

The Sovereign State and Fundamental Rights Interface

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ABSTRACT

*This article investigates the interface between the sovereign state and fundamental rights with the views of *The Social Contract Theory*. The concept of the sovereign state emerged in response to specific social and economic circumstances of the time. The idea of fundamental rights is a comparatively new phenomenon in the history of political thinking, and today's constitutions adopt a bill of rights that outlines the legal rights of individuals, which have been prevailing within society for a long time. *The Social Contract Theory* is a political and philosophical foundation for the modern sovereign state, encompassing major elements of natural rights: life, liberty, and property. This study critically evaluates the topic, applying a theory-driven method and arguing that political power originates from the people, not from the grace of God. Finally, the study provides recommendations on how independent and democratic nations can put these principles into practice.*

Key Words: Contestation, endurance, independent, interface, sovereign

Introduction

The sovereign state and fundamental rights are two of the major concepts in contemporary political science, yet research on how these ideas interact has been very limited. Before showing reciprocity between these political cum legal terminologies; it is worthy to give a brief description of the evolution of the state. The term 'state' is a contemporary invention, as it was unknown to the Greeks. They used 'polis' translated as 'City State' in English. Polis was more 'a city community' than a 'state'. The term 'state' came into practice only in the sixteenth century when the Italian political thinker, Niccolo Machiavelli, used it in his book, 'The Prince' (Jatkar & Rao, 1990, p. 27). The highest legal authority of the state is vested in sovereignty, which is the highest, unstoppable, absolute, unchecked power. In the eyes of other societies, the contemporary state is independent and sovereign. It

may provide them with a substance that would not need to be influenced by the will of any outside force.

The nature and development of the state are strongly associated with the history of the idea of sovereignty. The study of politics, particularly politics of state and statelessness, must start with the concept of sovereignty. Tansey (2011) argues that it distinguishes between internal and external, internal and external, hierarchy and anarchy, order and chaos, and security and insecurity. The emergence of the sovereign state, a uniquely modern phenomenon, was the pivotal moment of the early modern era. The Church, the Holy Roman Empire, and the corporations or large feudal lords gradually freed the kingship from these three political institutions, giving rise to the modern state. The concept of sovereignty is having absolute control over people. Thomas Hobbes supports absolute monarchy and maintains that sovereignty is above the law.

Fundamental rights are a category of rights that have received widespread recognition and extensive defense against infringement. The idea of basic rights is relatively recent in the history of political thought. Its origins can be seen in the theories of the social contract put forward by John Locke and Rousseau. In the seventeenth and eighteenth centuries, they argued that people have some basic rights that form the basis of the political system and cannot be arbitrarily eliminated by governments. Hobbes and Locke defended the idea of natural rights, attempting to establish the newly discovered independence and sovereignty of the state on a precept that would uphold the rights of its citizens. The kings of their era, who were luxuriating in the unrestricted authority that comes with the rule of an absolute sovereign, did not broadly endorse their idea as time went on.

Modern constitutions adopt a system of rules that establishes the long-standing lawful rights of the people in a community. The function of a bill of rights, however, extends beyond that since it also serves as a statement of the guiding ideals—human dignity, freedom, and equality—upon which society is based. Health, safety, the public good, and morality have historically been reasons for limiting basic rights; but, current constitutional systems often limit the ability to limit fundamental rights solely based on morality. For proper implementation, fundamental rights and procedural safeguards should be stated in explicit terms. Over time, a nation's constitution's "respected and implemented" bill of rights tends to evolve into more than just a powerful protection for its citizens, becoming the bedrock of a well-structured and autonomous society. A contract refers to an agreement established between two or more legitimate state authorities or between state authorities and another entity in society.

The modern political and intellectual foundation of a sovereign state is the "Social Contract Theory". Major components of natural rights, such as life, liberty, and

property, are included in a liberal democratic state as designed by social contract theorists. These rights are enshrined in the Constitution as fundamental rights. The cornerstones of a contemporary constitutional state are democracy, concern for civil rights, and the supremacy of law. In a society experiencing conflict and tension, the functions of the Constitution take on even greater significance. The Social Contract Theory was proposed as a remedy by Hobbes, Locke, Rousseau, and Kant. According to this idea, the state came into being as the result of a voluntarily reached agreement among equally autonomous and equal persons who were existing in a state of nature to join a society and be subject to a government set up by them to protect their inherent claims. This concept illustrates how the establishment of the state resulted from a first-stage agreement between the populace to join, followed by a second-stage pact between the populace and the ruler, in which the latter was granted supreme authority.

