**PRESERVING NATURE AND THE NATION: REDEFINING STATE SOVEREIGNTY IN THE** **ANTHROPOCENE AGE:**

**The concept of state sovereignty is a legal, social and political construction that has evolved in the past 200 years to mean that autonomy and complete control is vested in state authority.[[1]](#footnote-1) In view of our complete dependence on Mother Nature, this is obviously a fiction. In the face of accelerating global Climate Change, it’s time to reconstruct and enlarge the legal definition of sovereignty to include the state primary responsibility to preserve life, meaning both the nation and nature OR THE NATION-STATE MAY WELL PROVE TO BE THE MODERN DINOSAUR, DOOMED TO EXTINCTION.**

**In fact, the British philosopher Thomas Hobbes called self-preservation the basic law of nature, or Lex Naturalis;[[2]](#footnote-2) as such this is the proper foundation for state sovereignty in the anthropocentric Age. The basic doctrine of self- preservation is reflected in the derivative notion of military or national security, which becomes necessary only when there is something left to protect and preserve. If left unchecked, global climate change will simply destroy a large part of the people and existing nature within the boundaries of the nation state WHILE THE STATE MILITARY POWER WILL REMAIN LARGLY IMPOTENT BEFORE THIS ACCELERATING AND EXISTENTIAL THREAT…**

**THE RECONSTRUCTION: INTEGRAL SOVEREIGNTY:**

**Fortunately, such an evolution in the legal definition of state sovereignty does not require a complete refutation of its past and now archaic, if not dangerous, definition; rather, we must build and enlarge its meaning to encompass an explicit acknowledgement and obligation to protect the nations’ means of self-preservation found, first and foremost, in the natural world.**

**The word “integral,” in its original Latin meaning, provides a clear blueprint on how to achieve this. Specifically, as its meaning evolved, the word “Integral” means, among other things: “of or pertaining to a whole, intrinsic, belonging as a part to a whole.” Thus, to conceive of a state enjoying “integrated sovereignty” clearly implies that it is part of a greater whole, which is natural world from which all life, including that of the nation, derives and depends.**

**In the past hundred years, state sovereignty has evolved to mean territorial sovereignty and to a lesser extent, national or ethnic sovereignty, or some combination of the two; as Barkin and Cronin point out, “the bulk of the international relations literature generally does not account for any variation in the legitimation of sovereignty through the course of modern history. It is often not appreciated fully that sovereignty is a social construct, and like all social institutions its location is subject to changing interpretations.” [[3]](#footnote-3)**

**In short, it should be obvious—though it is not to statists of simplified realism—that state sovereignty is not an absolute and fixed fact of nature, like the Grand Canyon or the craters on the moon.** **This is because the legitimation and legal definition of sovereignty has changed over times to adapt to new circumstances and deep crises, like revolutions or word wars.[[4]](#footnote-4)**

**In view of this, the emergent and accelerating global emergency of climate change creates unique circumstances that profoundly endanger both the territory and the nation, or “population” of the state; if the state can’t adapt and rise to this challenge, it will have less and less raison d’etre for its continued existence, especially if greater and greater parts of its territory and people are ravaged by the coming wildfires, windstorms, flooding, droughts and displacements caused by the accelerating climate crisis.**

**In view of this emerging and accelerating climate emergency, which represents an existential threat, the basic legitimation of a state’s sovereignty must become the self-preservation and perpetuation of the nation or people as well as the essential biological systems that make life possible on Earth.[[5]](#footnote-5) The state must legally and politically recognize that it exists only as part of a greater natural world that makes all of life, including human societies-- and hence its mere existence-- possible. This is why integral sovereignty must now be defined in terms of the state seeking to insure, above all else, the self-preservation of nations and nature living in harmony with Mother Earth.**

**Furthermore, such integrated sovereignty makes more explicit the legal obligation of states to preserve the whole of the natural world, especially its “core commons,” as a lawful condominium[[6]](#footnote-6) in order to ensure the preservation and perpetuation of life and the Earth’s rich biodiversity into the future.**

**International Law and the ICJ has already recognized the legal obligation of states to prevent irreversible harm or the “do no harm,” “prevention” and “precaution” principles concerning the environment.[[7]](#footnote-7) The ICJ has also recognized the prevention principle as a customary principle of international law.[[8]](#footnote-8)**

**Integrated sovereignty allows, and even requires, that customary international law dealing with the environment be enforced in the domestic courts of each state. The key characteristics of such Integrated Sovereignty are that domestic courts, political and economic elites, and societies at large, recognize their essential legal obligations within the modern state realize these goals of self-preservation:**

1. ***Join in sustained regional and international with other states based, in part, on legal treaty obligations[[9]](#footnote-9)* to insure the preservation of the nations and nature. These efforts must include progress to halt the acceleration of climate change through carbon cuts, and the use of yet to be proven Negative Emission Technologies (NETs). Protect and restore as much natural habitats on a state territory that help absorb CO2 from the Earth’s atmosphere, or prevent Greenhouse gases from escaping, the so-called Methane bomb….**
2. **Enact state policies to help curtail the *exponential growth* of the global human population on Earth[[10]](#footnote-10) through family planning, the empowerment and education of women as well as tax incentives. Encourage a “2X2” population policy.[[11]](#footnote-11) Simply stated, the *exponential growth* in global human population can’t, by definition, continue within a limited ecosystem, even if it is the entire earth.**
3. **Reconfigure the “inner architecture” of state sovereignty characterized by the separate executive legislative and Judicial branches by strengthening the independence of the Judiciary and expanding national court jurisdictions to include both the modern Law of Nations,[[12]](#footnote-12) consisting of those laws common to humanity, including as well the emergent Lex Naturalis, or Law of Nature.**

