

Re-Defining sovereignty: How the EU has expanded the possibilities for Puerto Rico

Abstract: The dynamic nature of international politics is responsible for the constant changing of the definition of certain concepts. Sovereignty is one such concept. Since it was first used in the 16th century, “sovereignty” has gone from “absolute and supreme” to “indivisible and inalienable” to merely “independent from other political entities.” The Globalization process has, once again, started to redefine what being sovereign is. There is not one single actor in international politics that can exclusively account for the redefinition this concept is going through right now; International Organizations, Multinational Corporations among others have helped re-define this word. However, in this paper I analyze how the European Union specifically helped in this process and how this current meaning of the word can be used by remaining colonies in the world as a means to de-colonization. I especially focus on the case of the Commonwealth of Puerto Rico.

Concept definitions tend to be a very fragile thing in social sciences. This is so because the social sciences, political science included, are very dynamic fields of study. Words and concepts that were analyzed and defined centuries ago for the first time have been re-defined a dozen times since and continue to be. Practice, rather than theory itself, is to be held accountable for the constant re-definition of these concepts. This is the case with “sovereignty”. In this paper I plan to show how the word has been changing since its appearance in modern history and how it is currently being re-defined by the European Union. But theory was made to be applied in practice, so after presenting the current re-definition process I will show how this broader and weaker definition of sovereignty makes theoretical de-colonization options, that were conceived decades ago, viable in our current globalized world. I will also show how Puerto Rico could follow the steps of other countries which, applying this re-defined concept, have shed their colonial status.

Sovereignty: past and present

It was Jean Bodin who first used the term “sovereignty” referring to independent states (Pastor Ridruejo, 2001). “Sovereignty is that absolute and perpetual power vested in a commonwealth which in Latin is termed *majestas*...” (Bodin, 1577) Bodin himself explains what he means with the term “absolute”:

The people or the magnates of a commonwealth can bestow simply and unconditionally upon someone of their choice a sovereign and perpetual power to dispose of their property and persons, to govern the state as he thinks fit, and to order the succession, in the same way that any proprietor, out of his liberality, can freely and unconditionally make a gift of his property to another. Such a form of gift, not being qualified in any way, is the only and true gift, being at once unconditional and irrevocable. (Bodin, 1577)

In other words, Bodin sees sovereignty as the power a State has to act freely without interference from either the citizens or the international community. This authoritarian definition of the concept has had to change. It is clear that in a world where more and more countries are moving each day towards democracy, an ideology based precisely on the idea that the people “lend” some representatives their own sovereignty (with restrictions called “rights”), this definition of the word can no longer apply. Sovereignty can not be seen as perpetual either because history has proven otherwise. This is precisely the case of the de-colonization periods of the 1800’s in Latin America and the 1950’s and 60’s in Africa. Another good example of the “mortality” of sovereignty is the disappearance of the Soviet Union in the early 90’s.

Eighteenth century theorist, Jean Jacques Rousseau postulated:

The social contract's terms, when they are well understood, can be reduced to a single stipulation: the individual member alienates himself totally to the whole community together with all his rights. This is first because conditions will be the same for everyone when each individual gives himself totally, and secondly, because no one will be tempted to make that condition of shared equality worse for other men. (Rousseau, 1763)

His definition of sovereignty then, came to be, the power of the community, which was “indivisible and inalienable.” Again we can argue that this definition of sovereignty can not be applied in contemporary political science. Federations have proven that sovereignty is, in fact, divisible between the Central Authority and the Regional Authorities (e.g. the power transferred to the States by the Federal Government in the United States of America). As for being inalienable, that part is still under debate around the world, especially in remaining colonies that wish to have their shot at national and international sovereignty.

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Contemporary textbooks and political dictionaries define sovereignty as an “independent political authority [...] Also means being supreme in power or authority” (Fast-Times Political Dictionary, 1998). However, this definition still has an authoritarian ring to it. Globalization has made it clear for the world that no country is entirely independent or supreme in power. Pastor Ridruejo (2001: 279) explains this concept in his book *Curso de derecho internacional público y organizaciones internacionales*:

La soberanía de los Estados, incluso de los más poderosos, encuentra en el plano político limitaciones resultantes de la coexistencia entre ellos y de la soberanía concurrente de otros Estados en un mundo cada vez más pequeño e interdependiente. [...] Ni las grandes potencias ni siquiera las superpotencias pueden resolver a su entero gusto los problemas que les conciernen, ni de un modo general pueden comportarse a su libre antojo [...]