The Social Contract Theory aims to explain how societies and governments are constructed. It primarily focuses on the consciously expressed approval that people have for the formation of the government. John Locke's notion of the "Social Contract" gave rise to a new secular interpretation of natural law in which the people trusted their leaders with their power and any abuse of that trust by the leaders was interpreted as an infringement on the verdict of citizens, which permitted uprising against the authority. Locke supported a kind of governance that was bound by the Constitution. Locke's concept of the "Social Contract" gave rise to a novel irreligious interpretation of natural law in which the people trusted their leaders with their power and any abuse of that trust by the leaders was interpreted as an infringement on the elementary rights of the people, which permitted uprising against the government. Locke supported a legitimately constrained form of rule.

Furthermore, the principles of equality and liberty have had a significant impact on the fundamental rights protected by the constitutions of liberal democratic nations like Nepal and India. As a result, the government respects and upholds the freedoms and equality of every person. Following Locke's theories, the people have sovereign authority and it is exercised by the people, not granted by the Divinity.

Consequently, Locke's Social Contract theory serves as a precursor to democracy, encapsulated in Abraham Lincoln's famous phrase: "government of the people, by the people, and for the people." This concept finds practical application in Nepal and India, both being liberal democratic nations, during the process of drafting and implementing their constitutions. The objective of Social Contract Theory's jurisprudence is to promote harmony and order, which form the foundation of democratic countries like Nepal and India. This article aims to explore the extent to which the constitutions of these liberal egalitarian nations genuinely embrace the

core values of modern sovereign states and incorporate fundamental rights as the expression of the people's will, as postulated in the Social Contract Theory.

Objectives

This article has aimed to examine the nation-building process of modern liberal democratic sovereign states with the eyes of the Theory of Social Contract. It is also anticipated to assess the evolution of rights and take a closer look at sovereignty and fundamental rights relations in democratic states. It has also attempted to examine the sovereign state and fundamental rights interface with the outlooks of social contract theory observing some of the significant historical occurrences

Methodology

This study has followed an extensively descriptive method, using secondary data widely related to qualitative natures applying liberal philosophical theory. The study followed both inductive as well as deductive approaches. The inductive approach of reasoning has been applied in order to analyze the germination and development of sovereign states in global and national contexts. While the deductive approach has been applied for the endorsement of fundamental rights. Analytical, historical, and comparative methodologies have been pertinent to evaluate and characterize the data that have been collected for this study, which has chosen a qualitative research design.

Advancement of Contemporary Sovereign State

A political notion known as "sovereignty" describes absolute power or supreme authority. In many ways, the idea of absolute sovereignty is out-of-date because of a variety of problems. Sovereignty used to be defined as a state's independence and absolute power. As a result, it is typical to think of sovereignty as absolute, yet it is clear that state sovereignty is changing from an absolute to a relative one.

The word "state" is a modern invention because the Greeks were not familiar with it. They used a word called "polis," which is English for "City State." Polis was less of a "state" and more of "a city community." Niccolo Machiavelli, an Italian political philosopher, first introduced the term "state" in his book "The Prince" in the sixteenth century, which is when it first entered common usage (Jatkar & Rao, 1990, p. 27). The state of Machiavelli was an independent, non-religious organization. It was ethically self-sufficient and had no responsibilities to anybody or anything else (Mukharjee & Ramaswamy, 1999, p. 157). He claims that the state was a secular institution separate from the Church.

The state functions as a sovereign and autonomous entity capable of forming relationships with other states and exhibiting an international personality because it is regarded as a necessary and universal institution. It is a unique group of

political institutions that are specifically concerned with the organizing of dominance within a defined territory under the form of the common good. Maclean & Macmillan (2009, pp. 506-507) propose that the concept of the state is a highly dynamic subject in political studies, continuously evolving over time, and thus subject to intense academic debate. They emphasize that the definition of the term "State" is continually transforming.

Likewise, Blackstone, as cited by Dahal (2018, p. 179), underscores the obligatory aspect by defining sovereignty as the utmost, irresistible, absolute, and uncontrolled authority, where the highest legal power of the state resides. His primary focus lies on the supreme nature of sovereignty.

