

"Sovereignty is the supreme power of the State over citizens and subjects unrestrained by law".  
-Bodin

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## SOVEREIGNTY AND PLURALISM

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### MEANING OF SOVEREIGNTY

The term "Sovereignty" has been derived from the Latin word "Superanus" which means supreme or paramount. Although the term "Sovereignty" is modern yet the idea of "Sovereignty" goes back to Aristotle who spoke of the "supreme power of the state". Throughout the Middle Ages the Roman jurists and the civilians kept this idea in their mind and frequently employed the terms "Summa" potestas and "Plenitudo potestatis" to designate the supreme power of the state. The terms "Sovereign" and "Sovereignty" were first used by the French jurists in the fifteenth century and later they found their way into English, Italian and German political literature. The use of the term "Sovereignty" in Political Science dates back to the publication of Bodin's "**The Republic**" in 1576. "The word sovereign", says J.S. Roucek and others, "entered the vocabulary of political theory from the feudal order, wherein it designated a relationship between persons. The term sovereign had been applicable to any feudal overlord with authority over subjects in his own dominions"<sup>1</sup>

#### Two Aspects of Sovereignty

There are two aspects of sovereignty: internal sovereignty and external sovereignty. Internal Sovereignty means some persons, assembly of group of persons in every independent state have the final legal authority to command and enforce obedience. This sovereignty exercises its absolute authority over all individuals or associations of the individuals within the state. Professor Harold Laski has very aptly remarked in this connection: "**It issues orders to all men and all associations within that area; it receives orders from none of them. Its will is subject to no legal limitation of any kind. What it proposes is right by mere announcement of intention**".

We mean, by External Sovereignty, that the State is subject to no other authority and is independent of any compulsion on the part of other States. Every independent state reserves the authority to renounce trade treaties and to enter into military agreements. Each estate is independent of other states. Every independent State is at liberty to determine its foreign policy and to join any bloc of power it likes. Any other state does not reserve any right to interfere with the external

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1. J.S. Roucek and others: "Introduction to Political Science" (1954), p. 49.

matter of an independent state. Thus, by external sovereignty we mean that every state is independent of other states. In other words, External Sovereignty means national freedom. Professor Laski has very correctly observed in this regard, "The modern state is a sovereign state. It is, therefore, independent in the face of other communities. It may infuse its will towards them with a substance which need not be affected by the will of any external power". This statement of Professor Laski makes it very clear that the State possesses both external and internal sovereignty.

### DEFINITIONS OF SOVEREIGNTY

(1) "That characteristic of the state by virtue of which it cannot be legally bound except by its own or limited by any power other than itself". -Jellineck

(2) "Sovereignty is the sovereign political power vested in him whose acts are not subject to any other and whose will cannot be over-ridden". -Grotius

(3) "Sovereignty is the supreme power of the State over citizens and subjects unrestrained by law". -Bodin

(4) Sovereignty is "the common power of the state, it is the will of the nation organised in the state, it is right to give unconditional orders to all individuals in the territory of state". -Duguit

(Droit Constitutional Vol. I, page 113)

(5) Burgess characterised sovereign is the "Original, absolute, unlimited power over the individual subjects and over all associations of subjects".<sup>2</sup>

(6) "Sovereignty is that power which is neither temporary nor delegated, nor subject to particular rules which it cannot alter, not answerable to any other power over earth".<sup>3</sup> -Pollock

(7) "Sovereignty is the supreme will of the state". -Willoughby

(8) "Sovereignty is the daily operative power of framing and giving efficacy to the laws". -Woodrow Wilson

(9) Sovereignty is "the supreme, irresistible, absolute, uncontrolled authority in which the 'jurist summi imperi' reside". -Blackstone

(10) The sovereignty is "legally supreme over an individual or group, says Laski, he possesses "supreme coercive power".

After closely studying and carefully examining the definitions of sovereignty, given above, we arrive at the conclusion that sovereignty is the supreme political power of the state. It has two aspects: internal and external. Sovereignty is an unlimited power and it is not subject to any other authority.

### CHARACTERISTICS OR ATTRIBUTES OF SOVEREIGNTY

According to Dr. Garner, following are the characteristics or attributes of Sovereignty :

- (1) Permanence.
- (2) Exclusiveness.
- (3) All-Comprehensiveness.
- (4) Inalienability.
- (5) Unity.
- (6) Imprescriptibility.
- (7) Indivisibility.

2. Burgess: "Political Science and Constitutional Law", Vol. I, p. 52.

3. Pollock: "History of the Science of Politics", p. 49.

- (8) Absoluteness or illimitability.
- (9) Originality.

### (1) Permanence

Permanence is the chief characteristics of sovereignty. Sovereignty lasts as long as an independent state lasts. The death of the king, the overthrow of the government and the abdication of power does not lead to the destruction of sovereignty. We should keep in mind the basic fact that the king or the ruler exercises sovereign power on behalf of the state and, therefore, sovereignty lasts as long as the state lasts. The death of the king or the overthrow of the government does not affect sovereignty. This is the reason why people in England used to say "The King is dead, long live the King". Dr. Garner has beautifully summed up this idea in the following manner:

**"Sovereignty does not cease with the death or temporary dispossession of a particular bearer or the reorganisation of the state but shifts immediately to a new bearer, as the centre of gravity shifts from one part of physical body to another when it undergoes external change".<sup>4</sup>**

### (2) Exclusiveness

By exclusiveness we mean that there can be two sovereigns, in one independent state and if the two sovereigns exist in a state, the unity of that state will be destroyed. There cannot exist another sovereign state within the existing sovereign state.

### (3) All Comprehensiveness

The State is all comprehensive and the sovereign power is universally applicable. Every individual and every association of individual is subject to the sovereignty of the state. No association or group of individuals, however, rich or powerful it may be, can resist or disobey the sovereign authority. Sovereignty makes no exception and grants no exemption to anyone. It grants exemptions only in the case of foreign embassies and diplomatic representatives of foreign countries on the reciprocal basis. This does not in any way restrict the sovereignty of the state in the legal sense. The state can abolish and withdraw the diplomatic privileges granted to foreigners.

### (4) Inalienability

Inalienability is another characteristic of sovereignty. Sovereignty is inalienable. By inalienability we mean that the State cannot part with its sovereignty. In other words, we can say that the sovereign does not remain the sovereign or the sovereign state, if he or the state transfers his or its sovereignty to any other person or any other state. Sovereignty is the life and soul of the state and it cannot be alienated without destroying the state itself. Lieber has very aptly remarked in this connection: "Sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality to another without self-destruction".<sup>5</sup>

### (5) Unity

Unity is the very spirit of Sovereignty. The sovereign state is united just as we are united.

### (6) Imprescriptibility

By imprescriptibility, we mean that if the sovereign does not exercise his

4. Dr. Garner: "Political Science and Government".

5. Lieber: "Political Ethics", Vol. I, p. 219.

sovereignty for a certain period of time, it does not lead to the destruction of sovereignty. It lasts as long as the state lasts.

### (7) Indivisibility

Indivisibility is the life-blood of sovereignty. Sovereignty cannot be divided. American statesman Calhoun has declared, "Sovereignty is an entire thing; to divide it is to destroy it. It is the supreme power in a state and we might just as well speak of half square or half a triangle as half a sovereignty". Gettell, has also very aptly remarked in this regard, "If sovereignty is not absolute, no state exists, if sovereignty is divided, more than one state exists".

### (8) Absoluteness

Sovereignty is absolute and unlimited. The sovereign is entitled to do whatsoever he likes. Sovereignty is subject to none.

### (9) Originality

By originality we mean that the sovereign wields power by virtue of his own right and not by virtue of anybody's mercy.

## DIFFERENT KINDS OF SOVEREIGNTY

Following are the different kinds of sovereignty:

### (1) Nominal and Real Sovereignty

In ancient times many states had monarchies and their rulers were monarchs. They wielded absolute power and their senates and parliaments were quite powerless. At that time they exercised real sovereignty. Therefore, they are regarded as real sovereigns. For example, Kings were sovereigns and hence they were all powerful in England before fifteenth century, in U.S.S.R. before eighteenth and nineteenth centuries and in France before 1789. The state of affairs changed in England after the Glorious Revolution in 1688. Now the King is like a rubber-stamp. The British king has a right to encourage, warn and advise his Ministers or seek any information about the administration. Except these ordinary powers, all other powers of the British king are wielded by his Ministers. Lowell has summed up the position of the British Sovereign in these words: "According to the early history of the constitution, the ministers were the counsellors of the king. It was for them to advise and for him to decide. Now the parts are almost reversed. The king is consulted but the ministers decide".

