

What is A State?

READING ITEM 1

The Element of Sovereignty

This reading item comprises **a revised extract of publicly available online resources** at <http://www.politicalsciencenotes.com/sovereignty/sovereignty-introduction-classification-and-theories/777>, tailored to the needs of comparative constitutional law studies by international relations students by Márton Sulyok.

INTRODUCTION AND LEARNING OUTCOMES

*Students must come to understand such basic concepts of constitutional law and political science as sovereignty. Sovereignty as the basic principle enabling states to act autonomously as actors of international relations cannot be discarded. Sovereignty as a doctrine has **different interpretations in law and political science**, it can have **concurrent interpretations** differently assessing the importance of its **external and internal dimensions**. The following material provides a short overview of certain theories of sovereignty and their classifications.*

Learning outcomes

1. *Basic understanding of the concept of sovereignty (in an Anglo-Saxon political sciences approach)*
2. *Navigating between the different interpretations of sovereignty in political science*
3. *Understanding the effects of globalization, international law and organizations as well as of the proliferation of nation-states on the concept of sovereignty*

Keywords: *sovereignty, political science, external sovereignty, internal sovereignty, nation-state, crisis, sovereign power, globalization*

Necessary time: 1-2 hours

Recommended Reading

1. [Winston P. Naqan – Aitza P. Haddad: Sovereignty in Theory and Practice](#) (*San Diego International Law Journal* 13(429)2012:429-520)
2. [Georgios Maris – Pantelis Sklias: Asymmetrical Sovereignty, European Integration, and the Grey Zone of European Union Politics. p. 4-10](#) (*The evolving nature of the notion of sovereignty, Theoretical Background*)

On Sovereignty – in General

Several elements need to come together for an entity to be qualified as a state and sovereignty is perhaps the most important but also most controversial one. Liberals, conservatives, socialists—all types of thinkers view it in their own respective ways and this finally has resulted in different concepts about it.

The interesting fact is that many disapprove of state sovereignty as it curtails the liberty of individuals, they say. Their belief is that instead of arguing for concentration of power at a single center, it is better to decentralize. They say: ***Sovereignty means centralization of power and it runs counter to the progress of civilization and progress.*** In this spirit, Laski once said it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered. But the same author in the same book has offered us ***another view which says that the theory of sovereignty is the theory of political organization.***

Now, if we decide to surrender sovereignty, the only alternative left to us is to dismantle political organizations, which is an impractical proposition. Since we are not in a position to dismantle states, we must not surrender sovereignty.

Classifications of Sovereignty

<i>Many connected approaches</i>		
1. Legal	3. De jure	5. Internal
2. Political	4. De facto	6. External

1.1. Legal Sovereignty

Legal theory of sovereignty, in 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 undivided power to make laws, as in the absolute power of the state.

Bodin designated law as the command of sovereignty. In his view sovereignty is not only the absolute power of the commonwealth but also its 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 understood as **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 argues that the monopoly of coercive power is vested in the hands of the sovereign, who is a single person. Albeit sovereignty might be vested even in the hands of a group of persons as he allows, but his clear preference was for single person. **There is practically no difference between Bodin's 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.**

The absoluteness of Bodin's sovereignty can be illustrated by the following observation made by him in his *Six Books on Commonwealth*. *"There is none on earth, after God, greater than sovereign princes, whom God establishes as his lieutenants to command the rest of mankind"*. Besides God only the prince enjoys sovereign authority.

Like Bodin, Hobbes believed that the sovereign authority was the only or ultimate law-making power. He was the only power to see that the law made by him was properly implemented. The main aim of law and its proper implementation was to ensure "peaceful and commodious living". Hobbes' writing also contains that people erected an absolute sovereign power for the maintenance of security.

In the state of nature, he argued, peace, security, tranquility and commodious living was absent and to get all these, people created absolute sovereign power. We thus find that the legal aspect of sovereignty largely focuses on the law making and law implementing power of sovereign authority.

