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The Shifting Grounds Of Sovereignty In International Law

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Abstract

Globalization has accelerated the flow of goods, capital, technology, and information across borders, thereby challenging a core element of state sovereignty, the ability to control external influences. States today face vulnerabilities not only from other nations but also from transnational forces such as global markets, multinational corporations, terrorism, and cyber threats. When governments fail to meet the essential needs of citizens due to incapacity or policy choice, sovereignty may weaken, giving rise to instability, refugee crises, and security threats.

Globalization is often portrayed as a threat to national sovereignty. Critics argue that it reduces state authority and forces governments to adopt neoliberal economic policies such as deregulation, privatization, and cuts in public spending. However, the real issue is not the survival of the nation-state but the erosion of democratic policy autonomy. The question is whether governments will act according to the will of their people or remain constrained by what has been called the "Golden Straitjacket"—the economic pressures imposed by global financial systems and international institutions.

Keywords*: Globalization, Sovereignty, Nationalism, State, Border*

INTRODUCTION

Sovereignty is regarded as the most fundamental and defining attribute of the State. Classical political theory identifies **population, fixed territory, government and sovereignty** as the four essential elements of a State, each indispensable for its formation and existence.[1] Among these, sovereignty occupies a place of primacy because it distinguishes the State from all other associations, institutions, or organisations.[2] A State is considered sovereign only when it exercises supreme authority both internally over its subjects and externally in relation to other States, without being subordinate to any higher power. In other words, without sovereignty, a State cannot claim to be independent in decision-making or in the exercise of its powers.

Sovereignty may be described as the **supreme, absolute and unrestricted power** of the State to make and enforce laws within its territorial boundaries.[3] It is this sovereign power that enables the State to issue binding commands and expect obedience from individuals and institutions functioning within its jurisdiction.[4] Even though a sovereign State may voluntarily delegate some of its powers to subordinate authorities such as provincial governments, municipalities, or other local bodies, this delegation does not limit the sovereignty of the State. The delegated authority functions only at the discretion of the State and may be withdrawn at any time, thereby reaffirming that sovereignty remains indivisible and inalienable. Therefore, sovereignty provides the State with ultimate supremacy, and the loss of sovereignty is often equated with the political death of the State.

Sovereignty also implies independence from external control. A State possessing sovereignty is free to frame and execute policies in accordance with its will, without interference from any external authority.[5] The concept has evolved historically with philosophical, legal, and political interpretations given by thinkers such as Bodin, Hobbes, Rousseau, and Austin. While modern globalisation and the rise of international organisations have posed challenges to the traditional understanding of sovereignty, it still remains a central doctrine in political science and international law. Therefore, sovereignty continues to be a subject of intense debate and scholarly interpretation in the contemporary world.

[1] O P Gauba, *An Introduction to Political Theory* (4th edn, Macmillan 2009) 78.
[2] Harold J Laski, *A Grammar of Politics* (Allen and Unwin 1925) 15.
[3] Jean Bodin, *Six Books of the Commonwealth* (1576, Basil Blackwell 1955) 22.
[4] John Austin, *The Province of Jurisprudence Determined* (1832, Weidenfeld & Nicolson 1954) 199.
[5] Georg Jellinek, *General Theory of the State* (George W Law 1900) 112.

ORIGIN OF THE WORD 'SOVEREIGNTY'

The term *sovereignty* has its etymological roots in the Latin word **'superanus'**, meaning *supreme* or *above*.[6] This signifies the superiority and ultimate authority vested in the State, distinguishing it from all other social and political institutions. The word was later adopted into Old French as **'souveraineté'**, before entering English political vocabulary.[7] The classical meaning of sovereignty emerged during the rise of the modern nation-state in Europe between the 13th and 16th centuries, a time when the authority of feudal lords declined and centralised monarchies began to assert unified political control.

It was **Jean Bodin**, a 16th-century French jurist and political philosopher, who first provided a comprehensive explanation of sovereignty in his treatise *Six Books of the Commonwealth* (1576).[8] Bodin described sovereignty as **"the absolute and perpetual power of a commonwealth"**, indicating that sovereign authority is not subject to any other earthly power. He believed that sovereignty was the defining characteristic of the State and must remain indivisible and inalienable to ensure political stability. Bodin's concept was largely shaped by the political turmoil of his time, especially the French Wars of Religion, which created a need for strong central authority.

