Conceptual Issues and Theoretical Analysis of Sovereignty

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Abstract
This study on "Conceptual Issues and Theoretical Analysis of Sovereignty" is designed to examine the various perceptions and interpretations of the concept especially with respect to the sources, location, and essence. In the discourse, three schools of thought are dominant: the realists, the liberalists, and the constructivists. While the realists advocated for absolute sovereignty and maintained that it is untouchable and guaranteed only to legitimate nation-states; the liberalists propagated popular sovereignty in which the people constitute the legitimate sovereign; the constructivists on their part perceived sovereignty as a dynamic and socially constructed force which comes from ''someplace'' and, in any age, is heavily influenced by other social norms, values and practices. Without prejudice to these viewpoints, and taking due cognizance of the interpretations, phases, dimensions, features, and limitations, it is argued, first, that sovereignty consists of two basic elements: the competence to pass ultimate and binding decisions on certain matters, and; the right to delegate this competence to other bodies as the state, while maintaining the right to reclaim it; second, that the maintenance of sovereignty in a state largely depends on the nature of the relationship between the sovereign, the society, and the surrounding political environment. Hence, sovereignty may be located in the monarch, the constitution, the electorates, or the regime as the case might be.

Introduction
The concept of sovereignty has recently become the focal point of an interdisciplinary debate beyond the initial meaning. The debates have revolved around the questions of "What is sovereignty?"; "Who is the sovereign?"; "Why should there be sovereignty?"; and "How can sovereignty be maintained?". These questions have pre-occupied the minds of scholars from the earliest days when sovereignty became an issue of concern in the society. But over the years, the scope and perceptions of the concept have: varied from ancient to modern interpretations; changed from resting on individuals to being an exclusive preserve of states; while the rationale and dimensions of the idea have taken diverse perspectives. The concept of sovereignty has therefore been discussed throughout history, from the time of the Romans through to the present day; as such, it has changed in its definition, concept, and application. This study is therefore a reflection on the changes in the dimensions, perceptions, and interpretations of sovereignty.

    1.   **Meaning and Scope of Sovereignty**
The varied perceptions of sovereignty in different contexts have given rise to several definitions. As derived from old French concept, sovereignty simply means "to rule over" (Roskin, Cord, Medeiros, and Jones, 2003). The concept of sovereignty is closely associated with the writings of Jean Bodin (1529-1596) who is regarded as the author. Jean Bodin defined sovereignty as "unconditional and unrestrained power" or "absolute and perpetual power vested in a commonwealth" (Hoffman and Graham, 2006). Gamble (1963) defined it as an "independent public power that makes organised social life possible". Hence, sovereignty is designed to assert the character of "public power to make and enforce laws for the purpose of maintaining law and order in the society" (Gamble, 1963). In line with the definition of Gamble (1963), is Alan's (1986) submission that sovereignty is best defined as "constitutional independence of a state". Similarly, whereas Robertson (1993) defined sovereignty as "independent rule by a country or institution over a certain territory or set of political concerns"; Rourke and Boyer (2002) describes it as "political independence from any higher authority"; while Karen (1999) explained it as "the authority of the state, based on recognition by other states and non-state actors, to govern matters within its own borders that affect its people, economy, security, and form of government". In all these definitions, the common denominators associated with the concept of sovereignty include *supremacy*, *independence*, *absoluteness*, *unlimitedness*, and *perpetuity*. Invariably, sovereignty refers to final political authority with defined jurisdiction.

    As a type of authority relationship, sovereignty possesses both domestic and foreign scopes. Domestic sovereignty as Krasner (1999) explained, defines the ultimate or highest authority within a state to which all compliance accrue. In this respect, sovereignty implies a hierarchic relationship between the sovereign and subordinates (Lake, 2003). Domestic sovereignty requires effective control over the territory claimed by the sovereign (Lake, 2003). In the absence of such control, there can be no ultimate authority and, thus, no sovereign.

