

The Concept of Sovereignty in Political Philosophy

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Abstract

The concept of sovereignty has a very long historical records. It dates back to Aristotle; trending through the Middle Ages to our contemporary times. The meanings and nature of sovereignty as a socio-political concept have undergone remarkable transformations from ancient to our present times based on critical reflections of some astute thinkers and socio-political commentators alike. The changes have to do with successes recorded from the monistic interpretation of the concept to that of the present day pluralist account. There are so many problems associated with the concept of sovereignty, which caught our attention for inquiring into the meaning and nature of sovereignty; among the areas which this paper seeks to enquire are: the lopsided nature of the monistic interpretations to the concept of state sovereignty as laid down in its characteristic elements as: sovereignty is absolute, indivisible and unlimited in both cases internal and external. Secondly, that sovereignty always resides in the determinate person. Thirdly, a society without sovereignty cannot be called a state. Fourthly, the determinate human superior is the only law maker; his commands are laws and without him the state cannot have laws. More-also, the sovereign has no rival of equal status in the state nor does he obey the order of anyone. Finally, the sovereign is not subject to any power nor his own will. This paper examines all these features through a critical, analytic methods and concludes that the monistic ideas about sovereignty do not support the flourishing of our present day concept of popular sovereignty or the democratic practices of contemporary state, hence the paper's advocacy for a pluralist account of state sovereignty for the prompt realization of quick decision making in state socio-political project.

Introduction:

Sovereignty as a socio-political concept is an ambiguous concept. Its meaning and nature are very difficult to determine. However, sovereignty is a relevant concept in socio-political philosophy; its relevance lies in the validity of the state laws and the roles, which sovereignty plays in international relations among nation states cannot be quantified in socio-political lexicon.

The concept of sovereignty has a very long historical records. It dates back to the time of Aristotle, through the middle ages to our modern and contemporary ages. The meaning and nature to sovereignty has experienced transformations from the ancient to our contemporary times as a result of critical reflections of some thinkers from the earlier monistic idea to the pluralists on the concept of sovereignty. These transformations have led to divergent views about the meaning and nature of sovereignty and has made the idea very confusing and controversial. This confusion arose from the differences in the idea of the state on one hand and the differences which exist in legal theory and political practice.

The monists held that sovereignty was both metaphysical and philosophic. To them the sovereign was the source of all authority; his power and position in the political community was by means of a social contract; or by divine means as the case of a monarchy. There are no

limitation to the power and authority of the sovereign; the sovereign is not bound by the law. The monists who held this view about sovereignty are Aristotle, the Roman Jurists, Bodin, Hegel, Hobbes, Locke, Rousseau, Bentham and John Austin who took the monistic perspective of the concept of sovereignty to the zenith in his book "the province of Jurisprudence determined" Austin states that "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 (superior) is a society political and independent(Austin, 1954: 17-18). The implication to this Austin added, 'every positive law, or every law simply and strictly, so called, is set, directly or indirectly by a sovereign person or body to a member or members of the independent political society wherein that person or body is sovereign or supreme'(Austin, 1954:16). In recent time, this monistic perspective of the old philosophers have been changed based on the critical analysis by a group of philosophers and thinkers known as the pluralists. Notable among which are MacIver, Laski, Cole, Duguit, Figgis, Maitland, Gierke to name but a few. The view of the pluralists, on the idea of sovereignty is that; sovereignty is not absolute and that authority is not located to one particular person or body of persons rather, in every state authority is shared among associations or groups, which variously at different points make up the state, these associations or groups are entered into by individuals for the purpose of driving home their different needs and aspirations. This paper aims to clarify the concept of sovereignty, explores its theoretical perspectives and critically assess the possible problems associated with the concept of sovereignty in practice.

THE CONCEPT OF SOVEREIGNTY:

The term "sovereignty" is derived from the Latin word "superanus" which means supreme or paramount. The word sovereignty looks modern yet "sovereignty" goes back to Aristotle who spoke of the "supreme power of the state". Throughout the Middle Ages the Roman Jurists and the Civilians kept the idea on their minds and employed the terms "summa" potestas and "plenitudo potestatis" to mean or express supreme power of the state ([www.britanica.com>topic>sovereignty:1](http://www.britanica.com/topic/sovereignty)). The terms "sovereign and sovereignty" were first used by the French jurists in the fifteenth century and later they found their way into English, Italian and German Political literature. The term "sovereignty" in political science dates back to the publication of Bodin's "The republic" in 1576 ([www.britanica.com>topic>sovereignty:1](http://www.britanica.com/topic/sovereignty)).

