BEYOND STATES

POWERS, PEOPLES AND GLOBAL ORDER

ANTHONY PAGDEN

Beyond States

For Giulia, *compagna di vita*

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Powers, Peoples and Global Order

Anthony Pagden

polity

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Contents

Acknowledgements vi

Introduction 1

1 Birth of the Nation-State 16
2 Ordering the World 51
3 A World Order of Justice 81
4 A Federation of the World 110

Notes 165
Index 197

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Introduction

Today, we live in a world of states. This is true even of those ten million or so stateless persons who are 'stateless' only in the sense that they are not recognized as belonging to the states where they actually live. A state is very simply a legal and political order which exercises sovereign power over a nation. A nation is widely understood to be a single people living within a single geographical space, united by culture, by language, by habits and beliefs, who share a common history, whether real or imaginary, and, more often than not, a common religion. Together they make up the 'nation-state'; and since 1945 it has become what the United Nations Charter calls the 'right of all peoples' to live in one to which they, by birth or inheritance, belong. The distinction between the terms 'state' and 'nation' is, however, a very slippery one; and they are frequently used as if they were simply interchangeable. For while there clearly cannot exist a state without a nation, there are many nations that are not governed in this way by states – or at least not by states of their own choosing. A people such as the Kurds who are subject to the laws of the modern states of Turkey, Syria and Iran are a nation without a state. None of the remaining Indigenous peoples of the Americas, Australia and New Zealand, although they may often possess extensive

independent executive powers, have states of their own. There are many tribes in Africa who, like the Maasai and Tuareg, the Dogon and the Himba, live across the borders of several different nation-states. In 1917, the great Bengali poet Rabindranath Tagore, who was conscious of belonging to no nation, called the nation-state a 'ghastly abstraction of organizing man'.[1] For all these anomalies and exceptions, it has come to be looked upon as if it were almost a natural human condition.

In fact, however, it is of very recent origin. The modern nation-state first emerged, in anything like its modern form, in Europe in the seventeenth and eighteenth centuries after more than a century of unrelenting, internecine, religious and ideological conflict. It was conceived as a means of uniting under one sovereign authority, the collection of feudal domains, city-states and religious communities, those *petites patries*, as they were called in French, or *patrias chicas* in Spanish, of which most of the monarchies of Europe had hitherto been composed. It was given a more powerful more inclusive political identity by the American and French Revolutions, both of which re-fashioned existing pre-modern nations into new nation-states with new state forms. It also developed an ideology of its own – 'nationalism' – what Émile Durkheim in 1895 called that 'obscure mystic idea', the belief in the integrity and distinctiveness of one's own nation and of the ultimate superiority of one's own nation over all others.[2] Subsequently, it has overtaken the world. 'Have you not seen', asked Tagore, that 'the dread of it has been the one goblin dread with which the whole world has been trembling?'[3]

The nation-state was, therefore, as Tagore made clear, initially a European creation which was subsequently exported to, or was imposed upon, the rest of the world. Despite the often bitter debates over just what the political future of the newly independent states of Asia, Africa and the Middle East might be, all the future liberators of the colonized world were eventually convinced that the only way to achieve – and secure – true

independence was to do as the Americas, both North and South, had once done: create for themselves self-governing, sovereign states. 'Seek-ye first the political kingdom,' as Kwame Nkrumah, the first president of an independent Ghana, famously declared, 'and everything else shall be added unto you.' In the course of its brief and violent history, the nation-state has therefore, come to be looked upon not merely as a phase in human history but as the goal towards which all mankind has been struggling throughout its entire existence, as indeed 'the end of history'.

