Changing sovereignty and changing borders: vox dei or vox populi?

"The world is becoming more integrated, it is becoming increasingly tightly linked by communication systems, and yet, at the very same time, it is becoming more fragmented. Since Jean Gottmann wrote his seminal *The Significance of Territory,* the friction of space on communication has been lessened by the greater speed of train and air travel, by a better connected and less encumbered telephone system, by satellite transmission of radio and television signals, by the instant run around the globe of the e-mail and the web; but during that period many new sovereign states have been created; many more international borders have appeared. Distance – physical and perceptual – as well as boundaries that protect and divert communication remain major factors in international relations. ... Will the 21st century reverse the process of fragmentation of the world system of states? ... We should thus anticipate that new nations will appear. ... How will these new states be created, how will their boundaries be determined?"

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Introduction

The world is becoming more integrated, it is becoming increasingly tightly linked by communication systems, and yet, at the very same time, it is becoming more fragmented. Since Jean Gottmann (1973) wrote his seminal *The Significance of Territory,* the friction of space on communication has been lessened by the greater speed of train and air travel, by a better connected and less encumbered telephone system, by satellite transmission of radio and television signals, by the instant run around the globe of the e-mail and the web; but during that period many new sovereign states have been created; many more international borders have appeared. Distance – physical and perceptual – as well as boundaries that protect and divert communication remain major factors in international relations (HENRIKSON, 2002). True, the EU and Schengen type of agreements lower some of these borders, but for the world as a whole the century just ended marks a triumph of the movement of nationalities expressed in the juxtaposition of sovereign states with juridical control over separate territories.

Will the 21st century reverse the process of fragmentation of the world system of states? The formation of large economic and military blocs capable of measuring up to the super powers of the time will push the system in that direction; but, ethnic and national conflicts will continue to have an opposite effect. We should thus anticipate that new nations will appear, especially so if economic markets and political "markets" become decoupled from each other, thus allowing very small states to find a viable niche in the global economy.

How will these new states be created, how will their boundaries be determined?

One of the rhetorical questions that political science likes to put to itself asks whether regime matters, whether a state's system of government influences its behavior at the international level. The obvious answer is, of course, "yes and no,"

- yes, for example, in as much as democratic states practically never go to war against one another;
- no, in as much as the same democratic states have no qualms in forming alliances with dreadful abusers of human rights.

But this "yes-no" is in effect a "yes" answer since it says that there is some spillover from internal ideologies and politics to the outside, a spillover of the "good for the self" unto the "good for others."

An area of the spillover, much overlooked by students of international relations, concerns the involvement of the people who inhabit a given territory in a decision concerning its sovereignty and boundaries. Is the decision to come from above or from below. Vox dei? vox populi? or a blend of the two?

Before giving an answer to the question, let us replay a partition game suggested by the following boundary setting typology (LAPONCE, 2001a).

Consider a population of Os and Xs distributed as follows in physical space:

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oooooxxxx
oooooxxxx
oooooxxxx
oooooxxxx
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Assume now that we are boundary makers having to run a continuous separation through the whole set. Where shall we run that separation? Four major solutions are offered to us. To facilitate their identification, let us give them names.

- **Solution 1,** a Woodrow Wilson type of solution, creates homogeneity by separating the Os from the Xs;
- **Solution 2,** a solution that made multireligious England attractive to both Voltaire and Montesquieu, maximizes internal diversity by maintaining the original pattern thanks to the running of the division horizontally after the second row.
- **Solution 3,** a mix of the Wilson and Voltaire solutions runs the line in such a way that a few Xs are attached to the bulk of the Os, and a few Os to the bulk of the Xs.
- **Solution 4,** a kind of experimental solution, runs the line so that the Os are a solid block of Os, while the Xs have a few Os on their side. It sets Wilson on one side against Voltaire on the other.

Solution 1	Solution 2	Solution 3	Solution 4
oooo xxxx	ooooxxxx	oo ooxxxx	ooo oxxxx
oooo xxxx	ooooxxxx	ooo oxxxx	ooo oxxxx
oooo xxxx		xxxx ooo	oxxxx
oooo xxxx	ooooxxxx	oooooxx xx	ooo oxxxx
	ooooxxxx		

The leader as international boundary setter: Vox dei or vox populi?

