paul W. Kahn, *The Question of Sovereignty*, 40 STAN. J. INT'L L. 263 (2004).

9. See, for example, Native American concepts of sovereignty and how they differ from European understandings in: Ron Gable, *Sovereignty in the Blood: Cultural Resistance in the Characters of James Welch*, WICAZO SA REVIEW, Autumn 1993, at 37-43.

10. By contrast, the Greek city states (which are often regarded as precursors of the modern nation-state system), envisioned sovereignty as the prerogative to exercise internal power and engage in external relations on a equal footing, but not necessarily as a value. Similarly, the Roman Empire was sovereign in its control over population and territories, not as a value, but as a consequence of its military might.

11. See Daniel Engster, *DIVINE SOVEREIGNTY: THE ORIGINS OF MODERN STATE POWER*, (Dekalb, Northern Illinois University Press 2001).

12. See Mortimer Chambers, Raymond Grew, David Herlihy, Theodore K. Rabb, Isser Woloch, *THE WESTERN EXPERIENCE, VOLUME 1 TO THE EIGHTEENTH CENTURY*. (New York: MacGraw Hill 1995).

the reasons stated above, the pre - Westphalian era of the Middle Ages in Western continental Europe will be the first period studied in this essay. The second area of attention will be on the Westphalian era itself. For each period, the paper will address the dominant powers or forces, the value they assigned to sovereignty, the consequent justification of allocation of authority, the mechanisms to protect this allocation, and the mechanisms to reproduce or even expand the system, thus created. Central to this review is the understanding that for both periods, the use of force was necessary to protect the system of allocation of authority, as well as to expand the boundaries of the system.

A. THE PRE-WESTPHALIAN ORDER

Undoubtedly, the Church was the hegemonic power during the entire Middle Ages. While a succession of strong leaders followed Clovis, none could rule without the support of the Church.¹³ Most conspicuously, it was the Pope who crowned Charlemagne Emperor of the Occident in 800.¹⁴ Following Charlemagne's troubled succession and the subsequent split of his empire in 843 by the Treaty of Verdun,¹⁵ his grandsons could not effectively combat outside threats and their authority was soon supplanted by various lords. These lords interacted among themselves and with their vassals to form the framework of a complex feudal system. In this framework of overlapping secular jurisdictions, the concept of Church sovereignty remained unchallenged. John Ruggie adequately describes medieval Europe as a "patchwork of overlapping and incomplete rights of government," which was "inextricably superimposed and tangled."¹⁶ The only true and exclusive sovereignty was that of God and of his earthly representative, the Pope. An abstract from the *Dictus Papae* of Gregory VII (1073-1085) appropriately summarizes and confirms this assertion:¹⁷

1. *The Roman Church was created by God alone....*
2. *Only the sovereign (italics added) pontiff is by law called universal....*

13. The 6th to the 10th century: a new Orientation for the Church, *available at*, <http://dlibrary.acu.edu.au/staffhome/yukoszarycz/ecc/MOD4.HTML> (last visited May 17, 2006).

14. *Id.*

15. Wikipedia: Treaty of Verdun, *available at*, http://en.wikipedia.org/wiki/Treaty_of_Verdun.

16. John Gerard Ruggie, *Territoriality and Beyond: Problematizing Modernity in International Relations* 47 Int'l Org. 149-50 (1993).

17. C. Warren Hollister, Joe W. Leedom, Marc A. Meyer & David S. Spear, *MEDIEVAL EUROPE: A SHORT SOURCE BOOK* 183-84 (New York: MacGraw Hill 1992).

9. *Only the pope's feet can the princes kiss....*

12. *He can depose the emperor....*

19. *No one can judge him*

These principles established the legal consequences of the belief in God's sovereignty. Indeed, the allocation of authority provided for the universal jurisdiction of the Pope, as well as his immunity from all other jurisdictions, national or international. In that sense, while the feudal era was one of overlapping jurisdictions of the secular powers and of the Church, there was an unchallenged belief in the overall supremacy of the Church's expression of God's sovereignty.¹⁸

This belief system justified various enforcement mechanisms. First, within the European space, the Church itself was active in the suppression of dissent¹⁹ and in spreading its doctrine through the edification of churches and monasteries. More notably, cathedrals offered the illiterate masses the benefit of a religious education through sculptures, paintings, and stained glass which taught both testaments in many visual representations.²⁰ Outside the European space, the Church undertook to protect and/or expand its power through its struggle with the Muslim world - first in the Middle East in a series of crusades (starting in 1095), then much closer to home by reclaiming Spain by the 13th century.²¹ Finally, especially by the end of the Middle Ages, the universal, all embracing jurisdiction of the Pope took on a truly global or even universal component by claiming jurisdiction over population and territories worldwide (whether Christian or not). The Treaty of Tordesillas in 1494 justified the expansion of Europe outside of its continental confines by conferring it the legitimization of a religious mission.²² Whether by crusades, as an expression of just war, or by colonial expansion as a duty to Christianize, the use of force was a legitimate tool of policy. Jochnick and Normand capture the spirit of the era when "[c]hivalric rules actually served to protect the lives and property of privileged knights and nobles, entitling them to plunder and

18. Chambers *et al*, *supra* note 12.

19. *Id.*, at 266.

