

Freedom and the Nation-State

*The nation-state is the best
insurance for liberty.*

By Jeremy Rabkin

IN THE PAST, FREEDOM WAS often conceived as an attribute of persons. The free man could exercise free thought and free will. He was the opposite of the slave—of the man enslaved by others, or the man enslaved by his passions, his superstitions, his bodily needs. Today we more often think of freedom as an attribute of places. We refer to a “free country” or a “free society” or (as the Second Amendment to our Constitution puts it) a “free state.” To view it this way implies that freedom is not so much a challenge one must live up to as a place to which one can move. In fact, tens of millions of people have moved from tyrannical states and empires over the past three centuries in search of better lives. And almost always they moved to free nations.

If freedom has a natural home in the modern world, therefore, it is the nation-state: the legal entity that claims sovereignty within a bounded territory, and which can grant freedom within that territory through its law. It is very hard to imagine the survival of freedom in a world that has left the nation-state behind.

WORLD GOVERNMENT?

YOU CAN SEE THE POINT MOST EASILY if you think about the most commonly discussed alternatives to nation-states. Start with world government. Today the phrase sounds somewhat quaint, a sort of Edwardian fantasy from the fountain pen of a faded seer like H. G. Wells. But Wells was still writing on this theme on the eve of the conference that drafted the UN Charter in 1945. As late as the early 1950s, the World Federalist Society—dedicated to promoting some version of Wells’s science fiction

vision—included in its ranks prominent members of the U.S. Congress. In the mid-1960s, the World Federalists were even able to persuade Chief Justice Earl Warren to address their convention (where he spoke in praise of the UN).

The most obvious objection to world government was stated in medieval times. The Florentine poet and thinker Dante Alighieri offered a utopian vision for earthly government, lauding, in his tract *De monarchia*, the peace and prosperity that would follow when the entire world submitted to the rule of one empire. The work was denounced by the Church: Dante assumed, his clerical critics argued, that divine attributes (such as omniscience and absolute benevolence) could be found in mere earthly rulers.

The objection remains valid. What makes for freedom is not the extent of government or its lack of national boundaries, but the way in which government is exercised. If there were a world government, why wouldn't it simply end up as a world tyranny? In modern times, the most respected philosopher to embrace something like world government was



Immanuel Kant. And Kant insisted, in his plan for a world peace federation, that the federation must limit its role to maintaining peace among nations, each of which should be an autonomous republic, under its own internal rule of law. (That is why Kant called the federation he proposed a “League of Nations.”)

Other plans for world government, such as those of the socialist and communist “internationals,” have brushed all such considerations aside.

But Kant's vision too is defective. For if a world authority has enough power to guarantee every nation against its enemies, it must be more powerful than any of its component nations. So what power could compel it to limit its reach? Suppose a particular state thought the federation was exceeding its rightful role. Could that state withdraw from the peace federation? If so, wouldn't that undermine the hope for uniting all states in one global peace federation? If not, wouldn't that leave the federation to keep expanding its powers, despite any objections

from individual member states? Or would a universal peace federation simply transfer the old threat of war between states into a new threat of civil war within the universal federation?

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Good questions, even today. The UN Charter, as formulated in 1945, envisioned a limited, modified version of the peace federation. The Security Council was to have military forces on call, including an international bomber command for quick action. As these provisions were adopted only a few weeks after the firebombing of Dresden, one may assume the delegates had some fairly severe “action” in mind, at least as an ultimate threat.

Nothing of the sort ever developed, of course. Even when the end of the Cold War brought talk of a “new world order,” there were not many voices urging that the new order be entrusted with an international bomber force, for the very reason that any international force would reflect the priorities of its most determined members. The UN has never endorsed military confrontations to end tyranny or even mass slaughter. The UN sat passively on the sidelines while 800,000 Tutsis were slaughtered in Rwanda in 1994. When NATO launched its bombing campaign against Serbia in 1999, to end murder and repression in Kosovo, it acted without UN sanction because Russia and China vetoed proposals for UN authorization. Even in Afghanistan, where the UN did authorize military action in 2001, the forces that actually overthrew the Taliban regime (and have continued to fight on behalf of the new democratic government) were supplied by the United States and a small number of our NATO allies. Such examples show that an international force can uphold the concerns of free nations only if controlled by free nations.

