

**Group 9 presentation**

**Course code; pol 102**

**Topic; sovereignty of a state**

## Sovereignty of a state

It is impossible to talk about the state without saying something about sovereignty. This is the aspect of the state that relates to its supreme and unchecked power. J.W.Garner in his work *Introduction to political science* has defined sovereignty as that 'characteristic of the state in virtue of which it cannot be legally bound except by its own will or limited by any other power than itself'.

In political theory, sovereignty is a substantive term designating supreme authority over some polity. Sovereignty is therefore refers to as the power of the state to make and apply its own laws and to control it affairs without the interference of other states. It is the full right and power of a governing body over itself, without any interference from outside source or bodies.Sovereignty is an essential ingredient of statehood. It originated from the latin words -summa potestas - meaning supreme power. It has two main facets. In the first perspective, it means the condition of political independence, that is, the exclusive right of the state to act independently in international affairs. In another perspective, sovereignty can be viewed as the final, absolute, unlimited and coercive or supreme power of the state over its citizens with all means of coercion within its geographical frontiers. In other words, the absolute supremacy of the state cannot be shared with any body outside its territory. It empowers a state to conduct its own domestic and foreign affairs without being subject to either internal or external pressure. It is imperative that there must be a person or group of person who should be entrusted to control the supreme power in every state and such person or group of persons is or are known as the Sovereign.

It could be deducted from the above definition of sovereignty that, there are two aspects of sovereignty: internal sovereignty and external sovereignty. Internal sovereignty denotes

the supreme power of the state over its domestic affairs within its territory. The sovereign has absolute power to legislate laws and employ all available coercive apparatus of the state for their enforcement. Thus, internal sovereignty entails legal independence, self-sufficiency and completeness of a state. External sovereignty implies that a state is free from the domination of other states, political authority, and international body of organisation. It also means absolute independence and ultimate control of the state over foreign affairs without external interference. Thus, a sovereign state must be legally independent and virtually free from outside control in the formulation and conduct of foreign relations, treaty, settlement of conflict and waging of war.

## History of sovereignty

The concept of sovereignty has a long and respectable history. Sovereignty could be traced back to ancient philosophers such as Aristotle, Thomas Hobbes, John Locke and Jean Jacques Rousseau. The birth of sovereignty partly emanated from the struggle between the secular realm (State) and the spiritual realm (church) in 16th century Europe. The princes sought to assert the supremacy of the state over the church and the church made the same claim. The struggle resulted to a serious clash between the central authority and other competing centres of power in the feudal states. This culminated into civil war and the horror that followed made people think about the concept of sovereignty to provide for effective control of state machinery.

Jean Bodin (1530-96): He was a French political thinker and the father of modern theory of sovereignty. Jean Bodin in the treatise "Les Six Livres De-La" (The Republic 1576). He viewed sovereignty as the supreme power of the state over the citizens and subjects

unrestrained by the law. At the time Bodin wrote his treatises, France was engaged in a civil war and he was mainly interested in preserving a strong central authority. Therefore, he sought to increase the political powers of the king by reducing that of the church. This was at a time when the power of the church(pope) was greater than that of the state(king). According to him divine law, and the law of nature only bound the sovereign.

Thomas Hobbes(1588-1679) adopted a more authoritarian concept of sovereignty than Jean Bodin. In the Leviathan 1651, he emphasized that the power of the sovereign must be single, indivisible, unlimited and determinate. Hobbes felt that the absence of a sovereign in the STATE OF NATURE resulted into war against all and justice was based on "might was right". Hobbes did not posit any supranational authority on the sovereign but subjects him to a mystical covenant existing between the people and the ruler.

According to John Locke in *Essays on Civil Government*, the supreme power of the state may be controlled by the people. He emphasized that the power of the state is limited, not absolute, since it is derived from the people, and it is held in trust for the people by the sovereign.