### (2) Legal Sovereignty

Legal sovereignty is that authority of the state which has the legal power to issue final commands. It is the authority of the state to whose directions the law of the State attributes final legal force. In every independent and ordered state there are some laws which must be obeyed by the people and there must be a power to issue and enforce these laws. The power which has the legal authority to issue and enforce these laws is legal sovereignty. In England, the King-in-Parliament is sovereign. According to Dicey, "The British Parliament is so omnipotent legally speaking.... that it can adjudge an infant of full age, it may attain a man of treason after death; it may legitimise an illegitimate child or if it sees fit, make a man a judge in his own case". The authority of the legal sovereign is absolute and law is simply the will of the sovereign. Since the authority of the sovereign is unrestrained, he reserves the legal right to do whatever he desires. It is the legal sovereign who grants and enforces all the rights enjoyed by the citizens and, therefore, there cannot be any right against him. The legal sovereign is, thus, always definite and determinate.

Only the legal sovereign has the power to declare in legal terms the will of the state. The authority of the sovereign is absolute and supreme. This authority may reside either in the monarch or in an absolute monarchy or it may reside in the body of persons.

### (3) Political Sovereignty

Dicey believes that "behind the sovereign which the lawyer recognises, there is another sovereign to whom the legal sovereign must bow. Such sovereign to whom the legal sovereign must bow is called political sovereign. In every ordered state the legal sovereign has to pay due attention to the political sovereign. According to Professor Gilchrist, "The political sovereign means the sum-total of influences in a State which lie behind the law. In modern representative government we might define it roughly as the power of the people". In other words by political sovereign in the representative democracies, we mean the whole mass of the people or the electorate or the public opinion. But at the same time, it cannot be emphatically asserted that political sovereignty can definitely be identified with the whole mass of the people, the electorate or the public opinion. Political sovereignty is a vague and indeterminate term. Political sovereignty rests in that class of people under whose influence the mass of the people is or the people are. Political sovereignty rests in the electorate, in the public opinion and in all other influences in the state which mould and shape the public opinion. In the words of Professor R.N. Gilchrist, "Political sovereign manifests itself by voting, by the press, by speeches, and in many other ways not easy to describe or define. It is, however, not organised and it can become effective only when organised. But the organisation of political sovereignty lead to legal sovereignty. The two are aspects of the one sovereignty of the state". As a matter of fact, legal and political sovereignty are the two aspects of the one sovereignty of the state. But at the same time both the aspects stands poles apart. Legal sovereign is a law-making authority in legal terms, whereas political sovereignty is behind the legal sovereign. The legal sovereign can express his will in legal terms. But the political sovereign cannot do so. Legal sovereign is determinate, definite and visible whereas political sovereign is not determinate and clear. It is recognised. Legal sovereignty is vested in the electorate, public opinion and other influences of the state which mould or shape the public opinion. Legal sovereign is recognised by lawyers while political sovereign is not. Legal sovereign cannot go against the will of the political sovereign whereas political sovereign, though not legally powerful, controls over the legal sovereign. The concept of legal sovereign is clear whereas the concept of political sovereign is vague. Legal sovereign is elected by the political sovereign whereas political sovereign is the electorate or the people. These are the points of difference between the legal sovereign and the political sovereign.

### (4) Popular Sovereignty

Popular sovereignty roughly means the power of the masses as contrasted with the power of the individual ruler of the class. It implies manhood, suffrage, with each individual having only one vote and the control of the legislature by the representatives of the people. In popular sovereignty public is regarded as supreme. In the ancient times many writers on Political Science used popular sovereignty as a weapon to refute absolutism of the monarchs.

According to Dr. Garner, "Sovereignty of the people, therefore, can mean nothing more than the power of the majority of the electorate, in a country where a system of approximate universal suffrage prevails, acting through legally established channels to express their will and make it prevail".

### (5) Deo Facto and De Jure Sovereignty

Sometimes a distinction is made between the De Facto (actual) sovereignty and De Jure (legal) sovereignty. A de jure sovereign is the legal sovereign whereas a de facto sovereign is a sovereign which is actually obeyed. In the words of Lord Bryce, de facto sovereign "is the person or a body of persons who can make his or their will prevail whether with the law or against the law; he or they, is the de facto ruler, the person to whom obedience is actually paid". Thus, it is quite clear, that de jure is the legal sovereignty founded on law whereas de facto is the actual sovereignty. The person or the body of persons who actually exercise power is called the de facto sovereign. The de facto sovereign may not be a legal sovereign or he may be a usurping king, a dictator, a priest or a prophet, in either case sovereignty rests upon physical power or spiritual influence rather than legal right. History abounds in examples of de facto sovereignties. For example, Oliver Cromwell became de facto sovereign after he had dismissed the Long Parliament. Napoleon became the de facto sovereign after he had overthrown the Directory. Likewise, Franco became the de facto sovereign after he had dislodged the legal sovereign in Spain. On October 28, 1922 Mussolini's Black Shirts marched on Rome. At that time, Parliament was the legal sovereign. Mussolini became the Prime Minister in the legal manner. He ruled parliament and ruled the country through parliament. Parliament remained the legal sovereign but he was the actual or de facto sovereign. Hitler also did the same in Germany. He too became the de facto sovereign. He controlled the legal sovereign and became the de facto sovereign. Similarly, Stalin remained the actual sovereign in U.S.S.R. for about three decades. After the Second World War and before the Egyptian Revolution King Farouk was the legal sovereign. General Naguib's 'coup de'etat' in Egypt and the abdication of King Farouk is another example of de facto sovereignty. Nazib was expelled and Nasser succeeded him in de facto sovereign. After the death of Nasser, Mr. Sadat succeeded him. After the assassination, Hosni Mobarak became the President of Egypt. Similarly, Ayub became the de facto sovereign after he had staged the military coup in Pakistan. When Ayub was overthrown Yahya Khan rose to power with the help of the army and became the de facto sovereign. After his defeat in 1971 at the hands of Indian army he handed power to Bhutto, who was thrown in July, 1977 by Zia-ul-Haq, who first of all became de facto and later on de jure sovereign. Thus, it is quite clear that the actual or de facto sovereign is the strongest active force in the State and it is capable of making his will prevail. But sometimes, it happens that de facto and de jure sovereignty ultimately coincide. In this connection, Dr. Garner has very aptly remarked, "**The sovereign who succeeds in maintaining his power usually becomes in the course of time the legal sovereign, through the acquiescence of the people or the reorganisation of the State, somewhat as actual possession in private law ripens into legal ownership through prescription**".<sup>6</sup> China and Pakistan are the glaring examples. In Soviet Union, the Communist Government became the de facto government of the successful Bolshevik Revolution of 1917. But in course of time, it became the de jure government also.

## IV. AUSTIN'S THEORY OF SOVEREIGNTY

John Austin (1790-1859) had been an eminent English jurist in the nineteenth century. He stated his theory a little more than a century ago. His theory is well explained in the famous book "Lectures on Jurisprudence". This book was published in 1832. Though he was much impressed by the views of Hobbes and Bentham, yet his theory of sovereignty is quite distinct. He explained very clearly

6. Dr. Garner, "Introduction to Political Science", p. 168.

and precisely the legal or monistic theory of sovereignty in his famous book "Province of Jurisprudence Determined" (1832). In his another famous book "Lectures on Jurisprudence" he drew a line of difference between law and morality. His statement of the theory of sovereignty runs like this, "If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of given society, that determinate human superior is the sovereign and that society (including the superior) is a society political and independent. Every positive law or every law simple or strictly so called, is set directly or circuitously by a sovereign person or body to a member or members of the independent political society wherein that person or body is sovereign or supreme".

