

The only way to protect citizens from their governments is to divide sovereign authority between the national and international levels

By Democratic Audit UK

*The foremost responsibility taken on by a state is ensuring the safety of its citizens, but how can citizens be protected if the threat to their safety comes from their own government? **Carmen Pavel** argues that it is a mistake to believe states alone can effectively protect the rights of individuals. She writes that only a form of 'divided sovereignty', in which international institutions are invested with the authority to constrain the actions of governments, can ensure individual rights are upheld.*



No one thinks that absolutely power is today acceptable (Credit: [Dennis Jarvis, CC BY ND 2.0](#))

In 1994, Sulaiman Al-Adsani, a dual British/Kuwaiti national, sued the government of Kuwait in a UK court for his alleged torture in a Kuwaiti prison. The UK court [held that](#) even though torture is a violation of a fundamental human right and condemned by international law, the Kuwaiti government could not be held liable due to its protection under the doctrine of state immunity. The European Court of Human Rights [sided with](#) the UK on appeal and against Al-Adsani.

Whether the two decisions were correct or not is a complicated legal issue, involving questions of jurisdictional authority and the status of state immunity in international law. What is more interesting is why Mr. Al-Adsani saw fit to initiate a civil suit in a UK court. The answer lies in the fact that, for people like him that suffer abuses at the hands of their own governments, there are few, if any, regional or international forums that allow individuals or groups to hold those governments accountable.

Part of the explanation for this dearth of forums lies in the fact that, traditionally, states have viewed their sovereignty as an unlimited and final authority over their territory and citizens. In practice, this view encouraged unfettered license in their dealings with their own citizens. And although the Nuremberg Trials after the Second World War have started to erode this understanding of sovereignty, there are few universal, principled constraints observed today on how states treat their own citizens. Events in the past few years in Syria, Sudan, Afghanistan, North Korea and other parts of the world where states have perpetrated large scale abuses against tens or

hundreds of thousands of people, or have stood by while abuses happen, make this fact vivid. Is there a solution to this long-standing problem of large scale state abuse and neglect?

Divided sovereignty

I want to argue that there is a solution to the above problem. The only way to keep states within the legitimate bounds of their authority is to supplement them with a layer of international institutions whose role is to keep states in check and act as an insurance scheme against the possibility of states failing to fulfill the most basic responsibilities to their citizens, such as preventing their enslavement or protecting their life and physical security. Despite worries that international institutions such as the [International Criminal Court](#) could undermine domestic democratic control, citizens can divide sovereign authority between state and international institutions consistent with their right of democratic self-governance.

We need not travel to the realm of utopian institutional thinking to imagine what such a system would look like. A small number of strong, well-circumscribed international institutions, which can evolve independently to provide minimal policing, protection and criminal responsibility functions, may be sufficient to prevent some of the most severe violations. The [International Atomic Energy Agency](#) currently polices states' use of nuclear energy to ensure compliance with international norms and to prevent catastrophic accidents. Why couldn't we have a regional or international agency whose task is to police individuals and states who engage in slavery, bonded labour and human trafficking?

The International Criminal Court offers a good model for how to divide authority between states and international institutions because it asserts jurisdiction over certain types of crimes (genocide, crimes against humanity, war crimes) only when states are unwilling or unable to take action. We can imagine other organisations that police human trafficking and slavery, that work to prevent massive loss of life during civil wars. These organisations will not be effective right away or fix any and all problems of large scale abuse, but they are necessary to complement many (or perhaps most) states, which by themselves cannot be trusted to offer reasonable assurance that their citizens' basic rights will be protected.

Such an agency would offer an especially needed oversight given that the incidence of slavery appears to be high and rising according to the first [Global Slavery Index](#) published in 2013. State leaders are of course reluctant to sign on to institutional reforms that end up tying their own hands. But citizens should push for devolving some authority for protecting their basic rights upwards and should support public officials who understand the need for such outside oversight. This has happened before with the creation of the European Court for Human Rights, so it is conceivable that it could happen elsewhere and on a greater scale.

Why would citizens in developed countries, whose rights are the most secure, and who are not in imminent danger of massive rights violations by their governments, agree to transfer authority for policing their government upwards to international institutions? Isn't this a problem of poor, corrupt, developing countries only? I would argue that it is not. The advances in Western democracies that made rights secure for the majority of their citizens are relatively new, and still fragile. It is easy to forget that well into the twentieth century, some of them were still engaged in vast human rights violations such as internment, systematic racial discrimination, forced sterilisation, and genocide.

For example, Sweden and the United States had widespread campaigns of forced sterilisation of undesirable minorities or people with mental health problems well into the 1970s. Furthermore, many people in advanced democracies react with moral outrage to atrocities such as the Rwandan genocide, but are unsure how to respond. Perhaps the best way to respond is to support limits on the authority of all states to treat their citizens as they please, including their own states.

Complementing the system of states with an additional layer of international institutions cannot happen if people believe that relying on states alone to protect their rights is sufficient, as most people probably do. My book, [Divided Sovereignty](#), explains why it is a mistake to think this way and what it takes to imagine realistic institutional alternatives. Any path to institutional reform must be pursued cautiously, mindful of the conditions of institutional success, which require experimentation with different institutional forms, limitations on the scope of authority for coercive international institutions, and an appreciation of the limits of existing knowledge on

institutional design.

States are imperfect, incomplete political forms. They presuppose a monopoly of coercive power and final jurisdictional authority over their territory. These twin elements of sovereignty and authority can be used by state leaders and political representatives in ways that stray significantly from the interests of citizens. In the most extreme cases, when citizens become inconvenient obstacles in the pursuit of the self-serving ambitions of their leaders, state power turns against them.

Virtually no one defends unconstrained sovereignty today, yet few have pursued the question of how to justify a system of international institutions that can plausibly limit state authority. A world in which states remain indefinitely the sole authority entrusted with the protection of their citizens and the enforcement of criminal responsibility is a world in which the potential for abuse of citizens remains an especially acute problem. And it is a world in which people like Sulaiman Al-Adsani have no way of ensuring that their own governments are prevented from committing abuses, or held responsible when they do.

Note: This article originally appeared on [LSE Euorpp – Euroepan Politics and Policy](#), and gives the views of the author, and not the position of Democratic Audit UK, nor of the London School of Economics. Please read our [comments policy](#) before commenting.

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