20. See, for example, the description of the use of Wall paintings in teaching, *available at* <http://www.stmargaret-streatley.org.uk/WallPaintings.htm>.

21. The Christian Crusades 1095-1291, *available at*, <http://www.gbgm-umc.org/umv/bible/crusades.stm>.

22. Treaty between Spain and Portugal concluded at Tordesillas; June 7, 1494, *available at*, <http://www.yale.edu/lawweb/avalon/modeur/mod001.htm>.

kill peasant soldiers, non Christian enemies and civilians of all religions and ethnicity.”²³

The profits generated by this social order caused a power struggle among the dominant forces of the Middle Ages: the Pope (or the Church), European monarchs, and powerful feudal lords. Noticeably absent was a challenge to a concept that well served their need for mercantile wealth and power that ensured their dominant positions in a, presumably God-given, hierarchal, and unequal society (both at home and abroad).²⁴

Challenges to this construction came from non-dominant forces, individuals and/or units excluded from the decision-making power and the benefits of the system. Essentially, the feudal organization gave power to the Church and its clergy, and to the military (kings and lords). Opposition came from outside of these two groups, and took the form of a rebellion against the Church and the emergence of a powerful non-religious and non-military class of merchants, artists, and philosophers excluded from decision making.

The Church, fraught with corruption,²⁵ became the object of its biggest challenge to date to its doctrinal supremacy. Martin Luther²⁶ proposed, in a revolutionary approach, that the Church was no longer needed as an intermediary between God and Man. Meanwhile, Calvin²⁷ advocated strict interpretation of the Scriptures, putting salvation in the hands of God, not those of priests. Under their influence, the Protestant movement was instrumental in weakening the Church in Western Europe and the transformation of the world order that its previous strength had justified.

In the meantime, the ruling order of the knights was also under attack from a new class of people, as merchants grew in wealth and power (often exceeding that of the nobility).²⁸ At the same time, humanism in both artistic and scientific expressions spread throughout Europe, the

23. Chris Jochnick and Roger Normand, *The Legitimation of Violence: A Critical History of the Laws of War*, 35 HARV. INT’L L. J. 49, 61 (1994).

24. Medieval Anguillara, A Study in Feudal Lordship, *available at*, <http://www.dicksonc.act.edu.au/Showcase/ClioContents/chivalry/anguillara.html>.

25. After the great Plague, the Church capitalized on the fear of judgment day by selling indulgences, in essence offering assurance of redemption in exchange for money. (See Chambers *et al*, *supra* note 12)

26. Martin Luther, MARTIN LUTHER: SELECTIONS FROM HIS WRITINGS (John Dillenberger, Ed., 1958).

27. John Calvin, CALVIN ON GOD AND POLITICAL DUTY (John T. McNeil, Ed., Macmillan, New York, 1950).

28. Medieval Merchant Culture, *available at*, http://www.brown.edu/Departments/Italian_Studies/dweb/society/srtructure/mercahnt_cult.shtml.

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belief that men endowed with reason could understand and eventually master everything. Both the merchant class and the humanists benefited from each other through a well established system of patronage. Humanist philosophers formulated a new theory of sovereignty. While advocating different perspectives from each other, Hobbes, Bodin, and Machiavelli all departed from the previous ideology of Church sovereignty and advocated state sovereignty. In light of the chaos of overlapping jurisdictions, they argued that any reliable government, whether tyrannical (Hobbes), or Constitutional (Locke), or imposed (Bodin)²⁹ would be a better alternative than overlapping levels of authority and Church corruption.

Finally, the end of the Middle Ages took place in the context of all of these challenges and was precipitated by the religious wars and the subsequent peace of Westphalia in 1648.³⁰ New decision makers and dominant powers emerged and with them, new definitions of sovereignty and new mechanisms.