It has proved to be a highly efficient means of uniting the populations within its borders; but it has also, as the two world wars demonstrated with great ferocity, succeeded in dividing the peoples of the world in ways in which they had rarely been divided before. For many in the years since 1918, this has suggested that there might exist other ways of conceiving both the 'state' and the relationship between states, a relationship that might result in the emergence of an as yet shadowy and indistinct, but broader, more 'cosmopolitan', and potentially at least, less restrictive, less murderous form of human association. Many have announced the imminent death of the state. What very few, however, have sought to predict with any clarity was what would replace it. This book is an attempt to suggest an answer. It is, however, an answer that can only make sense in the context of a history of the ways in which, over the centuries, human beings across the planet have reflected on the nature and the possibilities of the ever-expanding degrees of interaction, of connection, that exist between them.

Before the arrival of the nation-state, much of the world was divided into empires, the most extensive, longest-lasting of all the kinds of political societies that have ever existed. Empires are notoriously difficult to define or even to describe. They united peoples, albeit initially often against their will. They also dispersed populations across the globe. They created new perceptions of space and time. They built new societies,

new ethnicities and new political forms. And in their quest to govern infinite spaces, they have, in effect, created what we today loosely call 'the globe' as an imaginary political space.

Empires, however, were not only as they are so often represented today, merely systems of conquest and colonization, driven by an overriding, inevitably self-serving vision of how the world should be governed, what laws it should possess, what values it should aspire to, and sometimes what religion or culture it should follow. For the world's empires, even the most famously rapacious of them, not merely fought and conquered, exploited and extracted, pillaged and settled. They also created extensive trading networks beyond the real limits of their own territories. They served, that is, not only to dominate peoples but also to connect them. This, it is now becoming clear, is true of even the most loosely organized of them. The Mongol Empire, for instance, for so long believed to be nothing but the creation of marauding bands of semi-nomadic horsemen, was also the creator of a complex set of commercial relations strung out across the whole of Asia that became, in time, a force for global development that is still felt to this day.[4]

Eventually, this expansion of trade and commerce led to what was called the (global) 'commercial society'. By the mid-eighteenth century, most of the peoples of the world, those at least who had not succumbed to what Adam Smith called '[t]he savage injustices of the Europeans', had some degree of interaction with, or at least an awareness of, the existence of a great many of the others. And while this all too often served to reinforce a perhaps innate sense of the superior worth of certain groups of humans over others, it also resulted in a need to communicate with, and to understand, those others, a desire which, in time, resulted in the creation of a more multifaceted, more connected world. The belief – the hope – of the great political and economic theorists of eighteenth-century

Europe was that what Montesquieu famously called 'sweet commerce' would eventually make all peoples more 'gentle' because commerce implied, above all, communication; and communication, even if it arose out of greed or necessity, would eventually compel humans to recognize each other's worth, to 'sympathize' with them across the continents. All of this may have been unduly optimistic, too often derailed by human greed, by what David Hume reviled as 'the jealousy of trade', since most trading nations were more, rather than less, likely to be perpetually at each other's throats. But even the highly sceptical Hume was prepared to believe that what he called the 'intercourse for mutual convenience and advantage' would inevitably result in the increase in 'the largeness of men's views, and the force of their mutual connexions'.[5] The commercial society led, inexorably, to the vision of a world we today describe increasingly in terms of the global, the planetary, and what Jeremy Bentham in 1780 was the first to call the 'international'.

The processes of conquest, colonization and commerce made a world. What, however, has sought to hold it together, to give it coherence, has been law, or more accurately the attempt to create a global system of justice. Empires were, or were believed to be, as much legal orders as they were systems of extraction and exploitation, and their principal objective has always been declared to be precisely to bring justice to all the peoples of the world. This may seem to be merely a means of sanctioning what was in reality a sustained process of brutal expropriation. But if empires had not also been able to deliver some real benefit to their conquered peoples, they could not have survived for long. (And those would-be empires that did not deliver, like Hitler's Third Reich, did not survive.) 'We live in every conceivable region', wrote the Spanish-Roman poet Aurelius Prudentius in the fourth century CE of the empire of which he was a citizen, 'scarcely different than if a single city and fatherland enclosed fellow citizens within a single wall.'[6]

He was reiterating a comforting self-image of imperial Rome. But without it the Roman Empire would never have survived, as it did, for more than a millennium.