After having closely studied and critically examined John Austin's theory of sovereignty, we discover the following highlights of this theory:

- (a) Sovereignty always resides in the determinate person or in a body of persons. In determinate person or a body of persons cannot be called sovereign. Nor does it reside in the General Will or electorate or God.
- (b) Sovereignty is absolute, indivisible and unlimited in both the cases: internal and external.
- (c) A society without sovereignty cannot be called a state.
- (d) The determinate human superior is the only law-maker. His commands are laws and without him the state can have no laws.
- (e) The determinate human has no rival of equal status in the state and nor does he obey the order of anyone.
- (f) The power of the determinate human superior is sovereignty.
- (g) The determinate human superior is subject to none or any power. The bulk of the people obey the sovereign's command as a matter of habit.

## **CRITICISM OF AUSTIN'S THEORY OF SOVEREIGNTY**

### **(1) This theory is against popular sovereignty**

This theory is deadly against Rousseau's concept of the General Will which is the very basis of democracy. It conflicts with the basic ideas of democracy. Austin's sovereign is superior and everybody else is sub-ordinate to him. The idea of popular sovereignty which lies at the basis of democracy has been ignored by Austin. In democracy supreme power resides in the people. On the contrary Austin's world is hierarchical. Thus, Austin's theory of sovereignty does not fit in with a democratic set-up.

### **(2) It ignores the power of public opinion and political sovereignty**

Austin's concept of sovereignty ignores the claim of public opinion and political sovereignty. Austin's determinate human sovereign is superior to all. He wields the power and exercise sovereignty. Austin's theory ignores the massive influence of the electorate, public opinion and the political sovereignty. Sir Henry Maine believes that it is a historical fact that sovereignty has repeatedly been for a time in the hands of a number of persons indeterminate.

### **(3) Law is not the command of the sovereign**

Austin is of the opinion that the determinate human superior is the only law-maker and his commands are laws. But Sir Henry Maine with other historical jurists has vehemently criticised and condemned Austin's theory of Sovereignty. Sir Henry Maine believes that sovereignty does not reside in the determinate human

superior. According to him "vast masses of influences, which we may call for shortness moral, that perpetually shapes, limits or forbids the actual direction of the forces by its sovereign".<sup>7</sup> Maine cites the example of Ranjit Singh whom he regards as an absolute despot possessing qualities of Austin's determinate human superior "Ranjit Singh", says Maine, "could have commanded anything; the smallest disobedience to his commands would have been followed by death or mutilation". Yet Ranjit Singh never "once in all his life issued a command which Austin could call law.... The rules which regulated the life of his subjects were derived from their immemorial usages and these rules were administered by domestic tribunals, in families or village communities".<sup>8</sup> Clark, Sidwick, Marby, Lowell, Wilson, T.H. Green, Lightwood, Marriam and Willoughby. All these political thinkers are of the opinion that John Austin has laid unnecessary emphasis on this only one element (the order of the sovereign) and ignored many other elements.<sup>9</sup> Austin's definition of law as "a command given by a superior to an inferior" is not accepted by most of the political thinkers. Professor Laski believes that to think of law as simple a command is even for the jurist, "to strain definition to the verge of decency". Many of the political thinkers believe that Austin's concept of sovereignty completely ignores the common law of Great Britain. John Austin attempted to defend this charge by saying that "whatever the Sovereignty permits, that is also law. But this defence of Austin could not satisfy the critics. The critics argued that the development of the Common Law was a great political stir which could not be averted by the sovereign. Hence, the sovereign had no other alternative than to permit the Common Law to exist. MacIver has very aptly remarked, "The state has little power to make custom and perhaps less to destroy it, although indirectly it influences customs by changing the conditions out of which they spring".<sup>10</sup> The sociologists are of the opinion that people abide by the laws not because the laws are the dictates of the sovereign but because these laws foster social unity. Laski is of the opinion that "the notion of commanding law is contingent and indirect, and the idea of penalty its, again, save in the most circuitous way, notably absent". Laski further observes, "The individual conscience is the only true source of law". Duguit goes so far as to say that it is not the state which creates law but is law which creates the state. Laws are merely the expression of social necessity". Krabbe discovers the spring of law in the community's sense of justice.

#### (4) Sovereign is not indivisible according to Pluralists

According to Pluralists, Sovereignty is not indivisible. It can be divided. Laski is of the opinion that, "it is impossible to make the legal theory of sovereignty valid for political philosophy. It would be a lasting benefit to Political Science if the whole concept of sovereignty were surrendered". Lindsay remarks, "If we look at the facts it is clear enough that the theory of the sovereign states has broken down". Barker is also of the opinion that no other principle of Political Science is so useless as the theory of sovereignty. The Pluralists challenge the claims of the state to

7. Sir Henry Maine: "Early History of Institution", p. 359.

8. Ibid.

9. Clark, "Practical Jurisprudence", "A Commentary on Austin", p. 116 ff. Sidwick: "Elements of Politics", Appendix A. Markby: "Elements of Law", p. 24. Lowell: "Essays on Government" (Chapter 5 on Sovereignty); Wilson, "An Old Master and other Essays", Chapter 5; T.H. Green, "Political Obligations", pp. 93-122; Lightwood, "Nature of Positive Law", Ch. 13; Marriam, "History of Society", p. 145 ff; Willoughby, "Fundamental Concept of Public Law", p. 116 ff and p. 129 ff.

10. MacIver: "Modern State", p. 161.

supremacy on the ground that society consists of many associations and the state is but one among them. Therefore, the state cannot be endowed with sovereign power of the community. Sovereignty is divisible and it must be divided between the state and various other association of the individuals.

**(5) Sovereignty does not reside with a determinate person in the federation**

In a federal state sovereignty does not reside with a determinate person. It is impossible to discover sovereign in a federal state. It is very difficult to locate the sovereign in a federal state. For example, in the federal state of U.S.A. sovereignty resides neither with the person of the president nor with his office nor with the Congress. It resides with the constitution. Similar is the situation in our country.

**(6) Force is not the only sanction behind laws**

Force is not the only sanction behind laws. The will of the public is also a sanction behind the law. Hence, Austin's concept of sovereignty is wrong. In modern times, laws are framed by the representatives of the people and not by the will of the sovereign.

**(7) This theory makes the sovereign completely absolute**

This theory makes the sovereign completely absolute, but in practice, it is not possible to become completely absolute. In the ancient and middle ages, there had been many absolute monarchs. But the monarchs could not remain completely absolute in their action and behaviour. They were subject to the canons of morality, code of conduct and scruples of religion. If they tried to establish moral, ethical and religious canons, they were in danger of facing the revolt.

**(8) This theory is not even applicable to Europe**

Austin has asserted that the king-in-Parliament is the sovereign in England. But legally speaking, this assertion is not correct because neither the King nor the Parliament can go to the extent of becoming completely absolute. Always they have to pay due attention to the will of the public. The reality is that the public is the ultimate source of power. It is public that empowers the Parliament. This is the reason why elections are conducted after every five years for the House of Commons. And the House of Lords is quite ineffective in the absence of the House of Common.

**Conclusion**

After having closely studied and critically analysed Austin's theory of legal sovereignty, we arrive at the conclusion that this theory, in the wider perspective of political philosophy, is quite inadequate. It is undemocratic and misleading. It ignores the socio-political forces and does not aim at promoting the welfare of the people. It narrows down "the meaning of vital terms to a content which, if maintained, would be fatal to the existence of society". Despite all this it has to be admitted that as a concept of sovereignty, Austin's theory is clear, matter of fact and logical. Legally speaking, the State is a supreme association and in an ordered society there should be a legal sovereign who may rule supreme. As a concept of sovereignty, Austin's theory of legal sovereignty is really important but in practice it does not appear to be so useful. A legal sovereign ought to pay due attention to the international law. He should be subject to morality, religious rituals, ethical scruples, public opinion and international treaties. In addition to this he is always subject to constitution, natural or divine law and the public.