B. THE WESTPHALIAN ORDER

The date of 1648 was as significant in launching state sovereignty as a value as 496 had been in affirming God's sovereignty as a value. Indeed, the Peace of Westphalia established the modern system of states, each independent from each other, equal to each other, and recognizing no supranational power, especially that of the Church.³¹ God's sovereignty was replaced by states' sovereignty, but the latter carried with it the same sense of theological value: a hegemonic belief that states not only exist as such, but that their sovereignty is the result of a universal norm that "rested on foundations different but no less religious than those of the medieval church."³² This is well summarized by Paul Kahn's statement that:

the history of modern political evolution is in substantial part a story of the growing autonomy of the sovereign from the church but it wrong to think of that simply as a

29. See Jean Bodin, *SIX BOOKS OF THE COMMONWEALTH*, 15750 (M J Tooley, *trans*, Basil: Blackwell 1955), Thomas Hobbes, *LEVIATHAN PART I AND II* (1651) quoted in Brad Roth, *The Enduring Significance of State Sovereignty*, 56 Fla L. Rev. 1017, 1020-21, n.12 (2004).

30. Treaty of Westphalia; October 24, 14648, *available at*, <http://yale.edu/lawweb/avalon/westphal.htm>.

31. Sovereignty, *available at*, <http://plato.stanford.edu/entries/soverignty>.

32. Constantin Fasolt, *Sovereignty and Heresy*, in *INFINITE BOUNDARIES: ORDER, DISORDER AND REORDER IN EARLY MODERN GERMAN CULTURE* 336 (Max Reinhart, Ed., Kirksville, Mo: Sixteenth Century Essays and Studies, 1998).

*secularization of the sovereign - rather it was [is] a process of sacralization of the state.*³³

God's sovereignty was no longer expressed through the universal control of the Church, yet rather than disappearing, it found its expression in the belief that monarchs were appointed by the grace of God. In that sense, "the sovereign body was the mystical corpus of the state in which all the subordinate parts were present," whereby "just as the Church was the body of Christ, the state was the body of the sovereign."³⁴

Just like in the name of God, sovereignty-specific structures were established in the name of state sovereignty, new structures had to be set up to reinforce states' power. This process perpetuated the belief that state sovereignty was a superior norm. The following portion of the paper offers a systematic look at the value of state sovereignty, the allocation of authority it legitimizes, the enforcement mechanisms it justifies, and the subsequent world order it creates and reproduces.

Throughout the Westphalian era, the dominant actors were states. During the first part of the Westphalian era, most of those states were more or less authoritarian monarchies.³⁵ In this context, sovereignty belonged to the state, but the state was personified by its king (or queen): the sovereign himself. "*L'etat, c'est moi,*" allegedly said Louis the XIV. After the French and the American revolutions, the locus of sovereignty did not change; it still belonged to the state, but progressively the state was seen as the reflection of the general will of the people or of the nation.³⁶ According to Shaw:

*Sovereignty until comparatively recently was regarded as appertaining to a particular individual in a state and not as an abstract manifestation of the existence and power of the state - the sovereign was a definable person to whom allegiance was due. This personalization was gradually replaced by the abstract concept of the state, but the basic mystique remained.*³⁷

33. Kahn, *supra* note 8, at 264.

34. See Louis Marin, *PORTRAIT OF THE KING* 9-13 (Martha Houle, trans., Minneapolis: University of Minnesota Press 1988), quoted in Kahn, *supra* note 8, at 268.

35. There is a difference of course, for example, between the absolute monarchy of France and the parliamentary monarchy of England.

36. See, for example, Jean Jacques Rousseau, *DU CONTRAT SOCIAL* (1762).

37. Malcolm N Shaw, *INTERNATIONAL LAW* 461 (Cambridge: Cambridge University Press, 1997).

In this case while the internal structure of power was affected, there were no fundamental alterations of the system.

Within the context of the belief in states' sovereignty, there is a horizontal allocation of authority.³⁸ In this system there is no "universal jurisdiction" of any kind, but rather a juxtaposition of independent territorial jurisdictions. The mechanisms established to protect and reproduce this allocation of authority are as follows: internally, sovereign states ensure the effective control of the government over their population³⁹ by endowing the government with the legitimate use of force. Alongside the use of force, less coercive methods are used to ensure national cohesion: various means ranging from the use of a common language, legal system, education, infrastructure, etc. foster the sense of a national identity and thus the legitimacy of a "social contract" within the nation.

Externally this system relies on the use of force as an essential mechanism of enforcement; force between states is legitimate to prevent any attempt of unwanted interference by another. Force toward non-state actors is also always legitimate to strengthen the power of the very system. Just like Christendom legitimized conquest in the name of God, the European state system legitimized the conquest of non-state actors in the name of the inherent superiority of state sovereignty reserved for civilized nations.⁴⁰ Force was also acceptable when originating from powerful states and exercised upon weaker ones if those weaker states at any point menaced the status quo. Krassner identifies 198 cases of intervention to change domestic regimes between 1555 and 2000.⁴¹

Unlike the previous era, the Westphalian system developed an increasingly sophisticated legal system regulating the relations between states. The positivist influence on the development of international law served to protect states' interests, and in many cases to legitimize their conduct. For example, "states carried on wars and wars profited the successful states materially as well as in 'psychic income' whence the centrality of war and the so called laws of war to international law."⁴² In that sense, law legitimized, for example, self-defense as a right.