These three examples of definitions of sovereignty demonstrate the dynamic nature of this concept and leave room for further debate.

Present Progressive: The European re-definition of the concept

It would have seemed unimaginable to people who lived World War I and World War II to see France and Germany in the year 2002 using one common currency. However unimaginable that may have sounded, today it is a reality. Six European countries established, by a series of treaties, a Union that today has 15 members (12 of which use the common currency, the Euro) and is expected to expand to 25 by 2004. But the case of the European Union is, indeed, the first of its nature. We are not talking about a series of poor countries that have joined forces with superpowers in order to ensure their economic survival. We are talking about 15 of the most powerful countries in the world that have voluntarily ceded sovereignty over certain issues in an attempt to form a very pragmatic and successful *economic union*.

The European Union did, in fact, start as a treaty merely to eradicate tariffs and barriers on certain products, which in 1985 by means of the Single European Act (SEA) culminated in creating a single “internal market”. Nonetheless, apart from the purely economical and commercial functions the EU has, the EU also has inheritance in some other fields such as employment and social policy, environmental protections, human rights, research and technological development, to name just a few. On top of this, Europe now has the European Police Office (EUROPOL) established as the EU law enforcement organization to handle criminal intelligence. (Delegation of the European Commission to the United States, 2002)

Charles Hauss (2000:177) claims that even though (at that moment) the EU lacked a police force or an army it had “formal institutions that have much in common with those in Britain, France, and Germany. [...] pass laws and issue decrees, directives and regulations that are binding on the member states, their citizens and corporations. [...] the EU has some of the characteristics of a state but not all of them.” The creation of a Common Foreign and Security Policy (CFSP) and the appointment of Mr. Javier Solana Madariaga have the Euro skeptics shivering. “This common defense policy could lead to a common defense if the European Council were to so decide and a decision were adopted and ratified by the fifteen Member States” (Council of the European Union, 2002). All steps seem to be leading to major political integration.

Why are the euro skeptics shivering? Precisely because as powers become more centralized in the Union, national governments of the Member States relinquish more and more of their own national sovereignty. The capacity to act freely (in an already limited and interdependent world) is being limited once again by a Central Power. Critics of the European Union point to the European Court of Justice’s 1996 decision that EU health and safety rules take precedence over British Labor Laws. Great Britain could not, after this decision, set the normal workweek to 48 hours, 8 more than the European Standard. This happened even though the UK had been allowed to opt out of the Social Chapter (Hauss, 2000).

Sovereignty is indeed a very touchy subject for people who wish to have a more direct participation in the decisions that will affect them. This is probably one of the reasons why Great Britain, historically one of the most skeptic European countries when it comes to surrendering sovereignty, has not adopted the Euro as its official currency. (Hauss, 2000)

There are significant limits that have been put upon national sovereignty in each one of those States. A very good example of this is illustrated in a pamphlet distributed by the Foreign & Commonwealth Office of Great Britain. It says:

How does European law fit in with UK-made law? *Most [italics are mine] law in Britain is made by Parliament, or by regional assemblies in Scotland, Wales and Northern Ireland. This will continue to be the case. When there is a clash, European law takes precedence. [italics are mine]* (Haine, 2001)

Another good example of the loss of sovereignty by these countries is precisely, the European Monetary Union (EMU). National notes and coins from each of the 12 states in the euro zone disappeared permanently on February 28, 2002. Monetary policy is now determined by the European System of Central Banks. (Delegation of the European Commission to the United States, 2002)

However, the European Union itself is changing the definition or meaning of “national sovereignty”. Everyone knows that France, Germany, Italy or any of the other 15 members are independent and sovereign states. Each one has its own seat in the United Nations. Each one has diplomats over the world and each one can participate freely in treaties such as NATO. This means that European States (in plural) have not disappeared in order to form one Super State called the European Union.