**PLURALISM**

**(a) Meaning of Pluralism**

Pluralism is a powerful protest against the monistic theory of sovereignty

which endows the state with supreme and unlimited power. Harold Laski, J.N. Figgis, Ernest Barker, G.D.H. Cole, A.D. Lindsay, Duguit, MacIver and others are the exponents of Pluralism. According to Pluralists, sovereignty resides not with the state but it resides with many other institutions. There exist many social, political, cultural and economic institutions in society and many of these institutions are prior to the State. For example, Family and Church are prior to the State. According to Pluralists, the State is not only the supreme institution. On the contrary, like other institutions the State is also one of the institutions of society. There the State does not reserve the authority to exercise sovereignty according to his will. Sovereignty is not his private property. The Pluralistic state is, therefore, "simply a state in which there exists no single source of authority". According to Pluralists, sovereignty is not indivisible and exclusive". One the contrary it is a multiplicity in its essence and manifestation, it is divisible in two parts and should be divided". A.D. Lindsay has very aptly remarked in this connection. "If we look at the facts it is clear enough that the theory of sovereign state has broken down". Professor Laski is of the opinion that "it is impossible to make the legal theory of sovereignty valid for political philosophy". He believed that "it would be lasting benefit to political science if the whole concept of sovereign was surrendered". Krabbe is of the opinion that the "notion of sovereignty must be expunged from political theory". While Barker says, "We see the State less as an association of individuals in a common life; we see it more as an association of individuals, already united in various groups for a further and more embracing common purpose". These associations have an inner life which is at least as autonomous as that of the state. Thus, the pluralists ardently advocate the autonomy and freedom of profession, political, religious, economic, social and educational associations. Gettell has beautifully summed up the idea of pluralism in these words, "The pluralists deny that the state is a unique organisation, they hold that other associations are equally important and natural, they argue that such associations for their purpose are as sovereign as the state is for its purpose. They emphasise the inability of the state to enforce its will in practice against the opposition of certain groups within it. They deny that possession of force by the state gives it any superior right. They insist on the equal rights of all groups that command the allegiance of their members and that perform valuable functions in society. Hence, sovereignty is possessed by many associations. It is not indivisible unit, the state is not supreme or unlimited".

#### (b) Development of the Pluralistic Theory

The pluralistic theory originated in the writings of Otto V. Gierke. "The germ of Pluralism is to be found", says Professor R.N. Gilchrist, "in the work of the German Jurist, Von Gierke (1844-1921) whose monumental work on the legal theory of corporation, part of which was translated, with a sympathetic introduction, by the English Jurist, F.W. Maitland, in his "Political Theories of Middle Ages" (1900), gave an impetus to the idea of corporations as legal entities, with a life of their own independent of government"<sup>11</sup> No doubt it is true that the theory of pluralism originated in the last quarters of the nineteenth century and developed in the beginning of the twentieth century, yet its background can be traced in the Medieval Age. In Medieval Age, the organisation of the State in Europe was loose and the church, vocational associations and Guilds played their significant role in society. In sixteenth and seventeenth century, national sentiment gathered force in Europe and as a consequence national states emerged. These national states became powerful and all the powers, in these states, were centred with the ruler. In due course of time, these national states faced revolt and public-

11. Hsiao, Kung Chuan: "Political Pluralism", p. 8.

movements and the result was the dawn of democracy. In Democracy, the authority of the ruler was confined, the cabinet became more powerful but the state remained sovereign and supreme. With the advent of the Welfare State there came a rapid increase in the functions of the State and there remained no sphere of life with which the State did not interfere. the sovereign and the supreme state also faced revolt and reaction. This reaction against the sovereign and supreme state resulted into the dawn of pluralism.

### (c) Factors responsible for the development of Pluralism

(1) The individuals laid emphasis on the reduction of the powers of the State. The Pluralists also followed suit. But the main point of difference between the individualists and pluralists is that the individualists laid emphasis on the rights and freedom of the individual whereas the pluralists laid emphasis on the rights and freedom of the associations of the individuals and guilds.

(2) Both the individualists and pluralists laid emphasis on the need of co-operation between the state and other associations for promoting the common welfare.

(3) In the modern age, all the states of the world are inter-dependent on one another in one way or the other and, therefore, the need of confining the sovereignty of the state is felt these days.

(4) Famous German Jurist Otto Von Gierke (1844-1921), F.W. Maitland, famous English Jurist, J.N. Figgis and others have argued that the Churches and Guilds possessed internal freedom and were party to sovereignty in the Medieval Age. They argue that if the Churches and Guilds possessed freedom in the Medieval Age, associations must possess freedom and autonomy these days also.

(5) Anarchism and Guild Socialism laid a great stress on the confinement of the sovereignty of the state and this gave impetus to Pluralism.

### Main Supporters of Pluralism

Otto Von Gierke, F.W. Maitland, Figgis, G.D.H. Cole, A.D. Lindsay, Ernest Barker, Krabbe, Duguit, Laski, Cober, Zimmern, Durkheim are some of the supporters of Pluralism. Gierke wrote, "The state should accept the common point of view that permanent associations have rights and duties as groups whether or not the state has accepted them as corporations". According to Laski, "**State is only one among the various forms of associations and as compared with them, has no superior claims to the individual allegiance**".<sup>12</sup> He further says, "**These associations are not less sovereign than the state itself. Because society is federal, the authority must also be federal**".<sup>13</sup> Krabbe believes that the "notion of sovereignty must expunged from political theory". Figgis has also admitted the importance of associations. He says, "Human society is not a heap of individuals related only through the State but an ascending hierarchy of groups. The traditional theory of sovereignty is venerable superstition". MacIver has also pointed out in his famous book, "The Modern State" that "State is one association among many associations within the community". The Pluralistic ideology has been very well summed up by Cober, "The state is confronted not merely by unassociated individual but also by other associations evolving independently, eliciting individual loyalties, better adopted than the state—because of their select membership, their special forms of organisation and action for serving various social needs.

12. Professor R.N. Gilchrist: "Principles of Political Science", p. 102.

13. Laski, "Grammar of Politics", p. 271.

**(d) Criticism of Pluralism**

The theory of the pluralistic state has been criticised by a number of political thinkers on the following grounds

(1) The state is needed to control various types of institutions existing in society. It is the sovereign state that brings about unity and regulates all the associations existing in society. Gierke, Barker, Miss M.P. Follet and Figgis and many other supporters of Pluralism have to realise the need of State for this purpose.

(2) If sovereignty is divided among various associations existing in society, this division will lead to the destruction of sovereignty. As a result anarchy will prevail in society and there will be chaos.

(3) Many of the pluralists believe that law is superior to the state and the State is controlled by law. But this hypothesis is wrong because laws are framed by the state.

(4) It is a mere illusion and not a reality that other associations are equal in status to the State.

(5) Laski, the ardent advocate of Pluralism, has also gone to the extent of criticising Pluralism by saying that it has not closely studied the different sections of society.

(6) If sovereignty is divided among various associations existing in society, these associations will be so powerful that it would be difficult, if not possible, for the State to have a control over these associations. This will lead to the rise of numerous problems in the State.

(7) If these associations are transferred limited sovereignty, society will deteriorate and mutual disputes will arise. Professor Gilchrist believes like this.

(8) State is needed for protecting people from the excess of associations.

**(e) Importance or Value of Pluralism**

Miss M.P. Follet in her famous book, "The New State" has summed up highlights of Pluralism in the following manner:

(1) The pluralists "prick the bubble of present state's right to supremacy. They see that the State which has been slowly forming since the Middle Ages with its pretences and unfulfilled claims has not won either our regard or respect".

(2) They recognise the value of the group and they see that the variety of our group life today has significance which must be immediately reckoned within political life".

(3) "They plead for revivification of local life".

(4) "The Pluralists see that the interest of the State is not always identical with the interests of its parts".

(5) "Pluralism is the beginning of the disappearance of the crowd".

(6) "Pluralism contains the prophecy of the future because it has, with keenest in sight, seized upon the problem of identity of association, of federalism".

Gettell describes the contribution of the Pluralists in these words: "Their emphasis on the fact that states, in spite of legal omnipotence, should be subject to moral restraints is a desirable reaction against the idealization of the state and the doctrine that state is an end in itself, free from all moral restraint. The Pluralists also

make a timely protest against the rigid and dogmatic legalism of the Austinian theory of sovereignty".<sup>14</sup> Gettell further remarks, "The Pluralists emphasise the necessity of studying the actual facts of political life in a rapidly changing social system. In this connection, they point out the growing changing social system. In this connection, they point out the growing importance of non-political groups, the danger of over-interference by the State with the proper functions of such groups and the desirability of giving to such groups greater legal recognition in the political system".<sup>15</sup>

### Conclusion

After having closely studied and critically analysed and evaluated Pluralism, we arrive at the conclusion that Pluralism has played an important role in upholding the importance of associations, for which they claim much autonomy. We admit that the sovereign state in practice must be subject to many limitations so that democracy may flourish but as a concept the sovereign state must not be subject to any legal authority. We do not support the division of sovereignty, for the division of sovereignty leads to the destruction of sovereignty and in the absence of sovereignty anarchy will prevail in society.