One part of this self-image of what it meant to be Roman – what the first–second century Christian theologian Tertullian called *Romanitas*, 'Romanness' – was what was called the 'law of nations', or 'law of peoples' (*ius gentium*). This had originally been that part of the private law that was open to both Romans and non-Romans; but, by the first century CE, it had become, in effect, what the jurist Gaius was able to describe simply as the 'law observed by all nations'. As such it is the remote ancestor of today's international law. The law of nations was poised somewhere between the civil law, that is, domestic positive law, and a somewhat nebulous conception of a 'natural law', a law whose dictates can supposedly be found out by reason alone, and which, therefore, applies to all human beings, no matter what their beliefs, origins or affiliations. What we today think of as 'international law' is, in many respects, the remote descendant of this 'law of nations'. For all the many difficulties it has faced over the centuries, for all that it was indisputably the legal mainstay of much European imperialism well into the nineteenth century, for all that at present it has very limited powers of coercion, 'international law' and all the many international institutions that have grown up to articulate and enforce it has become the most effective means of uniting the nation-states of the modern world.[7]

Most empires came to an abrupt and often violent end in a very brief span of time between roughly the end of the First World War and the 1960s. Throughout human history, however, they have determined the direction of the lives of most of the peoples of the world. So much so that, as the theorist of international relations G. John Ikenberry, has observed, 'In an important respect world politics in the twentieth century was an extended global struggle over whether and how the world would transition from an empire-based order into something

new.'[8] The question, however, was not only whether and how but also into what?

To many, the answer seemed to be obviously a world of nation-states, united by a system of international treaties. This vision of a post-imperial order as one of multiple and diverse peoples each occupying its own national territory over which it exercised exclusive sovereignty, but bound nonetheless by reciprocal obligations, if not amity, to each other, was the inspiration behind the League of Nations that was created in 1919 after the end of the First World War. This new 'commonwealth of nations' was to be built upon the principle of 'self-determination' and to constitute a 'parliament of the world'. It was the most ambitious, most far-seeing – if also, and precisely because it was all of those things, the most overly optimistic, overly idealistic – project ever conceived by a collection of formerly belligerent nations. Inevitably, it did not turn out as was hoped. The British and the French used the League's mandate system to extend their empires in the Middle East and Africa at the expense of the defeated Ottomans and Germans, and indeed looked upon the League as little more than a device for shoring up their old hegemonies in a rapidly dissolving world. (For all the talk of the right of all peoples to 'self-determination', the terms of the Covenant of the League still left almost two billion of them as colonial subjects.[9]) When, finally, after much wrangling, the US Senate, in defiance of the wishes of the president, refused to join the League on the grounds that it would rob the United States of its sovereignty, it became clear to many that the old world of warring states was set to return.[10] Within a decade, the League had gone from being – as it was called by the French and the Italians – a 'society' to little more than, in the dismissive words of the 'Crowned Jurist of the Third Reich', Carl Schmitt, 'a very useful meeting place under certain circumstances'.[11]

What followed, in the course of the 1920s and 1930s, was the emergence of the most fiercely nationalistic movements the