Ogbinaka defines sovereignty as the supreme political authority and power of the state or its agents over all other institutions, persons or laws within a given state (Ogbinaka, 1998:23). To Aristotle, the law is supreme therefore, sovereignty should be vested in the law and nowhere else (Aristotle, 1970: 126). Jenks defines sovereignty as "an authority which, in the last resort, controls absolutely and beyond appeals, the actions of every individuals members of the community". Duguit maintains that "sovereignty is the commanding power of the state, it is the will of the nation organized in the state, it is the right to give unconditional order to all individual in the territory of the state". "Burges says that sovereignty is original, absolute unlimited power over the individual subjects and overall associations of subjects".

Uduigwomen said, "Sovereignty is traditionally used to delineate independent states, to refer to an individual or group of individuals in whom resides political authority and refer to state law, especially its constitutions (Uduigwomen, 2010:123). Briefly, the word sovereignty refers to the supreme power of the state to make laws and the authority to execute the laws within a given territory which enables the sovereign to bind his will on his subjects by subjecting himself to the same laws he made.

The Evolution of the Concept of Sovereignty

The concept of sovereignty is not new in socio-political lexicon, it is dates back to the time of Aristotle who termed it as the “Supreme power of the state”. In the middle ages, the Roman Jurists recognized sovereignty as the “supreme power of the law”, hence, the head of the Cambridge colleges were regarded to as “sovereigns” as designated in the fifteenth century law reports (Mahajan, 2008: 276). The concept was introduced in our modern political life by a political philosopher named Bodin. Bodin conception of sovereignty is contained in his six books on “the Republic”. To Bodin sovereignty is the source of law, is the power supreme over the citizens and subjects, itself not bound by the laws. Appadorai noted that Bodin did not carry his investigation of the concept of sovereignty to a logical conclusion in that the postulations about laws and sovereign head warrant a rethinking about the subject “sovereignty”. Example that there are fundamental laws such as the salic law of France which the sovereign head cannot lawfully abrogate’ additionally private property is granted by law of nature. More-also, the sovereign cannot tax his subjects without their consent (Appadorai, 1968:48).

Some other writers that have developed the idea of sovereignty in socio-political circle worthy of mention are Hobbes, Locke, Rousseau, Hegel and Bentham. Hobbes articulated his idea of sovereignty in his book “The leviathan”. To Hobbes the sovereign was the source of all authority. His power and position in the political community was by means of a social contract. There was no limitation to the power and authority of the sovereign. The only occasion when an individual could disobey the sovereign was when the sovereign wanted to kill him or was not in position to protect him (Hobbes, 1928:64). To Hobbes sovereignty could be in one persons or body of persons (Hobbs, 1928:64).

Locke located the supreme power with the people. He constructed the sovereign through the means of a social contract. Locke located the sovereign power on the legislature but since the power of the legislature was fiduciary for certain end, therefore, supreme power belong to the people.

The sovereign head of Rousseau was found on the general will, created by means of social contract. To Rousseau, sovereignty arose from the will of the individuals which they gave up which before they possess in the state of nature in order to protect their right against the backdrop of chaos in the state of Nature given to the sovereign. Rousseau’s sovereign was absolute, invisible, infallible, and inalienable (Rousseau, 1968:26).

In Bentham’s submission, sovereignty is unlimited by law, but, not morally unlimited; for, in practice, it is limited by the possibility of resistance, and there are conditions under which resistance is morally justifiable (Bentham, 1948:46). Bentham said that the sovereign power can be justified in as much as his policies promote the greatest happiness of the greatest number (Bentham, 1948:46). Hegel’s idea of sovereignty was a rational and perfect being. An eternal, and necessary essence of the spirit with an absolute fix end in itself (Mahajan, 2008:277). The state to Hegel is the most powerful master on earth, as the supreme community is the source of all morality and civilization. Its power therefore, is unlimited, so the people do not possess the right to resist the state. Hence the sovereign cannot be revolted against in Hegel; view of sovereignty.