### SOME SELECTED QUESTIONS

1. What do you mean by sovereignty? Discuss the characteristics or elements of Sovereignty.
2. What is Sovereignty? State Austin's theory of sovereignty and the arguments advanced against it.
3. Write short notes on the following:
  - (a) Nominal and real sovereignty ;
  - (b) Legal and Political Sovereignty ;
  - (c) Popular Sovereignty ;
  - (d) De jure and De facto sovereignty.
4. Sovereignty is absolute. Do you agree with this statement? Give reasons for your answer.
5. Describe the Pluralistic theory of sovereignty or Pluralism. What are the defects and good points in it?
6. To divide sovereignty is to destroy it. Discuss this statement.

14. Gettell: "Political Science", 1956 ed., p. 146.

15. Ibid.

## Pluralist Theory of Sovereignty

THE CLASSICAL THEORY OF sovereignty, as enunciated by various thinkers from Jean Bodin (1530-96) to John Austin (1790-1859), largely dealt with the legal character of sovereignty. It held sovereignty as absolute, perpetual, universal, inalienable and indivisible. It envisaged a single sovereign in the state—a person or a body of persons. It is, therefore, described as the *monistic* theory of sovereignty.

When this monistic theory is applied to the political field, it gives rise to many problems. In the political sphere, the state is represented by government which claims sovereignty on behalf of the state. When the relationship between individual and the state is defined in terms of sovereignty, it postulates the *unlimited* authority of the state over individual which implies *unlimited* political obligation. In other words, the idea of the supreme, absolute and unlimited authority of the state reduces individuals to the status of dumb-driven cattle who have to follow the dictates of the state. In actual practice, these dictates are issued by the government consisting of human beings who may be wise or foolish, benevolent or selfish, virtuous or vicious—but in no case perfect, divine and infallible. Thus, the theory of sovereignty in the political sphere implies complete subordination of one set of individuals to another set of similar individuals. The pluralist theory of sovereignty seeks to resolve this dilemma.

### GENESIS OF THE PLURALIST THEORY

The form of sovereignty as developed from Jean Bodin to John Austin was generally regarded as an essential attribute of the modern state till the nineteenth century. Accordingly, it was almost universally admitted that the state is superior to all other human associations in society because sovereignty is exclusive to the state. This implied supreme legal authority of the state. In essence, it coincided with the organic theory of the state which glorified the state as the

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fountain of all moral and social values. The juristic theory went to the extent of evolving a juristic *personality* of the state.

#### Organic Theory of the State

In this metaphorical expression, the state is compared to an organism or a living body, and individuals are regarded as its organs. An individual separated from the state loses his existence and identity like an organ severed from the body.

However, the socialists—especially, Marx and Engels—had demonstrated in the nineteenth century itself, how the economic interests of the dominant class exclusively determined the policy of the state. The rise of capitalism combined with the theory of the absolute state posed a real threat to freedom in society. Many a thinker expressed serious concern at this state of affairs.

J.N. Figgis (*Churches in the Modern State*; 1913) saw clearly that the ascendance of the absolute state in his own day was directly linked to 'the horror of that very economic and industrial oppression which is the distinctive gift of modern capitalism to history'. Besides, in the twentieth century, there was an all-round development of social sciences which promoted new theories regarding the nature of the state. Modern psychology exploded the myth of the personality of the state which was earlier used to exalt the state and its sovereignty. Modern sociology, again, demonstrated that law is the product of prevailing social conditions, not an expression of the commands of the sovereign. This led several modern thinkers to realize that the state is only a partial manifestation of the social nature of man, with a defined sphere of activity. It cannot be treated as an all-comprehensive institution encompassing all aspects of the social life of man as the classical theory of sovereignty had postulated. This gave rise to the pluralistic theory which launched a systematic attack on the doctrine of state-sovereignty.

In short, the pluralist theory sought to redefine the nature of the state as one of the several associations of human beings operating in society to secure the multifarious interests of individuals. In view of this, it envisaged a new role for the state as an arbiter over conflicting claims of different associations. It also repudiated the exclusive and absolute claim of the state to individual's allegiance; it insisted that the state should compete with other human associations to establish its claim to superior authority.

It is significant that the pluralist challenge to state-sovereignty coincided with the conditions created by the First World War (1914-18). During war-time the state required its citizens to sacrifice everything—including their near and dear ones, even their own lives—for the sake of the state. The people did make untold sacrifices, yet this state of affairs prompted an inquiry into whether the state was logically entitled to make such enormous demands. There were men,

known as 'conscientious objectors', who claimed that their conscience urged them to oppose bloody war as a means of settling human disputes. Moreover, the policy of war was determined by the men in power who were as imperfect and fallible as any other human beings. A little folly on their part could escalate war and bring untold suffering to the citizens of the state. How, then, could the absolute authority of the state be taken for granted?

Harold J. Laski (*A Grammar of Politics*, 1938) enumerated two important factors which prompted the pluralist attack on sovereignty of the state:

(a) In the first place, the state claimed legal omnipotence; and it claimed the allegiance of its citizens on the ground that it represented the total interest of the society within its territorial jurisdiction. The pluralists pointed out that legal omnipotence was a purely formal concept often invalid in fact; and they argued that however majestic and powerful, the state in fact was only one of many associations in society, that, in experience, there were always limits to powers, and these were set by the relation between the purpose the state sought to fulfil and the judgement made by men of that purpose;

(b) In the second place, the pluralist doctrine was derived from the realization that the state's claim to pre-eminence always means, in fact, the sovereignty of a government composed of fallible men whose intentions alone are not a sufficient justification for so vast a claim. There went into the making of pluralism an historic analysis derived from the conflict between churches and the state, between trade unions and the state, between, as in the case of the conscientious objector to military service, the individual and the state.

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### MAIN TENETS OF THE PLURALIST THEORY

The pluralist attack on sovereignty was inspired by the doctrine of political pluralism. According to *A Dictionary of the Social Sciences* (ed. Julius Gould and William L. Kolb, 1964), 'political pluralism refers to those doctrines... which assert that certain groups in society (e.g. family, church, union, local government) embody important social values prior to and independent of their authorization or approval by the state'. So the pluralist theory of sovereignty proceeds from the idea of the pluralistic nature of society.

### THE PLURALISTIC NATURE OF SOCIETY

The pluralist theory represents a shift in focus from the legal to the sociological character of the state. It recognizes the role of several associations in society, formed by men in pursuance of their multifarious interests. Some of these

associations have been in existence prior to the origin of the state itself; some of them exist independent of the state, that is they are neither created, nor sponsored, nor maintained, nor even regulated by the state. Sociologically speaking, the state is but one of these associations, standing side-by-side with them, not above them. Such associations include the church and other religious organizations, trade unions, cooperative societies and chambers of commerce, and so many voluntary associations devoted to education, cultural and scientific pursuits. All these associations embody some social value, means of satisfying some needs and other worthwhile pursuits.

#### Association

A human organization formed for the fulfilment of certain common objectives of its members which motivates them to come together and work together.

Pluralists hold that it is morally preferable for individuals to be associated politically with a wide range of associations in pursuance of their specific interests. These groups provide them an opportunity to make use of their creative abilities and to seek self-fulfilment in various spheres of life. No outside agency, not least the state, should interfere in their functioning unless their activities are required to be regulated in the interest of public order, public safety or public morality.

### ROLE OF THE STATE AS COORDINATOR

When there are several associations in society to take care of the varied interests of individuals and for the fulfilment of their personality, what is then the nature and role of the state? According to the pluralist standpoint, the state does not exist above these associations. In fact, the state, as the society politically organized, cannot be conceived as distinct from these associations. To be sure, *the state itself is an association of associations*. As an association coordinates the activities of its members, so the state co-ordinates the activities of these associations in society. It is a means of resolving the conflicting claims of these associations, by evolving a common basis of their functioning, not by imposing its own will or regulations upon them, but by harmonizing and coordinating their several interests so as to secure the 'common good', the 'common interest', or the 'public interest'. This role of the state is essential for the maintenance of order in society.

