

Statehood Sovereignty: Western & Islamic Concepts

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Abstract

Statehood sovereignty is based on Westphalian principles and in practice since 1648. It has three dimensions: juridical, empirical and popular. Islamic concept of statehood is different from the Westphalian one. However, no matter whatever the differences between the two, the Islamic concept is not against the three categories of western statehood. And can be implemented by Muslim states under Islamic principles if followed in true sense. Quran does not make it obligatory to have an Islamic state, however, the ultimate source of sovereignty in Islam is Allah and prophetic traditions. No state is sovereign in absolute sense. The Muslim states in large lack the sovereign statehood principles based on Islamic and western concepts. They fall in the second and third world categories.

Key words: Islam, Sovereignty, God, Westphalia, Juridical, Empirical, Popular

The western concept of nation-statehood emerged with the Treaty of Westphalia in 1648. As Henry Kissinger describes in his book on world order, the treaty implemented Hobbesian world by rectifying the existence, importance and integrity of sovereignty.¹ Where it led to the emergence of the balance of power as an important system factor in international politics there it established the sacredness of sovereignty as an essential element of statehood: to be strengthened and respected individually and collectively as a norm and principle by states in existence, majority of them were European being at war with one another for decades. With the disintegration of empires there was an emergence of nation-states one after another or the age of nation-states began. Ataturk in 1920 in response to a question by a correspondent that how he saw the situation after Turkey being a remnant of a huge empire is shrunk to a limited area. He laughingly said that, “The days of empire are over. We now live in an age of nation-states. We have to build Turkey as a modern nation-state.”

In the post World Wars period the sovereignty of nation-states was affirmed through the establishment of supranational Institutions i. e. United Nations, its principal and specialized organs. The sovereignty element of a state makes a state sovereign in the conduct of internal and external affairs. It enables a country to apply for UN membership and join regional and international organizations.

In the Islamic concept of state, however, sovereignty is different than that of the western concept. But it is not against the existence of a Muslim modern nation-state in practice. I disagree with the leading scholar Samuel P. Huntington says that “The idea of sovereign nation states is incompatible with belief in the sovereignty of Allah and the primacy of the Ummah.”² Huntington claims that Islamic principle of state sovereignty is against the Westphalian or the order established in the years later. However, a number of scholars in counter believe that concept of sovereignty west believes can be adopted

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¹ . Henry Kissinger, *World Order: Reflections on the Character of Nations and the Course of History* Allen Lane 2014, p 32

² Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* London: Touchstone Books, 1997, p. 36

under the ultimate divine sovereignty as western sovereignty though claimed to be sovereign is actually not in practice. In Westphalian connotation, if a yardstick to measure sovereignty is applied, hardly a couple of states qualify to be actually sovereign in pursuit of its interests. Consequently, those who support globalization claim that sovereignty does not exist individually but rather collectively with all state and non-state actors being part. Even a large number of western scholars believe that sovereignty may be some thing “Supra-natural” like divine in theory, in practice it does not exist. For example, Krasner discusses in his book: *Sovereignty: An Organized Hypocrisy*, there is no sovereignty in absolute form. Nation-states are enjoying it in proxy. Sovereignty in western sense may be absolute, but in practice it is not as it is violated and limited in day to day exercise. Sovereignty is more seems more supranational than national.³

This article is an attempt to highlight the Western and Islamic concept of nation-state sovereignty in national and international politics with an effort to prove that Islamic concept is not in all against or contrary to the spirit of the former order. Also, an effort will be made to support the notion of the Islamic concept of sovereignty that ultimate supremacy belongs to God and no nation-state is ultimate sovereign in exercise of policy formulation.

The paper will also focus on the fact that the three categories as exercised by nation-states are not against the spirit of Islamic concept of sovereignty and can well be accommodated under the Islamic concept of sovereignty.

Western Concept of State Sovereignty:

The western concept of state sovereignty based on Westphalian order has been in practice for more 369 years which over the years has undergone enormous changes. I agree with Robert Gilpin, a renown scholar of international politics and supporter of System Theory that the international politics since the treaty has undergone cycles systemic changes within a “state-centric system” with the fact that the stability the system depended (s) on the existence of economic and political hegemonic a nation-state. There is uneven division in the international system of being rich and poor, developed and underdeveloped etc with wars being “principal mechanism of change in international system”. To him, international politics is a continual struggle by states to seek control over their land, others land or at least the behavior of other states, and the world economy. He explains that in the states’ struggle for power and wealth “only rich states can act on these preferences”.⁴ The Westphalian order was largely based on secular, non divine or less divine order. As Michael Mandelbaum discusses in his book the “sovereign state, and impersonal territorial unit with no higher power within its borders is customarily dated from the Treaty of Westphalia in 1648. It was created by the triumph of the monarch over the nobility and the clergy, among which power had been shared in medieval Europe”.⁵ Bryan Turner also supports the fact that Westphalian concept of nation-state tilted towards secular lines by separating the church from politics as in Christianity there was already a provision of *rendering to Caesar what was to Caesar*