Both Bodin and Hobbes were profoundly influenced by the prevailing circumstances in their respective countries. In Bodin's France, religious strife made life of common people unbearable and destroyed peace in society. In England, social and political disorder heavily told upon the normal life of people. Bodin and Hobbes believed that absolute power was the only remedy to this situation and this belief led them to argue for the undivided and unlimited power of the sovereignty.

1.2. Political Sovereignty

"Political sovereignty is not in any way based upon a claim to legal authority but is concerned simply about the actual distribution of power that is de facto sovereignty. Political sovereignty, therefore, refers to the existence of a supreme political power, possessed of the ability to command obedience because it monopolises coercive power". (Heywood)

Political sovereignty generally means that exercise of political power is of prime importance. Very often people do not want to see whether the sovereign power is sanctioned by law or

not; it may be that people show obedience to such sovereignty, but the obedience may not be spontaneous. It is, however, not true that political sovereignty is always based upon coercive force. It has been found that political sovereignty is vested in the hands of a person or group of persons who are closely related with the politics and less with legal affairs. Political sovereignty is de facto sovereignty.

1.3-1.4. De Jure and De Facto Sovereignty

The distinction between the two is like that between power and authority. Legal sovereignty means power is exercised in accordance with law and the sovereignty’s claim to obedience is also legal. It means that the claim to power and obedience is based on law.

- **De jure** sovereignty is **legal sovereignty**. The sovereign power is sanctioned by law. The actions and character of the de jure sovereignty are sanctioned by law and naturally none can challenge it on the question of legality on the other hand, de facto sovereignty cannot claim any legal sanction since it is not based on legality.
- **De facto** sovereignty exercises power and performs most of the normal duties of the sovereignty. Citizens can challenge the power and functions of the sovereignty.

NB This distinction is not always stable. If the power of the de facto sovereignty is sanctioned by the people, it becomes de jure. The de facto sovereignty may call for an election where people vote and if the de facto sovereignty receives majority support the power is converted into authority.

1.5. Internal Sovereignty

Both Political and Legal	Both De jure and De facto
<p><i>The internal sovereignty exercises its power over all citizens, groups and institutions and it has the power to settle all disputes. The concept of internal sovereignty is said to be confined within a limited geographical area and it cannot exercise power over the people of other places.</i></p>	<p><i>An internal sovereignty is one which enjoys ultimate, supreme and independent power within the geographical area of the state. The order, directions etc. are carried out by the citizens of the state and the policies and decisions are binding on all citizens. The internal sovereignty may be both de jure and de facto.</i></p>

*Though internal sovereignty is assumed to be **absolute and undivided**, such internal sovereignty can also be interpreted as a **misnomer**. Particularly in a **federal state**, the power is divided between the federal authority and state authorities and both the types of*

government are to abide by the rules of the constitution. Naturally, it is believed that the constitution is sovereign.

1.5.1. The 'Location' of Internal Sovereignty

*Internal sovereignty in the Middle Ages located in a single person (monarchs were sovereigns) and they claimed absolute power, resulting absolute monarchies. Over time, this autocratic rule was replaced by a compromise, far short of popular sovereignty advocated by Rousseau. In the meantime, British legal philosophers John **Austin** and John **Locke** worked on the legal theory of sovereignty.*

*Under these approaches, the location of sovereignty can be best described by the principle '**king-in-parliament**', meaning these two exercise sovereign power (together), one needing to approve the other's decision. (i.e. The idea of parliamentary sovereignty originates in this concept.)*

***Rousseau** suggested that all the adult men of the body politic will assemble in an open space and decide the policy through deliberation (**popular sovereignty**). Out of the deliberations will come out the "general will" which will be the guiding force of the body politic (i.e. the general will would act as sovereign.) Rousseau's sovereignty, though apparently popular, in ultimate analysis, is absolute because all the members of the body politic were forced to follow the directions of the general will. Nevertheless, in Rousseau's account, the people were given the power to exercise sovereign authority.*

