

THE PROBLEM OF SOVEREIGNTY IN THE PHILOSOPHY OF THE 17th–18th CENTURIES (T. HOBBS AND S. PUFENDORF)

ABSTRACT: This study presents a philosophical reflection on the question of sovereignty, viewed through a comparative analysis of two philosophers: Thomas Hobbes and Samuel Pufendorf. The field of inquiry lies between political philosophy and the philosophy of law. The literature review centers on prominent thinkers such as Machiavelli, Bodin, Spinoza, Locke, Montesquieu, Rousseau, Kant, and others, in order to provide a broader and deeper understanding of the questions surrounding sovereignty. The bibliographic research is oriented toward a comparative and analytical approach. A foundational understanding of Hobbes's and Pufendorf's philosophical positions is essential, as the comparative analysis aims to articulate their discourse on topics such as the idea of objective social unity and the ways in which national sovereignty is concretized. The comparison focuses on the form and substance of the social contract. At the core of the discussion is the relationship between popular (political) sovereignty and state sovereignty. The discourse highlights the nature of sovereign power and the issue of freedom, challenging the principle of representativeness. Positioned between the idea of indivisible force and the power to realize justice, sovereignty is situated within the conflicting contexts revealed through this comparison. The study further explores the political-legal system and the concept of the rule of law. Additionally, it addresses the

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complex relationship between internal and external sovereignty, wherein the essence of sovereignty is often compromised.

Keywords: *sovereignty, social unity, natural law, national sovereignty.*

1. Introduction

By nature, man is divided between selfishness and the need for social life. The question arises according to which objective criteria a person belongs to himself and to society at the same time. How can we strike a balance between individual freedom and social responsibility.

Under these circumstances, a sustainable social order must be created in which not only physical security is clearly stated, but also freedom, human rights for a dignified life. The means to achieve that goal is the power that rests on the parties, as the highest power. In the sense of a united society, this power was named sovereignty.

The debate about the nature of the power that governs and organizes society was early. He became the first sovereign in the 16th century (De Benoist, 1999, p. 100). In the 17th century, due to historical and political circumstances, sovereignty became one of the basic issues. Europe was in a phase of comprehensive changes and a moment of political re-examination and reorganization. The situation that followed the Thirty Years' War (1618–1648) in the political sense was a conflict for dominance (hegemony) or the balance of power between the European powers of that era. The outcome of this war was the Peace of Westphalia (1648), which divided Europe into sovereign states.

The philosophy of time requires objective arguments in conceptualizing the political and legal organization of societies. Hobbes and Pufendorf were among the first to place sovereignty as an essential part of their thinking. Three years after the Peace of Westphalia, in 1651, Hobbes publishes his famous work *Leviathan*, where he presents his view on sovereignty. About a decade later, Pufendorf was also involved in this discussion. The subject of the study, through a comparative analysis of two philosophers, aims to recognize the issue of sovereignty.

Sovereignty expresses the political power of society, which means that it does not derive from any other power. Being the first source makes it more absolute and unconditional than any other form of power. It legitimizes all other powers expressed by state sovereignty. State sovereignty has all the rights and mechanisms to perform the functions of sovereignty, regardless

of whether it is performed voluntarily or forcibly. In other words, society is organized within a legal order.

Referring to contemporary philosophical literature, ways of conceptualizing power are in the center of attention. It is enough to remember that sovereignty plays a fundamental role in the critical analysis of political and legal systems. Ž. Mariten, H. Arendt, M. Foucault, Đ. Agambente Hobbes and Pufendorf serve as a connecting link between antiquity, medieval theology and modern philosophy, and not only interhistorical philosophy, but also to see Nietzsche's benefit to the contemporary debate. The value of Hobbes and Pufendorf in this discourse is important for the dissertation, not only through the history of philosophy, but also to see their influence on the contemporary debate. Think of the sophisticated philosophical literature, of ways to conceptualize it at the center. It is enough to remember that sovereignty plays a fundamental role in the critical analysis of the political and legal system.

1.1. Methodology and Structure of the Paper

This paper analyzes and compares the theories of natural law of Thomas Hobbes and Samuel Pufendorf, with a focus on their views on natural law, the state of nature, and the role of the state in constituting the legal order.