In short, either a world authority has dominant force on its side or we remain in a world where lesser powers have the last word. Today, almost all those



powers are territorial states. The European Union, which claims to transcend national differences, has turned out to be of little relevance on great issues of war and peace. All its members have endorsed the war in Afghanistan, but some EU nations (notably Britain, Poland, and the Netherlands) have cooperated with U.S. military efforts there, while others (notably France and Germany) have refused to allow their troops to take part in the fighting. France and Germany tried to mobilize opposition to the U.S.-led invasion of Iraq in 2003, but Britain and a majority of other EU states joined the U.S. coalition. In some EU states that originally supported the war, elections brought new governments that decided to withdraw their troops from the coalition (as with Spain and Italy). In other countries (such as Britain, the Netherlands, and Denmark), elections confirmed public support for governments that continued their military commitments in Iraq. The EU, as such, has contributed little more than background noise. When it comes to vital questions of war and peace, states can make hard decisions, while transnational entities merely engage in discussions.

Of course, not all territorial states are democracies. Multinational empires have found it particularly hard to maintain democratic governments. In the late 19th century, when most states in western Europe had developed parliamentary forms of government, the Austrian Empire tried to join the trend. Representatives from different ethnic communities not only could not manage to form stable majorities but could not manage to keep their disputes from descending into actual violence in the parliament building. So the empire was ruled by bureaucratic decree until it finally collapsed into separate national states. The old Soviet Union managed to keep “captive nations” under its rule by ruthless repression until it, too, collapsed into separate national states in 1990. Fear of separatist movements—combining with others to overthrow the government or trying to leave the country and taking their part of its territory with them—remains a motive for repression in a number of countries today, most notably China. Even democratic countries have sometimes found it hard to conciliate ethnic differences, leading to the actual breakup of Czechoslovakia and Yugo-

slavia in the 1990s and persistent demands for independence or at least greater autonomy in Quebec.

How much simpler if all people could be satisfied by the same international standards! And if the United Nations could solve the problem of conflict between nations, why not also remove the grounds for conflict within each nation by assuring all people everywhere of the same human rights? The UN Charter accordingly included vague references to “promoting human rights” among the UN’s fundamental goals. Over the past 60 years, the organization has indeed promoted dozens of human rights standards. Some are quite proper (such as provisions for “freedom of worship”), some are vapid (such as provisions guaranteeing the right to vote, without mentioning the right of rival parties to field competing candidates), some are silly (such as requirements to ensure that jobs held by women are compensated in accord with their “worth”).

The world’s worst tyrannies have readily ratified these conventions—and eagerly taken their part in “monitoring” compliance and deflecting scrutiny away from themselves. In a forum that gives the same participation rights to tyrannies and free nations, “human rights” protection has never maintained a steady focus on the worst tyrannies. So the UN has contributed almost nothing to the advancement of freedom in the world. Even in Europe, where a regional Convention on Human Rights was established by Western nations and counts a solid majority of Western-style democracies in its membership, Russia has been a member in good standing since the 1990s—and seems to have been restrained not at all in its subsequent slide toward authoritarian rule.

In short, just as we still rely on nation-states for international security, we must still rely on national governments to protect individual rights. Your freedom still depends on where you live.

THE STRENGTH OF NATIONS

THE NATION-STATE, as we think of it today, is a product of modern times, emerging from the breakup of empires and from declarations of independence made by people wishing to claim their familiar territory as a home. In fact, the world’s most successful nation-state—certainly its richest and freest—was founded on just such a declaration. The American Declaration of Independence asserted that when subject to intolerable abuses, “one people may dissolve the political bands which have [previously] connected them with another.” The Declara-

tion refers to the people of Britain as “brethren,” presumably in view of common origins. But it goes on, in its penultimate paragraph, to insist that the American states will henceforth hold the British “as we hold the rest of mankind, enemies in war, in peace

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friends.” That is what independence means: national governments speak for the actual citizens of their own countries, not for groups defined without reference to national boundaries.

The Declaration of Independence is clear that nations are grounded in the consent of their current members rather than in mere ancestry. The Declaration even cites as one of the “causes” that “impelled [Americans] to the separation” from Britain that the British government had “endeavored to prevent the population of these states” by “obstructing laws for the naturalization of foreigners, refusing to pass others to encourage their migration hither....” So the Declaration envisions the United States as a place of refuge, to which people may come to enjoy the benefits of freedom under law.

Little more than a decade later, *The Federalist Papers* urged the necessity of a “national government.” The very first paper acknowledged that—despite the principles asserted in the Declaration of Independence—governments founded in consent were so rare in the world that “it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitution on accident and force.”

