



## Understanding the concept of 'Sovereignty'

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### Abstract

Sovereignty is one of the basic principles of state arrangement at global level and also one of the most poorly understood concepts in international law. The interpretation of this principle is open to change across time and space in the backdrop of historical and political contexts, offering full array of analysis.

**Keywords:** westphalian sovereignty, popular sovereignty, basket theory, chunk theory

### 1. Introduction

Sovereignty is the central organizing principle of the system of states. However, it is also one of the most poorly understood concepts in international relations. This confusion emerges from at least two sources.

- First, as will be discussed below, sovereignty is in fact a relatively recent innovation connected to the emergence of the nation-state as the primary unit of political organization.
- Second, what is more, a number of contemporary issues have placed increasing limits on the exercise of sovereign authority.

These two factors raise questions about the fixity of the concept of sovereignty often assumed by international relations scholars. A more sophisticated view of sovereignty now envisions states and non-state actors as engaged in a continual process of renegotiating the nature of sovereignty.

Sovereignty has also been explored as a "social construct." According to this view, "Numerous practices participate in the social construction of a territorial state as sovereign, including the stabilization of state boundaries, the recognition of territorial states as sovereign, and the conferring of rights onto sovereign states <sup>[1]</sup>." This approach tells that no particular characteristics in here in the concept of sovereignty, but that its nature depends very much on the customs and practices of nation-states and international systems <sup>[2]</sup>, which practices could change over time.

### 2. Historical Background

#### Origin of the Concept

The international system was not always arranged in terms of sovereign states. It is interesting to note that the medieval world knew nothing of national sovereignty. Theoretically, there existed Christendom, with its twin heads of Pope and Emperor, a unifying concept which exercised considerable influence upon political and philosophical thinking until the close of the middle Ages. After the decline of the authority of the church and the long struggle between the Pope and the Emperor, Christendom disintegrated. Out of this chaos emerged nation-states, with their monarchs engaged in a struggle against all external and internal adversaries. While externally they had to fight the still lingering influences of the Empire and the Papacy, internally they were troubled by the

fissiparous tendencies of feudalism in the form of a miscellaneous assortment of petty lords. But the discovery of the New World dealt a death blow to feudalism, and the invention of gunpowder permitted vigorous kings to raise powerful armies without the approval of baronage. Within the space of 50 years powerful nation-states emerged in England, France and Spain and a little later in Sweden, Russia and other parts of Europe <sup>[3]</sup>. The kings refused to recognize any superior, both within and without, and jurists came to their aid with a legal theory which served both as a weapon of defence and as a justification for the claim of royal supremacy.

Thereby originated the notion of sovereignty in order to help kings meet an intolerable situation. The concept of sovereignty in the European feudal times was multipolar in nature as the supreme authority was not reposed in a single seat: it had twin heads of Pope and Emperor.

Through the middle ages alternative feudal arrangements governed Europe and city-states lasted up until the modern period. The development of a system of sovereign states culminated in Europe at the Peace of Westphalia in 1648. This agreement essentially allowed the ruler to determine the religion within his borders, but it also represents both the internal and external aspects of sovereignty. (Internal sovereignty means supreme authority within one's territory, while external sovereignty relates to the recognition on the part of all states that each possesses this power in equal measure.) As Europe colonized much of the rest of the world from the fifteenth through the nineteenth centuries, the state system spread around the globe. Through this time, sovereign authority was clearly not extended to non-Europeans. However, the process of drawing boundaries to clearly demarcate borders would be critical for defining sovereign states during decolonization.

The second, current, movement appears to be the gradual circumscription of the sovereign state, which began roughly after World War II and continues to the present. Much of international law, at least until WWII, was designed to reinforce sovereignty. However, driven by the horrors of the Nazi genocide and the lessons of the Nuremberg war crimes tribunal, the society of states forged a series of agreements under the auspices of the United Nations that committed states to protect the human rights of their own citizens, a restriction on authority whiting the state. The post-war period also saw the

growth of intergovernmental organizations to help govern interstate relations in areas ranging from trade and monetary policy to security and a host of other issue areas. At the same time, much of the non-Western world gained their independence in the decades after World War II, setting up a scenario in which many of the new states were not fully sovereign<sup>[4]</sup>.

