

EXPLORING SOVEREIGNTY IN PUBLIC LAW: ANALYZING MAX WEBER'S CONCEPT OF STATE MONOPOLY ON LEGITIMATE USE OF FORCE

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ABSTRACT

This article delves into the intricate concept of sovereignty and its critical role within the realm of public law, framed by Max Weber's seminal assertion that the State holds the "monopoly of the legitimate use of physical force within a given territory." Sovereignty, a cornerstone of modern statehood, encompasses the supreme authority of the state to govern itself and make laws within its borders, free from external interference. This paper explores the evolution of sovereignty, its theoretical foundations, and its practical implications in contemporary public law. Central to this discussion is Weber's definition, which underscores the state's unique position as the sole legitimate enforcer of law and order. By examining case studies and legal frameworks, the article elucidates how Weber's concept of state monopoly on force shapes the enforcement of legal norms, maintains social order, and upholds the rule of law. Furthermore, it addresses the challenges and criticisms of this monopoly in the face of globalization, supranational entities, and internal dissent. Through this comprehensive analysis, the article aims to provide a nuanced understanding of sovereignty's enduring significance in public law and its pivotal role in the architecture of modern governance.

Keywords: Sovereignty, Public Law, Max Weber, State Monopoly, Globalization, Supranational Entities.

Introduction:

When it comes to the concept of Public Law and political theory, the concept of sovereignty holds a pivotal position. It embodies the power and the authority a State holds and defines its autonomy and control it holds on the defined boundary. Max Weber, a German sociologist, contributed significantly to the understanding of sovereignty through his seminal works on bureaucracy and political authority. In his work "Politics as a Vocation," he elucidates that the monopoly of the legitimate use of physical force is a core concept of modern public law.

The concept of sovereignty can be intertwined and understood in the light of the statement given by Max Webber that the State has "the monopoly of the legitimate use of physical force within a given territory." According to Weber, the state's legitimacy is derived from its ability to monopolize the use of physical force within a given territory. This monopoly distinguishes the state from other entities and empowers it to uphold law and order through the legitimate exercise of coercion. He believes that the legitimacy of the modern state's control was established by seizing the tools of political dominance and organization,

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including violence.¹ While rationalizing this we see how sovereignty is related to the concept of monopoly of force by the way of maintaining order, using legitimate force to the reasonable extend and as a multifaceted way for law enforcement. Hence, this essay revolves around the similar understanding and takes the understanding of Max Webber's theory and its applicability in the present day sovereignty as in accordance to its application in the regime of Public Law.

A historical perspective and evolution of State Sovereignty:

The idea of sovereignty emerged with the rise of modern states and the significant shift from feudalism to centralized government. In the medieval Europe, monarchs represented the height of sovereignty, exercising unquestionable authority over the domains and asserting a divinely granted prerogative to rule. However, the idea of sovereignty was redefined during the Age of Enlightenment and Renaissance as nation-states gained power and political authority consolidated.

The Treaty of Westphalia, which brought an end to the thirty years of war in 1648, strengthened and popularized the idea of state sovereignty. The treaty established the notion of territorial integrity and non-interference in their internal affairs, laying the groundwork for the contemporary concept of sovereignty. Over time, sovereignty has changed from belonging inky to monarchs to now being associated with the state as an independent entity separate from the leaders.

Realizing sovereignty as a component of Public Law:

The presentation of sovereignty as a component of public law has been a recent concept and has evolved with time. Various authors like Walker in "Late Sovereignty in the European Union"² and Loughlin in "Ten Tenets of Sovereignty"³ have interpreted

sovereignty as the concept which has evolved in such a manner that the features of the theory of public law can be seen in the features of sovereignty and it holds a huge significance when it comes to the constructive application of public law. It governs the relationship between the State and its citizens and realizes its significance in the propaganda of supremacy of law, legitimacy of the government, international recognition and many such public law realms.

When it comes to considering the same, sovereignty is interpreted in the lens of supremacy of law as it establishes a legal framework that applies to the individuals and the entities within its territories which defines the permissible and prohibited actions with a certain level of assurance to the predictability of order. Talking about the legitimacy of government, sovereignty provides the basis of the legitimacy of the State's government which provides to be an integral organ for the application of public law.

A view of sovereignty through the lens of Max Weber's interpretation of State's legitimate use of physical force:

As we reach to the interpretation of sovereignty in the terms of Max Weber's definition of modern state we realize that it has sociologically been the core for defining the same. The said definition brings the notion of monopoly closest to sovereignty. Coming to the application of the same with respect to who actually deploys the force, Weber made his contention's clear that the ruler and his staff as a whole are the ones responsible for the said action. The same might not be exactly embedded in the definition but it is prominently vocalized throughout Weber's writings and ideology of state formation.