world had yet seen, and eventually of a war which threatened to destroy forever the old European order and with it all that remained of the ability of the western 'Great Powers' to determine the fate of much of the globe. There were many after 1945 who declared, some triumphantly, some despairingly, that the state was indeed now dead. As the English historian and theorist of international relations E. H. Carr, who had been involved in drafting the Covenant for the League of Nations, but who had no illusions about what he later called dismissively 'such elegant superstructures',[12] observed in 1945, 'This may well turn out to have been the last triumph of the old fissiparous nationalism, of the ideology of the small nation as the ultimate political and economic unit; for it was one of those victories which prove self-destructive to the victor.'[13] Ten years later, a despairing Carl Schmitt wrote to his unlikely friend and ally the Franco-Russian Hegelian philosopher Alexandre Kojève, 'The "State" is at an end, that is true. This Mortal God is dead. There is nothing that can be done about it.' Now, he went on, the future lay in the hands of those he called sarcastically 'the greater men', who were building a new 'planning space suited to the dimensions of today's and tomorrow's technology'.[14] The earliest product of these new aspirations, for which Kojève in 1945 had written a policy document on behalf of the French government, would eventually become the European Union (EU).

From the end of the Second World War until today, there has been a continuing struggle between those who would still maintain that, in the words of Scottish jurist and member of the European Parliament Neil MacCormick, 'Sovereignty and sovereign states have been the passing phenomenon of a few centuries [and] their passing is by no means regrettable,'[15] and those who insist on the opposite: that the only viable option for the world, is a form of what many, such as the Israeli parliamentarian Yael Tamir, have called 'liberal nationalism'. For, as she has argued, the reliance upon 'constitutionalism, universal

rights, equal membership', while they might well be 'valuable guidelines for political action . . . cover a limited scope of a person's life', and 'offer a very thin base for social and political cooperation'. This, she believes, is the reason why nationalism – good and bad, liberal and illiberal – 'keeps coming back, pushing civic ideas aside, making its way to center stage'.[16]

She may well be right. But the nation-state has to be more than a source of identity, consolation and support to its citizens. It has also now to operate in a greatly enlarged world, one that is becoming increasingly interconnected, 'globalized' and amalgamated. And in this world of mass migration across dissolving frontiers, of accelerating climate change, where decisions about matters ranging from the kinds of weapons a state's military may use to how a state may regulate cigarette packaging within its borders are being made under the auspices of one or another kind of international law, the nation-state as it has been conceived over the past two centuries offers few protections. It is certainly not 'dead' or 'withering away' or 'fading into the shadows' as was once thought.[17] But it is also clearly undergoing massive change, much of it hitherto uncontrolled, uncontrollable and under-examined.

What is needed, then, is a new, or at least much revised, way of conceiving the international order, and the law by which it is constituted. One of the more obvious, most remarked upon, defects of international law is believed to be, as Immanuel Kant said of the earlier 'law of nations', the absence of any form of coercion. Without a system of courts, without a police force, it was, Kant declared, 'difficult even to form a concept of this or to think of law in this lawless state without contradicting oneself'.[18] Similar claims have been made from Kant's day to ours by those who dismiss international law as, if anything, little more than a convenient language used by states to negotiate or assert their own interests, to be cast aside or ignored when those interests are threatened. In the eighteenth century, in a world of fiercely competitive, fiercely independent and

largely self-reliant, if never self-sufficient, states, it was clear that, as Kant observed, the 'law of nations' was merely evidence that humanity possessed 'the moral disposition to eventually become master of the evil principle within him' – comforting, perhaps, but not of much use in building a new, more just, more humane world order.[19]

In today's world, however, while it is certainly true that the nation-state still determines most of human existence, there is no state that is not bound to others by a complex web of international treaties, trade agreements and interstate organizations, none that is able on its own not merely to survive, but also to guarantee some modicum of security and well-being for its citizens. Perhaps in such a world coercive force may be no longer the necessary condition for a compelling global order of justice. In 1940, the great Austrian jurist Hans Kelsen argued that indeed the only institution capable of holding the international order together was a system of law created by an international court – or courts – whose judges – rather than any state legislature – would make the law, as all law had been made in the past, on the basis of 'customs and agreement'. Coercion would not be necessary, if only because no nation which chose to subject itself to the court would have either the desire or the capability to violate its laws. What Kelsen had in mind was the Permanent Court of International Justice, created by the League of Nations in 1920 (and dissolved in 1946) but now endowed with what he called 'compulsory jurisdiction'. The states of the world, that is (but no individual people within it), would be governed by judges. For this jurisdiction to be truly compulsory, however, some larger order of government would clearly be required that was not merely capable of legislating for, but also of organizing, the world. What would be needed, that is, what is indeed steadily emerging in various regions of the globe, is a political form that, while it is capable of preserving those features of the state which have always made it a source for security and belonging to its populations,

is also able to ensure an increasing interconnectedness with, and dependence upon, other states.

