

A Sketch Survey of Sovereignty

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A. Development of the concept of sovereignty: From theory to practice

The concept of sovereignty was first advocated by Jean Bodin (1530–1596), a French political philosopher of the sixteenth century. In his *Six Books of the Commonwealth* published in 1576, Jean Bodin first proposed the concept of sovereignty and defined it as the supreme governing power over the subjects. According to Bodin, sovereignty is eternal (no limits of time can be placed upon it), self-subsisting (it does not depend for its validity on the consent of the subject), unalienable and not limited by domestic law (as the domestic law is only the orders of the sovereignty). Bodin held that the sovereignty shall be exercised by a monarch who is only restricted by the principles of divine law, natural law, and *ius gentium*. Although Bodin's sovereignty theory touched on the external (international) relations of a state (for example he held that the exercise of sovereignty should be subjected to *ius gentium*), it mainly stressed on internal (domestic) relations, the relationship between the sovereignty and the subjects.

Later, Hugo Grotius (1583–1645), a renowned Dutch jurist, discussed the sovereignty from the perspective of international relations and stressed the external aspect of the sovereignty. In his *De Jure Belli ac Pacis* (On the Law of War and Peace), Hugo Grotius claimed “That power is called sovereign, whose actions are not subject to the control of any other power, so as to be annulled at the pleasure of any other human will.” (Chapter Three, VII) This assertion emphasized the independence and freedom of the sovereignty in international relations.

The Peace Treaty of Westphalia entered into in 1648 for the ending of the Thirty Years' War finally established the notion of sovereignty with state practice. Up to now, the notion of sovereignty had been widely accepted after theoretical analysis and state practice, and would have substantial and far-reaching impact on the international relations of Europe and later the rest of the world. Although people still argue about the exact nature of sovereignty, the correct way of exercising sovereignty, and other related issues, people at least agree that sovereignty is exclusively for independent states, whether it is the right, power, legal status, or other things exclusively belonging to an independent state.

To further analyze the sovereignty, the rest of this article will first analyze it in light of territory and people and then in light of internal affairs and international relations.

B. Relationship between sovereignty and territory and people

Sovereignty is closely related to territory because the sovereignty of a state is mainly exercised within the territory of this state, including the land, territorial seas, and the territorial space. The main part of the territory is the land as both the territorial seas and territorial space are based on the land. The land is where people live and the most important assets. This was true in the past, it is still true now, and it will still be true in the foreseeable future. The land is only valuable when we take the people into consideration. However, when we take the people into consideration, the issue of sovereignty becomes much more complicated than the ownership of land. An interesting question is whether the people become subject to a sovereignty because they are on the territory of this sovereignty, or because the people on this piece of land construct or choose a sovereignty and make their land subject to this sovereignty.

Generally speaking, all the people on the territory of a sovereignty are under this sovereignty, whether they are citizens or not. To accommodate this principle, all states just exercise very limited sovereign powers over their citizens on the territory of another state. People on the territory of another state should not take activities to disrupt the host state. Even if they have bought pieces of land, aliens still cannot request that their land be united with their motherland state and become part of the territory of their motherland state. However, this is the general rule. If the relationship between people and territory is considered from the historical perspective, we may find the situation is far more complicated.

After the notion of sovereignty was accepted for a long time, the international community still accepted conquest, cession and other ways of acquiring territories. Generally speaking, when one state conquers a part or the whole of another state, the conquering state not only gets the territories conquered but also changes the people on the conquered land into its nationals (subjects), of course with the exception of those escaped. In this sense, a state may first get the territory and then the people. This situation is similar to what is described by a Roman law idiom about ownership: *Qui in territorio meo est, etiam meus subditus est* (If somebody is in my territory he is also subjected to me).

However, it is very difficult to rule a conquered state for a long time without being overthrown. Therefore, we may find in the history more cases where a state got certain territories because of its people, that is to say, a certain piece of land became subject to the sovereignty of a state because its people live on this piece of land. This situation not only happened in the emergence of nation-states in Europe, when the notion of sovereignty appeared and was gradually accepted, but also happened in the twentieth century, in the early twenty-first century, and may even happen in the future. Although the number of such cases is not big, almost each of such cases caused great impact on the existing international community.