Austin Ranney shared the same idea with Bodin and Hobbes. Austin said the sovereign must be an identifiable human superior, whether a person or a body of persons. In the opinion of Burgess, sovereignty is the original, absolute and unlimited power of the state over individual subject and citizens. In another perspective, sovereignty has been given various interpretations by scholars such as A.V. Dicey, Ivor Jennings etc. It was A.V. Dicey who classified sovereignty into legal sovereignty(parliament) and the political sovereignty( the electorate). This classification negates Hobbes-Austin's theory of indivisibility of the sovereignty. Legal sovereignty means a person or body of persons who possess the power to make laws. Political sovereignty denotes the body of persons in the state(electorate) whose

will ultimately prevail because legal sovereignty is bound to act according to their will. The distinction is imperative to emphasize the importance of the people as the source of political power in the state. It is the recognition of the essence of the legal institutions for the administration of the land. The dichotomy also negates the traditional notion of sovereignty as a determinable, indivisible and unlimited authority in the state. The two Diceyan dichotomies of sovereignty have been declared unnecessary by Field and Jennings. The Diceyan approach is mainly confined to the power of law making unrestrained by any legal limit. Contemporary approach to sovereignty disregards the Diceyan notion but points to the processes and procedures in decision-making and interpretation as a result of size, population; economic activities and other factors that make it complex to locate state authority.

## Attributes of sovereignty/ sovereign state

**Indivisibility:** Indivisibility is the life-blood of sovereignty. Sovereignty cannot be divided. American statesman Calhoun has declared, 'sovereignty is an entire thing; to divide it is to destroy it. It is the supreme power in a state and we might just as well divide it as to destroy it. Sovereignty is supreme, final and with coercive power of the state over the people living within the state. Sovereignty can not be divided, though the government can delegate powers to certain agencies. Gettell, has also very aptly remarked in this regard, 'if sovereignty is not absolute, no state exists. If sovereignty is divided, more than one state exists'.

**Absoluteness:** The powers of a sovereign state cannot be restricted. There is no limitation to its legal powers within its area and it receives orders from none. However, absolute external sovereignty of a state has been limited by its membership of international organisation to which it has surrendered part of its sovereignty.

Permanence: As long as the state exists, sovereignty continues without interruption, it is a permanent attribute of the state which does not change. It lasts as long as an independent lasts.

## Types of sovereignty in a state

constitutional/Legal sovereignty: the body that makes law and enforces same in the state is the legal sovereign. For example, parliament is the legal sovereign in Britain. The parliament also has the amending power of the constitution. Legal sovereignty, in the modern times, was first propounded by Jean Bodin(1530-1596) in his famous book Six Books of a Commonwealth published in 1576. In Bodin's account sovereignty is the untrammelled and undivided power to make laws. This power we call absolute power of the state.

Bodin designated law as the command of sovereignty. In his view sovereignty is not only absolute power of the commonwealth but also the legal authority and naturally none has any claim against such authority. Legal sovereignty is based upon the contention that ultimate and final authority resides in law-making power and since the sovereignty is law-making power it is the legal sovereignty.

Another great exponent of legal sovereignty is Thomas Hobbes(1588-1679). His Leviathan(1651) fully analyses the legal aspect of sovereignty. In this book Hobbes says monopoly of coercive power is vested in the hands of sovereignty might be vested even in the hands of a group of persons his clear preference was for single person. there is practically no difference between Bodin's untrammelled and undivided power and Hobbes' supreme

coercive power. Both indicate something and lead to same consequences. Both Bodin and Hobbes propounded a legal and absolute power of sovereignty.

Popular or political sovereignty: Dicey believes that 'behind the sovereign which the lawyer recognises (legal sovereignty), there is another sovereign to whom the legal sovereign must bow. Such sovereign to whom the legal sovereign must bow is called political sovereign. Political or popular sovereignty refers to that body which is supreme in a state, the will which is ultimately obeyed by the citizens of the state. The electorate constitute the political sovereign. The will of the electorate ultimately prevails because legal sovereignty, in the making of law, is bound to act according to their will.

However, the distinction between political and legal sovereignty is crucial for the following reasons;

- 1) To emphasize the importance of the electorate as a source of political power in the state. The electorate can exercise their voting power to bring down a corrupt and inefficient government in the next general election.
- 2) To recognize the essence of the legal institutions for the administration of the state.
- 3) To refute the traditional notion that sovereignty is the determinate, indivisible and unlimited authority in the state. By this sovereignty is divisible in modern times

However, the distinction is not sufficient because due consideration is not given to the other elements that make for sovereignty like external influence, resources, and problems of a federally heterogeneous state.