To critically analyze the theories of natural law in Hobbes and Pufendorf. To identify and explain the key differences and similarities in their approaches.

To highlight the significance of their theories for contemporary debates on natural and positive law.

How do Hobbes and Pufendorf conceptualize natural law and the state of nature? In what way do their theories interpret the relationship between natural and positive law? What are the consequences of their theories for understanding the role of the state and sovereignty?

H1: Hobbes and Pufendorf develop divergent conceptions of natural law, even though they start from a similar philosophical framework of the state of nature.

H2: In Pufendorf, natural law retains its normative force even after the establishment of a political community, whereas in Hobbes it is subordinated to the absolute authority of the sovereign.

The analytical method, which will be used to interpret in detail the relevant works of Hobbes and Pufendorf, with a focus on key concepts and arguments.

The comparative method, which will be used to systematically compare their theoretical positions with the aim of identifying similarities, differences, and influence on later theories of law and the state.

Introduction

Presentation of the topic, goals, research questions, hypotheses, and methodology.

Theory of Natural Law in Thomas Hobbes

- The concept of the state of nature
- Natural law and the laws of nature
- The role of the sovereign and the transformation of law into positive law.

Theory of Natural Law in Samuel Pufendorf

- The state of nature and its characteristics
- The normative force of natural law
- The relationship between natural and positive law; the function of the state

Comparative Analysis of Hobbes's and Pufendorf's Theories

- Initial premises and contextual similarities
- Key differences in the understanding of natural law, the state, and sovereignty
- Evaluation of the theoretical and practical consequences of their conceptions.

Synthesis of Key Findings in Relation to the Stated Hypotheses.

Emphasizing the significance of Hobbes and Pufendorf for contemporary legal theories, especially in the context of debates on the boundaries of natural and positive law.

Based on theoretical and comparative analysis, it is expected that the hypotheses will be confirmed:

That Hobbes reduces natural law to the instinct of self-preservation, which ultimately loses its force before the absolute authority of the sovereign.

In contrast, Pufendorf maintains natural law as a lasting moral and legal framework that remains valid even within an organized political society.

This difference has important implications for understanding the source of legal obligation and the role of the state.

2. On the concept of sovereignty

The history of mankind is so diverse that in its dynamic processes it has constantly incorporated and undermined many values and beliefs, changed the way of life and much more. What remains unchanged is the will to organize oneself. Presence in society has always required secure foundations for coexistence. Therefore, an individual in a society with all its complexity believed and accepted the power that structures (harmonizes) the mutual relations of organizations, which would not be possible without the guarantee of power. In this sense, power becomes an indispensable condition for a permanent relationship between people.

In the context of society as a whole, this power is called sovereignty. From the etymology of the term, sovereignty is a matter of power, different from other forms of power. Here, the concept of a person is at the core of the meaning of sovereignty. Instead of referring to a specific (physical) person, attention is paid to the attributes that person has, the qualities that distinguish him from the status and (superior) position of other persons. Therefore, power is a hierarchical relationship – the relationship between a person who has (exercised) power and the entity over which that power is exercised. Therefore, sovereignty cannot be understood in the usual course of society.

The power of sovereignty is the transcendental (abstract) form of society as an objective unity. The reason for sovereignty is the reason for the community, the power of the whole community is sovereignty. The abstraction of society as a single body (Hobbs, 2005, p. 109) characterizes sovereignty as the bearer of all forms of power that are expressed in society, and that is why two characteristics appear here: sovereignty is the greatest power and power is inalienable (Ruso, 2005, p. 31).

A member of society is inevitably a part of sovereignty. It is defined as part of this whole homogeneous body, which is often called civil society. The word refers to the city (*civitas*), the organization of society, where it may have been wrongly identified with the state (Grotius, 2007, p. 29).

First of all, there is a political understanding of society here, as a unique body, which is different from the concept of society. Within this conception, a member of society gets the status of a citizen and at this moment sovereignty is a political issue. Man, as a socio-political being, carries political power in interaction with others. For this reason, citizens constitute what Ruso called an active sovereign (Ruso, 2005, p. 31).

When talking about different levels of power, from the interpersonal to the universal structure of society, sovereignty is closely related to two basic concepts: reach and power (Fukuyama, 2013, p. 31).