³ Stephen D. Krasner *Sovereignty: Organized Hypocrisy* Princeton University Press, 1999 “Rethinking the Nation-State: Many Meaning of Sovereignty” (review article) *Foreign Affairs* November/December 1999

⁴ Robert Gilpin, *War and Change in World Politics* Cambridge: Cambridge University Press, 1983, p 27.

⁵ Michael Mandelbaum, *The Ideas that Conquered the World* New York: Percus Books group, 2002, p 75

*and to God what was to God.*⁶ Thus a nation-state was tried to make a unit which being sovereignty is independent and does not recognize any above authority or come under it, a notion which has been challenged in theory and practice.

A large number of treaties have codified the concept of sovereignty since the World War 1. An important of them is Montevideo Convention signed in December 1933 among 16 South American states which set out the eligibility criteria for nation-statehood in exercise of its rights and duties before international bodies in addition to the possession of territory, people and governance. There are many.

Besides sovereignty, the three elements of the nation-state are people, territory/land and government. They are universal, comparative, multi-dimensional and situational. Population constitutes the rudimentary and essential ingredient of a state. In simple words there is no life without people. Population of a state can be smaller or largest. There is neither a restriction nor certification that a nation-state be marked with a limit of population. And nor is there any ethnic or religious limit, but it can be homogenous or heterogeneous. China, US, India, Indonesia, Brazil and Pakistan have largest population while Denmark, Norway, Bhutan and Qatar have smaller ones.

The area or territory is taken as the “material bases” of a nation state with enormous effects on its sovereignty. It shapes the empirical bases of a state’s sovereignty to be discussed shortly. Territory includes mountains, maritime belts and territorial waters, lakes, glaciers.

The government enables a population unit on a specific area governable under rules, norms and ethos. It is the machinery which governs the population. There are different kinds of government. The element of government shapes the sovereignty of a state. A state with representative and accountable government is witnessed to be more sovereign in internal and external affairs than the one ruled dictatorially or authoritarian.

Sovereignty of a state:

Sovereignty is regarded the most important element of a nation-state which is multidimensional and vague in definition. I agree with Krasner that “in international politics the sovereignty concept is rather understood and misused.”⁷ Lassa Oppenheim describes it as “There exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon.”⁸ The concept of Sovereignty is multidimensional and comparative. It has been defined and classified in a variety of ways. Many scholars refer to it as “living Organism” which simply means that it is expanding with the growth of state and non state actors in international system. With the rise of globalization and growing strength of non-state actors like MNCs, the active supporters of the process better known as “hyperglobalizers” claim that nation-states in today’s world have become less sovereign as far as their empirical sovereignty is concerned. They proudly call it as “Borderless World”. Nevertheless, sovereignty exists

⁶Bryan Turner, “Islam, Religious Revival and the Sovereign State” in Muslim World, 97:3, July 2007, pp 405-18.

⁷ Stephen D. Krasner op. cit

⁸ Lassa Oppenheim, International Law 4th edition in 1924 in https://en.wikipedia.org/wiki/Sovereign_state

in multi-faced way.⁹ The scholars in large have defined the concept into three kinds: Juridical, Empirical and Popular.¹⁰

Juridical It refers to the fact that there is no authority above the jurisdiction of nation-state except international law or its associated regimes and norms governing the mutual interaction of nation states. The scope of interaction by choice and necessity started growing with the rise of the process of integration and now globalization. Samuel Makinda claims that it is because of juridical sovereignty that led to creation of transnational organizations. The United Nations and its associated agencies support and demand the exercise of juridical sovereignty by states. To her, juridical sovereignty is in one way conferred on states by international society. She cites the example of Taiwan where its permanent membership was taken away by Security Council members and given to People's China, but there are a number of other examples. Stephen Krasner calls this kind of sovereignty as international legal sovereignty.

