Sovereignty: an overview

Sovereignty is a relatively modern political concept implying supreme authority within a territory. The term ‘sovereignty’ originates from the Latin word ‘superanus’, meaning supreme. The concept was an outcome of a set of complex socio-political and economic processes spanning over two centuries in the history of Europe. Interestingly, since then the nature of sovereignty continued to evolve corresponding to the changing historical settings, making it a dynamic and multi-dimensional concept.

Origin of the concept:
- The Church-State conflict in the late Middle Age Europe: Efforts to limit the authority of the Roman Catholic Church and strengthen the authority of the secular rulers by thinkers like Marsiglio of Padua (1275-1342), Machiavelli (1469-1527) and Martin Luther (1483-1546)
- Emergence of the Reformation (16th century), Renaissance and capitalism (14th to 17th century) in Europe
- The French political philosopher Jean Bodin (1530-96) attempted to define sovereignty for the first time in his book titled: *The Six Books on the Commonwealth* (1576). Bodin was interested to consolidate the authority of the French rulers in the context of protracted civil war in France among the Catholic Bourbons and Protestant Huguenots
- After the end of the Thirty Year War the European monarchs entered into a treaty called Peace of Westphalia in 1648 which recognized the exclusive rights of the monarchs to rule in their respective territories in Europe
- The concept was further developed by Hugo Grotius (1583-1645) the social contract theorists like Hobbes (1588-1679), Locke (1632-1704) and Rousseau (1712-78)

Definitions of Sovereignty:
- Jean Bodin: “The State is a lawful government, with sovereign power, of different households and their common affairs. Sovereignty is the absolute and perpetual power of the State, that is the greatest power to command.” Sovereignty is “supreme power over citizens and subjects, unrestrained by law.”
- Hugo Grotius: “The supreme political power rested in him whose acts are not subject to any other and whose will cannot be overridden.”
- Burgess: “Original, absolute, unlimited power over individual subject and over all associations of subjects.”
- Willoughby: “Sovereignty is the supreme will of the State.”
- Anderson and Crystal: “The word ‘sovereignty’ denotes supreme and final legal authority above and beyond which no further legal power exists.”

Types of Sovereignty:
- Internal and external sovereignty
- De jure and de facto sovereignty
- Titular and real sovereignty
- Legal sovereignty
- Political sovereignty
- Popular sovereignty

Monistic Theory of Sovereignty: John Austin (1790-1859), *Lectures on Jurisprudence*, 1832:
- Sovereign: “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 that society (including the superior) is a society political and independent.”
- Law: “Law is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject. Furthermore, every positive law simply and strictly so called, is set, directly or circuitously, by a sovereign person or body to member or members of the independent political society wherein that person or body is sovereign or supreme.”

Features of Sovereignty:
- Sovereignty is the supreme legal authority within a territory, which itself is beyond the purview of law
- Sovereignty is a distinctive authority vested in a single person or a body
- Sovereign has habitual right to the obedience from the bulk of a society and to the possession of force
- Law is command of the sovereign

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Sovereignty is original, absolute, indivisible, inalienable and unlimited authority

Sovereignty exists only in a political and independent society

Criticism of Monistic Theory of Sovereignty:

According to Henry Maine, the leader of the historical school of thought, sovereign is neither determinate nor absolute. He gives the example of Maharaja Ranjit Singh and other Asian potentates who exercised absolute and despotic powers without any restraint of legislature or electorate, parties or press etc. But even these potentates could not ignore religions, customs and public opinion. Austin replied to such criticism that since the sovereign permits these, he commands them. But the fact of the matter is that he permits because he cannot do otherwise. If a potentate were to exercise power arbitrarily ignoring all these, his very authority would be in danger and would be overthrown.

As TH Green has pointed out, law is obeyed not because of physical sanctions behind it but because of its contents, it is the consciousness on the part of citizens that obedience to law is essential to the promotion of common welfare that lies behind this obedience to law and not the fear of penalties.

No sovereign can receive habitual obedience from the bulk of the society unless its laws, in the opinion of the citizens, promote common interests. Then the powers of a legal sovereign howsoever definite it may be are never absolute. Behind the legal sovereign in democracy or dictatorship or monarchy there is a political sovereign which consists of the public opinion, press, platform, broadcasting, religion, culture and so many other known or unknown forces.

The point that sovereignty is indivisible has been criticized by the American philosophers like Madison and Hamilton. They point out that in a federal structure like that of USA, sovereignty of the state is divided between the federal union on one hand and the federating units on the other hand so that the whole sovereignty consists of a number of partial sovereignties.

Sovereignty is externally limited by international law, which imposes duties upon states and which they are obligated to perform. Nonperformance of these duties means delinquency on the part of the state punishable under international law.