In the eyes of other societies, the present independent government is a sovereign government which may provide them with a substance that would not need to be influenced by the will of any outside force. According to L. J. Laski's argument (2010, p. 44), the state's authority is not only defined by the people and organizations it governs within its territory but also by its exclusive right to issue orders to them without being subject to orders from any of them. The state's declarations of intention are inherently considered right and just. Furthermore, sovereignty, as emphasized, holds a position above all other institutions and is not bound by their commands or directives.

The primary focus in the study of politics, particularly in analyzing state politics and statelessness, should be sovereignty. This concept serves as a crucial differentiator between internal and external affairs, national and foreign matters, order and chaos, as well as security and instability. Mishra (2008) highlights that sovereignty's fundamental significance makes it an unavoidable aspect to consider. Although its origins can be traced back to European experiences, its historical development and purported expansion to non-European regions have been extensively explored and documented in scholarly literature (p. 66). Though relatively infrequently, theories of international relations have also started to be interested in sovereignty. In Sabine (1920), the emergence of the sovereign state, a uniquely modern phenomenon, was the pivotal moment of the early modern era. Political theory, both then and now, was largely an attempt to identify the overarching pattern of events and to successfully give rise to new trends. It emerged from a century's conflicts.

Sovereignty has been defined from various perspectives, with Jean Bodin considered one of the first to systematically expound on it, although some scholars attribute the concept's origins to Machiavelli (Walker 1993, pp. 26-49). Bodin's notion of 'souveraineté' played a central role in his work 'Les Six Livres de la République' or Six Books of the Republic (1576). Similarly, Hinsley (1986) argued that during the civil war between Calvinist Huguenots and the Catholic monarchy

in France, there was a crisis of order. Bodin aimed to discard the medieval idea of a segmented society and instead proposed a unified body politic where the ruler and the ruled would be united, with the sovereign standing above human law (pp. 120-25). Ultimately, Bodin's ideas align with supporting an authoritarian system.

According to Bodin, sovereignty is the republic's unalienable right to exercise total dominion over its inhabitants and subordinates without regard to any legal restrictions (Cited in Hinsley, 1986, p. 122). The civil war's effects were also felt by English philosopher Thomas Hobbes, who saw the crisis of order as the main issue of his time. Appropriately, his 1651 book *Leviathan* presented a powerful monarch as the only solution to avoid disorder. Hobbes elevated the concept of "Sovereignty" to an absolute level that he believed could not be surpassed. According to him, individuals surrendered their rights to this sovereign authority, which remained unrestricted by any human, natural, or divine laws. The notion of sovereignty, as perceived by Hobbes, was absolute and of an absolutist nature (Mishra, 2008, p. 66). Hobbes advocated for absolute monarchy, where the sovereign authority stands above the law.

The unbridled nature of such absolute sovereignty posed inherent risks. Hinsley (1986) differentiates between Hobbes' and John Locke's stances on sovereignty, stating that while Locke rarely mentioned Hobbes and used the term sparingly, he aimed to establish sovereignty on constitutional principles, dividing it between the ruler and the ruled (pp. 144-149). This approach undermined the efforts of Bodin and Hobbes in upholding absolute sovereignty. Jean-Jacques Rousseau's 1756 work *The Social Contract* made an effort to rescue it from constitutional entrapment while avoiding the authoritarian difficulties of Hobbes' theory. According to Philpott (2003) Rousseau believed in the sovereignty of the state in which sovereignty was exercised with the consequence of the social contract, but sovereignty itself was indivisible and unbounded (p. 206). Immanuel Kant better accented Rousseau's outstanding exposition of sovereignty. A compromise between Hobbes' absolute power and Rousseau's ideas of freedom and consent was made in Kant's view of sovereignty. Kant's ideas on sovereignty echo those of Hobbes and Rousseau.

One example of notable endurance is the evolution of sovereignty from Bodin to Kant. In many ways, the strict pruning that Sovereignty underwent at the hands of these philosophers contributed to its adoption throughout time by nearly all of the Western states. Between the 17th and 20th centuries, they provided a large portion of the conceptual foundations for the developing European state system. Betardi convincingly argues that the authoritarian concept of sovereignty experienced a gradual decline, as it led to disastrous consequences in the first half of the 20th century, particularly during the two world wars, especially the second one (Betardi,

1996, pp. 91-109). But the notion of absolute sovereignty proved to be unproductive and ineffective.