Austin took this old perspective of an absolute sovereign to the Zenest in his book “The province of Jurisprudence Determined”. Austin states that “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 superior is a society political and independent. (Austin,1954:17-18). Austin added that: Every positive law, or every law simply and strictly so-called is set, directed or indirectly, by a sovereign person or body to a member or members of the independent political society wherein that person or body is sovereign or Supreme (Austin, 1954:16). These line of thoughts implies that:

- a. All states have a head and the headship is sovereign, his power is unlimited and undivided.
- b. The supreme power is (sovereignty) is located either on a person or body of persons.
- c. The supreme power consists of a command regarded to as law, this command elicits obedience else, failure to obey attracts punishment(Appadorai, 1968:48)

In recent times, these above perspective of the old philosophers have be changed based on a critical analysis by a group of philosophers and thinkers known as the pluralist. Notable of these persons are: Gieriek, Figgis,Maltland, Duguit, Cole, Laski and MacIver to mention but a few. The position of the pluralists over the idea of sovereignty is that: sovereignty is not absolute, and authority is not located to one particular person or body of persons rather in every state authority is shared among associations or groups which variously at different points make up the state, these associations or groups are entered into by individuals for the purpose of driving home their different needs and goals which will promote their wellbeing.

The divergent views about the meaning and nature of sovereignty make the idea of sovereignty very confusing and controversial. The confusion arose from the differences in the idea of the state on one hand and the differences which exists in legal theory and political practices. (Mahajan, 2008:276). while Hegel conceptualized the state to be absolute and a sovereign whose power is unlimited, indivisible, infallible, inalienable and therefore, the state and sovereign power to Hegel's conception are not to be revolted against by the citizens or the people because the state to Hegel is a moral being that cannot err. (Mahajan, 2008:277). To this end, the law of the state is supreme and should not be resisted. This chapter of this anthology is aimed to clarify the concept of sovereignty, explore its theoretical perspectives and critically assess the possible problems associated with the concept sovereignty.

D) Theories of sovereignty and implications. There are two major theories for the explication of the concept of sovereignty. They are viz:

a. **The Austinian theory of sovereignty:** This theory was advocated by John Austin in his Book, "The province of jurisprudence determined". Austin regarded sovereignty as: "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 society (including the superior) is a society political and independent". Furthermore, He continued, "every positive law or every law simply and strictly so called is set, directly or circuitously, by a society wherein that person or body is sovereign or supreme".

The Implication of Austin's Theory of Sovereignty

1. In all state, there must be a political head regarded to as a sovereign who perhaps as the head wide political power as the superior head is unlimited and indivisible.
2. The superior power, so to say is personalized and rested on a particular person or body of persons who gives command.
3. This command or order given by the superior body or person is regarded to as law. The law obliges the subject under it to do or to refrain from certain act else such act(s) is faced with sanction(s). By this, the citizens or subjects so to say have no legal right against the states. Their obedience to the superior or sovereign power is total and comprehensive without no objections (Appadorai, 1968:49).

The Austinian view of the concept of sovereignty is supported by seasoned thinkers like Thomas Hobbes, Jeremy Bentham. Thomas Hobbes concept of sovereignty is tallies with the Austinian perspective. To Hobbes, the supreme authority of the sovereign is unlimited, the authority is absolute and indivisible. The sovereign, was the source of all authority. Sovereignty is located on either one person or group of persons (Hobbes, 1928:65).

To Bentham, the sovereign possesses absolute powers. The power of the sovereign Bentham maintained was legally unlimited. Law was the command of the sovereign. While Hegel strengthened the positions of the above philosophers on sovereignty. Hegel viewed the state as the highest authority here on earth. Hence, to him, the state is the superior power or authority. The state was observed by Hegel as the eternal and necessary essence of the spirit, and an absolute fix end in itself. The powers of the state is unlimited (Bentham, 1948:47). The state as conceived by Hegel is the Supreme Community, the subjects or citizens have no right to resist the state because the state exist for the furtherance of the interest and good of the subjects(Stumpf, 2003:318).

The Austinian conception of sovereignty and the supports gained from like minds of Hegel, Bentham, Hobbes and John Locke have be meant with strong reactions and wide rejections from Laski, Duguit, Figgis, Cole, Krabbe and Follett to mention but a few. Laski attacked the theory of state sovereignty on a pragmatic grounds. He pointed out that pragmatic text of Truth lies in its workability. This requires that the doctrine of truth says that an idea can be true if only its usefulness or workability can be proven in a given circumstance. The theory of state as a superior authority has lost its usefulness and workability in that in our contemporary times, especially in view of the state meeting the desires and aspirations it subjects shows that the state has lost its usefulness and as such does not maintain the purpose for which it was created. Secondly, Laski further rejected Austin's theory of states sovereignty on the basis of "absolute sovereignty" as a "legal fiction". Therefore, rendered Autinian concept of sovereignty of the state a "barren concept". The three aspects of the conception of an absolute sovereignty were examined by Laski and they were variously faulted by Laski. To him, the monistic theory of sovereignty is historically untrue, legally untenable and politically unsound". To Laski the state should be shorn off its absolute sovereignty and demoted from a superior status to a coordinate status with other associations (Laski, 1917:27).