It is significant that the pluralist theory seeks to curtail or limit the absolute authority of the state as against the theory of state-sovereignty. It does not seek to abolish the state itself as anarchists do. The pluralists postulate some recognized functions of the state. For instance, the functions of maintaining internal order and security, defence from external enemies and enforcement of voluntary contracts should be left to the state unless a contract is deemed to

be void on moral grounds.

### THE STATE MUST JUSTIFY ITS CLAIM TO AUTHORITY

As the state is only one of the associations in society intended to serve the interests of society, its claim to superior authority cannot be taken for granted. The state enjoys a privileged position in the sense that its jurisdiction is compulsory over all individuals and associations within its fold. It is equipped with coercive powers so that it can punish those who ignore or defy its commands. These characteristics do not automatically establish the superior authority of the state. On the other hand, they postulate a higher moral responsibility on the state. The pluralists require the state to justify the exercise of its special powers.

The state, as an association of associations, is required to secure the 'common interest' or the 'public interest' by harmonizing the interests of all associations operating in society. Some of the associations might be more organized and more vocal than others; some of the vulnerable sections in society might be devoid of any organization. Some of the interests might be well-represented in the assemblies, or impressed upon the state through various investigatory commissions, through special delegations, or through mass movements, demonstrations and rallies; others might be dormant and hardly noticed. Theoretically, the state is expected to ensure that all interests are given due weightage while seeking their coordination in pursuance of the common interest. The state, as an arbiter of conflicting claims, must demonstrate that it is not dominated by any special interest or 'vested interests' while exercising its authority; otherwise it would betray the confidence reposed in it. As Benn and Peters (*Social Principles and the Democratic State*; 1975) have asserted: "The state must not be allowed to fall into the hands of men concerned only for the interest of a limited group. It must be sensitive to all, without succumbing to anyone or any limited coalition of interests."

This is the most delicate and difficult task of the state. It will be recalled that even the Marxian attack on the state is based on the argument that the capitalist state and its predecessors have been the instruments of serving the interests of the dominant class at the expense of the dependent class!

### DECENTRALIZATION OF AUTHORITY

The pluralists do not extend unconditional support to the sovereign authority of the state. They do not accept the state as a *Leviathan* (a sea-monster who is capable to overpower all sea-creatures) as imagined by Thomas Hobbes (1588-1679). They repudiate monopoly of the state on the allegiance of all individuals. They demand that the state should justify its claims to allegiance on moral grounds. They argue that expansion of the authority of the state undermines democracy and liberty of the individual and that concentration of authority in the state erodes administrative efficiency. The complexity of the economic and

political relations of the modern world cannot be dealt with by a monolithic view of the state. They, therefore, contend that the management and control of society should be shared by several associations in proportion to their contribution to the social good.

The pluralist theory, therefore, advocates reorganization of the state through a set of institutions guaranteeing its effective limitations, such as workers' and consumers' unions, which should serve as countervailing powers in the state.

[ III ]

### EXPONENTS OF THE PLURALIST THEORY

The doctrine of political pluralism was developed by a number of social and political thinkers from Europe and America. Emile Durkheim (1858-1917)—a French sociologist, Otto von Gierke (1841-1913)—a German political theorist, F.W. Maitland (1850-1906)—an English legal historian, and G.D.H. Cole (1889-1959)—an English economist are regarded as the forerunners of the pluralist theory. Gierke and Maitland enunciated the theory of the real personality of groups which became the focus of attention of many a later pluralist. According to the Gierke-Maitland thesis, as outlined in Gierke's *Political Theories of the Middle Age*, translated with an Introduction by Maitland (1900), each group in society possesses a real personality and will, and it plays a distinctive role in the process of law-making. The state, of course, plays the principal role in this sphere, but it is by no means exclusive. In other words, law is not made by the state alone; several social groups make their own contribution to this process. These social groups enjoy certain privileges and create certain obligations independent of the state's formal sanction.

Exponents of the pluralist theory include Léon Duguit—French legal luminary, Hugo Krabbe—a Dutch jurist, Harold J. Laski, Ernest Barker, and A.D. Lindsay—English political thinkers, and Robert M. MacIver—an American sociologist. Of these, Laski and MacIver are the most outstanding.

### LÉON DUGUIT

Léon Duguit (1859-1928), French legal philosopher, in his celebrated work *Traité on Constitutional Law* (1921-25), argues that laws are not an expression of the commands of an absolute sovereign. They are the conditions of *social solidarity*; that is manifested in the interdependence of men in society. In other words, laws embody those fundamental rules which sustain the social life of men. They are obligatory not because they are the commands of a 'determinate human superior', as the classical theory of sovereignty maintains, but because their observance is crucial to the functioning of human society. Accordingly, laws exist even before the origin of the state itself; they are by no means a product of the state. The state itself is an instrument of securing *social solidarity*.

Duguit, therefore, subordinates the state to the rules of *social solidarity* which find expression in the form of laws. He, therefore, argues that 'public service' rather than sovereignty is the essential characteristic of the state. Thus, Duguit rejects the theory of absolute sovereignty and makes the state responsible to society. He is not primarily interested in the political importance of the social groups within the state. Rather, he insists that administrative actions should be subjected to judicial limitations.

### HUGO KRABBE

Hugo Krabbe (1857-1936), a Dutch jurist, proceeds to distinguish between law and the state, and argues that law is independent of and superior to the state. Thus, sovereignty is an attribute of law, not of the state. Krabbe holds that law does not emanate from *social solidarity*, but from a *sense of right* of the majority of the community constituting the state. In his *The Idea of the Modern State* (1922), Krabbe asserts that the essence of the state is to be found in the operation of legal relations, not in the operation of relations between the strong and the weak. Krabbe's theory of the state rejects the idea that power is an essential feature of the state. In his view, the state is essentially a legal community—a portion of mankind having its own independent body of legal relations. The purpose of the state is to reconcile conflicting interests within the community in conformity with the values embodied in the law.

### A.D. LINDSAY

A.D. Lindsay (1879-1952), English political philosopher, in his 'The State in Recent Political Theory' (*Political Quarterly*: 1914), accepts the theory of the real personality of associations of human beings and argues that the state is only one of the numerous associations each of which possesses a corporate personality of its own. Many other associations, being smaller than the state, are more homogeneous and represent a closer community of interests. If they are permitted to act autonomously, they are likely to attract the deeper loyalties of their members, and prove themselves to be more effective agencies of social coordination than the state itself. Lindsay, therefore, insists that each one of these associations should be given greater authority and initiative, so much so that they should be allowed to legislate for themselves. Thus, Lindsay pleads for breaking the monopoly of the state in law-making and advocates decentralization of legislative powers to the several associations in society.

### ERNEST BARKER

Ernest Barker (1874-1960), English political philosopher, on the other hand, rejects the concept of the 'real personality' of the group, although he admits the juristic claim that the permanent groups within society existed prior to the state and that each of them has a corporate character and functions of its own.

In his *Political Thought in England from Herbert Spencer to the Present Day* (1915), Barker observes: "We see the state less as an association of individuals in a common life; we see it more as an association of individuals, already united in various groups for a further and more embracing common purpose."

Barker argues that the state should necessarily adjust the relations of associations to itself, to other associations and to their own members in order to maintain the integrity of its own scheme to preserve the equality of associations before law and to protect individuals from the possible tyranny of the group. Thus, he views the state as an association of associations, a community of communities, and an agency for harmonizing the interests of the groups as well as of individuals.

### HAROLD J. LASKI

Harold J. Laski (1893-1950), a brilliant English thinker, is the most ardent champion of the pluralist theory of sovereignty. He is a prolific writer and his views on this subject lie scattered in a large number of his works—*Authority in the Modern State* (1919); *The Foundations of Sovereignty and Other Essays* (1922); *A Grammar of Politics* (1925/1938); *An Introduction to Politics* (1931); *Studies in Law and Politics* (1932); *The State in Theory and Practice* (1935); *Reflections on the Revolution of Our Time* (1943), etc. Though very brilliant, he has not been very consistent in his formulations. After adjusting his pluralist position between liberalism and Marxism, he ultimately emerged as an exponent of positive liberalism—a combination of liberalism and socialism. In his scheme of the reorganization of the state on the basis of democratization of power, Laski comes out as an ardent pluralist.