Empirical Empirical sovereignty refers to the fact that a state has complete jurisdiction and control over its people, land, resources and institutions within its borders. Many scholars including Makinda claim that the empirical sovereignty is less defined by international society and more by the capabilities of the state how to define and manage its political, economic, socio-cultural and foreign matters, resources and entities. As an international relationist, I agree to that. For example, the UN Charter under article 2 (7) defends a country's sovereignty by saying that "nothing contained in the present Charter shall authorize the United Nations to intervene in the matters which are essentially within the domestic jurisdiction of any state." Nevertheless, under the same charter with provision to intervene UN has interfered in different places. And there have been interferences in recent years by US and Russia (Iraq, Syria, Ukraine) which is in sheer violation of a state's empirical sovereignty as well as of UN. Leila J. Farmer in her article on sovereignty claims that need to protect empirical sovereignty by African states led to the establishment of Organization of African Unity (OAU) and in return the organization justified its end in promotion of the empirical sovereignty of states as mentioned in article 2 of the charter "to defend their sovereignty, their territorial integrity and independence." Majority of African states lack sovereignty in true sense. A number of regional alliances are joined by states to safeguard their empirical sovereignty.

Popular The third form of sovereignty of a nation-state demands and verifies that all people within the jurisdiction of a state's territory are entitled to be governed by their consent and will be under good governance. They are entitled to human rights which can better be defined in the constitution and legal documents as "Fundamental Rights". Based on the teachings and writings of philosophers, scholars, human rights activists and think tanks, the popular sovereignty is essential and important phenomenon how to promote human dignity, welfare and happiness by government. As Leila describes, the scope of popular sovereignty has exceeded since 1990s after the "state-centric" view of sovereignty changed under the emerging trends that sovereignty is derived from people.¹¹

The UN charter supports the concept. And so does the charters of regional and international agencies. Kofi Anan in his address to UN General Assembly on 20th September 1999 stressed upon that the patterns of sovereignty are changing and are

⁹ Manfred Steger, *Globalization: A very Short Introduction*, Oxford University Press, 2003, p 121.

¹⁰ See an article Samuel M. Makinda published in the edited book: *The Ethics of Global Governance* by Antonio Franceschet divides

¹¹ op. cit, Leila J. Farmer, p. 97

redefined by the forces of international cooperation under globalization. He hoped that the change would be utilized for greater global peace. He said, "The State is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty -- and by this I mean the human rights and fundamental freedoms of each and every individual as enshrined in our Charter -- has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny".¹² Kofi Anan had made sovereignty "conditioned on respect for human rights". In many scholars' analysis the rise of globalization and democratization supports the popular dimensions of sovereignty.

Islamic Concept of State Sovereignty:

There is compatibility and incompatibility between the Islamic and Western concepts of sovereignty. Islam does not reject the western concept of sovereignty in all, but rather can accommodate the three aspects the nation-states' sovereignty is built on. Islamic state is neither mentioned in Quran nor made obligatory, but principles are provided on the basis of which a state embodiment of Islamic spirit can be raised. Sovereignty, according to the Islam, lies with God and major source of legislation is from Quran (51:58). In Islam sovereignty belongs to Allah/God Almighty. Quran, as many scholars agree, neither mentions the word an Islamic State nor defines its structure. To many scholars, in no place, unlike *Zakat* and *Hajj*, the establishment or adoption of an Islamic state is mentioned as an obligation. However, on the bases of the universality and teachings of Quran and traditions of Prophet Muhammad (SAW) a nation-state can be erected which under the framework of the Islamic and Western concept of sovereignty can do good in the comity of nations. The Islamic concept of sovereignty is not incompatible with the three major categories of the sovereignty of modern nation-states. According to Quran, the major source of the code of temporal and spiritual life for a Muslim State is that God is *Al-Malik* and *Al Malik ul Mulk* (sovereign or ultimate possessor of sovereignty). According to the two relevant verses of Quran (42:48 and 47:3) *i. Allah belongs the sovereignty of heavens and earth ii. It is he who gives life and He has power over all things and iii. He is the first and last the Evident and Immanent*"

A number of the leading scholars including Maulana Maududi support the fact and agree that the sovereignty concept in Islam by definition is universal as it embodies the whole Muslim community where Muslims constitute majority. They are united by faith and submission to God as one entity. The concept of sovereignty is thus absolute. Dr. Muqtedar in his article relates that the absolute concept of Hobbes' resembles Islamic concept. Islam instead of state renders complete submission to God.¹³

Stephen Krasner has characterized sovereignty (western sense) as an "organized hypocrisy," criticizing it on the grounds that it is universally recognized but, at the same time, widely violated. To him, State sovereignty has neither been absolute nor practiced in true form in large.¹¹ It can be related to the notion and adoption of the sovereignty concept in Islam. In reality, the concept of sovereignty as defined by Islam is not implemented in large. Soon after the period of Prophet Muhammad (SAW) and four Caliphs there started a period of hereditary rule with rulers/monarchs enjoying absolute powers. The four caliphs exhibited a rule which was based on a sort of direct democracy or consultation (*Sura*). They represented *ummah* in true sense but a factor not to be ignored that *ummah* was initially confined to limited area but soon after the conquests it