38. See, among others, Hedley Bull, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* (NY: Columbia University Press, 2002).

39. Montevideo Convention on the Rights and Duties of States, Art.1, Dec. 26, 1933, 49 Stat 3097: The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.

40. Sarooshi, *supra* note 4, at 1118.

41. Krassner, *supra* note 7, at 1079.

42. Jochnick and Normand, *supra* note 23, at 49, 95.

Self-defense ensured the protection of the entire system and its very survival. By practice or by treaties, the law of nations, or international law was built on the common understanding by dominant powers of sovereignty and its institutional consequences. On this point, Kahn quoting (with alarm) Carl Schmitt is particularly relevant:

*Schmitt is right, however, to see that the same sovereign power that is the source of law is the source of war. The more a community understands itself as apolitical people, the more it will find an ultimate meaning in that identity. It will protect that identity even at the cost of great sacrifice. In short every war looks like a war of self-defense to those who pursue it.*⁴³

As a result, there has been a progressive fusion of naturalist and positivist approaches of international law, whereby the naturalist perspective held the notion that state sovereignty carried with it universal validity, the very existence of which justified explicit regulations to protect it. This was actually reinforced by the concept of popular sovereignty that emerged after the American and French Revolutions. By transferring internal sovereignty from the state apparatus to the people, to the nation, or to individuals believed to have inalienable (natural) rights, the very concept of sovereignty became untouchable; as universally true as human rights themselves. Or, as Kahn puts it:

*The achievement of the modern politics of popular sovereignty was to link the organic unity of the Church to the enlightenment belief in reason. [...] This synthesis gave us a powerful experience of meaning along with the capacity to aspire for justice; literally a national Church of liberalism. It also gave us a deeply militarized state that could call upon the ample willingness of its citizens to sacrifice. It gave us law and war.*⁴⁴

Once again, this period has been faced with many challenges from non-dominant powers or individuals excluded from the realm of legitimacy. However, the period has shown remarkable consistency in the hegemonic belief in state sovereignty and territorial jurisdiction. Challenges came from colonized territories, especially after World War II, but those were soon absorbed in the system of sovereign states. Challenges have come more recently, in a fairly similar fashion to what

43. Kahn, *supra* note 8, at 263.

44. Kahn, *supra* note 8, at 282.

occurred in the Middle Ages with the merchant class, from transnational economic actors, especially transnational corporations. This concern is addressed in much of the current literature on globalization and sovereignty.⁴⁵ Challenges are also coming from other non-state actors: the neo humanists possibly represented by non-governmental organizations and a growing international civil society.⁴⁶ Challenges also arise from more dangerous groups, possibly the “neo- heretics” of our time: terrorists and organized criminal groups.

PART II

This paper will now argue that this mostly consensual period among dominant powers has now reached an end. We are witnessing a much talked about crisis of the “Western alliance.”⁴⁷ I argue that the current contrasting perspectives on sovereignty offer enlightening debate. This crisis is not completely unexpected, especially when examining US-Franco relations prior to and following WWII. However, the end of the Cold War has marked a much deeper schism, and I agree with Smith that it has “raised the possibility that the European Union and the United States face a context of much more fundamental risk and uncertainty.”⁴⁸ Since WWII, there have been many periods of tension and disagreement between France and the United States: the uneasy relationship between DeGaulle and the United States, French withdrawal from the North Atlantic Treaty Organization, French anti-American sentiments during the Vietnam war, many demonstrations in France over then Vice President George Bush’s statement that the U.S. was the leader of the free world, and the refusal of the French government to President Ronald Reagan’s plan of overflight on the way to bomb Libya are just a few of the marks of a troubled relationship. However, throughout the Cold War, the Western alliance (including the sometimes reluctant France) remained fairly intact in proposing an anti-communist front. The end of the Cold War and the promise of a new world order led to a shifting and repositioning of policies. Since then, we have seen an increasingly pronounced contrast between the United States and the European Union (with the exception of the United Kingdom) and

45. See for example David Strang, *From Dependency to Sovereignty: An Event History Analysis of Global Decolonization 1870-1987*, 846 AM. SOC. REV. (1990).