What we have been doing in sorting out the Os and the Xs is what leaders and governments have been doing from time immemorial. We have played God, we have been the vox dei. We have decided where the line should run on the basis of our own ideological or practical preferences. We have not consulted the 0s and the Xs.

If we were to pick at random any boundary in the world, we would have an extremely high chance of having selected a boundary that was set by rulers as gods of the map. Many are the examples of the vox dei approach, few are those of a vox populi involvement. I shall give examples of each type.

● After the Second World War the Allied Council of Foreign Ministers met to determine the boundary between Italy and Yugoslavia (SCHECHTMAN, 1962). They agreed that the division should be along ethnic lines (our solution 1). In fact, when it came to drawing the line, the USSR proposed a boundary that would give close to half a million Italians to Yugoslavia and no Yugoslavs to Italy (our solution 4); the USA proposed a line further to the east that would give a minority of 300,000 Yugoslavs to Italy and 50,000 Italians to Yugoslavia (our solution 3); Britain and France wanted to put a rough balance of Italians and Yugoslavs on each side (our solution 2).

This unusual attempt at using a Wilsonian principle of national allocation of space (unusual for a Second World War border settlement) was soon abandoned and most of the ground (Trieste excepted) was given to Yugoslavia.

The simple point I wanted to make from this example is that although the negotiation started with an agreement that the ethnic cleavages should lead to the solution, the people concerned were never consulted. The leaders were playing international chess. It could be that they had no choice since the Cold War had already begun. I am not passing ethical judgment on their intentions but on their behavior. It was undemocratic and unethical to dispose of a people's right to sovereignty without consulting them.

● As examples of the second type, let us consider two vox populi cases:

- that of Klagenfurt (1920) and
- that of Upper Silesia (1921).

• The Klagenfurt basin which is now the most southwestern of Austria's provinces was claimed by Yugoslavia after the First World War on the ground that it had a large population of Slavic origin.

The Peace Conference decided to hold a plebiscite in an area with about 125,000 inhabitants. According to the Austrian census of 1910 the southern part was 68 percent Slovene (more precisely "Windisch") while the northern part had only 8 percent Windisch speakers. The whole area was Catholic since the counter reformation (WAMBAUGH,1933).

The Klagenfurt referendum had one very distinctive feature. The voting area was divided into 2 zones which were each administered by the claimants, the northern zone by Austria, the southern zone by Yugoslavia. An Allied International Commission organized and supervised the referendum. Although Austrian and Yugoslav troops had withdrawn before voting day, the arrangement clearly favored Yugoslavia in the zone it administered. Yet, in that zone, it obtained only 40 percent of the votes for 18 out of 51 communes.

The referendum regulations specified that the electors of zone 1, that closest to Yugoslavia, would vote first and that the vote in zone 2, that closest to Austria would be held only if a majority of zone 1 had decided to secede from Austria. That second vote was not held since the first referendum had rejected the secession option.

Yugoslavia had made a major mistake in wanting too big a zone 1. Had the zone been restricted to its southern portion, it would have produced a majority in favor of Yugoslavia who tried indeed to convince the Allied Peace Conference that it should get the southern communes of zone 1 that had voted for separation. The Commission ruled that the electoral regulation, which expected the decision to be made at the zone level, could not be changed ex post facto. A different set of rules could have given satisfaction to the southern Slovenes; for example the rules used a quarter of a century later in Switzerland when Jura seceded from Bern. The Swiss procedure, the most democratic among secession rules, specified that a region could, on a second referendum, dissent from the whole and remain with Bern, and that on a third referendum the local communes located on the boundary determined by the second referendum could, by referendum once again, switch side and join either Bern or Jura (McRAE,1983; JENKINS, 1987, LAPONCE, 1987, 2001a and 2004).