In the history of the world, most people, most of the time, had lived in accord with the customs and folkways of their clan, tribe, village, or religion—

with lives largely determined by the circumstances into which they happened to be born. Often they were incorporated into larger kingdoms or great empires, though even these larger structures usually ruled through local chiefs, elders, or warlords, with highest honors allocated to the most successful conquerors. When the United States was founded, it

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was not even generally accepted in Europe that distinct nations should have their own governments. Much of the continent still lived under the rule of multinational empires—most notably the Romanovs and Ottomans in the east, the Habsburgs in central Europe.

All the more striking, then, that *The Federalist* argued not just for government by consent but for government on a national basis. The second paper in the series (by John Jay, subsequently first chief justice of the Supreme Court) suggests a kind of divinely appointed destiny for the new nation: “Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs....”

The authors did not lay too much stress on divine providence, however. The Constitution advocated by *The Federalist* includes a prohibition on religious tests for office, along with authorization for Congress to “establish a uniform rule of naturalization” (that is, legislation to make foreigners into American citizens) that indicates no limits on eligibility. While the Constitution requires the president to be “a natural born citizen,” it allows naturalized citizens to serve in the House of Representatives, the Senate, and the Supreme Court—as happened, in fact, from the earliest days of the Constitution.

Nearly half of the ensuing papers belabor the argument that, without a strong common government—a national government—the American confederacy will break into regional confederacies, which might not only descend to war with each other

but also seek foreign assistance and so become perpetually entangled in foreign wars. The final paper in the series concludes that “a nation without a national government is an awful spectacle.” The underlying argument, in short, is that a nation is not simply a given, not an inescapable destiny, but a human creation—something maintained by “reflection and choice.”

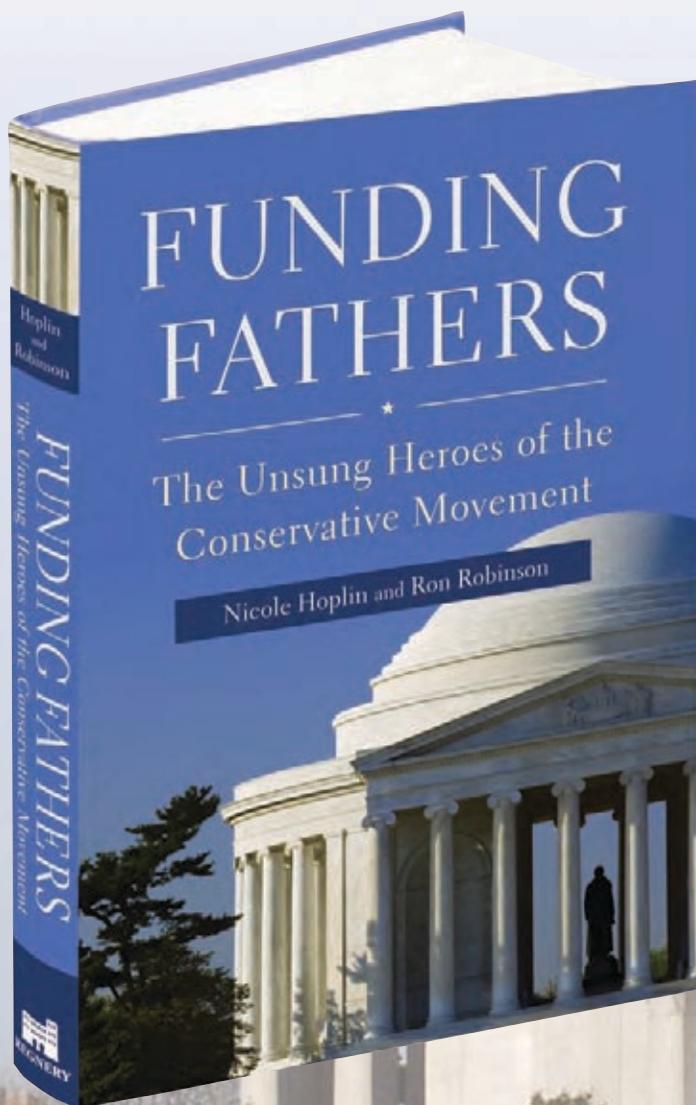
We should give due weight to the term “reflection” here. Apart from tribes and empires, the Western world still remembered the experience of the self-governing states of ancient Greece and Rome. Almost all Western languages (and many non-Western languages) have adopted the term “politics” from the Greek *polis* and “republic” from the Roman *res publica*—words preserved from dead languages because they did not have living models. What sustained such embedded reminders of the ancient republics was the appeal of citizens taking an active part in openly debating and then openly deciding how their community should be governed.