The sociologists have criticized this theory on principles of justice, sense of moral values and law of equity, which in actual practice limit the state action. Laws are not merely commands of the sovereign, rather they reflect the needs of society at a particular moment. In fact, only the state is the protector of laws and governs according to them and hence they are a limitation on it. The state is a useful instrument for promoting social good. It follows that laws must be obeyed when they are designed to promote that end. Man has a sense of right and wrong. Laws of the state will not be obeyed if these are contrary to the sense of reason and justice of the people.

The authority of the state is limited by the constitution of state. The constitution is considered to be the Supreme law of the land and the determinate legal sovereign like the Indian Parliament or U.S. Legislatures cannot go against the constitution. People have fundamental rights as defined by the ‘constitution’. These are limitations upon the state. State and law do not create rights; rights precede the state. It only protects them.

Austin defined sovereignty in terms of ‘power’ and not in terms of ‘purpose’. State in every community has a purpose to perform. That purpose becomes a limitation upon the state. The extent of the realization of that purpose and not the physical force at the disposal of the state, justifies its existence and the exercise of the sovereign authority. Duguit points out that the modern state is a social service state and, therefore, the idea of public services should replace the idea of sovereignty. Thus the legal theory of sovereignty as laid down by Austin does not stand the test of practical reality. As McIver points out physical force is not the essence but only differentia or criterion of the state. Sovereignty belongs to the state because the performance of the purpose of the state demands it. Thus sovereignty is limited by the purpose.

Pluralists have criticized this theory on the ground that society is federal and plural rather than monistic. State is only one out of many associations in society. There are numerous associations and groups like the church, family, trade unions, political parties and economic associations in society established independently of the state. They have their own internal life and purpose. They very often influence the laws of state. These independent associations in a way share the sovereignty of the state as they collectively serve a greater purpose than the state itself.
Pluralist Theory of Sovereignty:
The pluralist theory emerged in the early 20th century as a mark of protest against the growing incidents of state interferences into the rights and liberties of individual in the West and also as a critique of the monistic theory of sovereignty which effectively provided a validation to these incidents. Harold J Laski, one of the leading pluralist theoreticians in his *A Grammar of Politics* (1925) argued: “Because society is federal, authority must be federal also. ... The state is only one among many forms of human associations.” Laski even claimed: “It would be of lasting benefit to political science if the whole concept of sovereignty were surrendered.”

Major propagators:
AV Giarke, FW Maitland, E Barker, JN Figgis, HJ Laski, McIver, GDH Cole, Krabbe, Lindsay, Duguit

Some basic arguments forwarded by the Pluralists:
Maxey in his *Political Philosophy* presents the following arguments in support of the pluralist position:
- The state is one among various socio-economic associations formed by men to meet their wants.
- Man needs the state as well as the other associations.
- The associations are formed spontaneously and they do not depend on the state.
- The state is not able to effectively conduct the affairs of these associations.
- The monistic theory is absurd as it is not based on sociological ideas.

The Pluralist critique of Monistic Theory of Sovereignty:
- From the perspective of social structure:
  - Laski: The group is real in the same sense that the state is real.
  - Barker: We no longer write man versus the state, we write group versus the state.
  - Giarke and Maitland: The associations in the society grow spontaneously.
  - Society is associational and the state cannot be the alternative to the associations.
  - Authority must be proportional to the action.
  - The state is man-made, so it must be controlled by them, not the vice-versa.
  - Men must be guided by conscience, not by power only.
- From the perspective of the concept of law:
  - Law is not the command of sovereign, but it is a kind of social code of conduct.
  - As a social organization, the state is also subjected to the social norms.
  - The authority to formulate laws must be shared among the state and other organizations in the society.
  - Krabbe: Law is valid by virtue of the fact that it incorporates principles of rights.
  - Men obey law not out of fear of punishment, but out of necessity and willingness.
  - Laski: Legal imperatives ... are a function of effective demand.
- From the perspective of international community:
  - The state has to obey the international laws, conventions and treaties.
  - Laski: The full implications of sovereignty in this [international] context are a license to wreck civilization.
  - The states are by nature inter-dependent, not self-sufficient.

Critiquing Pluralism:
- The supporters of Austin, point out that the associations in a society are allowed to function only with the pleasure and approval of the sovereign and as such they are no encroachment on the authority of the legal sovereign. The legal sovereign whereas allows them to exist can also curb them when required. In Nazi Germany and Fascist Italy all sorts of associations were subordinated to the will of the legal sovereign.
- So far as the claims of divisibility of sovereign authority in a federal system is concerned, the Austinian school of philosophers argued that even in a federation sovereignty is singular and it lies in the amending body of the constitution. They say it is the governmental authority which is divided but not the sovereignty.
- Even HJ Laski later on acknowledged that, “Legally no one can deny that there exists in every state some organ whose authority is unlimited.”
Sovereignty in the Face of the Global System

Defining Globalization

Globalization is “A term that refers to the acceleration and intensification of mechanisms, processes, and activities that are allegedly promoting global interdependence and perhaps, ultimately, global political and economic integration. It is, therefore, a revolutionary concept, involving the deterritorialization of social, political, economic, and cultural life.”  