The situation of territory coming after the people can be explained with the sense of group identification or sense of belonging. Individual persons are the ultimate owners of benefits. When competing for benefits, people need to form certain organizations. Through cooperation within an organization, people can share and distribute certain benefits within the organization and enhance their competitiveness to better compete with people out of this organization. The success of fairly sharing and distributing benefits within the organization is positively related to the success in competing with the people out of this organization. The success of fairly sharing and distributing benefit is conducive to enhancing the group cohesion and improving the competitiveness when it competes with the outer world, including with other organizations. When a person chooses to form a certain organization with certain people, he in fact accepts certain people and excludes other people out of this organization. When people choose members of their organizations, they need to consider the possibility of successful cooperation. The sense of mutual recognition (or the sense of belonging) and the time dimension of the game (the two factors are positively correlative) influence people's expectation of successful cooperation. The higher the sense of mutual recognition and the longer the time dimension of the game, the higher the expectation of successful cooperation. The opposite is also true. When people form organizations through sense of belonging, they first have such sense of belonging with members of their nucleus family, then clans, and then other senses of belonging based on geographic, economic, cultural, religious, and other factors. Blood ties, personal dependence, culture, religion, geography, and other factors are very important for the sense of belonging. This was especially true in pre-modern times when people had deep distrust in other ethnic groups, which seriously affected the development of sense of belonging and the formation of organizations. It is exactly because of the sense of belonging that people formed nations and then nation states. Currently,

nation states are the biggest comprehensive organizations and have great impact on people's life.

From this perspective, there is certain historical inevitability for the notion of sovereignty to be constructed during the emergence of nation states in Europe. The theories of Jean Bodin, Grotius, and other scholars also support this. When Bodin for the first time systematically proposed a theory of sovereignty, the French as a nation was in an important period in its formation. Bodin took the view that the family was the foundation of the state and the state was established to avoid the fight among families and to provide common defense and common benefit. This idea is in line with the theory that the nation and nation states are constructed on the basis of the sense of belonging beyond families. In contrast with Bodin's emphasis on the domestic aspect, Grotius emphasized the international aspect of sovereignty. However, Grotius also pointed out that the sovereignty originated from the social contract. Moreover, Grotius' idea about sovereignty was closely linked to the war between the Netherlands and Spain for the independence of the Netherlands.

The change of international order after World War II also provides adequate examples for the above analysis. During the middle of the twentieth century, many former colonies gained independence from the controlling state and became independent states because colonies did not think themselves belong to the same the nation and chose to establish an independent nation state with those they think belonging to the same nation. The split of the former Soviet Union and the former Yugoslavia was also because their people did not think they belong to the same nation. The most recent establishment of an independent state based on the sense of belonging of the people is the establishment of the Republic of South Sudan, which was founded on 9 July 2011 and became the one hundred and ninety-third sovereign state recognized by the United Nations after its people decided to break away from Sudan and establish a new state through a referendum.

The formation of nations and then the establishment of nation states are in fact an important part of the right to self-determination of a nation. But we also need to notice the potential conflict between the right to self-determination of a nation and the right to maintain territorial integrity of a sovereignty state. Both rights are recognized by the modern international law. Currently most states are multi-national states and only very few states are made of a single nation. Considering this fact, if all nations of multi-national states have the right to establish an independent state, their exercise of this right will cause great social disorder and other destructive effects, at least for a period of time. Therefore, we have to consider the following questions: should there be prerequisite conditions for the exercise of right to self-determination? What is the relationship between the right to self-determination and the right of individual persons? What if some members of a nation want to break away from the existing state but other members oppose to do so? Considering the nation itself is a construction based on the sense of belonging and the integration of nations is a dynamic process, the right of individual persons should be more fundamental than the right to self-determination of individual nations, and democracy may better promote the protection of rights and interests of individual persons than the right to self-determination does.

C. Domestic and international aspects of sovereignty

Some people take the view that sovereignty is only useful in international law but not in domestic law. This view is one-sided. In fact, sovereignty is important in both international law and domestic law. The following paragraphs will first separately discuss sovereignty in the domestic context and international context and then discuss the relationship between the domestic aspect and the international aspect of the sovereignty.