The term gained further prominence in the works of later theorists such as **Thomas Hobbes**, who argued in *Leviathan* that sovereignty emerged from a social contract in which individuals submitted to an absolute sovereign for security and order. Hobbes emphasised that without a sovereign power, human life would remain in a state of anarchy and conflict. Over time, the concept evolved beyond monarchical absolutism to include democratic interpretations, where sovereignty may reside in the people rather than a single ruler. However, despite these variations, the original meaning of sovereignty as *supreme political authority* has remained consistent in political theory.

MEANING AND DEFINITIONS OF SOVEREIGNTY

The concept of sovereignty has been central to political and legal theory for centuries, yet it remains one of the most debated and evolving doctrines in the study of the State. At its core, sovereignty refers to the supreme and unrestricted authority of the State to govern itself and its people, free from any external interference.[9] In the context of international law, sovereignty signifies the legal independence of a State,

[6] Peter Oliver, *The Constitution of Independence: The Development of Constitutional Theory in Australia, Canada, and New Zealand* (Oxford University Press 2005) 33.
[7] Ibid.
[8] Thomas Hobbes, *Leviathan* (1651, Oxford University Press 1996) 120.
[9] H L A Hart, *The Concept of Law* (3rd edn, Oxford University Press 2012) 50.

affirming that no higher power exists above it within the international order.[10] Sovereignty is thus both an internal and external attribute: **internally**, it grants the State ultimate authority to legislate and enforce laws within its territory; **externally**, it affirms the State's equality and independence among other sovereign States.[11]

In its strictest sense, sovereignty implies that a State is the ultimate source of law and is not subject to any legal constraints except those it chooses to impose upon itself. Modern scholars have suggested that sovereignty is not merely a legal authority but also a political fact, dependent on the obedience and recognition of the population. Thus, sovereignty has acquired various interpretations in different historical and theoretical contexts from **absolute sovereignty** advocated by classical theorists to **popular** and **constitutional sovereignty** recognised in democratic systems.[12] Despite its evolving nature, sovereignty continues to symbolise the ultimate authority of the State over its affairs, making it a defining feature without which a State cannot exist.

Definitions of Sovereignty by Political Thinkers

Several jurists and political philosophers have attempted to define sovereignty:

- **Jean Bodin** defined sovereignty as "the supreme power over citizens and subjects, unrestrained by law."[13]
- **Georg Jellinek** described sovereignty as "that characteristic of the State by virtue of which it cannot be legally bound except by its own will."[14]
- **Sir Frederick Pollock** considered sovereignty as "the power which is neither temporary nor delegated, nor subject to particular rules which it cannot alter."[15]
- **W F Willoughby** defined sovereignty as "the supreme will of the State, which is not subject to any other authority on earth."[16]

These definitions collectively highlight that sovereignty is supreme, absolute, indivisible, and self-sufficient. While earlier thinkers emphasised **absolute sovereignty**, modern political theory recognises

[10] Ian Brownlie, *Principles of Public International Law* (7th edn, Oxford University Press 2008) 105.
[11] Oppenheim, *International Law* (9th edn, Longman 1992) 120.
[12] Harold J Laski, *A Grammar of Politics* (Allen and Unwin 1925) 35.
[13] Jean Bodin, *Six Books of the Commonwealth* (1576, Basil Blackwell 1955) 22.
[14] Georg Jellinek, *General Theory of the State* (George W Law 1900) 112.
[15] Sir Frederick Pollock, *Essays in the Law* (Macmillan 1922) 85.
[16] W F Willoughby, An Examination of the Nature of the State (Macmillan 1896) 129.

limitations on sovereignty arising from constitutional frameworks, public opinion, international law, and global interdependence.

CHARACTERISTICS OF SOVEREIGNTY

Sovereignty, as a defining attribute of the State, possesses certain inherent characteristics that distinguish it from other forms of power. Professor O P Gauba and other political theorists have identified several essential attributes of sovereignty, including originality, permanence, absoluteness, and exclusiveness**.** These characteristics collectively underscore that sovereignty is not derived from any external source but is inherent to the very existence of the State. Understanding these features is crucial to comprehending the nature of state authority and the limits, if any, of its exercise.[17]

Originality refers to the fact that sovereignty originates within the State itself. It is not granted or created by any outside authority; rather, it is self-generated and forms the foundation of all State power. This means that the State derives its authority from its own existence and does not depend on any external institution for its legitimacy or capacity to govern. The original nature of sovereignty ensures that no other entity, whether individual or institution, can claim an equivalent authority over the State without its consent.[18]