46. See, for example, RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS AND NORMS (Sanjeev Khagram, Kathryn Sikkick & James Riker, Eds., University of Minnesota Press 2002).

47. See, for example, Robert Kagan, *OF PARADISE AND POWER; AMERICA AND EUROPE IN THE NEW WORLD ORDER* (New York: Knopf: 2003).

48. Michael Smith *Between Two Worlds? The European Union, the US and World Order* 41 INT’L POL. 95-112 (2004).

especially with France over policy, culminating with the disagreement over the conflict with Iraq. As explained by Smith:

*The accumulation of a wide range of disputes ... [has] created a situation in which both internally and externally the Europeans and the Americans base institutional behavior on the assumption of difference rather than on the assumption of convergence.*⁴⁹

Therefore, it is important at this point, to examine in succession the American and the French perspectives on sovereignty, the system of meaning they each assign to this concept, and how it shapes policies especially in regards to the use of force.

I. THE UNITED STATES' PERSPECTIVE

The United States' perception of sovereignty is articulated around two prongs: the persistence in hanging on to a classical Westphalian perspective and the projection of a strong belief in U.S. exceptionalism.

Recent statements and activities of the United States are in accordance with the classic Westphalian approach described earlier. This approach places the ultimate and supreme sovereignty in the state and confers on sovereignty, thus defined an ontological value, while asserting the positivist nature of international law. The United States seems to operate on the assumption that its sovereignty can never be trumped by an international norm to which it does not explicitly adhere. To a great degree this position has remained unchanged since Chief Justice Marshall's classic dictum in the *Schooner Exchange* case in 1812:

*the Jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible to no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source would imply a diminution of sovereignty.*⁵⁰

So, while the United States enters into international treaties, and therefore agrees to be bound by certain rules, it consistently holds true to the fact that international law is always subordinate to the Constitution. Indeed, the "Supreme Court has repeatedly cautioned that just as with [c]ongressional statutes, treaties must be consistent with the

49. *Id.* at 101.

50. *Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812).

Constitution.”⁵¹ In so far as it is grounded in treaties, international law would thus seem securely subordinate to the Constitution and the powers invested in the Federal government. Indeed, the United States often pleads to internal legal authorities to mitigate, or refute, its international obligations.⁵² The State, ultimately sovereign (knowing no superior power), therefore, can only rely on itself for matters of security. It is commonplace that “major concerns include [...] in international affairs, avoiding exogenous constraints on sovereign prerogative, especially in the area of national security.”⁵³ Undeniably the United States’ perspective is anchored in the realist belief in an anarchic world system.⁵⁴ And while the United States was instrumental in proposing a *jus ad bellum* that would limit the use of force (Briand Kellogg pact of 1928, United Nations Charter), it never suggested unconditionally forgoing the use of force in all circumstances. Self-defense is central in the U.N. Charter and is an established “inherent”⁵⁵ right, and subsequently a corollary to statehood. While it is often read that the U.N. Charter abolished the use of force as a tool of policy, the Charter also has to be read as merely redefining the limits in which war is legal or legitimate and as reasserting the use of force as the exclusive prerogative of states. The Charter, in this light, institutionalized a “sovereignty centered collective security.”⁵⁶

The United States’ position on sovereignty, very well presented by Rabkin, is that it “serves as a legitimizing notion for a foreign policy based essentially on a unilateral - some would say insular - definition of national action and responsibility.”⁵⁷ This conception of state sovereignty as the ultimate locus of authority, to which any international legislation is relegated to an inferior status, legitimates to an American audience the political reasons for the non-ratification of treaties like the Kyoto Protocol, the refusal to participate in the International Criminal Court. It also legitimates breaching international law and the use of unilateral military action. All of these actions are presented as policies enacted as a prerogative of sovereignty as well as a way to preserve this

51. Jeremy Rabkin *War, International Law, and Sovereignty: Reevaluating the Rules of the Game in a New Century*, 5 CHI. J. INT’L L. 474 (2005).

52. James C. Hathaway, *America Defender of Democratic Legitimacy* 11 EUR. J. INT’L L. 121, 132 (2001).

53. Ryan Goodman and Derek Jinks, *Toward an Institutional Theory of Sovereignty* 55 STAN. L. REV. 1785 (2003).

54. See, for example, Kenneth Waltz, *THEORY OF INTERNATIONAL POLITICS* (New York: Random House, 1979).

55. UN Charter, art. 51 (1945).

56. Mariano-Florentino Cuellar, *Reflections on Sovereignty and Collective Security*, 40 STAN. J. INT’L L., No. 211 (Summer 2004).

