

HISTORICAL DEVELOPMENT

Thomas Hobbes (1588-1679)

In the seventeenth century Hobbes, an English political thinker, further developed the concept of sovereignty. As an exponent of the theory of the social contract, Hobbes argued that the state was a product of the will of the people. Sovereignty is an attribute of the state; its character is determined by the terms of the social contract.

As men emerge from the state of nature—characterized by law of the jungle—and form a state to attain order, peace and security, they create a sovereign for this purpose. They surrender all their natural rights—the right of the stronger to oppress the weaker—to the sovereign. The surrender is complete, final and irrevocable. How can they ask for restoration of their natural rights once they have become civilized men! Defying the authority of the sovereign would mean reversion to the state of nature, the state of anarchy, law of the jungle, where the stronger will be free to oppress the weaker. Hobbes, therefore, places authority of the sovereign beyond challenge.

Hobbes's chief contribution to the theory of sovereignty consists in adding an element of legitimacy to authority of the sovereign, because he held: (a) that the sovereign is the product of the will of the people; and (b) that the sovereign enjoys his supreme authority for its functional value, that is by virtue of providing order, peace and security in the place of anarchy and oppression.

John Locke (1632-1704), another English exponent of the theory of the social contract, did not concede absolute sovereignty of the state. He thought that the supreme power in society was held by the people which came into existence before the formation of the state. The natural rights of life, liberty and property were retained by the people and the state was created for the protection of these vital rights. Ruler or government could not possess supreme power.

Jean Jacques Rousseau (1712-78)

In the eighteenth century, Rousseau, the French exponent of the theory of the social contract, made an important contribution to the theory of sovereignty, by introducing the doctrine of popular sovereignty. While another chief exponent of the social contract theory, viz. Hobbes had created a sovereign apart from the people, Rousseau made the people themselves sovereign. In his opinion, the social contract was concluded between the people in their individual capacity on the one hand, and the people in their corporate capacity on the other. According to this line of argument sovereignty is retained by the people themselves in their corporate capacity, represented by the general will, while their actual will is subordinated to their real will. Rousseau, therefore, suggested that sovereignty belongs to the people; it could be exercised only in an assembly of the whole people. Government is but an agent of the general will which reigns supreme. In

other words, a government cannot logically claim to hold sovereignty. Rousseau also maintained that sovereignty is absolute and unlimited because the supreme direction and control of the general will is accepted by the people unconditionally in the interests of their freedom. Rousseau went to the extent of saying that the 'people can be forced to be free'.

General Will

According to J.J. Rousseau (1712-78), a French philosopher, the common denominator of the real will of the people which embodies not only their common interest but also everybody's real and long-term interest. Man realizes his freedom by submitting his particular will to the direction of the general will.

Jeremy Bentham (1748-1832)

Bentham, the famous English Utilitarian, argued that sovereignty was not limited by law, but was subject to moral limitations. Bentham maintained that sovereignty was limited by the possibility of resistance, and there were conditions under which resistance was morally justified. He, therefore, insisted that the sovereign should justify his authority by useful legislation with the object of promoting the greatest happiness of the greatest numbers.

John Austin (1790-1859)

In the nineteenth century, the theory of sovereignty as a legal concept was perfected by Austin, an English jurist. He is regarded as the greatest exponent of the monistic theory of sovereignty. In his *Province of Jurisprudence Determined* (1832) Austin observed:

If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and that society (including the superior) is a society political and independent.

Austin's theory of sovereignty was influenced by the then prevailing conditions in England. The early Utilitarians had sought to remove the anomalies of common law by subordinating it to a superior law which consisted in the universal and hence not bound by the dictates of natural law or any other superior law. Austin sought to define law as the command of the sovereign, obliging the subject to do or refrain from doing, certain acts, failure to obey the law being visited by penalty. Thus, he identified the following characteristics of law: (a) It must emanate from a determinate source, that is the sovereign, to be clearly located in the state; (b) it must be the expression of the command of the sovereign; and (c) it must be backed by sanctions. In other words, disobedience to law must be punishable. These characteristics are peculiar to the positive law of the state, not to be found in natural law, custom or religious commandments. Thus, natural law, or for that matter any superior law, is not law in the proper sense of the term. Accordingly, in case a positive law enforced by the state comes into conflict with the natural law or religious

commandments, etc., the former must prevail. In this way Austin established supremacy of the power, authority and commands of the sovereign beyond doubt. He maintained that any rights of the citizens, including the right to property, were nothing but concessions granted by the sovereign. The subjects could have no legal right against the state.

By establishing a single source of all positive law Austin put forward a monistic view of law, state and sovereignty. It is significant that Austin's theory solely dwells on the legal character of sovereignty; it does not repudiate moral or social limitations on the power of the state. He does not declare the state as a 'perfect embodiment of reason' as the idealist theory had maintained. Austin is an exponent of absolute and unlimited sovereignty purely from the legal or formal point of view. He admits that sovereign authority habitually observes fundamental moral principles though not legally bound by any external authority. He does not envisage an irresponsible sovereign, but holds that the sovereign cannot be formally made responsible to any authority similar to himself; his authority is legally superior to all individuals and groups within his jurisdiction.

permanent dictates of natural reason; the state could neither ignore nor abrogate that superior law. Repudiating these arguments, Austin advanced his theory of positive law which expressed the will of the legal sovereign of the state and