According to political philosopher Carl Schmitt, the state always wins despite the constant threat of extinction. It demands a leader with authority over and above the law in the face of a prevailing fear. Schmitt believes that the "exception" can be decided by the sovereign. His "Political Theology," which was released in 1992, articulated this extreme conception of sovereignty. It posed a threat to the arduous constitutional-legal restraints imposed on sovereignty by constitutional liberalism in the preceding two centuries (Frye, 1966). Widespread concerns were raised about threats from extremes in state sovereignty. French philosopher Bertrand de Jouvenal (1957) expressed doubts about it in his book "*Sovereignty: An Enquiry into the Political Good*". Totalitarianism, which is innate to the latter's will, is encouraged by absolute sovereignty. He reasoned that this was risky and that constitutionalism by itself offered scant promise. He proposed that the source of the will that the sovereign must carry out come from the common moral concerns of the populace (Philpott 2003). Thus, the sovereign is placed in an unfavorable outright position. Consequently, it impedes the development of international law and the global order, promotes domestic centralism, and goes against the democratic idea of accountability. The concept of sovereignty suggests an authoritarian grip over internal affairs.

According to political scientists, sovereignty and nation-building are interconnected. They argue that a sovereign state plays a vital role in strengthening nation-building (Mishra, 2008, p. 66). Nation-building relies on key proposals such as institutionalizing the idea of equal citizenship, achieving collective security, and expanding constitutional rule. These proposals are crucial for addressing various issues, including identity, ethnicity, clashes of civilizations, gender discrimination, citizenship matters, and promoting a just and inclusive society (Bhandari, 2016, p. 97). Constitutionalism facilitates the realization of these concepts. However, the sustainability of a nation's politics largely hinges on how its constitution functions.

In the development of political thinking, the perception of fundamental rights is rather new. Its origins can be seen in the theories of Locke and Rousseau. In the seventeenth and eighteenth centuries, they argued that people have some basic rights that form the basis of the political system and cannot be arbitrarily eliminated by governments. The social contract laid the foundation for the concept of unalienable rights for citizens, which became the cornerstone of individual rights and liberties. Both the American Declaration of Independence and the French Declaration of the Rights of Man and Citizens were influenced by this notion (Khosla & Semwal, 2011, pp. 929-930). These fundamental rights endowed to individuals serve as the bedrock for good governance.

In ancient Greek city-states, certain rights and advantages were granted to their citizens, while aliens did not enjoy the same privileges. Over time, conventional rights that could be both granted and revoked were developed. The emergence of the concept of human dignity and equality, influenced by stoicism and Christianity, paved the way for a more universal and enduring notion of rights (Gorman, 2005, pp. 685). Over time, human rights became increasingly global in scope.

Stoics and Christians both believed in the divine origin of creation. Hobbes and Locke defended the idea of natural rights, aiming to establish the newfound independence and sovereignty of the state on principles that would protect the rights of its citizens. Their theories contradicted the unrestricted authority exercised by the kings of their time as absolute sovereigns, leading to disagreements with their ideas. However, over time, the concept of natural rights took root, and regimes that embraced a universal conception of human rights followed suit (Khosla & Semwal, 2011, p. 929). This concept of human rights emerged as a result of popular sovereignty.

A bill of rights is adopted by modern constitutions, establishing the long-standing legal rights of the individual. The function of such rights, however, goes beyond that because it also works as an announcement of the basic principles of equality, freedom, and human dignity, upon which society is based. Dixon (2015) describes, fundamental constitutional rights, including the rights to housing, health, security of the person, and participation in public affairs, play a vital role in safeguarding people's essential interests and maintaining social harmony (p. 406). The idea of constitutionalism transformed as a result.

Individual and group freedoms are preserved under fundamental rights. Tushnet (2001) examines the development of fundamental rights in three stages: (i) initially encompassing a set of fundamental civil liberties, such as the right to own property and enter into social contracts; (ii) they then expanded to include rights of political participation and the right to enjoy freedoms on an equal basis; and (iii) finally, they included social welfare rights. Rights to cultural and environmental preservation are also increasingly being viewed as fundamental rights. Only when advancing significant public interests and to a degree proportional to the limitation can fundamental rights be restricted.