57. Rabkin, *supra* note 51, at 444.

sovereignty, thus defined and often portrayed as threatened by international law. The validation of several international norms and institutions “would interfere with the traditional notion that sovereign statehood carries with it the responsibility for defining and maintaining the legal order within the territorial boundaries of the nation state.”⁵⁸

Alongside the classical definition of sovereignty and the realist perspective on world order, needs to be added what is often called “American exceptionalism” or “the sense that the US has a special moral status and mission [that has] resulted in an intensive engagement by the US in Foreign Affairs predicated on a belief that America has a unique mission to lead the world.”⁵⁹ American exceptionalism contributes to the belief that the United States can be exempted from the rules it promotes. In this framework, the possibility of unilateral use of force is not only legitimized as an act of defense of sovereignty, but as the realization of a mission to protect the world order by spreading democracy. This is not very different from the Christianization of the Middle Ages, or the civilizing mission of the classical Westphalian period. Radon notes that “[s]overeignty in the United States is nearly synonymous with the notion of American democracy,” to the extent that, “[i]n effect it has become an emotional flag.”⁶⁰ On this point, Kagan is accurate in remarking that “the only stable and successful international order Americans can imagine is one that has the United States at its center. Nor can the Americans conceive of an international order that is not defended by power, and specifically American Power.”⁶¹ Kagan echoes the official position of the United States expressed by Ambassador Richard Hass, former director of policy planning at the U.S. Department of State:

Sovereignty has been the source of stability for more than two centuries [...] It has also provided a stable framework within which representative governments and market economies could merge in many nations. At the beginning of the 21st century, sovereignty remains an

58. Rabkin’s position summarized in John R. Worth, *Globalization and the Myth of Absolute National Sovereignty: Reconsidering the “un-signing” of the Rome Statute and the Legacy of Senator Bricker*, 79 IND. L.J. 245 (2004).

59. Hathaway, *supra* note 52.

60. Jenik Radon, *Sovereignty: A Political Emotion, not a Concept* 40 STAN. J. INT’L L. 195, 202 (2004).

61. Robert Kagan, *OF PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER* 94 (New York: Knopf 2003).

*essential foundation for peace, democracy, and prosperity.*⁶²

II. THE FRENCH PERSPECTIVE IN A EUROPEAN CONTEXT

By contrast, the Europeans are moving away from traditional perceptions of sovereignty and replacing it with notions of pooled or perforated sovereignty; similarly defined by Abram and Antonia Chayes as the “new” sovereignty or the right and capacity to participate in international institutions.⁶³ This new version of sovereignty proposed (if not fully realized) by France and the other Europeans, means that “states that are members of the European Union have broken sharply with the tradition of state sovereignty. Sovereignty is pooled in the sense that, in many areas, states’ legal authority over internal and external affairs are transferred to the community as a whole, authorizing action, through procedures not involving state vetoes.”⁶⁴ The question is whether or not this development is perceived in Europe as an abandonment of sovereignty, a weakening of the state and its functions, or as a truly new definition and conceptualization favorable to the interests of the state and its citizens. While there is undoubtedly some political friction over that question,⁶⁵ French constitutional practice suggests that the conceptualization of sovereignty is not only new in name alone. Indeed, reviewing the decisions made by the Conseil Constitutionnel, Professor Comabacau confirms that “international law and French law are essentially compatible and that international law is by nature not contrary to French sovereignty.”⁶⁶ The French have adopted a monist approach to international law, unlike the increasingly dualistic approach of the United States.

Furthermore, Comabacau’s reading of perspectives on sovereignty as it appears in constitutional practice argues that sovereignty remains intact even when there is a transfer of competence (for example to the European Community). In that sense there are no limitations of

62. Richard N. Haas, President, Council on Foreign Relations, *Sovereignty, Existing Rights, Evolving Responsibilities*, Remarks at the School of Foreign Service and the Morgenthau Center for International Studies, Georgetown University (January 14, 2003), *available at*, http://www.georgetown.edu/sfs/documents/haas_sovereignty_20030114.pdf.

63. Abram and Antonia Chayes, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL AGREEMENTS* (Cambridge: Harvard University Press, 1995).

64. Keohane, *supra* note 1, at 312.

65. France and the Netherlands voted ‘no’ to the European Constitution.

66. Il n’existe pas dans le droit français de domaine qui ne puisse être régis concurremment par des règles internationales et cela n’est pas jugé contraire à la souveraineté de la France. (translation is that of the author).

sovereignty: the transfer of competence is in itself an exercise of full sovereignty.