Before 1945, domestic sovereignty was typically a prerequisite for recognition by the international community. Since that time, it has become increasingly separated from the second face of sovereignty. Externally, Foreign sovereignty entails the recognition by other similarly recognized states that a political entity is "legitimately one of them" (Bull, 1977). Hence, sovereignty implies relationship of formal equality among sovereigns. As Waltz (1979) describes it, among sovereigns, "none is entitled to command; none is required to obey". External "Sovereignty" therefore implies a government which exercises de facto administrative control over a country and is not subordinate to any other government in that country or a foreign sovereign state. If ever the intervention by one country on another's territory is necessary, when is it permissible?

2. Historical Phases in the Development of Sovereignty

Classical Phase: In this phase, sovereignty is assumed to be fixed and exogenous attribute of an autonomous political unit. Sovereignty is also considered to be an absolute principle understood as a practical matter to have arisen in and around the Treaty of Westphalia (1648), which ended the Thirty Year's War. It is used to denote the existence of a supreme authority over a certain territory. The key idea is that sovereignty requires a single political hierarchy reaching its apex in the ''sovereign.'' Before the Thirty Years' War, which was partly a religious war, the European world of Christendom was largely a diarchic one of the Pope and the Emperor. But as a result of its defeat, the Holy Roman Empire was dissolved into hundreds of relatively independent authorities with more or less equal sovereignty over their populations and territories, which theoretically marked the birth of the modern *nation-State* system. This meant the secular authorities taking over the religious power in the political world of Europe, where a common European international public law prevailed among the sovereign Christian European States.

Medieval Phase: In the medieval period, although monarchs were seen as sovereign, they were *not* absolutely sovereign because they were constrained by, and shared power with, their feudal aristocracy. Furthermore, both were strongly constrained by custom. Sovereignty existed during the Medieval Period as the *de jure* rights of nobility and royalty, and in the *de facto* capability of individuals to make their own choices in life.

Reformation Phase: Sovereignty re-emerged as a concept in the late 16th century, a time when civil wars had created a craving for stronger central authority, when monarchs had begun to gather power into their own hands at the expense of the nobility, and the modern nation state was emerging. Jean Bodin, partly in reaction to the chaos of the *French wars of religion* presented theories of sovereignty calling for strong central authority in the form of *absolute monarchy*.

Enlightenment Phase: During the Age of Enlightenment, the idea of sovereignty gained both legal and moral force as the main Western description of the meaning and power of a State. In particular, the "Social Contract" as a mechanism for establishing sovereignty was suggested and, by 1800, widely accepted, especially in the new United States and France, though also in Great Britain to a lesser extent.

3. Ancient and Modern Perceptions of Sovereignty

Prior to the late 1700s and early 1800s, the prevailing principle of governance was the theory of "Divine Right of Kings" which held that the Monarch was the sovereign and that the people in the sovereign's realm were subjects (Guibernau, 1996). Hence, in the ancient perception, sovereignty meant the power of the Monarch to rule over his or her kingdom (Roskin, Cord, Medeiros, & Jones, 2003). It was the Monarch, not the people who owned the state and political authority rested in them to make and enforce laws (Guibernau, 1996). This ancient perception of sovereignty found expression in the Roman formulation that "whatever pleases the Prince has the force of law" (Karen, 1999). The sovereign was therefore a definable person to whom allegiance was due. Accordingly, the sovereign could not be made subject to the judicial process of his or her country; neither could the sovereign be sued in foreign courts. As observed by the Roman jurist, Ulpian, with sovereignty, (a) The *imperium* of the people is transferred to the Emperor; (b) The Emperor is not bound by the law; and (c) The Emperor's word is law (Emperor is the law making and abiding force).

However, personal sovereignty was gradually replaced by state sovereignty in modern perceptions as a result of developments in the middle ages. The developments manifested in the emergence, consolidation, and expansion of political power as against the theocratic excesses of the ecclesia (Gamble, 1963). First, the rulers of Europe expanded their political authority by breaking away from secular domination of the Holy Roman Empire and the theological authority of the Pope. Second, the Kings also consolidated political power by subjugating feudal estates and other competing local political organisations within their realms. The emergent states exercised supreme authority over their territory and citizens; they owed neither allegiance, nor obedience to any higher authority. Hence, in the modern conception, sovereignty is no more personalised in the Monarch but founded on the state. In essence, the concept of sovereignty broadened to mean "national control over a defined country's territory and concerned above all, the relationship of the individual to the state" (Gamble, 1963). Meanwhile, the question of sovereignty only arises when the state is sharply separated from the society as in capitalism where there is acute divide between public and private matters ((Rosenberg, 1994; Hinsley, 1986;