Laski challenged the moral validity of the doctrine which attributed sovereignty to the state where he said "The only state to which I owe allegiance is the state in which I discover moral adequacy; and if a given state fails to satisfy that condition, I must, to be consistent with my own moral nature, attempt experiment, Our duty is to be true to our conscience (Laski, 1917:27). The challenges, reactions and final rejection brought about the critical analysis of the like advocacies of Laski, Duguit, Figgis and MacIver etc. that pave way to the pluralist theory in the explication of the modern and contemporary notion of sovereignty.

The Pluralist Theory of Sovereignty:

The pluralist theory of sovereignty was a reaction to the monistic, legal, absolutist Austinian theory of sovereignty earlier analyzed above. It could be seen as an attack against those who were in support of absolutism of the state and unlimited sovereignty. The pluralist theory of sovereignty requested for the limitation of the state sovereignty i.e. Supreme power; and therefore, advocated for a division and control of the sovereign power of the state. To this end, Mahajan wrote, "sovereignty should not belong to the state alone but should be divided among the various associations in the society(Mahajan, 2008:278). He went further to demarcate the requests of the anarchist from the pluralist thus: "unlike the anarchists who demanded that the state be abolished, the pluralists demanded that the state be continued to exist but its powers must be limited. The exponents of pluralist theory of state sovereignty are Gireke, Maitland, Laski, Dugult, Figgis, MacIver and etc. to mention but a few.

Below is the position of the exponents of the pluralist theory of state sovereignty.

FIGGIS: Figgis was one of the exponents of pluralists who used the "doctrine of real personality" of a group to attack the monistic legal and philosophical theory of state sovereignty. To Figgis the other Associations e.g. the church, labour and professional

association that exist in the state did not exit by an act of grace. Rather, the other associations within the state possesses “powers of self-development just due a person”. Figgis went further to support his claim that “the corporate personality of the other associations are neither given nor withdrawn by the state (Figgis, 1914:16). This right is simply to be recognized.

Dugult: Leon Duguit contented that laws are not an expression of the command of an absolute sovereign rather, they are part of the conditions of social solidarity –meaning the interdependence of man in society. Therefore, the obligation to obey the laws in a state according to him is not because the laws are the commands of a determinate human superior. But simply because their compliance is relevant to the functioning of the human society. To, Dugult, law exists even before the origin of the state(Duguit, 1927:27). The state itself is an instrument of securing or maintaining social solidarity, claimed Duguit.

Robert MacIver: MacIver viewed the state sovereignty from a sociological sphere. MacIver view was that none of the aspect of social life can be separated from other therefore, the political aspect of social life must be observed by associating it with other aspects of human life. MacIver having studied the various aspects of social lives concluded that “the plurality of social life is a fact of modern society, he maintained that different groups or associations perform important functions in relations to other which also make them relevant in the social structure without which the system cannot run smoothly. MacIver averred, that the theory of the state had been dominated for long by the legalistic conception of sovereignty, but the state is nothing but an association like any other association in society and the law of the state is only a form of social regulations (MacIver, 1926:51). MacIver also condemned the “power element” that is associated with the state from the monistic theory framework of sovereignty. He claimed that “the legalistic concept of sovereignty is premised on power not service, whereas, power is only an instrument of service. Nobody would regard the services of the state to be unlimited, therefore, the conception of the unlimited sovereignty is unheard off and practically wrong.

Critique of Pluralist Theory of Sovereignty

The pluralist theory of state sovereignty has been criticized on so many bases, some of these criticisms are enumerated below.

First, to achieve the purpose of the pluralist thesis on state sovereignty and limitation of the superior power of the state is to first and foremost create a classless society and to ensure this we must dismantle the state structure first and form a socialist society which is not easy to come by.