In this Comabacau agrees with Slaughter that:

*however paradoxical it sounds, the measurement of a state's capacity to act as an independent unit within the international system-the condition that sovereignty purports both to grant and describe- depends on the breadth and depth of its links to other states.*⁶⁷

As a result of this practice, the benefits of division of competence in a mutually accepted framework are apparent. By replacing self-help by a normative framework the Europeans have lessened the risk of inter-state wars and offer a viable alternative to the violent world order that is seemingly perpetuated by the United States. In that sense, the Europeans have adopted what Ruggie⁶⁸ calls, a multi “perspectival” view and are, thus, promoting what Smith calls “civilian values,” by offering a “quite distinctive range of normative concerns, of domestic political considerations and linkages between ‘hard’ and ‘soft’ security.”⁶⁹ By opposition to the United States’ warrior-type⁷⁰ model of self-help and exceptionalism that can only survive under the Westphalian system that legitimates the use of force, even unilateral, to protect sovereignty, we can see the sketch of a new model of state sovereignty based not on exclusive territorial jurisdiction, but rather a locus of jurisdiction that allows transfers of competence, based on multilateralism and on overlapping allocations of authority.

III. ANALYSIS, STAKES AND CONFRONTATION

The questions to ask, and hopefully to answer, at this point are multifold. Is the French/European model viable or is it in Rabkin’s term “an act of foolish submission?”⁷¹ Quite the contrary, I believe that the model advocated by the French government is the expression of a belief that new challenges of security or otherwise can be better met by a new model than by an old one. Professor Rabkin reminds us of WWII and that “if all people were as submissive as the Dutch or the French proved to be, we might have universal peace - or we might have universal

67. Anne Marie Slaughter *Sovereignty and Power in a Networked World Order* 40 STAN. J. INT’L L 283, 286 (2004).

68. Ruggie, *supra* note 16.

69. Smith, *supra* note 48, at 101.

70. *Id.* at 108.

71. Rabkin, *supra* note 51.

tyranny.”⁷² This statement, echoed widely in the United States, presupposes that attempts at negotiated peace and multilateralism amount to a relinquishing of sovereignty and can only lead to tyranny. It is important to refute this argument, as it is replete with contradictions. The period preceding WWII was that of classical sovereignty, and ultra nationalism that ultimately lead to war. By contrast, since WWII the European pooling of sovereignty (starting with France and Germany) has now eradicated the risk of an intra state war in Western Europe. Instead of instating tyranny, democracy has been strengthened.

The second issue to resolve is if the French/ European model is foolish or actually viable and potentially successful. Additionally, can it co-exist with the American paradigm? In other words, what are the tangible stakes of what is otherwise an interesting but purely theoretical debate? Is it more than the continuation of a Franco - American competition for “moral superiority?” Absolutely. The final goal of this paper is to argue that contrasting perspectives on sovereignty set the stage for a much broader reaching confrontation, the outcome of which could drastically alter the economic and political stability of both countries.

For the most part, the French and European paradigm of pooled sovereignty appears to be a success. Europe is a formidable economic powerhouse of 25 countries that boasts an \$11 trillion dollar economy, 455 million people, and a currency that is slowly supplanting the United States dollar in world reserves.⁷³ Meanwhile, Europe has, once again for the most part, managed to acquire leadership in key economic sectors while preserving the basic tenets of a functioning welfare system of allocating significant budget outlays for social services and reining in defense expenditures.⁷⁴ Meanwhile, the United States economic model, while producing superior results in terms of Gross Domestic Product,⁷⁵ cannot hide embarrassing rankings in terms of people living in poverty, infant mortality, and lack of health care and education.⁷⁶ Contrary to Kagan’s view that France’s policies, like that of other Europeans “[are]

72. *Id.*

73. *See for example* CIA World factbook figures available at <https://www.cia.gov/library/publications/the-world-factbook/index.html> (last visited Feb. 18, 2008), Menzie Chinn & Jeffrey Frankel, *Will the Euro Eventually Surpass the Dollar as Leading International Reserve Currency?*, available at, <http://wage.wisc.edu/publications/working-papers/index.aspx>.

74. *See for example*, Johan Lembke, *COMPETITION FOR TECHNOLOGICAL LEADERSHIP: EU POLICY FOR HIGH TECHNOLOGY* (Cheltenham: Edward Elgar Publishing, 2002).

75. *See for example* Stein Kuhnle, *Survival of the European Welfare State*, available at, <http://www.arena.uio.no/publications/working-papers1999>.

76. *See for example* Quality of Life in the United States – How we stack up, available at, <http://www.dailykos.com/storyonly/2005/8/7/20486/49640>.

to be seen as a rationalization of the essential weakness of the European power,"⁷⁷ it can easily be asserted that French and European policies have established a very strong power.

Furthermore, what seems to be more relevant to this analysis is the normative power that the European paradigm is gathering. As Ryan Goodman and Derek Jinks convincingly argue, the European ideology is spreading though a constructivist approach.