Defacto sovereignty and De jure sovereignty: sometimes, a distinction is made between the De Facto(actual) sovereignty and De jure(legal) sovereignty. A De jure sovereign is the legal sovereign whereas a de factor sovereign is a sovereign which is actually obeyed. In other words, the De facto sovereignty is a type of sovereign rule that refers to the body or group of people who use force to make citizens obey their will, after overthrowing the legitimate sovereign of the state through invasion or revolution, e.g the military in government, while De jure sovereignty is that type of sovereign rule that is based on law and its application as opposed to physical exercise or use of force.

In the words of Lord Bryce, de facto sovereign 'is the person or a body of persons who can make his or their will prevail whether with the law or against the law or against the law; he or they , is the de facto ruler , the person to whom obedience is actually paid'. thus , it is quite clear, that de jure is the legal sovereignty founded on law whereas de facto is the actual sovereignty. The person or the body of persons who actually exercise power is called the de facto sovereign. The de facto sovereign may not be a legal sovereign or he may be a usurpingking, a dictator, a priest or a prophet, in either case sovereignty rest upon physical power or spiritual influence rather than legal right.

Histories abound in example of de facto sovereignties. For example, Oliver Cramwell became de facto sovereign after he had dismissed the long parliament. Napoleon became de facto sovereign after he had overthrown the Directory. Likewise, Franco became the de facto sovereign after he had dislodged the legal sovereign in Spain. On october 28, 1922 Mussolini's Black Shirts marched on Rome. At that time, parliament was the legal sovereign. Mussolini became the prime minister in the legal manner. He ruled parliament and ruled the country through parliament.



Parliament remained the legal sovereign but he was the actual or de facto sovereign. Hitler also did the same in Germany. He too became the de facto sovereign. He controlled the legal sovereign and became the de facto sovereign. Similarly, Stalin remained the actual sovereign in U.S.S.R. for about three decades.

Internal sovereignty: this refers to supreme power the state has to make and enforce law within its area authority. A state which possesses internal sovereignty is one which has the authority and ability to exercise command over its society.

External sovereignty: the term external sovereignty is employed by some writers to mean nothing more than the freedom of the state from subjugation to or control by a foreign state, i.e the supremacy of the state as against all foreign wills, whether of persons or state. It is the power the state has to decide on how to relate with other nations of the world on equal basis, in other words, it confers equality on the state in its relation with other states in the international system.

## Limitations to the sovereignty of a state

The following are some of the internal and external limitations to the sovereignty of a state

### Internal limitations

The constitution: the can limit the sovereignty of a state because the constitution of most states are supreme, it defines the power exercise by the various levels of government. It therefore limits the powers of the government. In other words, the constitution itself imposes certain restrictions on the power of the government. The principle of checks and balances

help in preventing abuse of power. For instance, the judiciary, in Nigeria has the power to declare null and void the law which violates the spirit of the constitution.

Electoralates: political sovereignty is vested in the hands of the electorate. They possess ultimate power in a state. Therefore, any government should be responsible to the people whose collective affairs it directs and controls, otherwise, such leaders could be voted out of power during the next election (every government requires the support of the electorate).

Public opinion: in democracies, governments are open and accommodating. They take into consideration the opinion of the people when formulating policies. This is a limitation to the exercise of powers.

Customs and traditions: the customs and traditions of the people are mostly considered by the state before or when making policies and laws.

The military: the military through forceful removal of a democratic government is a limitation to the sovereignty of a state because the tradition mostly exhibited by the military is by suspending the constitution of the state after taking over power.

however, the exercise of sovereignty is best achieved in a unitary state than in a federal or confederal system of government.

### **External limitations**

International organisations; this is concerned with the relationship among nations of the world. The influence and authority of international organisations such as the UNO and African Union render the notion of absolute sovereignty invalid. International organisations limit the independent sovereign actions of a state. States which belong to international organisations must be ready to abide by any collective decisions taken by the organisation because states that disobey international laws and conventions may face some sanctions. However, the rule of unanimity is always adopted in international organisations to reflect the principle of sovereign equality among nations. This indicates that all nations are equal regardless of their variation in size population and power as well as exercise of legislative functions.