The Klagenfurt case offers a textbook illustration of the difference in outcome that results from consulting a population rather than deducing its interests and loyalties from purely objective criteria. Most Windisch speakers may well have been 'objectively' closer to Yugoslavia than to Austria by language and culture but not by other criteria, and decided, on balance, that they preferred to remain under Austrian sovereignty.

• Our second example of a vox populi case concerns Upper Silesia after the First World War. The region had belonged to German rulers for five centuries but had a majority Polish-speaking population. Woodrow Wilson wanted to give it all to Poland (for the Wilsonian criteria of national distinctiveness see AMBROSIUS, 1987). It took the insistence of Lloyd George, who proved to be more Wilsonian than Wilson, to obtain that a referendum be held. The plebiscite was supervised by an allied commission, backed up by French, English and Italian military forces (WAMBAUGH, 1933; LAPONCE, 2001a).

Notwithstanding a very tense situation marked by frequent

clashes between Poles and Germans, voting day was relatively peaceful. The result was 60-40 in favor of Poland. But, unlike in Klagenfurt where there was a geographical gradient of separatist opinion, no such gradient obtained in Upper Silesia which offered on the contrary a checkerboard mix of ethnicity, especially in the industrial east where central cities would often have large German populations surrounded by Polish suburbs.

Rather than count the vote by areas, as in Klagenfurt, the votes were tabulated at the local level of the commune and submitted to the Plebiscite Commission whose task it was to select a boundary. The French, English, and Italian commissioners were unable to agree. The selection of a boundary was thus referred to the League of Nations which instructed a committee to give priority to ethnic over economic considerations. The final boundary satisfied that condition but could satisfy, according to Wambaugh (1933), little more than 60 percent of voters. If the whole of Upper Silesia had been given to Poland, a roughly similar percentage would have been pleased with the outcome; but, in that last case, only Poles would have been among the satisfied. The boundary of the League, obtained after consultation of the populations concerned, offered a more balanced outcome, hence a fairer division. Lloyd George gives us here an example of rational as well as ethical leadership. He set aside the vox dei, not entirely but enough to make room for the vox populi. He blended the interests of the Allies (to weaken Germany) and the interests of the German residents, at least a large number of them.

From vox dei to vox populi

The principle that populations should be consulted in matters of sovereignty and boundaries was introduced to international relations in 1791. The events are worth recalling since they mark a revolution in the relation between people and states. For the first time "They, the people" voted in a referendum to change sovereignty.

- The French revolutionary Assembly, which had renounced conquest, was embarrassed if pleased when in 1791 a delegation from Avignon, which had belonged to the Holy See since the 14th century, came to the bar of the Assembly to request joining France. To reconcile the principle of non-expansion with that of popular will, the Assembly requested a referendum. As expected, the vote favored France in what appears to have been relatively fair election. Of particular interest to our vox populi/vox dei alternative is the debate that followed the Avignon vote in the French Assembly. Among those favorable to Avignon joining France, a minority, unwilling to transfer power of decision to the people, argued for annexation on legal grounds, on the ground that the Queen of Naples, who had given Avignon to the Pope in the 14th century, had been a minor at the time, hence had transferred it illegally. The majority said: never mind the legal imbroglio, what matters is the will of the people of today (see a selection of the debates in the Assembly as well as a description of the vote in Avignon in Wambaugh (1920)).
- Since Avignon, some 150 odd referendums concerning sovereignty have been held (WAMBAUGH, 1920 and 1933; FAIRLY, 1986; BUTLER, 1994; LAPONCE, 2001a). Among those, a handful transferred from the rulers to the people not only the right to choose a sovereignty but also the right to determine where the international boundary would run (see the list in LAPONCE, 2001b)

In the years which followed the Avignon "revolution," the referendum was used again in Savoy and in Nice to obtain union with France, but it soon degenerated into manipulated procedures to justify the annexation of Belgian and Rhine valley cities, and then disappeared from the diplomatic scene during the first half of the 19th century, a politically conservative era. It reappeared after the democratic revolutions of 1848. It was used systematically throughout the process of Italian unification, either to build the Italian state from mid-century to 1870, or to legitimize paying the political debts (Savoy and Nice) that Sardinia "owed" France.