The most likely possible future for humankind is not the emergence of a world made up of hostile superstates, as so many gloomily prognosticated during the Cold War, and are beginning to prophesy once again in the wake of the recent rise of China. Much less is it likely to be the dissolution of the nation-state into a fissiparous network of supranational networks, beholden to no single power, what Carl Schmitt in 1932, speaking of what he envisaged as a world governed by the League of Nations, called 'a unified entity based exclusively upon economics and on technically regulating traffic'. Commerce – in the guise of 'globalization' – and international law have, between them, created a world of peoples who are more united than they have ever been. The future, however, looks anarchic, chaotic and very far from certain.

The political philosopher Philip Petit is probably right to say that the 'state-system is likely to stay around for the foreseeable future', if only because 'the distrust between peoples is likely to block the formation of a binding, sustainable contract in support of a global government.'[20] But then the vision of a 'global government' as imagined by the numerous champions of global rule in the nineteenth and twentieth centuries is no longer, if it ever was, a plausible, much less desirable goal. There exists, however, another more easily adaptable form, more capable of containing or placating 'the distrust between peoples': the federation. Federations have been in existence for a very long time. They were a distinctive feature of the ancient world. The most powerful of them, the Delphic, or Great Amphictyonic League, was believed to have been founded after the Trojan War to protect the Temple of Apollo at Delphi; but it was still in existence in the second century CE. The federation was, of course, the form chosen by the nascent 'United States' in the eighteenth century. Had the 'Liberator' Simón Bolívar succeeded in his ambition to create a new American

'Amphitryonic Congress', uniting most of what are now the independent states of South America, for the most part, poor, divided and unstable, into one great confederation, this might well have become the equal of its northern neighbour. Crucially, also, and unlike nation-states, federations are not exclusively of western origin. They have, in some form or another, existed across all the great civilizations of the world; and there were many from India, Asia, Africa and the Caribbean who, in the period of decolonization between the end of the First World War and the 1960s, favoured a federal solution over a national one for the impending disintegration of the old world empires.

The federation is a means of preserving all of the benefits that the nation-state has indubitably conferred upon its populations, while at the same time, allowing – compelling – those populations, to combine together to the benefit of *all* their members. 'The federative system', as the French historian François Guizot remarked in 1828, might be defined as one,

> which consists in leaving in each locality and each particular society all that portion of the government which can remain there, and in taking from it only that portion which is indispensable to the maintenance of the general society, and carrying this to the centre of that society there to constitute of it a central government.[21]

Today, there exists only one such federation – although, as yet, it refuses to call itself that – the European Union. For all its failings, for all its shortcomings, for all that it is still a project in the making, for all of the blunders, inanities and tragedies that resulted in 'Brexit', the EU has indeed become, as one of its founders, Jean Monnet, predicted for it in 1947, a 'civilian great power'.[22] It is a model for what other states, and indeed at some still far distant date the entire globe, might yet achieve. It is, at the very least, an indication of what the future might become. And although it is only slightly less difficult to imagine

a 'federation of the world' than it is to imagine a 'government of the world', it is possible perhaps to conceive of a federation of federations in which the global confederation resembles not a government but something like Kelsen's international court, made up of judges from all parts of the world and to which all matters that are of global significance are referred, and which makes not 'inter-national' but 'inter-federal' law.