### 3. Early Thinkers

#### i) Machiavelli

Although he did not expound the theory of Sovereignty, Machiavelli, in his work, *The Prince*, published in 1532, suggested the new theory of the State and the methods of securing its advancement. He discounted all restraints upon the ruler, legal or moral, and pleaded for an absolute and irresponsible control exercised by one man who should embody in himself the unity, strength and authority of the State<sup>[5]</sup>. He paved the way for other writers. In the words of Machiavelli:

*“Those who have been present at any deliberative assemblies of men will have observed how erroneous their opinions often are; and in fact, unless they are directed by superior men, they are apt to be contrary to all reason<sup>[6]</sup>. . . . The only way to establish any kind of order there is to found a monarchical government; for where the body of the people is so thoroughly corrupt that the laws are powerless for restraint, it becomes necessary to establish some superior power which with a royal hand, and with full and absolute powers, may put a curb upon the excessive ambition and corruption of the powerful.<sup>[7]</sup>”*

In sum, it was just the public interest that required an absolute type of sovereignty, which justified the use, by the prince, of any kind of instrument, irrespective of its moral implications, including force (“the stick”), bribery, or deceit.

#### ii) Jean Bodin

Jean Bodin, who is said to be the first to have formulated this theory in 1576 in his *De Republica*, was, like all other writers, deeply influenced by the circumstances of his time. His preoccupation was merely to show the supremacy of the monarch over his own subjects in, his own territory and his freedom from the control of other real or pretended sovereigns, such as the Pope or the Emperor. He wanted to find out the secret of stability in a politically unstable world. Being a sixteenth-century Frenchman and a patriot, his decision was inevitably in favour of monarchy. He was convinced that a State, in order to be a State, must have one, and not more than one, supreme power from which its laws proceeded.

He said expressly that the sovereignty of States comprised this one thing, namely, to make and give laws to each of the citizens and subjects, and that since the sovereign made the laws, he clearly could not be bound by the laws he had made himself. In other words, sovereignty was essentially an internal power - the power of a superior over an inferior<sup>[8]</sup>.

But this did not mean that the sovereign was above all laws. As Bodin, defining sovereignty as an *“absolute and perpetual power vested in a Commonwealth”*, added:

*“If we insist however that absolute power means exemption from all law whatsoever, there is no prince in the world who can be regarded as sovereign, since all the princes of the earth are subject to the laws of God and of nature, and even to certain human laws common to all nations<sup>[9]</sup>.”*

This theory of sovereignty, clearly circumscribed by law,

however, came later to be distorted, and sovereignty came to be identified with absolute power above the law.

The whole purpose of Bodin, as we have seen, was to establish order.

#### iii) Thomas Hobbes

The pursuit of the same purpose led Hobbes, writing in the midst of a civil war and political crisis in England, to take the concept of sovereignty to an extreme position. In his *Leviathan*, published in 1651, Hobbes stated that men needed for their security *“a common power to keep them in awe and to direct their actions to the common benefit”* and that the person or body in whom this power resided was the sovereign. Law neither made the sovereign nor limited his authority; it is might that made the sovereign, and law was merely what he commanded. Further, since the power that was the strongest could not be limited by anything outside itself, it followed that sovereignty must be absolute, illimitable and irresponsible. Hobbes did realize that such power concentrated in a single centre was unpleasant to live under, but argued that it was the lesser of the two evils, life and men being what they were, and compared to *“the miseries and horrible calamities that accompany a civil war of that dissolute condition of masterless men”*<sup>[10]</sup>.

The hold of sovereignty had become so strong upon the thinking of that age that when it became obvious that the personal monarch no longer fitted the role, they started a hunt for the “location” of sovereignty somewhere else. As Hobbes had said the absolute and uncontrollable power need not be vested in a single individual. It could be enjoyed by a group like the British Parliament<sup>[11]</sup>.