Alan, 1986). This implies that before one could talk of sovereignty even when the rulers and the ruled are bonded together as citizens, there must be division between state and society as well as public and private. As such, sovereignty requires a belief that absolute and illimitable power resides in the body politic (state) which constitutes a single personality composed of rulers and ruled alike (Hinsley, 1986). In the modern perception, sovereignty which relates to supreme power is a major attribute of the state. The current notion of state sovereignty contains four aspects consisting of territory, population, authority and recognition (Krasner, 1999).

4. Dimensions of Sovereignty
Krasner (1999) identified four dimensions upon which sovereignty could be understood and they are:
- *Domestic Sovereignty* – actual control over a state exercised by an authority organized within this state;
- *Interdependence Sovereignty* – actual control of movement across state's borders, assuming the borders exist;
- *International Legal Sovereignty* – formal recognition by other sovereign states;
- *Westphalian Sovereignty* – lack of other authority over state than the domestic authority (examples of such other authorities could be a non-domestic church, a non-domestic political organization, or any other external agent).

Besides the categorisation of sovereignty as Krasner (1999) identified, there are also political sovereignty, legal sovereignty, and territorial sovereignty. Whereas political sovereignty is concerned with the legitimacy and authority to exercise power in the process of governance in overseeing the affairs of the people; legal sovereignty rests on constitutional independence as basis to make laws for the subjects, abrogate laws already made, and amend obsolete laws; while territorial sovereignty incorporates the existence of rights over defined geographical areas that may border in the airspace, water, and on land (Gamble, 1963; Karen, 1999; Rourke and Boyer, 2002).

5. Perspectives of Sovereignty
There are three main perspectives on the doctrine of sovereignty: realists, liberalists, and constructivists. There exist vastly differing views on the moral basis of sovereignty. A fundamental polarity is between theories that assert that sovereignty is vested directly in the sovereign by divine or natural right and theories which assert that it originates from the people. In the latter case there is a further division into those that assert that the people transfer their sovereignty to the sovereign, and those that assert that the people retain their sovereignty.

The realists' viewpoint originated from the writings of Thomas Hobbes based on the social contract theory where he advocated for *absolute sovereignty*. They maintain that sovereignty is *untouchable* and *guaranteed* only to *legitimate nation-states*. Thomas Hobbes, in *Leviathan* (1651) borrowed Bodin's definition of sovereignty, which had just achieved legal status in the "Peace of Westphalia", and explained its origin. He created the first modern version of the social contract theory, arguing that to overcome the "nasty, brutish and short" quality of life without the cooperation of other human beings, people must join in a "commonwealth" and submit to a "Sovereign Power" that is able to compel them to act in the common good. Hobbes' hypothesis that the ruler's sovereignty is contracted to him by the people in return for his maintaining their physical safety, led him to conclude that if and when the ruler fails, the people recover their ability to protect themselves, including by forming a new contract. The realists hold the view that sovereignty is manifest where power rightfully exists with those states that hold the greatest ability to impose the will of said state, by force or threat of force, over the populace or other states with weaker military or political will.

The liberalists who advocated *popular sovereignty* maintained that the *people* constitute the legitimate sovereign. This view is shared by Jean Jack Rousseau (1712–1778), John Locke, and Montesquieu. Their central argument is that Sovereignty, or the general will, is inalienable, for the will cannot be transmitted; it is indivisible, since it is essentially general; it is infallible and always right, determined and limited in its power by the common interest; it acts through laws. Law is the decision of the general will in regard to some object of common interest, but though the general will is always right and desires only good, its judgment is not always enlightened, and consequently does not always see wherein the common good lies; hence the necessity of the legislator. But the legislator has, of himself, no authority; he is only a guide who drafts and proposes laws, but the people alone (that is, the sovereign or general will) have authority to make and impose them. Rousseau, in his 1763 treatise *Of the Social Contract* argued that "the growth of the State giving the trustees of public authority more and means to abuse their power, the more the Government has to have force to contain the people, the more force the Sovereign should have in turn in order to contain the Government," with the understanding that the Sovereign is "a collective being of wonder" resulting from "the general will" of the people, and that "what any man, whoever he may be, orders on his own, is not a law" and furthermore predicated on the assumption that the people have an unbiased means to ascertain the general will. Thus the legal maxim, "there is no law without a sovereign."