– Marin Griffiths and Terry O’Callaghan in Key Concepts in International Relations

“... globality signifies a social condition characterized by tight global economic, political and environmental interconnections and flows that make most of the currently existing borders and boundaries irrelevant. ...”

“The term globalization applies to a set of social processes that appear to transform our present social condition of conventional nationality into one of globality. ...”

– Manfred B. Steger in Globalization: A Very Short Introduction

A number of fundamental ‘gaps’ [disjunctures], ... are apparent in the relation between the political theory of the sovereign state and the nature of the twentieth-century world, gaps which highlight a discrepancy between the terms of reference and explanatory reach of the theory and actual practices and structures of the state and economic system at the global level....

In short, the idea of de jure sovereignty remains compelling, especially with regard to the state’s capacity to wield coercive power. However, the operation of states in an ever more complex institutional system, which limits their autonomy and infringes their sovereignty, undermines the cogency of those traditions of sovereignty – stemming from Hobbes, on the one side, and Rousseau, on the other – which interpret sovereignty as an illimitable and indivisible form of political power. Instead, if sovereignty as a concept is to retain its analytical and normative force – as the rightful capacity to take final decisions and make and enact the law within a given community – it has to be conceived as divided among a number of agencies and limited by the very nature of its plurality and the rules and procedures which protect it.  

[David Held, 1989, Political Theory and the Modern State, pp. 228-39]

Sovereignty, autonomy and disjunctures

While the nation-state manifests continuing vitality, this does not mean that the sovereign structure of individual democratic nation-states remains unaffected by the intersections of national, international and transnational forces and relations: rather, it signals, in all probability, shifting patterns of powers and constraints. The precise scope of the sovereign authority of democratic nation-states can be mapped by looking at a number of ‘disjunctures’ between, on the one hand, the formal domain of political authority they claim for themselves and, on the other, the actual practices and structures of the state and economic system at the regional and global levels. At the latter levels, there are disjunctures between the idea of the democratic state as in principle capable of determining its own future, and the world economy, international organizations, regional and global institutions, international law and military alliances which operate to shape and constrain the options of individual nation-states....

Disjuncture 1: the world economy

There is disjuncture between the formal authority of the state and the actual system of production, distribution and exchange which in many ways serves to limit the power or scope of national political authorities....

Disjuncture 2: international political decision-making

A second significant area of disjuncture between the theory of sovereign state and the contemporary global system lies at the intersection of a vast array of international regimes and organizations that have been established to manage whole areas of transnational activity (trade, transportation, the use of the oceans and so on) and collective policy problems. The growth in the number of these new forms of political organization reflects the rapid expansion of transnational links, the growing interpenetration of foreign and domestic policy, and the
corresponding desire by most states for some form of international governance and regulation to deal with collective policy problems....

Disjuncture 3: international law
The development of international law has subjected individuals, governments and non-governmental organizations to new systems of legal regulation. International law has recognized powers and constraints, and rights and duties, which transcend the claims of nation-states and which, while they may not be backed by institutions with coercive powers of enforcement, none the less have far-reaching consequences....

Disjuncture 4: culture and the environment
There is a further disjuncture involving the idea of the state as an autonomous centre of culture, able to foster and sustain a national identity, with a secure environment for its people, and interlinked changes in the sphere of media and environmental forces....

The global order, and with it the role of the nation-state, is changing. While a complex pattern of global interconnections has been evident for a long time, there is little doubt that there has recently been a further ‘internationalization’ of domestic activities and an intensification of decision-making in international frameworks. The evidence that international and transnational relations have altered the powers of the modern sovereign state is certainly strong. Global processes have moved politics a long way from activity which simply crystallizes first and foremost around state and interstate concerns.

The ‘disjunctures’ identified above reveal a set of forces which combine to restrict the freedom of action of governments and states by blurring the boundaries of domestic politics, transforming the conditions of political decision-making, changing the institutional and organizational context of national politics, altering the legal framework and administrative practices of governments and obscuring the lines of responsibility and accountability of national states themselves. These processes alone warrant the statement that the operation of states in an ever more complex global system both alters their autonomy (by changing the balance between the costs and benefits of policies) and impinges increasingly upon their sovereignty. Any conception of sovereignty which interprets it as an illimitable and indivisible form of public power is undermined. Sovereignty itself has to be conceived today as already divided among a number of agencies – national, regional and international – and limited by the very nature of this plurality.

The modern theory of sovereign democratic state, liberal and radical, presupposes the idea of a community which rightly governs itself and determines its own future. This idea is challenged fundamentally by the nature of the pattern of global interconnections and the issues that have to be confronted by a modern state. National communities by no means exclusively ‘programme’ the actions, decisions and policies of their governments and the latter by no means simply determinate what is right or appropriate for their own citizens alone. The meaning of democracy, and of the model of democratic autonomy in particular, has to be rethought in relation to a series of overlapping local, regional and global structures and processes.
[David Held, 2006, Models of Democracy, pp. 294-304]