The characteristics derived from the conception of society as an objective unity give it the sovereign right to exercise authority over all members of society, as well as over the territory on which it operates. Thus, a sovereign person, as Weber writes: “...holds the monopoly of the lawful use of physical force within a certain territory” (Weber, 2004, p. 142).

The concepts of legitimacy or approval, delegation, try to solve one of the central problems of sovereignty: Who deserves sovereign power? To what extent or how should force be used in conditions of superior power. The force itself does not have to be reflected, but is easily determined. What deserves attention is justice and respect for one’s freedom. The question posed here refers to the philosopher B. Pascal’s concern about how to “...strengthen what is right and only what is strong” (Pascal, 2005, p. 29). In this sense, sovereignty becomes a question of the principle of justice.

Formalizing transcendental power means making abstract commands or formulations of a sovereign person. In other words, the conventionalism of sovereignty is a tendency in the understanding of power. Its action is expressed in such a way that every member of society (community) is subject to the law, sovereignty (its order). Ruso defines it as a passive sovereign (Ruso, 2005, p. 31), which is formalized through the state. So, concretely, sovereignty also extends beyond the state. The concept of the nature or profile of a sovereign person gives us not only a model of state building, an expression of a political-legal regime, but also a way of governing. From this point of view, members of society acquire the status of citizen, which is different from the concept of citizen.

In terms of his internal sovereignty and omnipotence, as the only higher power, it is understood that a sovereign person enjoys absolute freedom in the exercise of power, which means that there is no power that would be his rival. The highest power is in the sense of public power, which is theoretically the last instance in the entire hierarchy of power (De Benoist, 1999, p. 100), as an inviolable, inalienable force. Therefore, it is not limited by other forms of power within society. Superiority gives absolute freedom, which implies the unlimitedness of the sovereign person (Bodin, 2007, p. 23) It is paradoxical to say that a sovereign person is limited by his order. Self-limitation is not a limitation and that is why sovereignty is legally unlimited. In this sense, a sovereign person is a moral person who is seen outside the state, outside the application of the specific law, but which is hidden in the principle and purpose of the law. The state itself as a realized act reflects the principles of sovereignty (Pufendorf, 2007, p. 75).

This optic expresses absolute strength in extension and competence. The argument is that a sovereign person can have absolute reach over the entire

territory, but should have a limited range of jurisdiction. At this moment, the question arises according to which criteria a sovereign person distances himself in terms of his competence. Again, it is troubling that the extent of a sovereign person's power remains undefined when we are in a state of unconditional sovereignty.

As regards the duties of a sovereign person as a legal person, he makes laws for his subjects, except for himself (Agamben & Sacer, 1998, p. 14). Then by what criteria does a sovereign person do justice? These questions raise concerns about finding the foundations of sovereignty and therefore determining the profile of a person with sovereign power. His task is related to the organization of the state, the way of governing, where he must create power as an expression of justice in the function of peace and social harmony.

For the sake of argument, let's consider for a moment that a sovereign person does not have absolute power. Does being non-absolute make it inexorable? As we stated above, it absolutely refers to the issue of physical (territorial) expansion as independent internal sovereignty. Also, in terms of inclusion, in terms of competence, power is absolute and inalienable. Outside this field, it is not absolute and can be placed in parallel (horizontal) power relations.

Considering the latter, Bodin, Hobbs et al. oppose this optic. They see the sovereign person as absolute in power and scope.

Thus, comprehensive, unconditional sovereignty. Sovereignty as social unity cannot be limited to individual power, community power or even the majority of society, because objective social unity is necessary and rests on any other form of power. If the other power carries the sovereignty, then it loses its essence. In this case, we will have the rule of a part, not a united society. Therefore, sovereignty is justified as a natural right of man and community. Sovereignty is the highest principle, inviolable and should not be confused with its action (state or government). This means that the state and government are the result of sovereignty and its function. This is the point of view of the school of natural law, in which all members of society without exception are members of sovereignty, that is, of a united society and an objective body.

These members operate and communicate in a defined territory. Territory has to do with property, life, housing, material possessions, etc. Territorialization is another reason for unifying and crystallizing the differences that characterize society.