Constructivists on their part emphasize that sovereignty, in both its internal and external faces, is a

socially constructed trait. Hence, sovereignty as a dynamic and socially constructed force comes from ''someplace'' and, in any age, is heavily influenced by other social *norms, values* and *practices* (Lake, 2003). In this light, Reus-Smit (1999) conceptualized sovereignty as one of three elements of international societies' ''constitutional structure,'' which itself is related to the varying ''*moral purposes*'' of the state, embodying *norms of legitimacy* and *rightful action*. As Wendt (1992) theorized most elegantly and Reus-Smit (1999) demonstrated historically, the meaning and practice of sovereignty have varied even within relationships in which the parties are clearly not subordinate to a common authority.

Based on the foregoing expositions, sovereignty consists of two basic elements: the competence to pass ultimate and binding decisions on certain matters, and; the right to delegate this competence to other bodies as the state, while maintaining the right to reclaim it. Thus, it is deducible that sovereignty may be located in the monarch, the constitution, the electorates, or the regime (centralised or decentralised authorities).

6. Features of Sovereignty
As observed by Bodin, Grotius, and Hobbes, sovereignty is arguably absolute, perpetual, exclusive, indivisible, inalienable, recognitive, and comprehensive (Lake, 2003; Krasner, 1999; Hoffman and Graham, 2006).

Absolute: An important factor of sovereignty is its degree of absoluteness. A sovereign power has absolute sovereignty when it is not restricted by a constitution, by the laws of its predecessors, or by custom, and no areas of law or policy are reserved as being outside its control. This implies that the sovereign is the final authority and makes the final decision. Hobbes noted that conditions could only be imposed on a sovereign if there were some outside arbitrator to determine when he had violated them, in which case the sovereign would no longer be the final authority.

Perpetual: this suggests that sovereignty is everlasting and it is not temporarily delegated to any strong leader in an emergency or to a state employee such as a magistrate. For Hobbes, sovereignty must be perpetual because anyone with the power to enforce a time-limit on the governing power must be above the governing power, which would be impossible if the governing power is absolute.

Indivisible: The sovereign is the only final authority in his territory and does not share final authority with any other entity. Hobbes held this to be true because without being indivisible, there would be no way of resolving a disagreement between the multiple authorities.

Inalienable: This means that sovereignty is inherent in the sovereign; as such Rousseau maintains that there is no distinction between the origin and the exercise of sovereignty. Thus, sovereignty is not transferable from the origin to those that will exercise it.

Recognition: another fundamental feature of sovereignty is that it is a claim that must be recognised by others if it is to have any meaning: "Sovereignty is more than anything else a matter of legitimacy that requires reciprocal recognition. Sovereignty is considered to be a hypothetical trade, in which two potentially conflicting sides, respecting de facto realities of power, exchange such recognitions as their least costly strategy."

Exclusive: A key element of sovereignty in a legalistic sense is that of *exclusivity of jurisdiction*. Hence, the German sociologist Max Weber proposed that sovereignty is a community's monopoly on the legitimate use of force; and thus any group claiming the same right must either be brought under the yoke of the sovereign, proven illegitimate, or otherwise contested and defeated for sovereignty to be genuine.

Comprehensiveness: The scope of sovereignty is wide as it covers all aspects of the citizens' life and activities in a state. It is all embracing.