Understanding the key outlines of Max Weber's theory w.r.t. Sovereignty:

Weber, while accepting Trotsky's statement that "every State is based on force," defines a state by its means rather than its ends. Although Weber contends that force alone is insufficient and it needs to be perceived as legitimate for both pragmatic and normative reasons. As we underline the term "legitimate" in the said concept we realize that state is not the only actor that have a control over using force but rather, state is the only actor that can

1 Karl Dusza, Max Weber's Concept of State, International Journal of Politics, Culture, and Society (1989), <https://www.jstor.org/stable/20006938?seq=1>

2 N. Walker, Late Sovereignty in the European Union, Sovereignty in Transition (pp. 3-32) (2003)

3 Martin Loughlin, Ten Tenets of Sovereignty, Relocating Sovereignty, (2006)

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legitimize the use of violence. Hence, it can grant certain other actors the right to use violence and not loose monopoly on it as long as it remains the source of the right use of violence and the capacity to do the same is maintained.⁴

Talking about the capacity mentioned we realize that the concept of sovereign state which has the wholesome power to decide and apply its own actions can regulate the use of force accordingly considering the same to be legitimate. In the Weberian theory, the state, governed by willing and charismatic leaders, is limited in what it can lawfully do by custom and law. Even if Weber's claim that states have the exclusive right to use force is accepted, this does not mean that all the state violence is acceptable.

Critical interpretation in the current scenario:

On analyzing Max Weber's interpretation of modern state and the same has been a concern of state's unrestricted rule despite the principle of legitimacy we analyse that there could be certain parameters on which the sovereign state can be critiqued and the Weber's interpretation cannot be taken in literal sense yet, can be a direction in which a state's society can work in its functioning. Understanding this we see, maintenance law and order is one of such parameter on which this theory is based. Weber's interpretation of modern state is in accordance with the use of legitimate force to ensure that there must be a sense of security for the citizens of the state, externally or internally with a consonant of peace that shall be maintained under this notion. The same can be an applicable methodology but the extent of State's idea of legitimacy to the maintenance of peace can vary and the same can be regulated with the current role of comparative law that is done and adopted by many states. This highlights the role crucial judicial institutions, law enforcement agencies, and legal mechanisms are in upholding the law while also ensuring public safety.

Adding to this, the boundaries of state sovereignty plays an important role in defining the similar concept. The boundaries between a state's autonomy and independence of power are outlined

in Max Weber's assertion of sovereignty. The state exercise control over its internal affairs through the implementation of law and governance, although its sovereignty may be limited by international law, human rights standards, and other commitments resulting from treaties and agreements. With this, Max Weber's interpretation highlights the significance of two important democratic principles, maintaining responsibility and guaranteeing the legitimacy of the state authority. The issue of sovereignty articulates Max Weber's well-known claim that the state has the only right to use force legitimately inside a certain area; nonetheless, it does present important difficulties and ramifications for the field of Public Law. A subjective examination of all these issues and their consequences offers important new perspectives on how government, the state, and the rule of law function.

Challenges to Sovereignty as seen from the Max Weber's theory in the realm of Public Law:

The above discussed concept of sovereignty in the context of public law as seen from the Max Weber's theory is said to be a bit narrow in this developing and rapidly intertwining society. The major challenge could be Globalization as the same puts this idea of sovereignty under a test for growing without the independence to choose to evolve the global economy, policy influence and application of comparative evolution of the sovereign state, which is important in the present day scenario. Transnational issues like migration, terrorism, climate change, corporation environmental depletion which interlink the national borders are to be managed as well.⁵

Moreover, as a developing concern, protection and promotion of human rights is a significant challenge to this traditional approach of Max Weber's perspective of modern state and sovereignty as a constructive enabler of the same. The cases where the state engages in suppression of human rights can be of major concern and it gets difficult to uphold the law and order. Striking a balance between state sovereignty and the duty to respect and promote

4 Gregor Fitz; Sovereignty, legality and democracy: Politics in the work of Max Weber, Project Muse, (2009) <https://muse.jhu.edu/article/808847>

5 Herbert Wulf; Challenging the Weberian Concept of the State: The Future of the Monopoly of Violence, The Australian Centre for Peace and Conflict Studies, (2007) <http://www.wulf-herbert.de/ACPACS-occ-paper9.pdf>

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human rights presents moral challenges for the international community. Furthermore, sub-national movements, like separatist movements or regional autonomy movements, contest the unitary nature of state sovereignty. The demands of these movements for increased autonomy or independence from central authority resulted in confrontations over political representation and territorial integrity.

Conclusion:

When we analyze the concept of sovereignty in the realm of public law and look at it through the lens of Max Weber's theory of legitimate control of violence by the state, we see that sovereignty has a hint of influence from the said philosophy. The rise of sovereignty gave a rise to the rule of the state with state's control in internal and external aspects of the functioning. This gave a rise to the state's monopoly

in conduct of society of that particular state and the same includes the monopoly in the regulation of violence. Yet, in the current scenario where the exclusive sovereign rule is not the only factor governing the state's action, it is hard to interpret Weber's statement in the current societal regime.

We see that factors like globalization, the need and demand of human rights and the international treaties and transnational activities are highly influential for the betterment and functioning of state. The same is the importance of comparative legal analysis which helps the improvement of a state by taking ideas from another state's legal structure. It is important to know that Weber's statement can be of good use for the regulation of society but the same has a less effective implementation in the current societal dynamics.