In this context, the School of Natural Law is opposed to the views of the traditionalists or the Historical School, which advocate the idea that

sovereignty rests on the principle of the nation (E. Berk). For Sismond, sovereignty is the reason of the nation (Merriam, 2001, p. 42).

Nation-state sovereignty, motivated after the 30-year war (after the Peace of Westphalia in 1648), emphasized the right of nations to be sovereign.

Therefore, the unification is realized from the historical national identity, and with that unification, the sovereign right to independence and power arises. Identity and cultural basis were natural laws according to Vic's judgment (Gadamer, 2008, p. 20).

In this respect, the nation as a historical-cultural community is a dimension that differs from the idea of sovereignty abstracted in a natural sense. So, in essence, the difference is between the objectification of society on the principles of natural law and the objectification of society on the principles of historical and cultural character (Maritain, 2008, p. 28).

In the case of the Natural Law School, objective unification justifies sovereignty, despite the differences between members or groups that characterize society as a whole. On the other hand, the School of History motivates a certain (particular) expression of sovereignty, conditioned by history, tradition and culture, quite different from other societies. Power is limited by public opinion, social morality, religion or customary law, which often not only justify the source of sovereignty but also dictate and then impose the rules, laws and orders of the sovereign person (Merriam, 2001, p. 21).

However, this judgment is not about resolving the relationship between sovereignty, territory and citizenship. In terms of globalization, multicultural societies, intensive migrations, technical and economic development, the concept of classical sovereignty is called into question (Krasner, 2001, p. 229).

Territory is not only a prerequisite for the formation of a single sovereignty, but it is also a prerequisite for the limitations of this power. The geographical extent makes sovereignty a separate and powerful entity in the territory.

In this sense, sovereignty refers to a defined territory, with all competences for the exercise of its power. Outside this territory he has to deal with other rulers. It is this relationship that enables the understanding of external sovereignty. The question posed here is the nature of the relationship between internal sovereignty and external sovereignty. The most important thing in this relationship is the mutual recognition of respective sovereignties. Conventional sovereignty (Krasner, 2004, p. 2) understands the right to independence as sovereignty, not externally imposed on internal affairs.

He knows all the attributes that anyone with sovereignty must enjoy. In other words, recognition means acceptance, approval of sovereignty.

Recognition is a presumption created by diplomatic (interstate) relations and the formalization and building of relations according to a certain interest. It is known as international relations, and the plan (principles) for that relationship is known as international law. Non-recognition or limited recognition expresses an isolated, limited sovereignty and therefore cannot enjoy the rights attributed to another sovereign.

Krasner understands sovereignty as a whole in four forms of expression. The first is the sovereignty of interdependence, which is the fact that it is conditioned for interaction with other sovereigns. The second meaning has to do with the internal structure of sovereign power, that is, internal sovereignty. Sovereignty of interdependence cannot create absolute internal sovereignty.

Opposite to this (third) is Westphalian sovereignty, which advocates the absolute independence of internal sovereignty (Krasner, 2001, p. 231).

The fourth meaning is international legal sovereignty, which is based on a legal framework, where sovereign states with free relations will establish mutual relations.

If we need to define the most ideal sovereignty, then we will need "...international legal sovereignty, Westphalian (domestic) and internal sovereignty to be mutually stimulating" (Krasner, 2004, p.5) .

From this point of view, we see that sovereignty depends not only on internal factors but also on other sovereign states as a dialectical and dynamic process. Therefore, its existence depends on the existence of other sovereignties (De Benoist, 1999, p. 100). In this sense, the concept of recognition as a separate and independent state is not just a formality.

In conclusion, as discussed above, sovereignty is determined by factors:

- 1) Society as an absolute whole is a product of the human community and acts on this community;
- 2) Higher and inalienable authority (indivisible);
- 3) Physical expansion of the territory (territorial integrity) of internal sovereignty that structures society through state organization;
- 4) Recognition of sovereignty by other sovereigns, which fulfills the essential criterion regarding external sovereignty.

Beyond giving a final definition, from what we talked about, sovereignty can be understood as a transcendental (abstract) unifying power of society, the highest power within a certain territory, recognized by other sovereign states, which is absolute, free, independent, indivisible, inseparable, unlimited in matters of its jurisdiction.