Moreover, Tushnet discusses the situations for the limitations on fundamental rights in case of their contradictory arrangements. Health, safety, the public good, and morality have historically been the concerns that have justified limitations on fundamental rights; but, current constitutional systems often limit the power to limit basic rights solely on the basis of morality. When one such right conflicts with another, fundamental rights may also be restricted. When rights conflict, they are often balanced against one another; in other circumstances, one right is given

significant precedence over others. Application and justification issues are challenging for both of these approaches. Constitutional regimes safeguard fundamental rights by enforcing them through judicial systems with very different designs, moral commitments on the part of the populace and of government officials, and increasingly, through moral commitments on the part of the society as a whole. Fundamental rights are like 'dependent variables' as their validity and legitimacy depend upon the cause and effect of other subordinate components.

Additionally, the development of constitutionalism has been considered as an outcome of the humanistic paradigm shift. It initially concentrated on its institutional aspect, particularly the structure of the elements of state and organs of the government. But in modern times, it is essential to people's pleasure and quality of life. As a result, the protection of human rights is now a fundamental principle of constitutionalism. Nearly every changes to the State, whether in the economic, social, or political spheres, must be guided by concerns about rights. In reality, fulfilling this task when enacting constitutional amendments or a new constitution is not a difficult one. For proper implementation, fundamental rights and procedural safeguards should be stated in explicit terms.

The Bill of Rights and related processes are crucial in societies. Such charters change throughout time when they encounter obstacles to further improvements. The concerned authority should decide which principles should be considered and defended in the face of incompatible interests, in what way and how to achieve stability between different principles and interests, and between the wishes of the majority and the minority rights. When a country's bill of rights is respected and put into practice throughout time, it often serves as both the foundation for a peaceful and democratic society as well as an effective shield safeguarding the individual (Jain, 2006, pp. 151–152). The bill of rights was the previous name for what we now refer to as fundamental rights.

In this regard, it is important to stress the following: when correctly implemented, inalienable rights are one of the most powerful weapons for restoring peace or averting conflicts since they embody the ambitions and interests of all parties and come with protective mechanisms and processes. Internal disputes frequently result from systematic breaches of human rights. For perpetual peace, the different dimensions have to be kept in account. Some constitutions make an effort to preserve the bond between the people and the state while denying the individual any rights in favor of focusing solely on outlining obligations.

Modern Sovereign State and Social Contract Theory

The theoretical and political underpinning of the contemporary sovereign state is the Social Contract Theory. According to social contract theorists, a liberal

democratic state must incorporate important aspects of natural rights such as life, liberty, and property in the form of fundamental rights in its constitution. Human rights, democracy and constitutional government are the fundamental tenets of contemporary politics.

Constitutions that potentially control how society operates now are frequently referred to as "Social Contracts." In a democratic nation, the people often decide for themselves how to organize, settle conflicts between interests, and shape the state. They put less emphasis on the social agreement that exists between the people and the government where they reside. Consequently, at a society's most vulnerable period of conflicts and tensions, the tasks of the constitution have more significance. A human rights-based constitution may be an effective instrument to avoid or settle conflict while taking into consideration the government's oppression of the populace, according to the UN, an international body, which sought the legal document to protect the democratic process (UN, 2018, pp. 6-7). It was expected that the tool would be integrated and represent the voices of the people. It emphasizes constitutional government and the supremacy of law.

The Social Contract Theory, embraced by Hobbes, Locke, Rousseau, and Kant, stands as a widely accepted concept. Hobbes contends that it represents a significant addition to prevailing political and moral ideologies. Locke and Rousseau, in a similar vein, are highly regarded as the foremost proponents of this immensely influential theory, which has played a pivotal role in shaping moral and political thought in the modern Western world. Glaser (2014) defines the moral and political aspects of the Social Contract, while in the twentieth century, John Rawls' Kantian version of the theory reinvigorated philosophical interest in moral and political thought. Subsequently, scholars like David Author and others explored new analyses of the subject (pp.25-26). These actions set the stage for the formal foundation of the state.

According to this idea, the state came into existence as a result of a voluntarily negotiated agreement between equal, autonomous individuals who were living in a state of nature to join a society and subject to a government set up by them to protect their natural rights. This idea shows how the creation of the state was the outcome of a two-stage bargain between the populace and the government, in which the latter was given authority and power.