#### iv) John Locke and J.J. Rousseau

With the coming of constitutional government, Locke, and later Rousseau, propounded the theory that the people as a whole wore the sovereign, and in the eighteenth century, this became the doctrine which was held to justify the American and French Revolutions<sup>[12]</sup>. But all that changed was the bearer of sovereignty. In substance, the claim of the sovereign remained unaltered. Whether the individual was called a subject or a citizen, the sovereign held unlimited sway over him. Thus, by the end of the eighteenth century, Europe found itself under the *“incubus of a malign and sinister heritage”* of juristic theory which attributed to the State, a juristic entity, contrary to the earlier sovereign, who was a personal monarch, an absolute and unlimited power above the law<sup>[13]</sup>.

#### v) John Austin

In the international sphere, the national State claimed sovereignty, in the sense of independence from outside control, with the same vigour as its absolutist predecessor. Thus, in 1832, in his Lectures on Jurisprudence, Austin defined sovereignty in the following terms:

*“If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.”*

At the time that the philosophy of sovereignty, in the modern sense of the term, first developed it was certainly conceived as an absolute prerogative of the sovereign entity. The inherent dignity of the King was above the earthly idea of life and

death, and also above the law. The conception of the sovereign power as the supreme entity, over the law and the life and death of the subjects, was shared by most theorists and philosophers from the early modern times, such as Niccolò Machiavelli, Jean Bodin, and Thomas Hobbes, although such an idea was often the result of considerations of *realpolitik* rather than of supernaturalism-based thoughts.

From these premises, the objective idea of sovereignty that emerged in early modern Europe was of a power concentrated in the hands of an authority bundled into a single entity, which governed a collectivity unified by the sharing of a single set of interests and confined within territorial borders. The sovereign authority held supremacy in the collective interest.

When Europe came out of the Medieval darkness (politically speaking), the internal absoluteness of sovereignty was not yet reflected in its external dimension. In particular, the Holy Roman Empire retained a nearly exclusive power over religious matters, and this allowed the Pope to interfere in the internal affairs of independent “sovereign” States. The transition from the “vertical” structure - headed by the Pope and the Holy Roman Empire-to the “horizontal” structure of independent sovereign States-which in principle were equal in authority and legal legitimacy-was consolidated in 1648 with the Peace of Westphalia (ending the Thirty Years’ War in Europe), which introduced the so-called Westphalian sovereignty.

#### 4. The Westphalian Sovereign Ideal

The traditional tale of sovereignty is summarised neatly by Glanville, who suggests that it

*“is repeatedly told...that sovereignty was established sometime around the 17th century (at the Peace of Westphalia...) and, since that time, states have enjoyed ‘unfettered’ rights to self-government, non-intervention and freedom from interference in internal affairs”*<sup>[14]</sup>

The sovereignty fairy tale holds that states, by virtue of being sovereign, enjoy the inviolable right to non-intervention, non-interference and self-government. Although, this ideal seemingly never existed; the discourse that it perpetuates is very significant. Without this ideal and the rights it supposedly grants to states, it would be impossible to discuss whether intervention violated sovereignty at all. Furthermore, this narrative also plays a significant role in entrenching the notion that states have a right to do as they please within their territories and to do so without interference.

#### Debunking the Myth

It is possible to refute the Westphalia myth fairly easily. This essay will contest the myth on three grounds: firstly, the non-intervention norm did not originate at Westphalia; secondly, the myth has seemingly never matched reality due to frequent cases of intervention; and thirdly, sovereign power has never been truly unchecked. The norm of non-intervention often associated with the Peace of Westphalia was actually codified at a later date during the mid-eighteenth century<sup>[15]</sup>. This undermines the rather dubious claim that *“in the history of sovereignty one can skip three hundred years without omitting noteworthy change”*<sup>[16]</sup>. Philpot is here certainly guilty of perpetuating the Westphalian myth.