7. Limitations of Sovereignty
Although sovereignty has been described as being characterised by absoluteness, perpetuity, indivisibility, inalienability, recognition and exclusivity; it is often constrained by the following:

i.   *Membership of International Organisations*: Once a state becomes a member of any international organisations like the Economic Community of West African States (ECOWAS), African Union (AU), or United Nations (UN), their status with respect to sovereignty become constrained by the policies and decisions of the umbrella body. This is because every member state will be required to abide by the rules and regulations of the general body. For instance, Nigeria could not have ceded Bakassi Peninsula to Cameroon but for her commitment to the membership of the United Nations in which verdict was passed through the judicial organ (The International Court of Justice – ICJ). Thus, *the more a state desires to obtain intergovernmental organisation membership, the more likely it will be to change its policy or behaviour to meet the requirements.*

ii.   *The Influence of Powerful Nations*: Powerful Nations like the USA, Russia, France, Britain, and China who constitute the core and permanent members of the UN Security Council wield a lot of influences on the smaller and weaker states or less developed countries. The influences arise from their economic strength, political dominance, military superiority, and technological advancement in the international community above the rest. In essence, the foreign policies and decisions of the

smaller and weaker nations are usually meticulously made in order not to conflict with the interests of the powerful states.

iii. *Supremacy of the Constitution*: Irrespective of the institution or body in which sovereignty is located, the powers of such body or institution operate within the confines of the constitution of the state. Ordinarily, no one is above the laws of the land no matter the social status of the individual

iv. *Foreign Aids*: Poor and less developed nations mortgage their sovereignty by applying for, and accepting, economic, military, and technical assistances from stronger nations. In other words, *the more a state is dependent upon foreign aid, the more likely it is to alter its policies and decisions to conform to the donor state's expectations*. This is exemplified in Nigeria's acceptance of loan from the International Monetary Fund (IMF) under stringent conditions like currency devaluation and privatisation of public enterprises.

v. *Influence of Pressure Groups*: Pressure groups perform the function of checks and balances on the sovereignty of states. This is done through different strategies and measures to prevent any individual or bodies that wield power in a state from having or exercising absolute and unlimited powers.

vi. *Power Sharing and Delegation*: The complex nature of modern government has made it imperative for powers to be shared and delegated to subordinate bodies. The sharing and delegation of power reduces the extent to which powers concentrated in an individual, body, or institution. When power is distributed among units of governance especially in a federation, competing branches of government, and authorities reserved for subordinate entities can pose legal infringements on exclusivity.

vii. *Customs and Traditions*: The State puts the customs and traditions of its people into consideration when exercising its sovereign powers. As a result, the customs and traditions of the people impose serious limitations on the sovereignty of a state.

viii. *Coup D'etat*: The forceful takeover of government through military coups limits the sovereignty of a state with the suspension of the constitution. This makes it difficult to locate where the sovereignty lies.

ix. *International Laws and Obligations*: Given that states are required to abide by the provisions of international laws and obligations, they no longer have the final legal authority to determine its actions and inactions in the international community. This is shown in Nigeria's acceptance of the decisions of the International Court of Justice based on international law on territorial acquisition and her past treaty obligations with Cameroon.

x. *Public Opinions*: Local and international public opinions may also prevent or control a country or state from taking certain actions.

xi. *Means of enforcement*: Sometimes, a state may not have the political, military, economic, and technical resources to assert its sovereignty in the international community.

xii. *Globalisation*: The liberalisation, integration, and unification of the world into a global village have made it extremely difficult for states to have properly defined boundaries to exercise their control and jurisdiction as sovereignty demands. The integration of states into regional entities like the European Union and ECOWAS with common currency, citizenship status, and unrestricted movements across borders seriously weighs down the exercise of sovereignty. This is because no government is absolutely in charge of whatever happens in the country without the expression of concerns and legitimized interference either from other individual countries or international umbrella organisations.

Conclusion

It is evident that the concept of sovereignty is relatively conceived by scholars differently; but it commonly refers to the status of being an independent authority with the powers to determine how laws are made and enforced within a defined jurisdiction with little or no undue external interferences. The sovereign may be an individual, organ, or institution; while the essence of the sovereignty is mainly to serve the interests of the state defined in terms of citizens' needs as may be conceived by the leaders and influenced by the people. The maintenance of sovereignty in a state largely depends on the nature of the relationship between the sovereign, the society, and the surrounding political environment.

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