The European Union and its members have, therefore, begun in practice, to re-define the theoretical concept of sovereignty. We know that sovereignty is no longer considered indivisible and/or absolute; if there were any doubts, the EU confirms it. Countries have ceded some of their national sovereignty, and power now rests

between the EU and the Member States (of course, the States *still* have the upper hand) so in a sense it has been divided among 15 parts. It can't be called absolute because the decision making process inside the European Union is subject to what the representatives from each country decide. It cannot be called supreme either because power does not rest entirely on the hands of either the EU or the Member States. And it does illustrate the point that not even powerful countries (such as the 15 members of the Union are) can act anyway they want to.

So where does this leave me? It would be presumptuous of me to try and re-define the word sovereignty. However, from what I have analyzed I can safely conclude that "sovereign" is not a word that can be used to solely describe States which are completely independent from other States or political entities. Sovereignty is now a broader and more inclusive concept that takes into account the globalization process and how each and everyday States depend more and more on each other. Even States that are subjected, in some ways, to a higher political authority (e.g. the Marshall Islands to the United States in defense policy) can be described as being sovereign. This wider, broader conception of sovereignty can definitely be applied to remaining colonies in the world, like the Commonwealth of Puerto Rico.

The lack of Puerto Rican Sovereignty: past and present

Before assessing how the current definition of sovereignty could apply in the future to Puerto Rico, I must present what the problem with our current status is.

Defining the Puerto Rican status problem is not an easy or simple thing to do. There are many factors that one has to take into account, like economic, cultural and historical factors that play a very big part of the problem. However, it is not possible to describe the quandary in its entirety in just a few lines, so I will just stick to the lack of national sovereignty.

Puerto Rico has been a colony of the United States since 1898. In 1952 we obtained, via Law 600 that called for Puerto Ricans to draft our own constitution, self-government. This means that we, the people of Puerto Rico, can elect our own governor, senators, representatives, mayors, and Resident Commissioner (only one PR representative in the US Congress - who has no vote). This also means that the Island has the capacity to make, pass, and enforce laws just as long as those laws are compatible with American laws. If there is a clash, *US laws take precedence*. □

Why, then, do I say Puerto Rico lacks sovereignty? Internationally, Puerto Rico is not recognized as a subject of law. It cannot produce a Puerto Rican passport because, internationally, there is no such thing as a Puerto Rican citizen. If we were to renounce the American Citizenship that was given to us in 1917, we would be left without a Citizenship and would not be able to go anywhere, unless we picked up another internationally recognized citizenship such as the Dominican or Venezuelan. Apart from this, Puerto Rico cannot sign or ratify treaties (with the exception of cultural ones), does not have a Chair on the United Nations or the Organization of American States and it does not have diplomats or a national army.

Nationally, Puerto Rico, like I mentioned before, is subjected to Congress and the President. The Governor of the Island and the Legislative Assembly are not the Supreme Rulers of the country because they answer to Federal Authorities. Because of this, just to give an example, is why today Puerto Rico is still subjected to maritime laws imposed on the Island in the year 1900, laws that say that we can only buy products that have been shipped to the island in American Ships (Ramos, 1974) (the Merchant Marine of the United States is one of the most expensive in the world and Puerto Rico is almost three times as poor as the poorest state of the Union.)

Although all of this may sound like Puerto Rico is just another state of the American Union, and like such is subjected to Federal Authorities, Puerto Rico is neither independent nor a Federal State. It is considered an "unincorporated territory" □ of the US.

Future: Applying this new concept to a scared colony

Puerto Rico has been a colony for 500 years, first of Spain, now of the United States. It has never been on its own. It is no wonder why there are many skeptics when it comes to asking for more sovereignty. This is the main problem. The collective psyche of the Puerto Rican people has been conditioned to think that if for some reason the United States would let go, the Island would simply perish. Asking for national sovereignty, then, is commonly misinterpreted as asking for a quick, immediate and total independence. And this frightens many people on the island.

Like I argued at the beginning of this paper, sovereignty is no longer that authoritarian and absolute concept theorists conceived centuries ago. As we saw earlier on, States all over the world are currently ceding powers to higher political authorities, even States as powerful as France, Italy or Germany. This may be bad for those persons who still wish to see sovereignty as "absolute and indivisible" but it is certainly good news for those who live in countries where sovereignty is merely a textbook word. These countries, Puerto Rico included, now have a gray area on their specters. It is not any longer "either we have all sovereign powers or we do not." Now it is more a question of getting some that will put you in equal positions with other sovereign countries.