Moreover, the extent to which the ‘traditional’ conception of sovereignty, specifically the non-intervention aspect, existed in practice is debatable. But it is unlikely it ever truly operated in

the international system. As Krasner notes *“the principles associated within both Westphalian and international legal sovereignty have always been violated”*<sup>[17]</sup>, seemingly suggesting that the Westphalian ideal never existed. The frequent violation of sovereignty norms leads Krasner to deem them ‘organized hypocrisy’ as they are widely understood but frequently compromised<sup>[18]</sup>. This take on sovereignty appears fairly rigid and static because it treats sovereignty as a constant with fixed characteristics, thus discounting the notion that it can change. Therefore, for Krasner, sovereignty constitutes something that can be violated by greater intervention. Moreover, Glanville also refutes the myth on the basis that the reality of sovereignty never matched the ideal anyway. He argues that sovereign authority has always involved varied and evolving responsibilities since it was first espoused<sup>[19]</sup>. He rebuffs the idea that sovereignty was absolute and empowered states with unfettered rights to do as they saw fit, instead arguing that sovereign power has always been to a degree – checked.

The Westphalian ideal of sovereignty was interpreted by the literal rule of interpretation. This may be attributable to the fact that the ‘sovereignty’ was the crucial element in the peace treaties of Westphalia. The literal rule of interpretation of the concept of sovereignty support the positivist view of sovereignty as the positivist approach focuses on the natural and ordinary meaning of the text.

#### 5. ‘Popular’ Sovereignty

Popular sovereignty or the sovereignty of the people is the belief that the legitimacy of the state is created by the will or consent of its people, who are the source of all political power. It is closely associated to the social contract philosophers, among whom are Thomas Hobbes, John Locke and Jean-Jacques Rousseau. Popular sovereignty expresses a concept and does not necessarily reflect or describe a political reality<sup>[20]</sup>. It is often contrasted with the concept of parliamentary sovereignty, and with individual sovereignty.

Benjamin Franklin expressed the concept when he wrote, *“In free governments, the rulers are the servants and the people their superiors and sovereigns”*<sup>[21]</sup>.

The term “squatter sovereignty” is used by Jefferson Davis in his book- *A Short History of the Confederate States of America*. This probably derogatory term referred to the influx of new citizens in order to manipulate the ultimate sovereign votes.

Popular sovereignty is an idea that also dates to the social contracts school (mid-17th to mid-18th centuries), represented by Thomas Hobbes (1588–1679), John Locke (1632–1704), and Jean-Jacques Rousseau (1712–1778), author of *The Social Contract*, a prominent literary work that clearly highlighted the ideals of “general will” and further matured the idea of popular sovereignty. The central tenet is that legitimacy of rule or of law is based on the consent of the governed. Popular sovereignty is thus a basic tenet of most democracies. Hobbes and Rousseau were the most influential thinkers of this school, all postulating that individuals choose to enter into a social contract with one another, thus voluntarily giving up some rights in return for protection from the dangers.

A parallel development of a theory of popular sovereignty can be found among the School of Salamanca (see e.g. Francisco de Vitoria (1483–1546) or Francisco Suarez (1548–1617)), who (like the theorists of the divine right of kings) saw

sovereignty as emanating originally from God, but (unlike those theorists) passing from God to all people equally, not only to monarchs.

Republics and popular monarchies are theoretically based on popular sovereignty. However, a legalistic notion of popular sovereignty does not necessarily imply an effective, functioning democracy: a party or even an individual dictator may claim to represent the will of the people, and rule in its name, pretending to detain *auctoritas*.

## 6. The Chunk Theory

The world is thus composed by a number of sovereign entities that have absolute dominion within their territorial borders, all of these sovereign entities being in a relationship of parallel equality with each other. In other words, they all possess an identical set of sovereign features, and the sovereign powers belonging to each of such entities stop exactly where the sovereign powers of another begin. This is the so-called chunk theory of sovereignty, according to which sovereignty may only be possessed “in full or not at all,” being represented as a monolithic chunk of identical stones, any one of which is possessed by a sovereign entity<sup>[22]</sup>.

From the standpoint of international law, the translation of this theory into practical terms shows the connection between the concept of sovereignty, at least in its strict and narrowest sense, with the notion of constitutional or legal independence.