Modern nations had reason to look back on the ancient republics with mixed feelings, however. In the ancient republics, sizable parts of the population were held in slavery or helotry or excluded from citizenship as “foreigners” (*metoikoi*), even if born into the territory of a particular city-state. Those who were citizens took part in “politics”—but often very extreme politics, as leaders of contending factions imposed execution or exile on rivals and bolder usurpations provoked bloodier civil strife. *The Federalist* stressed the point: “It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated and...[their] perpetual vibration between the extremes of tyranny and anarchy.” There was, one could say, too much choice—for both political communities and their leading citizens. *The Federalist* several times remarks on the readiness of leaders of republics to betray their countries out of personal ambition—evidently alluding to “noble lives” recounted in Plutarch. They looked for a more stable sense of nationality to support a more stable form of politics.

Government by consent doesn’t mean government with which all citizens agree. It means government with which citizens may freely disagree. This is the great achievement of Western constitutional democracy. If the constitutional safeguards that secure my basic freedoms are in place, then I can



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proceed with my life regardless of those in high office; I can freely disagree with them, as they cannot punish me for doing so. Much of *The Federalist* celebrates the division of powers between the federal government and the states. Still more papers defend the separation of powers and constitutional guarantees of individual rights. But in the end, the force of the Constitution relies on the claim that “we the people”—collectively—stand behind it. And that theoretical claim is much easier to embrace if there is some degree of national unity in the background.

Even in the 19th century, the United States was sympathetic to independence movements of other peoples. While presidents tried to keep official foreign policy free of entanglement in foreign disputes, members of Congress were quick to express sympathy for the Greeks in their war to throw off Turkish domination, for Polish rebellions against Russia, for Hungarian and then Italian rebellions against Austrian control. Woodrow Wilson’s support for “national self-determination”—that is, the breakup of the multinational empires—at the end of the World War was almost foreordained. Senate critics of the Versailles Treaty wasted no tears on the vanished empires; rather, they complained that it was wrong to have imposed artificial boundaries on some of the new states—and wrong to have acceded to continuing foreign enclaves in China. They believed that enduring democracies could arise only where there were also nation-states to support them.

POLITICAL COSTS OF SUPRANATIONALISM

THE EMERGENCE OF THE NATION-STATE facilitated the spread of democracy by identifying bounded territories with the people who lived in them. In contemporary Europe, however, nationalism provokes shudders, being blamed for “centuries of conflict” culminating in two world wars, while the European Union is credited by its defenders with delivering peace. In 2005, during debate over the proposed new constitutional treaty for the EU, commissioner Margot Wallstrom, vice-president of the European Commission, went so far as to warn that if the constitutional treaty were defeated, Europe would be at risk for a new genocide. Just who would be killing whom she did not say. But, in the spirit of harmony and continental understanding, she embraced the European convention according to which the unique crimes of the Germans resulted exclusively from “nationalism”—as if Belgium or Portugal were always on the verge of invading their



neighbors or Sweden (Wallstrom’s home country) in danger of exterminating the ethnic Finns.

But if the European Union is hostile to nationalism, it is not really hostile to the nation-state. Indeed, it depends on the nation-states for its survival. It is not simply that it has no army. It has no police. It has no criminal law or criminal courts of its own. It does not even have field agents. All its policies must be implemented by national governments, so that citizens feel the sting of EU policies only through the pinch of enforcement actions by national officials in their own countries.

Major EU policies must be approved by a council of ministers from member governments. In many areas, policies can be established even when not all governments approve, but there must be a “qualified majority”—in a system that gives extra votes to more populous states but requires majorities of both governments and population-weighted votes. The European Commission proposes new policies for the council of ministers and then prepares detailed implementing regulations for national governments. The European Court of Justice hears appeals from national courts to clarify the meaning of EU treaties and standards, leaving national courts to work out applications in particular cases.

But the EU does not have a genuine government of its own. There is a directly elected parliament, but its powers are limited to rejecting major measures. Though successive treaties have tinkered with details, there has never been a serious proposal to give the same powers to the European Parliament that parliaments have in all the member states. To do so would be to admit that all smaller states could be outvoted and overwhelmed by the European majority, like rural counties in a national parliament.

So the EU, while acquiring a very broad range of powers, is not trusted to exercise some of the most fundamental powers of government. It is mostly financed from European-wide tariffs and lacks separate taxing authority. Compared to national governments, it has very little revenue and (apart from agricultural subsidies and some development subsidies to less affluent members) very little spending responsibility. It is not trusted to administer retirement pensions, health insurance, school finance, or other major responsibilities of national governments. It has no separate executive to provide leadership in a crisis, but merely a “president”—the prime minister of a member state serving for six months until all members (including Luxembourg) have had their chance rotating through the half-year “presidency.” The proposed new constitution for Europe sought to strengthen the office by giving it a three-year term and election by other prime ministers instead of automatic rotation, but it did not propose any serious increase in powers to the office.