Secondly, pluralist theory is not a pragmatic one, in that it will be practically impossible to attain divided sovereignty by mere coordination and social equality which the pluralists aimed at achieving their aspiration of limited state sovereignty

Thirdly, the pluralist desired to attain legal authority through the principle of social solidarity or by the means of human fundamental rights, instead of by political authority is a child plays game that cannot easily be achieved because human rights are ambiguous in the attainment of political authority.

Fourthly, the pluralists demand the external sovereignty of a state to be restricted to allow for the expansion or realization of the interest of human dignity, peace and security. These can be achieved only through the elimination of imperialism and capitalism which is not so easy to come by. Finally the pluralists asked for the limitation of state sovereignty in order to expand human right. It has been observed that without an unlimited power of the state human right cannot be protected and be maintained.

The Fundamental Problems Associated with the Concept of Sovereignty:

There are so many problems associated with the concept of sovereignty that call for an enquiry into the meaning and nature of the concept; amongst these problems under our study are: the lopsided nature of the monistic interpretations to the concept of state sovereignty as consisting the following features.

1. Sovereignty is absolute, indivisible and unlimited in both cases internal and external
2. Sovereignty always resides in the determinate person or in a body of persons. A determinate person or a body of persons cannot be called sovereign nor does it reside in the general will
3. A society without sovereignty cannot be called a state.
4. The determinate human superior is the only law-maker. His commands are laws and without him the state cannot have laws.
5. The sovereign has no rival of equal status in the state and nor does he obey the order of anyone
6. The sovereign is not subject to any power nor his own will. All these monist ideas about sovereignty do not support the flourishing of popular sovereignty nor democratic practices of contemporary state.

Findings and Concluding Remarks

After thorough investigations, it was observed that:

The monistic, legalistic concept of sovereignty as explicated by Bentham, Austin, Hobbes, Locke, and Hegel to mention but a few. Can truncate popular sovereignty that is the basis of democracy. In democratic governance supreme power resides with the people but the monistic calculus of the legal theory of state sovereignty- the sovereign is superior to everybody else in the state this negates public interest and opinion. Thus, the monistic, legalistic conception of a state sovereignty cannot fit into the democratic ethos of our contemporary world.

Additionally, the monistic, legalistic notion of state sovereignty does not allow for political sovereignty to grow. When public opinion and political sovereignty is not allowed to develop it will hamper the strength of popular opinion and political participation i.e. sovereignty since sovereign power only lies with the determinate human superior in a monistic belief.

More-also, the monists believed that law is only the command of the sovereign, curious investigations revealed that vast masses of influences shape the making of the law such as a morals.

Furthermore, sovereignty is not indivisible, rather it can be divided as opined by the pluralists. Whereas, the monistic, legalistic conception of the likes of Austin, Bentham, Hobbes and Locke contended that sovereignty is indivisible, absolute, located, permanent etc. but practical understanding of the processes of governance in federalism as practiced in U.S.A for instance shows that sovereignty is divisible, it must be divided between the states and the various other associations of the individuals.

Finally, hitherto, the monistic, legalistic views of state sovereignty was that force, or coercion is the means only to achieve sanction of laws. But, thanks to the pluralists, who have unveiled the truth that force is not the only sanction behind laws but that the will of the public i.e. people is a cardinal measure of sanction behind laws.

We conclude this paper by reiterating the view of Laski that “it is impossible to make the legal theory of sovereignty valid for political philosophy; it would be a lasting benefit to political science of the whole concept if sovereignty were surrendered”. From our investigations on this chapter that instead of the belief by the monists that the law is only the command of the sovereign, practical experiences from primitive society and contemporary as

well shows that the law cannot be the command only of the sovereign, rather laws have so many influences which shape it and bring it to bear in the society such as public opinion on morals etc. do shape the making of laws in human society.

The monist viewed the state to be absolute and authoritarian in its general outlook, but a close look reveals that the state business i.e. policies are often times carried out in accordance with the fundamental rules made for the state by the general will of the community.

So, in a nutshell, sovereignty should not be looked at solely from the perspective of the monistic, legalistic notions, rather our teaches on state sovereignty should better be appraised from the basis of the transformation of its meanings and nature i.e. the circumscription view point to cover all ideas of the concepts than adhering to the lopsided version of the monists that is highly controversial. The sovereign power of the state have been circumscribed by the existence of some international organization such as UN, EU, WHO and other regional powers that resist the supreme power of the state for the purpose of maintaining world peace and security.

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