The Social Contract theory encompasses two fundamental principles that the human mind consistently upholds: the importance of freedom's value, emphasizing 'will' over 'force' as the foundation of governance, and the significance of justice, asserting that 'right' should prevail over 'might' as the bedrock of all political societies and systems of order (Jatkar & Rao, 1990, pp. 96-97). They focus on representative government. The subsequent sections examine

these claims in greater detail, first focusing on the conceptual facets of the interaction between sovereign state and fundamental rights before moving on to an empirical examination of democratic development in non-state entities.

Conventionality of Rights and Interface with Modern Sovereign States

The Social Contract Theory pursues to clarify the foundation of societies and governments. It mainly concerns on the deliberate approval that people give to the establishment of the government. Grotius, Hobbes, Pufendorf, Locke, Rousseau, and Kant were the greatest notable proponents of the social compact and natural rights during the seventeenth and eighteenth centuries. They found an alternative solution to the issue of political power. Grotius held the view that every human being had intrinsic rights. Hobbes, on the other hand, asserted that people voluntarily cede their rights to a powerful ruling body, whether it takes the shape of a monarchy or a parliamentary government. Contrary to Hobbes, Pufendorf disputed the notion that a state of nature automatically translates into a state of conflict (Laski, 2010, pp. 89–95). They sought for social contract in order to prepare the ground for an organized institution.

Samual Salzborn (2015) very precisely highlights, "No freedom without sovereignty-but conversely, and recalling the twofold thrust of sovereignty it does not allow individual freedom." So, freedom and sovereignty are complementary to each other. The idea of natural rights played a momentous role in Locke's legal and political theory. In fact, he proclaimed the three cardinal rights of "life, liberty, and property," which fundamentally influenced and inspired the 1776 Declaration of American Independence. According to Locke, the state aims to safeguard and uphold peoples' inalienable rights. His 'inalienable' rights as an individual were guaranteed to him even today and were incorporated in several constitutions.

One of the greatest thinkers of all time is John Locke (1632–1704) who has earned the title of "Father of Classical Liberalism" from many people. He is equally crucial to the Social Contract Theory as Francis Bacon, being the second-earliest British empiricist. He established his Social Contract Theory in his book *Two Treatises on Civil Government* (1690). Surprisingly, his work had an impact on the development of epistemology and political philosophy. John Locke's ideas had a profound impact on various influential figures, such as Voltaire and Rousseau, as well as numerous thinkers during the Scottish Enlightenment and the American revolutionaries. His influence can be seen in both classical republicanism and liberal theory, evident in the principles expressed in the United States Declaration of Independence (Myers, 1995, pp. 632–633). The political ideologies that sprang out of the Renaissance diminished the value of the individual and supported the state's ultimate sovereignty.

It was necessary to understand the ideas of natural law and the social contract in order to protect individual rights against the sovereign's supreme authority. Observing the Glorious Revolution of 1688 and the rise of individualism in England at the time, John Locke had a significant impact on political and legal ideas. Therefore, Locke revised his understanding of the Social Contract and rejected Hobbes' original notion of the state of nature (Singh, 1959, p. 321). Locke espouses liberal perspectives on the social contract.

John Locke's concept of the "Social Contract" gave rise to a novel secular interpretation of natural law in which the people trusted their leaders with their power and any abuse of that trust by the leaders was interpreted as an infringement on the basic rights of the people, which permitted uprising against the existing rule. Locke advocated for a form of government that was appropriately limited in its powers. The emergence of the nineteenth-century laissez-faire doctrine, which promoted individual freedom in economic matters, can be traced back to the foundations of Locke's theory. Unlike Hobbes, who favored a strong State authority, Locke emphasized the importance of individual liberty (Forde, 2009, p. 428). In fact, people have inherent autonomy. Governments were merely the people's representatives, and if they failed to carry out their duties to the people, it was reasonable to remove them. He made an effort to provide concrete safeguards against governmental interference with the natural order. In Locke's opinion, the sovereign did not defend all rights and the people still had the majority of the power. Sovereignty and the rule of law were central to Locke's Social Contract. The "Will" of the people granted sovereignty. The people would still remember this. He also stated that the people had sovereignty over the state and that the state was only supreme if it was restrained by natural and legal codes.