Permanence is another defining feature of sovereignty. Sovereignty is enduring and continues regardless of changes in government or leadership. Political transitions, revolutions, or regime changes do not affect the State's sovereignty, as the authority resides not in any particular ruler or government but in the State itself. In this sense, sovereignty survives the temporal nature of governments and ensures the continuity of the State as a political and legal entity.[19]

Absoluteness of sovereignty implies that the State possesses unrestricted authority within its jurisdiction. The sovereign power is supreme and free from internal or external control; its decrees are binding on all individuals and institutions within the territory. While the State may delegate certain powers to subordinate authorities, such delegation does not diminish the absolute nature of sovereignty, which remains the ultimate source of authority.[20]

Exclusiveness highlights that sovereignty is indivisible and cannot be shared by two independent authorities within the same State. Only one sovereign exists within a territory, and all subjects must obey

[17] O P Gauba, *An Introduction to Political Theory* (4th edn, Macmillan 2009) 102.
[18] Harold J Laski, *A Grammar of Politics* (Allen and Unwin 1925) 28.
[19] A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 70.
[20] Georg Jellinek, *General Theory of the State* (George W Law 1900) 115.

its commands. Even when powers are delegated to local or federal authorities, these authorities act under the overarching authority of the sovereign and do not become sovereign themselves. This exclusiveness ensures unity of command and prevents the emergence of competing centers of authority within the State.

In conclusion, the characteristics of sovereignty , **originality, permanence, absoluteness, and exclusiveness** , reinforce its central role in defining the authority, independence, and supremacy of the State. Without these features, a State would be unable to assert its authority internally or externally, and the concept of a sovereign political entity would be undermined.

DIFFERENT KINDS OR FORMS OF SOVEREIGNTY

Sovereignty can manifest in several forms depending on how authority is exercised and recognised within the State. Nominal or titular sovereignty refers to a figurehead who holds the title of sovereign but does not exercise real power, such as the King or Queen in the United Kingdom or the President of India in a parliamentary system. In contrast, real sovereignty is held by the individual or body that actively exercises supreme authority, with citizens obeying their commands.

Legal sovereignty denotes the supreme authority vested in a State to make and enforce laws, representing the formal and recognised source of legislative power. **Political sovereignty**, however, reflects the actual influence over the decision-making process, which may be distinct from formal legal authority. **Popular sovereignty** emphasises that ultimate authority rests with the people, forming the democratic foundation of modern States.[21]

Finally, sovereignty can also be categorised as **de jure** or **de facto**. **De jure sovereignty** refers to legal authority officially recognised by law, whereas **de facto sovereignty** exists when an individual or group effectively exercises control, often arising through force or other practical dominance. These classifications highlight the complex interplay between legal recognition, political power, and actual control in understanding sovereignty.

AUSTIN'S THEORY OF SOVEREIGNTY

John Austin's theory, also known as the legal or monistic theory of sovereignty, asserts that sovereignty is undivided, indivisible, and absolute, residing exclusively in the State. According to Austin, the State alone possesses the ultimate power to make laws, and all individuals within its territory are legally

[21] Jean Bodin, *Six Books of the Commonwealth* (1576, Basil Blackwell 1955) 30.

obliged to obey these laws. Sovereignty cannot be shared, and any attempt to divide it would undermine the authority of the State.

Austin emphasises the legal dimension of sovereignty**,** distinguishing between the law-making authority of the sovereign and moral, religious, or customary considerations. In his view, laws are the expression of the sovereign's will and derive their validity solely from the recognition of that authority, rather than from any external moral or ethical standard.[5] This approach underscores the supremacy of legal sovereignty, which is the only source of rights and obligations within the State.

While Austin's theory provides clarity on the monopoly of legal authority, critics argue that it oversimplifies political realities, especially in modern democratic systems where political, social, and constitutional constraints influence the exercise of sovereignty. Nevertheless, the legal theory remains influential in understanding the relationship between law, authority, and obedience within a sovereign State.[22]

CONCLUSION

Sovereignty is the cornerstone of State authority, enabling the State to exercise legitimate control over its laws, policies, and governance. Without sovereignty, a State lacks the ability to implement its will or command obedience from individuals and institutions within its territory. However, in the modern world, sovereignty cannot be exercised in isolation; States must engage and cooperate with other nations through international laws, treaties, and organisations while retaining their ultimate authority.[3] Thus, sovereignty remains both a **legal and political principle**, balancing absolute authority with practical obligations in an interconnected global environment.

[22] Ian Brownlie, *Principles of Public International Law* (7th edn, Oxford University Press 2008) 110.