In the early phase of his political thought, that is in the 1920s, Laski advanced vigorous criticism of the theory of state sovereignty, and held that this theory would pass like the theory of the divine right of kings which had had its day. He thought of sovereignty as nothing more than a legal fiction and a barren concept. But, in a later phase, that is in the 1930s, Laski began to evolve a balanced view of pluralism—identifying the points of its strength and weakness, and then he conceded the importance of sovereignty as an essential element of state-power, though he viewed the state itself as an agency for regulating class-relations in society, while he himself preferred a classless society.

### Attack on Absolute Sovereignty

In his *A Grammar of Politics* (1938), Laski proceeds to scrutinize the theory of sovereignty from three aspects and discovers its weaknesses everywhere. In the first place, historical analysis of the state repudiates the idea of absolute sovereignty. He accepts Sir Henry Maine's (1822-88) criticism of Austin and shows how custom and tradition substantially limit the exercise of sovereign power. These are not legal checks imposed by some determinate human superior,

nor do they operate with the express or tacit consent of the sovereign himself. The deference which even omnipotent monarchs and sultans have to show to custom, is a political need, a dictate of prudence and expediency. Besides these limitations in the internal sphere, sovereignty is also subject to limitations in the external sphere. Here Laski finds the claims of absolute sovereignty incompatible with the interests of humanity. As he observes: "In a creative civilization what is important is not the historical accident of separate States, but the scientific fact of world-interdependence. The real unit of allegiance is the world. The real obligation of obedience is to the total interest of our fellow-men" (*A Grammar of Politics*, 1938).

In the second place, the theory of absolute sovereignty fails as a theory of law. Here Laski accepts Dicey's (1835-1922) distinction between legal and popular sovereignty as a proof of the absurdity of Austin's definition of sovereignty as determinate and indivisible. He proceeds to show how even the idea of popular sovereignty is not workable. In Laski's own words, "everyone knows that to regard the King-in-Parliament as a sovereign body in the Austinian sense is absurd. No Parliament would dare to disenfranchise the Roman Catholics or to prohibit the existence of trade unions. If it made the attempt, it would cease to be a Parliament. That is to say that in practice legally unlimited power turns out to be power exercised under conditions fairly well known to each generation."

Finally, the theory of sovereignty does not hold good in the analysis of a political organization. Laski cites the case of the federal state, particularly of the United States, to show that the location of sovereignty—as envisaged by Austin—is very difficult in the case of such political organizations.

### Distinction between the State and Government

Laski dwells on the distinction between the state and government to demonstrate the inadequacy of the theory of absolute and unlimited sovereignty. He points out that, in actual practice, the so-called sovereign powers of the state are claimed by the government, that is a body of persons issuing orders and enforcing obedience thereto. In the exercise of these powers, the government can never be allowed to become absolute and irresponsible. In his *The State in Theory and Practice* (1935), Laski observed that government is but the agent of the state:

It exists to carry out the purpose of the state. It is not itself the supreme coercive power; it is simply the mechanism of administration which gives effect to the purpose of that power. It is not, we are told, sovereign in the sense in which the state is sovereign; its competence is defined by such authority as the state may choose to confer upon it; and if it oversteps that authority it may, where such provision exists, be called to account.

Pointing to the dangers of conferring absolute powers on government, Laski further observes:

Every government is composed of fallible men. They may deliberately exploit the authority they possess for their own selfish purposes. They may, with the best intentions, but quite unreasonably, mistake the private interest of a few for the well-being of the whole community. They may be ignorant of the position they confront, or be incompetent in handling it. Circumstances such as these have occurred in every political society at some period of its history. The value of the distinction between state and government is the possibility it offers of creating institutional mechanisms for changing the agents of the state, that is the government, when the latter shows itself inadequate to its responsibilities.

### Moral Grounds of Allegiance

In *The Foundations of Sovereignty* (1922), Laski argues that the state is only one among many forms of human associations and, as compared with other associations, it has no superior claims to an individual's allegiance. He argues that the state has no right to the allegiance of an individual save insofar as his conscience gives assent. His point is that to demand unquestioning obedience to the orders of the sovereign authority without giving the individual the right to judge for himself their moral adequacy is morally wrong; it stunts the growth of his moral personality. In his *A Grammar of Politics* (1938), Laski argues that the larger functions of the state postulate larger responsibility as well. The state can justify its existence only as a 'public service corporation':

The State differs from every other association in that it is, in the first place, an association in which membership is compulsory. It is, in the second place, essentially territorial in nature ... The State controls the level at which men are to live as men. It is, in administrative terms, a government whose activities are shaped by the common needs of its members. To satisfy those common needs, it must control other associations to the degree that secures from them the service such needs require.

In other words, the state must justify exercise of its social authority by ensuring an effective coordination of functions of other human associations in the best public interest. Its claim to the allegiance of individuals will rest on the efficient performance of its functions.

Laski tries to demonstrate the pluralistic character of the state on the basis of the pluralistic character of society itself. He observes that society is not a uniform organization of all citizens. Citizens organize themselves into several associations according to their specific interests and these associations in turn organize themselves into society. Thus society is an association of associations, or a federation of various interest groups. This principle should form the basis of authority of the state. So Laski declares: "... because society is federal, authority must be federal also" (*A Grammar of Politics*, 1938). In other words, the state should exercise its authority over the various interest groups which constitute it.

But each interest group should in turn exercise its authority over its members.

Thus Laski insists that sovereignty in the state should be shared by many groups according to the respective value of the functions of each group. The state should perform its coordinating function, but it has no right to omnipotence. The power of the state should become coordinative instead of being hierarchical, and authority should become federal instead of being absolute and indivisible. Laski's plea to make authority federal is the cornerstone of his pluralist doctrine. Its logical conclusion may be found in his concept of the democratization of power.

### Democratization of Power

In his pluralist fervour, Laski feels deeply concerned about the undemocratic control of industry and politics by the economic overlords in society—a characteristic feature of capitalist civilization. In his *Reflections on the Revolution of Our Time* (1943), Laski most eloquently declares:

In modern society, the large industrial corporations are controlled by a caste of economic directors, mainly remarkable for their skill in financial manipulation, who are masters alike of their shareholders and of the consumers and are not seldom in a position to hold even the states to ransom. Their power is as massive in volume as it has largely been irresponsible in operation. We have reached a stage in historical evolution where either their power must be subordinated to the interest of the community or the interest of the community will be a tragic pseudonym for their power.

This state of affairs cannot be transformed, Laski feels, unless the vital instruments of production are owned and controlled by the community. But he immediately shifts from this socialist solution to an alternative scheme of democratization of power—a pluralist solution. Laski identifies four bases of economic power—the supply of capital and credit; the ownership and control of land; control of the import and export trades; and, finally, control of transport, fuel and power. Socialization of these vital resources will avert concentration of economic power in society and start the process of the democratization of power.

### ROBERT M. MACIVER

Robert M. MacIver (1882-1970), American sociologist, has developed his pluralistic theory in his two outstanding works: *The Modern State* (1926) and *The Web of Government* (1947/1965). MacIver takes a sociological view of the state and traces its evolution from primitive social structures to its modern form. In this process he rejects the theory of absolute sovereignty and vindicates the pluralist view of the state.

### Supremacy of Law

As the outset, MacIver identifies the state as one of several human associations. The state is distinguished from other associations because it gives expression to law, not because it is characterized by sovereignty. MacIver has advanced three arguments against the doctrine of sovereignty: (a) In the first place, the concept of the *general will*, as formulated by Rousseau (1712-78) and Green (1836-82), is sometimes invoked as the basis of sovereignty. But it is difficult to discover the existence of the general will in the state. There are many persons in the state who differ from the prevalent will in the state. The states of the past included vast numbers of aliens and slaves apart from the citizens whose will could not be reconciled with the so-called will of the state. Besides, the state appears as an upholder of custom and, therefore, loyalty to the state in such a case is derived from men's regard for custom, not for the state itself; (b) Secondly, even in a democratic state, it is very difficult to locate the ultimate sovereign. There is no homogeneous will of the people. Majority and minority opinions exist simultaneously. One government is replaced by another, will seems to go on changing; policy also changes therewith; and (c) Finally, power in the state is always exercised by a political government. Limits to the power of government are set by the constitution over which government has no direct control. The stability of the authority of government depends on its legitimacy for which it must conform to the prevalent traditions and social values.