## 7. The Basket Theory

The degree of independence exercised by States varies greatly in reality. It is necessary to emphasize that even for the most powerful States in the world sovereignty is not absolute. For instance, a number of States have definitively delegated a wide range of powers to other entities, as has happened with the European Union. Thus, the so-called basket theory of sovereignty appears as much more coherent to the concrete reality existing in the real world than the chunk theory<sup>[23]</sup>. According to the basket theory, sovereignty is to be seen “in variable terms, as a basket of attributes and corresponding rights and duties<sup>[24]</sup>.” Any sovereign entity owns a basket, but the content of the different baskets varies considerably; certain sovereign entities have baskets with many more attributes of sovereignty than others, and as a result, entities possessing more of these attributes have a higher degree of independence.

## 8. Sovereignty as Symbolic Form

Jens Bartelson, a Professor of Political Science, has, in his book *Sovereignty as symbolic form* given a short and stimulating overview of the concept of sovereignty by interpreting it in symbolic form. He has given a unique insight into the origin of the concept of sovereignty. He makes a unique claim that sovereignty in its concept.

According to the author, sovereignty is to be interpreted in terms of ‘symbols’ and in the form of ‘geometrical expressions’. Although we have grown accustomed to regarding sovereignty as a defining characteristic of the modern state and as a constitutive principle of the international system, Sovereignty as Symbolic Form argues that recent changes indicate that sovereignty has been turned into something granted, contingent upon its responsible exercise in accordance with the norms and values of an imagined international community. Hence we need a new understanding of sovereignty in order to clarify the logic of its current usage

in theory and practice alike, and its connection to broader concerns of social ontology.

As per his interpretation, the concept of sovereignty gained its momentum after the age of great discoveries which was heralded by the Spanish and the Portuguese explorers. These explorers discovered new found lands in the far flung areas of world. With discoveries, came the concept of geographical maps and consequently the imaginary lines of latitudes and longitudes defined, caged and limited the new territories in a definite form.

In its external aspect, sovereignty was exerted over these territories. Maps, in turn, were made possible because of the application of a précised subject called ‘geometry’. Bartelson interprets that the notion of indivisibility of sovereignty must be equated with a decimal which is one of the main features of mathematics.

In its internal aspect, sovereignty came to be identified first as a symbol in the form of a crown and this symbolic interpretation paved way for the political and legal understanding of sovereignty. The concept of sovereignty allowed the king to be the sole proprietor of political power in a defined territory. As the concept of nation-state grew, the idea of sovereignty became entrenched in the legal order of the nation-state. The concept of sovereignty now became unchallenged in its internal sphere.

## 9. Conclusion

The various interpretations of the concept of ‘sovereignty’ by different thinkers clearly tell that the concept of sovereignty was open to interpretation across time and space. From ‘traditional sovereignty’ to ‘popular sovereignty’ and now its symbolic manifestation, the meaning of sovereignty has undergone many changes. In early times, sovereignty was interpreted in strict sense, owing supremacy and indivisibility to the authority of State. This later changed into ‘popular sovereignty’, where the sovereignty of a state was derived from the will of its subjects, i.e., the individuals. And now, amidst various international players and multipolarity, the concept of sovereignty is again being reshaped. This is indicative of the fact that sovereignty is essentially a fluid concept whose meanings and conceptions have been changing as per the polity, times, among other factors.

This position is indicative of the fact that ‘sovereignty’ is interpreted by way of ‘Teleological’ or the ‘Purposive’ approach of interpretation. According to McDougal, who has influenced the teleological approach, many concepts of the international law are imprecise and travel in opposite direction (such as ‘intervention’ and ‘state sovereignty’ under the present study). In such a decentralised system, the function of interpretation is not to dictate specific decision, as the case was in the interpretation of Treaty of Westphalia, but to draw attention of the policy makers towards crystallised community expectations.

As argued by many thinkers that in the neo world order, the concept of sovereignty has faded away or shrank, but to this, I would suggest that in reality the dimensions of sovereignty has changed. The watertight conceptualisation of ‘sovereign’ in ‘absolutist’ terms is not justifiable to categorise national supremacies in an evolved global scenario.

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