The plebiscite was also used by Sweden and France for the transfer of the Island of Saint Bartholomew, it was used by the Ionian local assemblies to obtain unification to Greece, by the European powers to obtain autonomy for what later became Romania, by Norway to obtain its independence from Sweden, and by Natal to join South Africa. All these referendums were successful in obtaining what the majority had supported.

- The high period of the sovereignty referendum occurred after the First World War (WAMBAUGH, 1933: LAPONCE, 2001a) mostly to redraw the borders of Germany and Austria, but also to settle the claim to self-government by Southern Rhodesia, the claims of Sweden and Finland over the Aaland Islands, the union of Iceland to Denmark, the attempts of the Vorarlberg to join Switzerland, the attempt of Salzburg and Tyrol to join Germany, and the attempt by Western Australia to separate from the Australian federation. The success rate of these referendums in satisfying the voters was not as high as in the previous century. Western Australia did not separate, the Aaland Islands did not join Sweden, the Vorarlberg did not become Swiss, the Tyrol and Salzburg did not trigger the Anschluss; some referendums had to be abandoned, as in Teschen 1920, Vilna 1921, and Taca 1925; some were plebiscitary frauds, such as Vilna 1922, but these total or partial failures are of less significance than the successes, and in particular the success in introducing a new type of referendum, one that was intended not only to transfer sovereignty but also to divide the contested ground, notably in the cases of Schleswig, Upper Silesia, Allenstein, Marienwerder, and Klagenfurt. In those five cases, the voters were asked to decide or share in the decision concerning the location of a boundary between contesting states (LAPONCE, 2001a).
- The fourth period of the referendum, which extends from the end of the Second World War to 1990, coincides with the Cold War. The democratization of sovereignty determination started in Avignon suffered a major setback (DEFRANCE, 1996; KEYLOR, 1966; LAPONCE, 2001a). If the sovereignty referendum was still widely used in the process of decolonization, it was almost never used in Europe, the referendum of 1955 in the Saar being the exception (I do not count the manipulated plebiscite by which Poland agreed to her new boundaries in 1946); and nowhere was it used to offer a split of the voting area except in the case of the British Cameroon that was divided in 1959 between Nigeria and the French Cameroon.

Post-World War Two diplomacy, as well as the international law built on that diplomacy, marked a drastic reversal in the evolution. Typically, after the Second World War, the Allies, rather than consulting people in matters of sovereignty, chased them from their homes, more or less forcefully, in order to homogenize the ethnolinguistic composition of the European system of states. Great power diplomacy practiced then, on a large scale, what it condemned 50 years later as ethnic cleansing. The winning powers who, during the First World War, had agreed to the principle of self-determination, decided during the Second World War, to reorganize the map by other means, by agreeing for example to Benes's request that Germans be expelled from Czechoslovakia (SCHECHTMAN, 1962).

The map resulting from these practices was subsequently frozen by what Jackson and Zacher (1997) call the "territorial covenant," the covenant which guided Western diplomacy, a covenant which says that, former colonies excepted, state boundaries are unchangeable unless it be with the expressed

consent of the states concerned (among the many studies of the ambiguous position of international law on the question of self-determination see BUCHEIT, 1978; ROURKE et al, 1992; CLARK and WILLIAMSON, 1996; LAUWERS and SMIS, 2000; WALTZ, 1959; WALTZER, 1986; FALK, 2000).

- The fifth and most recent period starts with the fall of communism. From Slovenia to Timor the referendum re-emerged as a means of deciding transfers of sovereignty, especially so in Europe. That period marks a partial revision of the "territorial covenant." Revision in the sense that the new states that emerged from the USSR and the former Yugoslavia were recognized eventually by the international community even when the former sovereign did not agree to the secession; but a partial revision since the conservative "covenant" was moved down from the level of the whole state to that of its internal governing units, for example from the level of the USSR to that of Moldova or from that of Yugoslavia to that of Bosnia-Herzegovina.