Subjects were viewed as the cornerstone of sovereignty and the state as the protector of personal freedom. According to Locke, the Social Contract surrendered power to the community rather than the sovereign. According to his opinion, there was only a political society everywhere, in which each person transferred their inherent power to the community. Locke emphasized the significance of the "will" of the people in establishing a democratic society by using the phrase "there and there only." As a result of everyone in society resigning their intrinsic right to free "Will" to the community in exchange for performing the people's duties, a political society is given the power to safeguard property and deal with criminal activity. No one can give more than they already have, hence the power cannot be more than what people had in their natural condition before joining a society and donating it to the community. Locke's concept of 'community' refers to a government where the people are both the creators and the beneficiaries of the governance. Consequently, community rights take precedence over individual rights, as individuals willingly surrender their rights to the community,

whose authority stems solely from the people. Therefore, the term "hands of the community" symbolizes the governing entity acting according to the will of the people (Treatise Concerning Government, II, Sect., 151). The collective will of the people plays a decisive role in the establishment and functioning of such a community.

Locke argued that the people surrendered their rights to the sovereign authority in order to protect and uphold the natural law. The further rights, including the rights to dignity of life, freedom, and property, were kept by the citizens themselves because they were seen as natural and unalienable. Therefore, it might be claimed that Locke supports individuals giving up some of their rights. Even in today's parliamentary democracy, Lock's idealistic outlook is strongly represented. His theories helped to conceptualize the opposition to absolutism and laid the groundwork for parliamentary democracy. Furthermore, Locke's principles of liberty and equality have had a significant impact on the basic rights protected in the form of fundamental rights by the constitutions of liberal democratic nations like India and Nepal. Individual freedom and equality are greatly valued and so upheld by the state. According to Locke's theories, the people possess sovereignty. According to the Social Contract Theory, it is the people who exercise political power, not divine favour.

Locke's Social Contract Theory is therefore a forerunner of democratic theory, which is the governance of the people, by the people, and for the people, to borrow a term from Abraham Lincoln when he was president of the United States. Thus, the social contract idea serves as the foundation for contemporary democratic governments that uphold the principles of free and fair elections, such as those in Nepal and India. By electing a limited group of individuals to form the government, Nepal and India put the Social Contract Theory into effect. The major problem in these nations is that the political systems do not uphold Locke's Social Contract values. The government and the people must live under the principles of 'Pactum Unionis and Pactum Subjectionis' with due respect and obedience towards the rights and duties that come with them.

Conventionality control has become a separate doctrine in inter-American courts for the protection of human rights. To preserve the public voice in a modern sovereign state, every political community has a constitution, and it is believed that the constitution expresses the "will" of the people. The conventionality norms operate in the simple principle of being responsible towards the existence of one another.

Conclusion

The study has shown the interface between sovereign state and fundamental rights that are two crucial concepts in contemporary political science. Their relationship is impossible to generalize because different features of sovereignty have varied effects on the viability of fundamental rights. Understanding sovereignty is necessary for political analysis, especially that of states and being stateless. It is the supreme, unstoppable, absolute, unchecked authority in which the highest legal authority of the state is vested. The modern state is an autonomous sovereign state. The idea of fundamental rights is a comparatively recent phenomenon. Fundamental rights are a category of rights that have received widespread recognition and extensive defense against infringement. Every political community has a constitution since it is a state's fundamental legislation. It is assumed that the constitution reflects the "will" of the people and guarantees fundamental rights as the thematic arrangements of rights. Today's constitutions incorporate a bill of rights that outlines the long-standing legal rights of each citizen in society.

The Social Contract Theory is a political and philosophical foundation for a modern sovereign state. It pursues to clarify the foundation of societies and governments and concerns about the deliberate approval that people give to the establishment of the government. A liberal democratic state includes life, liberty and property as major elements of natural rights in the form of fundamental rights in its constitution. It emphasizes on the exertion of political power from the people and not from the grace of God. It is put into practice in each and every sovereign state by electing and selecting peoples' representatives to create the government.