**Specifically, the state can do this by recognizing and enhancing the role of the domestic courts in enforcing environmental law, both national and international, on the grounds that adjudication environmental legal obligations are now a precondition to its claims to sovereignty. In particular, the courts must now accept as self-executing within their national, regional or local jurisdictions the Law of Nations, especially treaty or customary international law as the [[13]](#footnote-13)emergent, common and shared Lex Naturalis; as such, this law must now reach deep into the domestic jurisdiction of every state to insure legal protections for the nation and nature against its own and other governments.**

**In particular, the emergent Law of Nature—including the No harm, prevention and precautionary principles of international law –now obligates states to PROTECT WHAT IS ABSOULTELY NECESSARY FOR SELF PRESERVATION AND PERPETUATION OF LIFE ON THIS PLANET;[[14]](#footnote-14) this is the only basis for legitimate state sovereignty in the Anthropocene Age. So, observing and, if need be, enforcing these legal protections towards the environment, as well as peoples’ rights to a healthy and safe local and global environment are the absolute prerequisites to self-preservation and hence for legitimate and legal sovereignty of a state.**

**In short, integral sovereignty now requires that the state extend comprehensive legal protection, via its domestic courts, over all remaining biodiversity, forests and those natural systems that support and sustain life on this planet.**

**THIS REQUIRES THE STRICT LEGAL PROTECTION WITHIN EACH STATE JURISDICTION OF ALL REMAINING ECOSYSTEMS, FORESTS, AGRICULTURAL LANDS, FRESH WATER AND BIODIVERSITY PRESERVES. Only through the strict enforcement of existing and emergent environmental principles, norms or law, BOTH DOMESTIC AND INTERNATIONAL, do we have any chance of surviving the accelerating ravages of global climate change. Otherwise, we will probably go the way of the dinosaurs, and perhaps sooner rather than later. In short, there is really no more time to lose; we must take decisive actions NOW……**

**So, to repeat, consistent with the modern Law of Nations, such laws to protect nature and bio-diversity, the Lex Naturalis, are or now must be self-executing within the domestic courts of any state as a precondition of its sovereignty.[[15]](#footnote-15) This can be done by the courts recognizing as customary law the international legal principles of environmental law; jurists, legislators and scholars can help in this effort as well. Only in this way can any state accurately claim that it is working to insure the preservation of the nation and nature.**

**Thomas Boudreau Ph.D.**

**Salisbury University**

[**teboudreau@salisbury.edu**](mailto:teboudreau@salisbury.edu)

**© 2021**

**Creative Commons**

1. See: Brown, C., Cerny, P., Grieco, J., Groom, A. J. R., Smith, S., Higgott, R., ... & Lamy, S. (1996). *State sovereignty as social construct* (No. 46). Cambridge University Press. Also see: Ferreira-Snyman, M. P. (2006). The evolution of state sovereignty: A historical overview. *Fundamina: A Journal of Legal History*, *12*(2), 1-28. [↑](#footnote-ref-1)
2. Thomas Hobbes, (2007). *Leviathan*, Chapter 14. Duke University Press. [↑](#footnote-ref-2)
3. Barkin, J. S., & Cronin, B. (1994). The state and the nation: changing norms and the rules of sovereignty in international relations. *International organization*, 107-130. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. See: Magalhães, P., Steffen, W., & Bosselmann, K. (Eds.). (2016). *The safe operating space treaty: A new approach to managing our use of the earth system*. Cambridge Scholars Publishing. [↑](#footnote-ref-5)
6. Ibid…... [↑](#footnote-ref-6)
7. Dupuy, P. M., & Viñuales, J. E. (2018). *International environmental law*. Cambridge University Press. [↑](#footnote-ref-7)
8. Ibid., p.59 [↑](#footnote-ref-8)
9. One such treaty is the proposed Global Pact for the Environment. See: Aguila, Y., & Viñuales, J. E. (2019). A Global Pact for the Environment: Conceptual foundations. *Review of European, Comparative & International Environmental Law*, *28*(1), 3-12. [↑](#footnote-ref-9)
10. See, for example: Chapin III, F. S., Torn, M. S., & Tateno, M. (1996). Principles of ecosystem sustainability. *The American Naturalist*, *148*(6), 1016-1037. Also: Daily, G. C., Ehrlich, A. H., & Ehrlich, P. R. (1993). Optimum human population size. *Race, Poverty & the Environment*, 9-12. [↑](#footnote-ref-10)
11. This is the social policy that encourages two parents to have two children: ”Why be outnumbered?!’ Even if adopted for the duration of the climate crisis, this policy will continue the increase of human population for a while but at a slower rate than exponential growth…The idea that continued exponential human population growth has little or no relationship to our current environmental degradation and climate crisis is simply ludicrous. [↑](#footnote-ref-11)
12. Boudreau, T. (2016). Paradigms Lost and Found: The Emergent International Legal Order. *J. Juris*, *30*, 65. [↑](#footnote-ref-12)
13. Ib., Andrei. [↑](#footnote-ref-13)
14. See supra, note 5, See: Magalhães, P., Steffen, W., & Bosselmann, K. (Eds.). (2016).  [↑](#footnote-ref-14)
15. Boudreau,T. and J.C. Sainz-Borgo, eds.,(2017) Advances in International Law and Jurisprudence, .Elias Press [↑](#footnote-ref-15)