Through processes of social learning and persuasion, "actors" internalize new norms and rules of appropriate behavior and redefine their interest and identities accordingly.⁷⁸

If the European version prevails, then "becoming or being a sovereign state would mean the participation of as many government officials as possible in plurilateral, regional and global government networks."⁷⁹ In the words of Smith: "the EU offers an essentially different approach to world leadership, emphasizing the development of negotiated order and the mobilization of normative power."⁸⁰

The European approach creates significant consequences for the United States. Paul Kahn insists on the growing attraction of the European model: "For many around the world, the question is how to become more like the Europeans, which means less like the Americans."⁸¹ This ideological loss for the United States could also precipitate an economic decline. For example, in one of his visits to Latin America, President Bush was quite remarkable in his inability to convince Argentina and other Latin American countries, which depend largely on the United States, to enter into certain trade agreements.⁸² This failure should be noted as much more than a simple hurdle in an otherwise privileged relationship. It also takes place in the broader current of Latin America moving away from United States control. Of course, one cannot evade the topic of Iraq and how United States' use of force without broad multilateral support is failing to bring the announced results, while seriously shredding the moral legitimacy of the American model.

77. Kagan, *supra* note 47.

78. Goodman & Jinks, *supra* note 53.

79. Slaughter, *supra* note 67, at 325.

80. Smith, *supra* note 48, at 104.

81. Kahn, *supra* note 8, at 264.

82. No Free Trade Agreement at Summit, MAR DEL PLATA, Argentina, Nov. 6, 2005., available at, <http://www.cbsnews.com/stories/2005/11-6/world/main1015872.shtml>.

This being said, is it feasible for the United States to adhere to a European concept of pooled sovereignty and agree to greater participation in international norms, treaties, and institutions (from Kyoto, to CEDAW, to the Convention on the Rights of the Child, to the ICC, etc.)? It would partly mean, following Krieger's advice, that the United States:

*should free itself from the mentality about strategic power that sees only brute force and the threat of force as the guarantor of the international order. It should move past the mindset (shared by Kagan) that views the Europeans alternatives of diplomacy, appeals to international law, and consensus driven policies as little more than unseeingly squeamishness about the use of force.*⁸³

This would require a complete shift not only of foreign policy, but of domestic economic policies. Indeed, most of American productivity relies on military spending.⁸⁴ It implies the need to justify an astronomical defense budget⁸⁵ required by the willingness to use force more than law, and hard power more than soft power to conduct foreign affairs.⁸⁶ Abandoning the classical Westphalian concept of sovereignty linked, as aforementioned, to the ability to use force unilaterally if required, would force a complete reconfiguration of the United States economy, the details of which obviously go beyond the scope of this paper. Kahn warns that "when contemporary scholars or leaders declare that sovereignty is no longer an appropriate ideal [...] they are proposing to United States a change as significant as the Reformation was in the Christian experience."⁸⁷

IV. CONCLUSION

Therefore, it can be asserted that it still remains more feasible for the United States to weaken the European model and/or construction and to influence each European country individually to readopt a more nationalistic perspective to their identity. If this is plausible, then many

83. Joel Krieger, GLOBALIZATION AND STATE POWER: WHO WINS WHEN AMERICA RULES 55 (NY: Pearson Longman, 2005).

84. James M. Cypher, *The Iron Triangle: the New Military Build up Dollars and Sense* magazine, January/February 2002 available at, <http://www.thirdworldtraveler.com>.

85. See FY 2007 Budget Proposal: Agency-by Agency Breakdown, available at, <http://www.washingtonpost.com/wp-srv/politics/interactives/budget07/agencies.html>.

86. Pascal Boniface, LA FRANCE CONTRE L'EMPIRE 15 (Paris: Robert Laffont, 2003).

87. Khan, *supra* note 8, at 277.

recent and more than likely upcoming confrontations between France and the United States will not merely be diplomatic differences resulting from different styles. For example, in this light, Rumsfeld's statement of "old Europe v. new Europe"⁸⁸ was far from being a mere boorish blunder, but more a deliberate attempt at creating dissent within the continent. Many such events can be analyzed in this framework, and while labeling this trend the new cold war may be going too far,⁸⁹ it, nonetheless, appears to be an increasingly heated posturing.

88. Rumsfeld Repeats "Old Europe" Comments 11.06.2003, *available at*, <http://www.dw-wprld.de/dw/article/O,,890806.html>.

89. Andrew O'Hehir, *Welcome to the New Cold War*, *available at*, <http://dir.salon.com/story/books/feature/2004/11/15/europe/index.html>.