This sounds all very nice in theory, but it is necessary to present real live examples of how this would work. Let's imagine for a moment that Puerto Rico were to sign a truly bilateral pact with the United States and that this pact granted Puerto Rico sovereignty over most of its issues. What would this mean? This would mean that, for example, Puerto Rican law would take precedence over US law (in Puerto Rican soil) just as long as it were not otherwise specified in the treaty. It would certainly mean the end of the maritime laws that have hurt us for so many years, and this would be accompanied by the entry of other foreign products. It would also mean the entry of Puerto Rico into the international arena with a vote on the United Nations. □

All of this may have seemed, in the past, incompatible with a relationship on an equal to equal basis with another country, but as the European Union and the Compact of Free Association of the Marshall Islands have demonstrated, a country can cede certain sovereign rights to another and still be called sovereign. In the case of the Marshall Islands and Micronesia, they ceded Defense and Security to the United States and in the huge text of the Compact there are many other provisions which refer to powers that have been ceded by or to the United States.

One of the perpetual fears of Puerto Ricans is the loss of the free transit between Puerto Rico and the United States. Article IV of the Compact deals with this issue in the case of the Marshall Islands and Micronesia and grants them the right to “enter lawfully and engage in occupations, and establish residence as a non-immigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26)”. This is yet another example of how acquiring sovereignty is not any longer a synonym of isolation and seclusion.

So in conclusion...

The word “sovereignty” used to be a black and white term. Either you had it or you did not. As we have seen throughout this paper, this is no longer the case. Since its conception in the 16th century, this word has gone through many changes caused by the dynamic environment of international relations. This term used to carry a very “absolute and supreme” ring to it that Globalization can no longer accept. States are no longer able to act freely without any restraints but this does not mean that these States are no longer sovereign.

The member States of the European Union have made the concept go through yet another change by ceding some of their sovereign powers (such as the capacity to control national currency) while retaining a “sovereign” status internationally. This re-definition of the concept has shown the world, once again, that being sovereign is not a matter of being absolute, that in fact, it is impossible for any country to be “supreme and absolute”.

How has this broaden the possibilities for colonies such as Puerto Rico? The European Union put into practice something that, up until then, existed only in theory: there is a gray area on the sovereignty specter. This internationally accepted re-definition of sovereignty is probably what has led other countries to enter bilateral and multilateral pacts where the parties involved renounce or cede some sovereign rights. One such example is the Free Association treaty between the Marshall Islands and the United States. It is this more flexible definition of sovereignty that now exists in *practice* what has made Free Association a real option to solving the Puerto Rican status problem. Asking for more sovereignty is no longer an act of asking for complete separation but instead it is asking for control over more issues while living in a small and interdependent world.

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ⁱ Translation: "Sovereignty of States, even of the most powerful ones, has encountered, on an international arena, limits resulting from the coexistence between them and the concurrent sovereignty of other States in a world which everyday is smaller and more interdependent. [...] Not even powerful States, or superpowers, can deal with problems that concern them with entire freedom, in general terms, they can not act however they want to [...]"

ⁱⁱ On June 2001, the First Circuit Court of Boston, decided that the Death Penalty could apply to Puerto Rico even though the Puerto Rican constitution strictly prohibits it.

ⁱⁱⁱ "Unincorporated territory"- A term that derives from Supreme Court Justice Edward Douglass White's concurring opinion in *DOWNES v. BIDWELL* (1901). To be an unincorporated territory is to belong to but remain separate from the United States. Those living in the territories are American citizens (American nationals in the case of American Samoa), but they do not have the right to vote in federal elections. This status means that the territories are neither sovereign nations nor American states and has induced varying degrees of dissatisfaction both in the territories themselves and in the United States.

^{iv} The "Compact of Free Association" between the United States and the Marshall Islands and the Federated States of Micronesia can serve as an international precedent. Article II "Foreign Affairs", section 121 states that a) The Governments of the Marshall Islands and the Federated States of Micronesia have the capacity to conduct foreign affairs and shall do so in their own name and right, except as otherwise provided in this Compact. (b) The foreign affairs capacity of the Governments of the Marshall Islands and the Federated States of Micronesia includes: (1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law; (2) the conduct of their commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting their individual citizens. (c) The Government of the United States recognizes that the Governments of the Marshall Islands and the Federated States of Micronesia have the capacity to enter into, in their own name and right, treaties and other international agreements with governments and regional and international organizations.