¹² . <http://www.un.org/press/en/1999/19990920.sgsm7136.html>

¹³ "Sovereignty in Islam & Human Agency" by Dr. Muqtedar Khan <http://www.ijtihad.org/sovt.htm>

had started expanding where the question of non-Muslims' rights and duties had started. During the period the Charter of Madina (*Midaq ul Madina*) had provided a social contract. The charter consisted of a total of 47 articles, 23 of which dealt with mutual relationship amongst Muslims, their rights and duties. It provided a guideline to coming rulers that *Ummah* can be erected on common mutual aspirations than ethnicity or language or territory. The remaining 24 articles dealt with the relations of Muslims with Jews and Christians, the two minorities in Mecca and Madina. The non Muslims enjoyed a residency status in the Ummah underlined by the fact that the future welfare and defense of Ummah be founded on "common spiritual aspirations and in unity with non Muslims". For the defence of the common territory the services and cooperation of non-Muslims was not underestimated. The charter supports the popular aspect of western sovereignty in true sense.

Three Categories of Sovereignty and Islam:

The three concepts of sovereignty are not against the Islamic spirit and are competent to be modified in accordance to Islamic nature.

The first being Juridical sovereignty in the modern international system has a reality that nature of states' governance and interaction is finally subject to an authority known as international law, regimes and norms. Juridical sovereignty is a weakened concept of state sovereignty but has to be implemented. In the age of globalization, day to day grown interaction and emergence of non-state actors, a body is needed which is above state sovereignty, but they remain under divine sovereignty --- thus serve the purpose of Islam that sovereignty belongs to God. There are so many new laws which nation states have voluntarily opted, majority Islamic states, for their betterment. For example, Calvo Clause. It is a term originated as part of international political economy. It is clause in an agreement between a host state and a foreign investor i.e. Multinational Corporations, IGO according to which the investor is bound not to seek the diplomatic assistance against a host state in resolving disputes with the host state on an issue. The necessity of the clause arose after the emergence of Multi-national corporations as an international actor in different parts of the world with strong support of their home state. MNCs sought the diplomatic support of their home countries, majority of them being developed and industrialized countries, in disputes over financial or management issues against the host countries. This pressurized the host countries, majority of them being developing and under-developed countries, for showing them concessions at cost of their own national interests. Donald Shea in his book *The Calvo Clause* describes the term in context of inter-American and international law/diplomacy analysis.¹⁴ Clause is a necessity for smooth relationship between a host and home government relationship in today's world of globalization. Similarly, the hijacking rules, UN peace keeping and blockade issues have limited the role of a state. There can be many such examples in international law.

The empirical concept of sovereignty is regarded an essential element of the western concept of state sovereignty which can well be accommodated under the overall Islamic concept of sovereignty. It is and should be a motivating factor for the formulation of foreign policies of Muslim States. The Islamic states and empires since the advent of Islam claimed empirical entity. It is proudly stated that under Ottoman Empire its empirical sovereignty spanned over three continents of Asia, Europe and Africa. Even

¹⁴ For detail see Mansoor Akbar Kundi A Learner's Dictionary of Politics, 2nd ed. Rawalpindi: Instant Print System, 2017, p. 24

today the Muslim states are based and adhered to the empirical concept of sovereignty. The charter of the Organization of Islamic Cooperation comprising 57 nation-states actors is supportive of the empirical concept itself --- *territorial integrity*. The term "Territorial Integrity" is mentioned 7 times based upon the principle to be assured: "Respect the right of self determination and non interference in the domestic affairs and respect sovereignty, independence and territorial integrity of each member state." Territorial gains and control has been a universal concept the modern nation states system is based on. Interestingly, the ISIS which is an unrecognized entity in international law and believes in the setup of an Islamic community (Ummah) irrespective of all territorial, ethnic or racial considerations, vocally claims its territorial control over 8 million people and area in Iraq and Syria.¹⁵

Islam stands for welfare of human beings. The major five principles a Muslim political community or state is based on are: i. Each Muslim community must establish "din" in accordance with the first purpose of the law. ii. A state must ensure the safety and welfare of all human beings under its governance. iii. The state must establish conditions for a sound family system in accordance with shariah. iv The state must provide conditions for the growth of healthy minds e.g. by providing freedom of expression etc. v. The state must ensure the economic well being of the community as a whole. When talked about human beings, healthy minds, freedom of expressions and economic well being of community, it is irrespective of religion and ethnicity. They include all citizens under Islamic principles.

