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Discussion After the Speeches of Richard B. Bilder and Donat Pharand

QUESTION: *Professor King*: I was curious as to whether the speakers would want to comment on to what extent the European Community affords a model for a balance between sovereign independence or balanced sovereignty, and an identification of state values and cultural values.

ANSWER: *Professor Pharand*: I have in my notes, as a matter of fact, a word specifically on that. You are perfectly right. The EC could, it seems to me, constitute a model for the world to imitate. But do not forget that 21 states of the Council have developed over centuries, what I call minimum common values. It was not done overnight by any means. After all, it is only since 1991, for instance, that the EC has established minimum common values in human rights. I nearly got into the field of human rights preparing my paper. Imagine when I realized, after writing quite a bit, that there was someone speaking on human rights. And not only was there someone, but after his name I saw S.J., which meant, of course, that this was a Jesuit Father. Well, having studied under the Jesuits for seven years, I said never will I speak on that topic. I will not touch it, because those fellows are so solid, they are just absolutely irreplaceable.

But anyway, it is only since 1991, that states have finally, by way of additional protocols to the European Convention on Human Rights, accepted that an individual may take his or her complaint directly to the European Court, after of course having the petition declared receivable by the Commission. Nevertheless, this shows the extent to which the European countries have developed certain common values, and how they are now developing a political community from the original economic community.

They have accepted, as it were, a lesser sovereignty for a greater prosperity. It is a good exchange, it seems to me. And this is the kind of model, to use your phrase, to which, in spite of its limitations, we could perhaps look. But I do not think it is for tomorrow, and for the same reason, for the lack of those common values at a minimum.

ANSWER: *Professor Bilder*: The European Community is certainly a possible model. But I think the Community is particularly interesting as showing that our classical or traditional model of international law, which has regarded states as really the only significant actors in the international system, is simply no longer accurate. Obviously, the European Community — as well as other global and regional international organizations such as the U.N., OAS, OAU, and CSCE — have become principal players, separate and apart from the individ-

ual states that comprise them, and we cannot hope to understand either contemporary politics or contemporary international law without taking them into account. For example, the European Community is now a party in its own right to a variety of international agreements. This is also the case, of course, with a number of substate actors and groups, such as international NGO's and international corporations, which again, despite their clear importance for the workings of the international system, have been largely ignored by traditional international law. We have to find some way of rethinking our conceptual structures so as to bring these non-state actors into our analytical framework.

One of the most interesting things I learned in preparing my talk for this conference was just how recent and historically contingent the concepts of "sovereignty," "statehood" and "the state system" really are. I found it liberating to realize that the national state is only one of many possible ways in which people can politically organize their activities and interrelations and that we need not lock either our political or legal thinking into that single model. Certainly, it is open to us to think about different and more flexible kinds of international interrelationships and legal structures and, indeed, this seems to be the direction we are going.

QUESTION: *Mr. O'Grady*: I am interested in this idea. You frequently hear it said that the nation state is a relatively modern concept, and you just said something to that effect, Professor, but if you look at the Roman Empire, the kings of Persia, the ancient emperors of China, what is so different about their form of political organization from the modern nation state, and the modern concept of sovereignty? Is this idea not more or less autonomous to any one geographic district? Is this not just inherent in the political organizations of mankind from ancient time?

ANSWER: *Professor Pharand*: I am not sure at all that I am versed enough in the early history of international law to delve into that question, but I think you might well be right. We had the concept of city-states, and then we went to the Roman Empire, and then we went back, as it were, in a sense, at Westphalia, and developed principalities and statehood. And, then, we went from there and developed the concept of sovereignty as we know it today in the western world; because — as someone I believe has pointed out already — it is basically a western concept, and we have considerable difficulty today, when that concept is applied without limitation, by certain non-western States.

But, to come to your question, I think you might well be right.

The essence of your comment is that we have not changed all that much if we go back far enough.

ANSWER: *Professor Bilder*: I am not a scholar of this material, but if I might slightly disagree from Donat here, my reading on this —

which I say with a caveat — is that it was not that way. It is really very interesting, from my reading, that our idea of statehood, of nationality, of allegiances, of broad territorially defined allegiances, is really very new, and really does come from Westphalia. Interestingly enough, what I think the scholars in this point out, is that before we had the state, we had — at least particularly in western society — a very global sense, a very universal sense of law and of allegiances and things like that.

For example, the Roman Empire, which for thousands of years through the Holy Roman Empire, consisted of an international community in which everybody was really together. They might have been in little local units, but there was a spirit that there should be something bigger, that there was a universal kind of law. Then, with the Papacy in Christendom, there was again this broad sense that, yes, everybody was doing their own thing, but that basically there was a binding, more — of course I am talking mostly western — universal force, at least in the west, that bound people together.

It was my understanding that things got to be such a mess in the religious wars, the Thirty Years War, etc. . . , and with the growth of capitalism and a whole bunch of factors coming together, that the state structure was the only way to deal with the chaos of many, many different kinds of structures overlaying each other in terms of governance and the lack of order in a time of particular trouble. In addition, a lot of people say that the development of capitalism and other forces, economic and technological forces could only be dealt with and harnessed through a territorial consolidation, within what we now take for granted as the state structure.

And this is what I meant in suggesting that the state was very contingent, and that people did not think that way before. It is just now that we have grown up. So, because I am not a scholar of it, all I can say is that many of the writings seem to suggest that that is not the way it is, that our way of thinking is very special to our own time in our particular history, which I find very interesting.