This partial revision worked relatively well in the USSR, except in the case of de facto secessions such as that of Transnistria; but in Yugoslavia it is likely to have fanned ethnic wars, notably in Bosnia-Herzegovina where the referendum procedure was most dysfunctional because of the use of majority decision at the level of the whole republic instead of using a zone by zone count as in Klagenfurt or an advisory referendum as in Upper Silesia or a Swiss type of sequential referendums down from the whole areas to the local level.

The problems posed by the ill-fitting boundaries of the ex-Yugoslavia divided the members of the European Union. To its credit, Holland wanted that the boundaries of Bosnia Herzegovina be modified. But the Dutch found no support among the other members of the Union (OWEN, 1995).

In addition to arguments pointing to the difficulty of changing an international boundary, the conservatives often defend the status quo by saying that "civic citizenship is better than its ethnic variety" and that people who live in systems akin to Voltaire's ideal (our game solution 2) live in a better world than those akin to the Wilsonian ideal (our solution 1). That is often true; however, to make it a universal truth is not justified by events. Multi-ethnic societies may well be better civil societies when the groups of which they are composed are civil to one another, but why expect such civility when the ethnic antagonism is very high, when the people are on the verge of civil war? Separating antagonists is the first rule of action from bar brawls to street fights to international conflicts.

Politically, such separation may take a variety of forms that are grouped under the name of "consociationalism" in the study of comparative politics (for example the territorial separation of languages in Switzerland), and may signify, in international relations, the drawing of new protective boundaries, preferably with the help of the populations concerned. If "love thy neighbor" is always good advice, "Share your home with that neighbor" is not always a good prescription (LAPONCE, 2001a). It is sometimes easier to love or at least to like at a distance than at too close a range. And, if in doubt, why not ask the people?

Conclusion

Let us conclude in two steps; first a wish à la Grotius, then the appropriate counterpoint.

Grotius and his followers based their *jus gentium* on the argument that, since man has to live in a community of men, pure egoism is as irrational as pure altruism (MAGNETTE, 2001). Love of self has to be tempered by the love of others in order that the self be able to survive. That applies to the relations among communities as well as states. The consideration for others is both ethical and self-motivated. Our wish is thus, now that the Cold War is over, for a return to the democratic practice started in Avignon and refined after the First World War, a return to the practice of giving voice to the people in matters not only of sovereignty but also in the determination of international boundaries.

The counterpoint, inherent to a Grotian position, is that asking for more vox populi does not imply that leaders should abandon their responsibilities as holders of authority. The wish is for inclusion of the people in the process of decisions concerning sovereignty and boundary, as much as advisable. I agree with Bucheit (1978) that the right to self-determination is subject to restrictive criteria that I narrow to viability, seriousness of the claim, world peace, and relatively good citizenship in the international system (LAPONCE, 2001a).

In matters of applied ethics, one must not be so ideologically committed to certain means of reaching desired goals that one would be blind to perverse effects. In some cases, the referendum will not be the best way of serving the populations concerned. In the 1920s, for example, a plebiscite intended to resolve a territorial dispute in Teschen between Czechoslovakia and Poland was abandoned when it increased dangerously the tensions between the two communities. The problem was resolved by arbitration. Similarly in Tacna and Arica, in 1925, in the case of a dispute between Chile and Peru (WAMBAUGH, 1933).

But these and other cases of non applicability of the plebiscite to the settlement of sovereignty and boundary disputes do not stand in the way of the general observation that there would be much to be gained, ethically and practically, if the evolution begun in Avignon were to be resumed and the people trusted to decide in matters concerning their sovereignty and their territorial boundaries. Even in the former Yugoslavia it is not too late to do so and there are a number of other locations where the boundary referendum might ease the way from violent conflict to peaceful solution: notably in Sudan, Kashmir, Sri Lanka, and Israel.

So, the wish stands, a wish for the continued democratization of international politics; the simple wish that, in matters of sovereignty and boundaries, the vox populi and the vox dei sing in harmony.... as much as possible; the wish that Jean Gottmann be remembered by the rulers of the map when he says (GOTTMANN, 1973): "the relationship between sovereignty and territory is built upon a connecting link: the people ..."

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