This is not, I should add, meant to be a prophecy. One problem with trying to foresee the future is that the rate and direction of human evolution is utterly unpredictable. Current assumptions about our not-so distant futures place great emphasis on algorithms and artificial intelligence, yet, say seventy years ago, such things were unknown and barely imaginable. As the Swiss sociologist Andreas Wimmer has pointed out, three hundred years ago the world was made up of 'dynastic kingdoms (such as absolutist France), tribal confederacies (as in Somalia) or empires. . . . The model of the nation-state was born half a century later in the French and American revolutions. No trend extrapolation based on how empires or kingdoms work could have foreseen that.'[23]

For this reason alone, it is impossible to tell what direction the arrow of history will now take. I offer only what I believe to be the most desirable *possible* alternative to the present seemingly directionless evolution of the modern world of nation-states. It is what Socrates called a 'paradigma', or a model, something akin to what Immanuel Kant referred to as a 'regulative principle': an idea that may provide not certain knowledge, but rather a guide to future inquiries.[24] And, as Kant said of his own vision for the future of mankind as a cosmopolitan order of united republics, while it may never come to pass, it should not, therefore, be abandoned 'under the very wretched and harmful pretext of its impracticability'.[25]

We need not believe the French essayist, Emmanuel Todd, an author who cites himself more than any other source, that, with the wars in Ukraine and in Gaza, the 'West' has finally

been 'defeated'.[26] We need not believe that this defeat is the inescapable outcome of the decline or, in most quarters of the western world, the complete disappearance of the Protestant Christian religion, which, on a very selective reading of Max Weber, Todd takes to have been the prime, indeed the only, mover of its previous global successes. We need not believe that this 'Protestantism' has been replaced by the ever-present, never-defined 'neo-liberalism' which, among other things, is 'based on cohabitation outside marriage and illegitimate births (not to forget the sexual liberty that goes with it)' and which has led in Britain to the decline of the public school system and the merger of the Left and the Right, all of whose champions have passed through 'the university where woke values reign'. We need not believe that Scandinavia has been beset by 'a sickness (*malaise*) in the relationship between the sexes that is now apparent in politics', or that the implications of the 'gender wars' have turned Ursula von der Leyen, the president of the European Commission, or Annalena Baerbock, German minister of foreign affairs, into warmongering harpies (*pasionarias de la guerre*). We need not believe that the EU has been absorbed by NATO as a consequence of its support for Ukraine, or that NATO has itself become little more than a tool in the grip of a United States freed now from all religious constraint – this, the most religious nation on the planet – and beset by a nihilism which 'renders everything, absolutely everything, possible'. We do not need to believe him, nor indeed any of the myriad others from among the legion of the criers of havoc.[27] We need not, and we should not, be overly disturbed by the images of doom they have to offer, however titillating they might be. We should not believe them, not only because so many of their predications and prophecies are – like Todd's – for the most part simply absurd. We should not believe them because so very few – and certainly not Todd – offer the prospect of a way out of the predicaments in which they believe we are trapped. Time for the species is indeed speeding

up and has been doing so for the past two hundred years, so that crises have become a near-permanent condition. But this does not mean that *homo sapiens sapiens* – or even the 'West' – is now powerless before the hazards for which it has itself been responsible. What we have made we may yet be able to un-make.

In an acutely prophetic lecture that he gave in London in 1960, the French liberal philosopher Raymond Aron, after reflecting on the suffering that had wracked Europe since the beginning of the century, remarked, 'it seems true to me, or at least plausible, that in the course of this century, humanity has undergone a kind of evolution, or perhaps it would be better to call it a mutation whose first phases took place before the twentieth century but whose features have become more marked in the course of the past decades.'[28]

This book is an attempt to trace the course of that evolution – or mutation – and to sketch out one possible direction it might take into a more enlightened, more hopeful, more prosperous future. To do that, however, we have to begin, as Aron did, by examining the past.