*The **newest approach** is that of **polycentric sovereignty** denoting that there is no single center of sovereign power in a democratic state.*

1.6. External Sovereignty

External sovereignty of any member state (of an international legal order or legal system or international organization) refers to its position in this framework. (*For more on this see the next Reading Item 2 for this topic on the Role of State as an Actor of International Cooperation.*) If a state remains out of the control (influence) of another state in the international sphere, it can exert its external sovereignty.

Every state will, however, obey the international code of conduct and that does not entail the loss of sovereignty. Such sovereignty is recognized by international law. [Article 2(2) of the UN Charter declares that the organization is based on the principle of the sovereign equality of all its members.]

In the international arena, every state is entitled to enjoy sovereignty. But the convention that has developed in this regard is that the exercise of sovereign power shall not, under any circumstances, threaten peace, security and the sovereignty of other states.

The concept of external sovereignty is fully incongruous in the present international sphere because no nation can live alone and none can claim that they are not dependent on any other nation. Long ago, Laski argued that *“the notion of an independent sovereign state is, on the international side, fatal to the well-being of humanity.... England ought not to settle what armament she needs, the tariffs she will erect, the immigrants she will permit to enter”*.

In fact, there is hardly any scope for any nation to exercise sovereign power in the international arena. Even a superpower will think twice before exercising absolute power. Political, economic and other factors limit sovereign power.

1.7. Sovereignty and International Organizations

In recent years, there is a mushroom growth of international organizations and these progressively become more vital in international politics, unquestionably affecting sovereign powers of states.

According to David Held, the **number of international organizations** was 37 in 1909, which rose to 365 by 1984. Again, the **number of the NGOs** was 176 in 1909 rising to 4,615 by 1984. During the last more than two decades the number of both has increased even more considerably. There are **transnational pressure groups** and these are the key policy-making instruments. This tendency has considerably eclipsed the proper functioning of sovereignty by some countries.

How NGOs and International Organizations Affect Sovereignty?



1.7.1. The Influence of International Law

*Legal pioneer Hugo **Grotius** (1583-1645) was the first to enunciate the basic principles of international law which will guide the relations among the nations. His great work **On the Law of War and Peace (De jure belli ac pacis)** was published in 1625. He said that as the individuals are subject to certain laws and regulations within the nation-state, the states are also subject to laws and regulations in the international field.*