MacIver, therefore, argues that the state is subject to the supremacy of law which exists apart from the state. Thus he observes:

It is not the office but the instrument, not sovereignty but the law and the constitution that wear the legitimate armour of might. The government has power as the guardian of the constitution, as the executor of law, not in its own right. Outside the realm of law its use of force is as irreducible to principle as that of any strong man armed. To law, therefore, we must turn, and not to sovereignty as such, if we are to attain a true definition of the state (*The Modern State*, 1926).

Law, in this sense, cannot be regarded as an expression of the will of the state. The state does not create law. Law exists prior to the state; the state only grasps it and gives it a definite expression in the form of its statutes. In other words, the state only codifies law, or modifies its form; it cannot make or remake it. As MacIver points out: "The state can no more reconstitute at any time the law as a whole than a man can remake his body." MacIver agrees with Hugo Krabbe that the authority of law is greater than the authority of the state.

### Basis of Authority

As the state is one of several human associations, the basis of authority of

the state cannot be different from that of other associations or corporations. MacIver asserts: "Every association of any magnitude has grades of authority and control analogous to those of the state" (*The Modern State*). A business corporation has a body of shareholders who are united in the will and interest to uphold the corporation. The shareholders must choose a board of directors, but neither on the choice nor on the policy of the board are they likely to be unanimous. In the sphere of the state, the will of the people—which is nothing more than the dominant will or the majority will—is analogous to the will of the shareholders and government is analogous to the board of directors. The state, accordingly, derives its authority from the will of the majority of the people, not in its own right.

A corporation is recognized by law; it entails certain rights and obligations. The state is similar to other corporations in this sense also. It is recognized by law, and has its definite rights and obligations. What is, then, the relation of the state to other corporate entities—the human associations whose right it recognizes and defines?

According to MacIver, the state

gives them a special status defining their privileges and responsibilities. The state does not create the corporation but only regulates its legal character... The association, such as a professional group or a body of believers, exists apart from and prior to the state's act of recognition. The state cannot, for the most part, either make or unmake it ... The great associations are as native to the soil of society as the state itself. The state can scarcely even decide whether it will or will not recognize them.

How can the state fulfil the function of control and coordination of human associations unless it enjoys supremacy over them? Does it imply that, while other associations cater to the partial interests of men, the state is the guardian and agent of the universal interests of men?

MacIver's answer to these questions comprises the essence of his pluralist position. He argues that the state does not regulate the internal affairs of other associations; it does not and cannot determine their purposes or, for the most part, their methods. It does not treat them as its own agencies or instruments. The state comes into the picture only when the interests of one group encroach on another. In other words, the state acts only in order to resolve the conflicting interests of various associations in society. The state cannot impose its own will on human associations for the protection of the 'common interest'. In MacIver's own words, the state

stands for the common interest; but only so far as the common interest is sufficiently unified to admit of political expression, and only so far as it is sufficiently externalized to admit of legal regulation. True, it stands for the common interest; but not for the whole of the common interest

... The common interest is no simple objective, attainable in its entirety by an inclusive authority. The partial interests of a thousand associations, cultural and economic, are also parts of the common interest.

Even if the state claims to be the protector of the common interest, it cannot demand superior authority on this account. Other associations may cater to less extensive interests of men, yet they may attract their deeper loyalties because they are more intimate and more closely bound with the traditions and beliefs of groups. As MacIver further observes: "On this account the doctrine of absolute sovereignty, if actually practised in the states of today with all their diversities of culture, would be fatal to the harmony of social life."

Initially, MacIver seems to hold that the state should not use its authority to regulate the internal affairs of any other human association. But in the later part of his life, he sought to introduce a note of caution in this matter. In a subsequent edition of *The Web of Government* (1965), MacIver makes a distinction between two types of organizations: those which serve the emotional and cultural interests of men and cannot be regulated by the state; and those which serve the economic interests of different groups, and have to be regulated to serve the common interest. As he points out:

There are schools and styles in every form of art, in every field of cultural expression. The followers of any one ... take delight in their own, in the difference itself. Religions may alike proclaim the brotherhood of man or the fatherhood of God, but each has its own conception of the fatherhood. To coordinate them all into one would be to destroy their characteristic qualities, to drain them of their vitality.

On the other hand, the associations formed to serve the economic interests of various groups cannot be treated on similar lines. As MacIver argues:

Economic activities, for example, cannot be left to the free arbitrament of individuals and groups without serious interference with public order. Thus, an employer cannot lower the wages of his employees below the prevailing rate ... extend the hours of labour without doing harm to his fellow employers as well as to his employees ... No more can a man rightly claim to use his property in any way that seems good to him. His property not only is the fruit of the cooperative labour of many men but also it is the potential if not the actual source of the livelihood of others. If he neglects it, lets it run to waste or ruin, or actually destroys it he is injuring his fellows.

Recognition of this distinction between the two types of associations provides a profounder basis to MacIver's pluralist theory.

### A CRITICAL APPRAISAL

The pluralist theory of sovereignty is important because it deals with the problem

of sovereignty in the political sphere. It is significant that the classical theory of sovereignty was developed by several thinkers from Jean Bodin to John Austin as a purely legal concept. These thinkers were generally conscious of the moral responsibility of the sovereign, but they did not recognize any human superior whose advice or approval would be necessary for the sovereign. This position could be upheld so long as sovereignty was nothing more than a legal notion.

But once the theory of absolute and unlimited sovereignty is accepted, the distinction between the state and government is soon forgotten or ignored and absolute powers are claimed by a government in the name of the state, paving the way for autocracy and tyranny. It is, therefore, quite expedient that the implications of sovereignty in the political sphere are worked out and spelled out so that sound principles of politics and government could be evolved. This is precisely the field where the pluralist theory has made an important contribution.

The exponents of the pluralist theory have elaborated the limitations on the authority of the state—in practice, on the authority of government. Some of the pluralists, like A. D. Lindsay and Robert M. MacIver, have even regarded other associations as objects of deeper individual loyalties than the state. Harold J. Laski has used the pluralist model especially to curb the concentration of economic power—a baneful product of capitalism. MacIver has, of course, made an important point by prescribing different roles of the state with regard to the cultural and emotional groups on the one hand, and economic interest groups on the other.

There are, however, some dangers inherent in the pluralist theory. When interest groups become the centre of individual loyalty, so much so that some groups attract deeper loyalty than the state itself, there is a danger that some groups might become unduly powerful; they may dictate unjust terms to society because of this power. For instance, the unions of those performing essential services, such as mechanics, engineers, doctors, dispensers, drivers, and even sweepers, may be able to exert undue pressure on the authorities because they can disrupt normal social life, while teachers, artists, scientists, etc. may not be able to press for their just and genuine demands. Moreover, some categories of persons, such as traders and workers, are usually more organized and vocal than other categories, such as consumers. The pluralist model of government, in such cases, implies pre-eminence of the interests of dominant groups over those of the vulnerable sections of society.

Under the circumstances, the responsibility for protecting the common interest devolves on the state. The state should act as an agency for harmonizing the conflicting claims of different interest groups—because some groups might be unduly eloquent in advancing their claims while others might not be even conscious of their interests, not to speak of properly organizing and

articulating their genuine demands. The state should, therefore, determine the requirements of the common interest in admitting the respective claims of the various interest groups.

Again, with the ascendancy of big corporations in the modern state, the position of other groups has considerably weakened. The giant corporations have in fact eclipsed other social groups as regards their influence on the policy-making process. Under such circumstances, public policy can hardly be regarded as an end-product of mutual adjustment of group interests. In order to restore the rightful place of smaller groups vis-a-vis the bigger ones, the state must play an effective role in curbing the powers and influence of the more powerful organs, particularly the big corporations. This would call for a stronger base for the state sovereignty than what the pluralist theory might concede.