The popular concept of democracy which the Western democracies focus on and are incorporated in UN Charter and other leading treaties were focused by Islam in large. The concept of welfare unfortunately may not be followed in large number of Muslim countries, but Quranic teachings and Prophetic traditions greatly support them. The principles and spirit of the Charter of Madina has provisions to support the rudimentary principles of popular sovereignty the modern states are based on or can be. Many western countries based on democratic and representative constitutions seem closer to the spirit of the charter than Muslim countries where Muslims and non-Muslims population are denied political and social participations. Donald Rothchild and Francis M Deng in the famous book (edited) wrote that the only states exempted from potential intervention are those with enhanced popular sovereignty. They "under normal circumstances, strive to ensure for their people an effective governance that guarantees a just system of law and order, democratic freedoms, respect for fundamental rights, and general welfare."¹⁶

Islam stands for the welfare of minorities, rights of which are defied in even western welfare states. Quran says, "Let there be no compulsion in religion" (2:256) The principle of Jazyia is prescribed in Quran (9:29) without the mention of how much. The Jews in Madina (Bani Auf, Hareth, and Saedah) during the rule of Prophet (SAW) were allowed to be the part of Ummah and were exempted from Jazyia if they rendered military services in peace and war. Mark Gould claims that Islamic principles propounded by Quran and Sunnah support popular sovereignty.¹⁷ His thesis is the

¹⁵ Islamic State and the Hypocrisy of Sovereignty in <http://www.e-ir.info/2015/03/20/islamic-state-and-the-hypocrisy-of-sovereignty/>

¹⁶ Donald Rothchild and Francis M Deng ed. *Sovereignty as Responsibility: Conflict Management in Africa*, Brooking Institution Press, 1996

¹⁷ Mark Gould, Gould "Islam, the Law and Sovereignty of God in Policy Review, Hoover Institution, Stanford University in <http://www.hoover.org/research/islam-law-and-sovereignty-god>

Quranic teachings and Prophetic traditions are above the modern welfare and in the light or shadows of them Muslim states under a welfare system can well be established. Modern Welfare state broadly stands for i. Provision of social security for all against accident, sickness, unemployment, old age and disability. ii. Social justice or fair and equitable distribution of income and wealth among all citizens by minimizing the gulf between the rich and the poor through effective use of taxation and public expenditure. iii. Provision of free or heavily-subsidized services by the state in education and medical aid. iv. The maintenance of full employment for the working force of the nation by making the state fully responsible for providing jobs to all able-bodied workers. v. Public ownership of utility services so that the same may be provided to low income groups at subsidized rates. But very few highly industrialized western countries meet the criteria. I doubt a Muslim country can meet the criteria. But Islamic teachings don't contradict their provisions if done.

Conclusion:

The two versions of sovereignty, western and Islamic, have different dimensions of explanations. There is compatibility and incompatibility between the two with gap in theory and practice once it is applied at nation-state level. The Western concept of sovereignty is based on Westphalian principles that sovereignty of a state is supreme and be respected by the state itself and others. It involves myths and realities. Sovereignty rules framed by Westphalian order are vague and non-measurable as the concept of nation-state is itself based on uneven foundations. And Westphalian system has lost its integrity and comprehensiveness I was once based on. No country is sovereign in deed. A large number of countries, including many Muslim countries, don't meet the criterion of being nation-state as sovereignty per se. The growing gap between the have and have-nots of UN members; growth of non-state actors under globalization with each struggle for power; and weak existence of international law poses a major challenge to states' sovereignty. In the age of globalization where nation-states have become integrated and non-state actors have assumed more power than nation-states themselves, the concept of sovereignty is less national and more supranational. In case of supranational the sovereignty seems divine and supra-natural.

The Islamic concept of sovereignty claims that the ultimate source of all powers is God Almighty. People as claimed are not the source of sovereignty. However, the existing three versions of sovereignty is not contrary to Islamic principles and can be adjusted. The growth of globalization and supranational character of sovereignty that international law is above states can be closer to Islamic principle that sovereignty belongs to God. The supranational sovereignty is not comprehensive in itself and violated day to day cases by developed and developing countries. The existing Muslim states' sovereignty is based on the western patterns. And even they fail to meet the Westphalian criteria of strengthening empirical and popular sovereignty. They are run in large by undemocratic and non-representative forces without public taken into confidence. Their foreign policies are least independent and devoid of the principles of the sovereignty dimensions. And they fail to meet Islamic standards which support legitimacy, accountability, judicial review and least dependence on super-powers which are non-Muslim.

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