Comparative Analysis: Thomas Hobbes vs. Samuel Pufendorf

Dimension	Thomas Hobbes	Samuel Pufendorf
State of Nature	War of all against all; life is “solitary, poor, nasty, brutish, and short.”	A state of insecurity, but with rational norms; less chaotic than in Hobbes.
Natural Law	Instinct of self-preservation; everyone’s right to do whatever is needed to survive.	Rational, universal norms prescribing duties toward oneself and others.
Laws of Nature	Rules of reason that guide toward peace, but lack binding power without authority.	Permanent rational norms valid in both natural and civil conditions.
Positive Law	Derives solely from the will of the sovereign; without sovereign, no obligation.	Builds upon natural law, which remains superior and independent.
Role of the State (Sovereign)	Absolute power of the sovereign; law is the expression of the sovereign’s will.	The state institutionalizes and enforces natural law; it does not nullify it.
Source of Obligation	Obligation arises from fear and a contract transferring power to the sovereign.	Obligation comes from rationality of natural law, independent of political power.
Philosophical Basis	Mechanicism, materialism, skepticism toward natural law without authority.	Rationalism; natural law as a universal moral and rational obligation.
Purpose of Society and Law	Peace and security through absolute rule.	Balance of rights and duties in line with universal moral norms.

Source: Author’s research

3. Conclusion

This work, by a comparative analysis of Hobbes’ and Pufendorf’s philosophy, sought to break down the questions posed by sovereignty, starting with the idea of social unity or the formation of a political society, from which state (legal) sovereignty derives; the form and content of the social contract; the relationship

between people's sovereignty and the sovereignty of the state; understanding the nature and properties of sovereign power; the relation of this power to free demand law, directing the discussion of the political and legal systems of the organization of society; the relationship of internal and external sovereignty. To begin with, it is in the subject's interest to create a discourse on issues of sovereignty. In addition, bibliographic research is also seen as a function of comparative analysis. Despite differing views, the common ground lies in the fact that sovereignty rests on the problem of human evil. The need to provide for life, the selfishness of human nature on the one hand, and the propensity for social life, the need for self-realization, dignity, on the other hand, puts man and society in complex, confusing and chaotic circumstances. Due to instability and great contradictions, it is necessary to organize individual and social life on a clear and secure basis. Achieving this goal requires power that rests on the individual, but also on society itself.

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PROBLEM SUVERENITETA U FILOZOFIJI XVII-XVIII VEKA (T. Hobs i S. Pufendorf)

APSTRAKT: Studija je filozofsko razmišljanje o pitanjima suverenosti, viđeno kroz uporednu analizu dva filozofa: Tomasa Hobsa i Samuela Pufendorfa. Polje proučavanja leži između političke filozofije i filozofije prava. Pregled literature usredsredio se na najistaknutije filozofe poput Makijavellija, Bodena, Spinoze, Loka, Monteskeja, Rusoa, Kanta i drugih. Služi za šire i dublje prepoznavanje pitanja koja nosi suverenitet. Bibliografska istraživanja orijentisana su na komparativno analitičko proučavanje. Za ovu temu važno je osnovno znanje o Hobsovoj i Pufendorfovoj filozofskoj tezi, pri čemu uporedna analiza ima za cilj da pokaže diskurs o pitanjima kao što su ideja objektivnog društvenog jedinstva i načina konkretizacije narodnog suvereniteta. Poređenje se fokusira na oblik i sadržaj društvenog ugovora. Osnovno pitanje je odnos popularnog (političkog) suvereniteta i državnog suvereniteta. Diskurs ističe prirodu suverene moći i problem slobode, dovodeći u pitanje princip reprezentativnosti. Između ideje o nedeljivoj sili i

moći da se ostvari pravda, suverenitet se postavlja u sukobljenim situacijama koje su identifikovane prilikom poređenja. Studija ide dublje u raspravu o političko-pravnom sistemu i konceptu vladavine zakona. U drugom planu je prikazan odnos između unutrašnjeg i spoljnog suvereniteta koje je složeno pitanje, gde se suština suvereniteta često krši.

Ključne riječi: suverenitet, društveno jedinstvo, prirodno pravo, narodni suverenitet

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