In the domestic context, sovereignty means the governing powers of a state. It is the totality of all

powers managing state affairs. As far as internal affairs are concerned, it is very important to distinguish who owns the sovereignty and who exercises the sovereignty. However, during a quite long time after the notion of sovereignty was accepted, people did not clearly distinguish who owned the sovereignty and who exercised the sovereignty. In fact, in an absolute monarchy, it is almost meaningless to distinguish who owns the sovereignty and who exercises the sovereignty. Louis XIV of France once said: “L’État c’est moi” (I am the state). The Collection of Poems, an ancient book of China, also contains a poem: “All land in the world belongs to the king and all people in the world are subjects of the king.” In an absolute monarchy, the monarch owes and exercises the sovereignty. With the development of democracy and constitutional law, the person(s) who owns the sovereignty gradually separate(s) from persons who exercise the sovereignty: the state owns the sovereignty but governmental branches exercise distinctive powers originating from the sovereignty. The constitution generally provides which governmental branch has which power and how to exercise its power. The general practice is to vest the legislative power in the congress, the executive power in the administration, and the judicial power in the court. In a democratic state, all legislative powers, executive powers, and judicial powers are ultimately from the people. Not only members of the congress are directly or indirectly elected by the people, the constitutions of some states also provide that certain fundamental decisions should be confirmed by the people through a referendum.

In the international community, sovereignty means the legal status to engage in international affairs as an independent state and the right to be free from unlawful interference into its internal affairs by other states. As there is no other power over sovereignty, the acquisition of the legal status of sovereignty is through the mutual recognition, and the protection of sovereign rights is also through mutual respect and collective safeguard mechanisms. As far as international relations are concerned, an important issue related to sovereignty is whether the sovereign rights of states should be restricted and how to be restricted.

Just as individual persons in a country need to respect the rights of each other, need coordinate their potentially conflicting rights, need to cooperate, and even need to establish certain organizations to promote cooperation, sovereign states need to respect each other, need to coordinate with each other, and need to cooperate to reduce conflicts and solve problems. Therefore, a state should not unlawfully infringe upon the rights and interests of other states (the negative obligation of the sovereignty) and may willingly accept certain restrictions on their sovereignty to facilitate cooperation arrangements, be it interim cooperation for particular matters or highly organized cooperation arrangements. The legitimacy of such restrictions are unquestionable.

A more controversial issue is whether international organizations or other states may lawfully impose restrictions on a sovereign state without its consent or even against its opposition. For example, the UN Security Council adopted Resolution 688 in 1991 and later the US, the UK, and France established a safety zone for Kurdish refugees in Iraq. This safety zone was within the territory of Iraq for the purpose of protection a particular group of Iraq nationals, the Kurdish people, and the humanitarian activities also took place in Iraq. According to the traditional view, all these matters are internal affairs and international organizations can only take actions with the consent of the host state. However, Iraq did not consent to Resolution 688 and the following actions. Although there were some controversies, the humanitarian intervention activities were taken and seemingly accepted by the international community. Later on, the UN Security Council adopted similar resolutions and similar safety zones were established in the former Yugoslavia. The practice of humanitarian intervention after the Cold War seems to indicate that international humanitarian interventions need not get the consent of host state for emergencies such as wars, armed conflicts of large scale, and genocide.

There is a close link between the domestic aspect and international aspect of the sovereignty. Generally speaking, the former is the basis of the latter. In the international community, the reason for other states to recognize the authority of a particular governmental officer to represent his state is exactly because this governmental officer has the authority according to its domestic law. It is unimaginable that a person who has no such authority according to the domestic law will be respected and recognized as the duly authorized representative of his country. Many states make domestic laws to provide the authorities and procedures to conclude international treaties and take other actions. This is a typical example of regulating the international aspect of the sovereignty with domestic law. With the development of globalization, the international law will have more influence on domestic law and the international aspect of the sovereignty may have more important restrictions on the domestic aspect of the sovereignty.

D. Concluding Remarks

Sovereignty is an unavoidable issue for the research into domestic and international politics and legal issues. To better understand the notion of sovereignty, this article surveys the issue of sovereignty in its relationship with territory and people, and discusses its domestic and international aspects. However, this article may raise more questions than it answers. Perhaps the discussion on sovereignty will continue as long as there are still sovereign states.

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