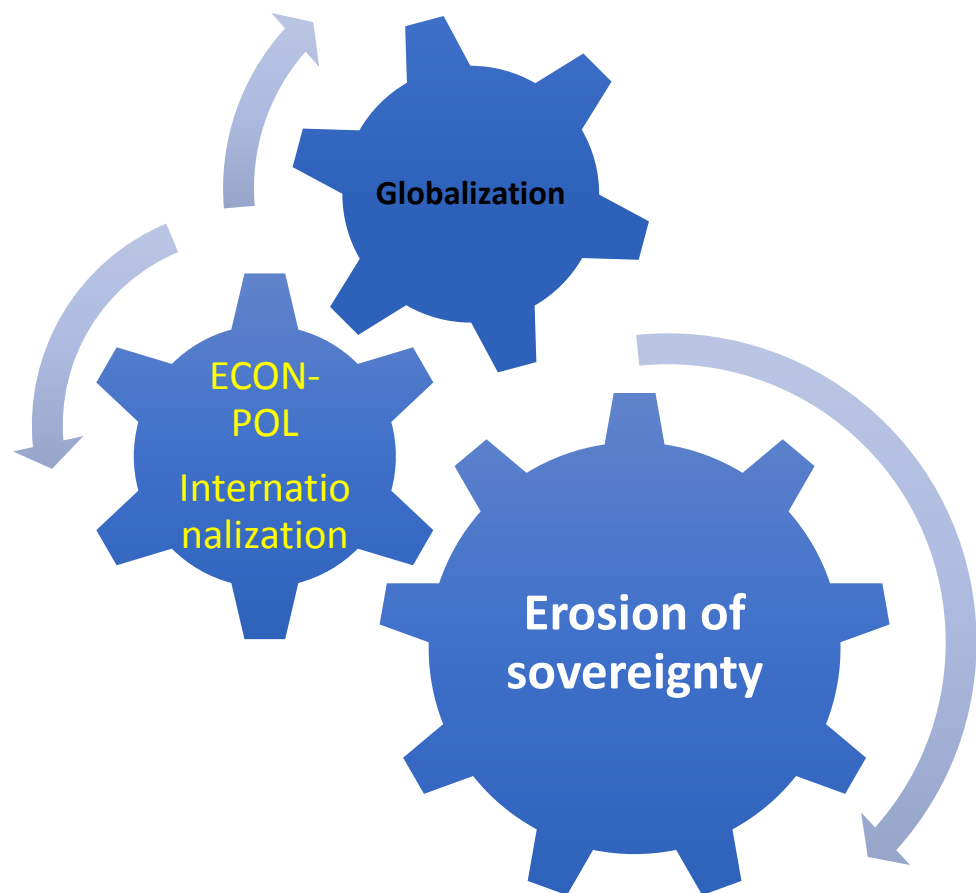
In the last few decades it has been observed that unprecedented emphasis on human rights heavily tells upon the sovereign power of the nation-states. The nation-states cannot wishfully deprive their citizens from rights declared by the UDHR (1948) – supplemented by the ICCPR and the ICESCR (1966) – and the ECHR (1950). All these declarations are supported by international law. A particular state may not be willing to recognize and implement the rights but the international law and world situation force them to act accordingly.

1.8. Crises in National and External Sovereignty

National	External
<p><i>Terrorism, religious fundamentalism, group politics, growing importance of pressure groups etc. are about to put curbs in the authority of state. Even these groups and movements are not willing to give any credence to the sovereignty. The motives, if clearly interpreted, will lead to the division of sovereignty.</i></p>	<p>Due to interdependence of states and the progress of economy, trade, commerce and the progressive internationalization of transport and communication sovereignty, through the external aspect, has been brought into question over the years in relation to globalization.</p>

It has also been found that **different linguistic and cultural groups are demanding autonomy**. They are eager to confederalize the political system and, thereby endanger the traditional understanding of sovereignty and sovereign state powers.

Sovereignty in the Era of Globalization



(More in Reading Item 2 on the Role of State as an Actor in International Cooperation)

During the last few decades the number of nation-states has proliferated beyond any comprehension. At the outbreak of the **First World War** there were only **62 independent states** in the world. The number rose to **74 in 1946**. **Today there are 193 states** (present membership of the United Nations). This figure does not disclose everything. Most of the states are very small. *87 states have population less than 5 million, 58 countries have population below 2.5 m.* The population of each of the 35 countries is under 5,00,000. There is no halt of the division of old states into smaller ones, rather the process is continuing.

In 1991, the former Soviet Union was divided into 15 independent republics (today there are 12 such republics) and all were created on ethnic grounds. On the same ground Yugoslavia broke into Croatia, Slovenia and Bosnia. The Palestinians are fiercely fighting for a separate homeland. The same tendency is gathering momentum in several parts of Africa.

The proliferation of sovereign states proves beyond any shadow of doubt that the concept of sovereignty is no longer a matter of history or demand for it has faded away.

Questions for Self-Check
1. How could you differentiate between legal and political sovereignty?
2. What is understood under the proliferation of nation-states?
3. How did international law influence the understanding of sovereignty?
4. How is the UN Charter relevant to external sovereignty?
5. What do we understand under the "location" of internal sovereignty?



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