So the EU does not supplant the member states but feeds off their legitimacy. The parliament has never developed parties of its own. Candidates com-

pete as members of national parties that then form loose alliances within the European Parliament. The most visible and engaging aspects of public life—the sorts of things that get most attention in national media—are lacking in the EU. There is no great wrangling among contending parties and contending interests on big questions of allocation—the prizes in legislative and electoral politics. There are no dramatic initiatives to handle a crisis or mobilize support for a bold new project—the stuff of executive leadership. Almost everything gets swallowed in technical details of bureaucratic directives or judicial interpretations.

And here, surely, lies the growing crisis within the European institutions. Established as an alternative to the nation-state, the EU depends on the nation-states for its precarious legitimacy. At the same time, its powers—exerted by an unelected European Commission, and a parliament that can do little except veto the Commission’s measures—are resented by national electorates, so much so that, in the rerun of the treaty for a constitution, the European leaders have done their utmost to prevent referendums in the member states. The Irish, obliged



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by their own constitution to have such a referendum, decisively rejected the treaty in July of this year, though no doubt some way will be found to ignore the Irish vote.

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Moreover, officials in national governments estimate that more than half of the legal standards they enforce today are actually derived from EU mandates. A body that imposes such an enormous legislative burden on people who have no say in controlling it will not inspire loyalty. Indeed, citizens of the nation-states regard the EU as so far from making any real claim on their allegiance that most do not bother to vote in elections to its parliament. In the EU we see a gradual confiscation of the powers of national governments without any corresponding accountability for their exercise. And the resulting deficit in legitimacy could be reversed only by acknowledging once again that legitimacy begins and ends in the nation-state.

THE STAKES FOR LIBERTY

MEANWHILE, IN THE UNITED STATES, human rights advocates have been protesting American war policies for defying international humanitarian treaties, as these are read by the International Red Cross and Amnesty International. And the U.S. Supreme Court has, in a number of cases since 2002, invoked international treaties (including some not ratified by the U.S. Senate) and human rights rulings in foreign countries to determine what the U.S. Constitution should be interpreted to require.

It may seem ironic that transnational impulses have gathered momentum in the United States, just as they have been faltering in Europe. But in a way it is logical. The great historic achievement of the nation-state has been to create political space for open debate. Citizens may disagree in their outlook or ideological dispositions, but political debate in a nation-state will be pulled back to common questions of safety and prosperity. If you want to escape political debate, it makes sense (in a way) to embrace some imagined consensus of mankind, which can appear more consensual and unified the

more abstract it is. So almost no one urges that the UN be stripped of responsibility for protecting human rights, even though the UN Human Rights Council, now chaired by Cuba, has decided to concentrate on the threat of Islamophobia in Western countries rather than mass murder in Sudan. But the abstract idea of world concern for human rights is so edifying—and amorphous—that it shields the UN from any serious assessment of its performance. The EU floats in a similar cloud of protective abstractions, being less like a government than a church—an entity supposed to inspire proper attitudes rather than take responsibility for actual results.

Perhaps none of this would matter if free countries in the world faced an untroubled future in which most decisions could be safely delegated to technical specialists. But that is not the situation. Lower birth rates and rising life spans mean government pension and health care systems will face increasingly sharp strains. This problem is particularly serious in Europe, and although immigration might ease the problem, most European nations have had great difficulty integrating immigrants, particularly Muslim immigrants who have clustered in self-segregated communities. Within these communities, Islamists challenge the jurisdiction of European nation-states and insist that within a few decades, Europe will be governed by *sharia*. The European Union cannot secure the loyalty of immigrant communities, much less maintain necessary measures to detect and disrupt terror networks. Only nation-states can hope to maintain the authority of law—and the personal freedoms, religious toleration, and open debate that are guaranteed by national legal systems. So the future of freedom in Europe will depend on the durability of its nation-states. ❧

Jeremy Rabkin is professor of law at George Mason University School of Law and the author of *Law Without Nations?* (Princeton University Press), *The Case for Sovereignty* (AEI Press), and *Why Sovereignty Matters* (AEI Press). This essay is the ninth in a ten-part series being published in successive issues of *The American Spectator* under the general title, “*The Future of Individual Liberty: Elevating the Human Condition and Overcoming the Challenges to Free Societies.*” The series is supported by a grant from the John Templeton Foundation. The opinions expressed in this series are those of the authors and do not necessarily reflect the views of the John Templeton Foundation.