The current constitutions of Nepal and India reflect the "will" of the people to honor and recognize the verdict of the citizenry. They obligate everyone to follow the terms mentioned in it, i.e., living agreeing to recognized processes and to respect the public voice. It can only be assumed that the concept of sovereignty in the future is likely to become much blurred and vague if the idea of global government is intended. In the face of both internal and foreign influences, sovereignty is the highest authority of the state. These powers are derived from the will of the people, and the people's ultimate 'will' is expressed in the basic freedoms guaranteed by the constitutions of democratic nations like Nepal and India. Lastly, the study concludes that since it is extremely difficult to separate rights from a sovereign state, the conventionality of rights is reciprocal to a sovereign state. Finally, the study expects that further research can be conducted, building on what has been learned so far, to examine all potential interfaces between sovereign state and fundamental rights.

Declarations

Ethical Consent and Consent to Participate

I declare that this research was conducted ethically and take sole responsibility for any plagiarism or misconduct.

References

- Betrati, M. (1996). The international community and limitations of sovereignty. *Diagnose*, 44 (40), 91-109.
- Bhandari, S. (2016). *Constitutional design and implementation dynamics: Federalism and inclusive nation building in Nepal*. Himal Innovative Development and Research.
- Dixon, R. (2015). Partial bills of rights. *The American Journal of Comparative Law*, 63 (2), 403-438. URL: <https://www.jstor.org/stable/10.2307/26425420>
- Forde, S. (2009). The charitable John Locke. *The Review of Policies*, 71 (3), 428-458. URL: <https://www.jstor.org/stable/25655842>
- Gautam, D.R. (2022). *Constitutional provision of fundamental rights: A comparative study of Nepal and India*. Unpublished PhD Dissertation submitted to Faculties of Humanities and Social Sciences, Tribhuvan University.
- Glaser, D. (2014). Liberal egalitarianism, theorica. *A Journal of Social Science and Political Theory*, 61(140), 25-46. URL: <https://www.jstor.org/stable/24719979>
- Gorman, R. F. (Ed.). (2005). Human rights. *Ethics*, 2, 213-223.
- Hinsley, F. (1986). *Sovereignty*. Cambridge University Press.
- Hobbes, T. (1651). *Leviathan*. England: Andrew Crooke. <http://www.gutenberg.org/files/3207-h/3207-h.htm>
- Jain, N. (2006). Human rights under democracy. *The Indian Journal of Political Science*, 67 (1), 143-152. URL: <https://www.jstor.org/stable/41856200>
- Jatkar, S. D. & Rao, V. K. (1990). *Political theory and institutions*. Sterling Publishers Private Limited.
- Khosla, S. & Semwal, M. M. (2011). Human rights jurisprudence in Indian constitution. *The Indian Journal of Political Science*, LXXII (4), 927-956.
- Laski, H. J. (2010). *A grammar of politics*. Surjeet Publication.
- McClean, I & McMillan, A. (Eds.). (2009). *Oxford dictionary of politics* (3rd ed.). New York: Oxford University Press.

- Mishra, A. (2008). Theorizing state sovereignty in south Asia. *Economic Weekly*, 43 (40), 65-72. URL: <https://www.jstor.org/stable/40278028>
- Mukharjee, S. & Ramaswamy, S. (1999). *A history of political thought- Plato to Marx*. Prentice Hall of India.
- Myers, P. C. (1995). The state of nature and the basis of Locke's political thought. *Polity*, 27 (4), 629-649. URL: <https://www.jstor.org/stable/3234963>
- Philpott, D. (2003). *Ideas and the evolution of sovereignty*. Pennsylvania State University Press.
- Sabine, G. N. (1920). The Concept of the State as Power. *The Philosophical Review*, 29 (4), 301-318. URL: <https://www.jstor.org/stable/2179076>
- Salzborn, S. (2015). No Sovereignty without Freedom: Machiavelli, Hobbes and Global Order in the Twenty-First Century. *Theoria: A journal of Social and Political Theory*; 62, (144), 19-39. URL: <http://www.jstor.com/stable/24719943>
- Singh, R. (1959). John Locke and idea of sovereignty. *The Indian Journal of Political Science*; 20 (4), 320-334.
- Tansey, O. (2011). Does democracy need sovereignty? *Review of International Studies*, October 2011, 37(4), (October 2011), 1515-1536. URL: <https://www.jstor.org/stable/23025564>
- Tushnet, M. (2001). *International Encyclopedia of social and behavioral sciences* (pp. 5552-5856). James Wright.
- United Nations, H. R. (2018). *Human rights and constitution making*. Office of the High Commissions.