In practice, we have the imposition of the will of big and powerful nations on small and weak ones without their consent, particularly the Security Council members of the UN which possess veto-power, especially USA and Russia. They have successfully interfered in the internal affairs of weak nations of Africa and Asia. Due to poverty, they have become the puppets of the super-powers. This tendency is a negation of rule of unanimity as well as state sovereignty. The idea of minorities is no longer tenable in the international community. The tendency nowadays is for the various nations of the world to put all their sovereignties together for the purpose of maintaining international peace and progress. The membership of international organisations involves submission to their rules and regulations, for example, the regulations of armament for the preservation of the overall well-being of the ever shrinking world. It is mandatory for states to respect the majority opinion of the organisations. World opinion is now a real factor in international politics. No state can declare war against other states without justification. A state is bound by international conventions. Sanctions can be placed on a nation that violates the principles and objectives of

the organisation . Moreover, the role of Amnesty International, which has its headquarters in London, limits the exercise of supreme power by leaders. It has successfully prevailed over many African leaders to safeguard and guarantee the rights of their citizens.

Also, it is morally binding for the sovereign to observe international agreements made with other states. The authority of defence pacts or agreements such as NATO or WARSAW places the state sovereignty at stake. It is a moral duty for all members to follow common policies dictated by the terms of the pacts.international economic organisations such as ECOWAS and European Union limit the sovereignty of a state. The member-nations have to submit to certain controls over trade and tariff policies in order to be members of such bodies or organisations.

Interdependence of state: international interdependence whether in the military or economic sphere is a fact of political life. The necessity for interdependence of states on the socio-economic, political, scientific and technological fields is crucial in contemporary society. Cooperation is needed for collective control epidemics like cholera, HIV/ AIDS, hunger, poverty and ignorance. Also, the poverty of certain states has made them subservient to the manipulation of the richer nations and consequently have no authority for independent action. Foreign aid is also given to induce these poor nations in order to tie them to the apron strings of the donor nations. This is the weapon normally adopted by Britain, USA and Russia to influence the internal affairs of Africa and Latin American states. The super-powers often interfere in the internal affairs of less developed nations. In other words, external sovereignty of less-developed or under-developed countries have been undermined by the economic, technical and military assistance of donors. The donor country can influence both domestic and external policies of the recipient country. This constitutes a limitation.

International law; international law must be respected by each nation to ensure world peace.

The obedience and compliance to the principles of international law do not allow a state a complete independent action on internal and external policies. We have maritime and space regulations, which limit the authority of the state using them. The interest of other nations must be taken into consideration in adopting a particular policy. Jerry bentham coined international law in 1780. International laws simply means a body of customary and conventional rules which are considered legally binding by civilized states in their international relations. It may also be viewed as generally accepted principles moderating the conduct of nation-states, individual and international organisations.

## Locations of sovereignty in a state

According to Hans Morgenthau the location of sovereignty depends on political judgement and determination rather than on legal interpretation. While John Chipman Corey claimed that sovereignty cannot be located in one man , basically, sovereignty can be located in accordance with the wishes of the people, the political ideology, and the system of government being operated in the state. The attempt to locate sovereign has been an impossible adventure. In democratic societies, the electorates are regarded as the sovereign. The people have the right to revolt.

Sovereignty in a federal state is not permanently located in any institution. It sometimes resides in the judiciary, executive, legislation or the constitution and even the electorate. There is usually a multiplicity of legislation both at the centre and the state or

regional levels. In federal states such as the USA, Nigeria and Australia the authority of the central legislature is so circumscribed that it cannot be regarded as the sovereign.

In the military system, sovereignty is assumed to rest in one body that is (central authority) which can override or abrogate all other bodies in the state. Sometimes, the sovereignty may be located or resided in the military, the populace or the constitution. Normally, the ultimate power of the sovereign belongs to the people. In socialist or communist countries the political sovereign belongs to the working class.

In summary, in modern society no single person or body can possess such supreme or unlimited authority as advocated by Hobbes and Austin Ranney. Nevertheless, the exercise of sovereignty is best achieved in a unitary state than the federal or confederal system of government.

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