

IV.—THE THEORY OF SOVEREIGNTY RESTATED

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THERE is a tendency among present-day political theorists to work without the aid of the concept of sovereignty. This is due partly to the logical difficulties inherent in the concept, and partly to the fact that certain modern political developments, such as the growth of democracy, federalism and public law, have made the concept a difficult one to apply in present conditions. The purpose of this article will be to re-examine the traditional use of the concept, and to enquire whether it still cannot be used in such a way as to avoid the objections now usually raised against it.

I

The strength of the logical objection to the traditional theory can be seen if we merely examine the following traditional questions: (1) Is it necessary that there should be a sovereign, or an ultimate source of authority or power, in every state? (2) Is it necessary that the authority or power of the sovereign should be indivisible? (3) Is it necessary that the authority or power of the sovereign should be unlimited? and (4) Where is the sovereign located? It is notorious that no unambiguous answer is possible to these questions. What then is the point of asking them, and what is the point of a concept which merely enables us to ask pointless questions? Nor is the criticism obviously exaggerated. The evidence of some three and a half centuries of political theory is largely on the side of the critics.

There are, however, two different reasons why it may not be possible to give a straight answer to a seemingly straight question. In the first place, the question may not be a genuine question. This may be either because it involves a logical contradiction, *e.g.*, What is there outside the universe? or because we do not know what information would be relevant to determining the answer to the question, *e.g.*, Is everything twice as big to-day as it was yesterday? But in the second place, the question may be more than one question. This would be the case when the terms in which the question is stated are capable of having more than one meaning, *e.g.*, Is justice the interest of the stronger? where 'justice' may mean 'legal justice' or

'ideal justice', and where the answer may be different according to the sense in which the word is used.

The traditional questions about sovereignty, it seems to me, are questions of the latter and not of the former kind. They cannot be satisfactorily answered, not because they are not genuine questions, but because each question consists of several questions which have never been clearly distinguished. Once the proper distinctions are drawn, therefore, they may be replaced by other questions to which unambiguous answers can always be given. To show that this is so, all that is necessary is to analyse the possible meanings of the terms we are using.

In the traditional questions about sovereignty, the words which have been most often used ambiguously are the words 'sovereign' and 'state'. My first task, therefore, must be to analyse the different meanings which different philosophers, and sometimes the same philosophers, have given to these two words. I shall take, first of all, the word 'sovereign'.

(1) The word has been used by some as equivalent to a *supreme legal authority*. Those who have used the word in this way have not usually thought it necessary to define what they mean by authority, or to say how authority is to be distinguished from power or influence. It is clear, however, from the way in which they have written, that they have meant to draw some important distinction between these concepts. "Let us notice in the first place", writes Lord Lindsay, "that the doctrine of sovereignty is properly concerned with the question of authority. It is not properly concerned with questions of force or power as such."¹ This is predominantly the sense in which the word was used by John Austin, and by the lawyers of the Austinian school. I shall call this, sovereignty in the legal sense.

A word of further explanation, however, is needed. Theorists who have adopted the doctrine of the separation of powers have used the word 'sovereign' to mean either (a) a supreme legislative authority, as for instance in the case of Dicey, or (b) a supreme legislative or executive authority, as in the case of Lord Bryce. Those who have denied the separation of powers, on the other hand, have used the word to mean (c) a supreme legal authority, irrespective of whether it is the authority of a Parliament, a Ministry, or a Court; that is, they have used it to mean what would, on a separationist view, be regarded as a supreme legislative, executive or judicial authority.² In order to avoid over-burdening the present analysis, and in order also

¹ *The Modern Democratic State*, vol. i, pp. 217-18.

² Cf. *Finer, The Theory and Practice of Modern Government*, vol. i, chap. I.

not to prejudge the case for or against the doctrine of the separation of powers, I shall use the words 'supreme legal authority' in this latter sense. I shall use them, that is to say, in what a separationist may regard as a generic sense, and what an anti-separationist may regard as the only appropriate sense. This will preclude any direct discussion of sovereignty in senses (a) and (b) above, but that will not affect my general argument. If the separationist view is the correct one, and if clear answers can be given to the traditional questions, using the present generic sense, then the same answers can always be given to the same questions, using senses (a) or (b). If, however, the separationist view is not the correct view, then the need to discuss senses (a) and (b) does not arise in any case.

(2) The word 'sovereign' has been used by others to mean a *supreme legal authority in so far as it is also a completely moral authority*. This is sovereignty as understood by Rousseau and the Hegelians. "The Sovereign", says Rousseau, "merely by virtue of what it is, is always what it should be." "Sovereignty", says Bosanquet, "is the exercise of the General Will", which "is expressed in law, in so far as law is what it ought to be".¹ It is, therefore, a species of sovereignty in the previous sense. For that reason, it is not always clear that a person who uses the word in this way is using it necessarily in a way which is different from the previous one. But we can, in fact, be sure that a different sense is involved wherever there is clear evidence that the writer would, in addition, deny the title of sovereign to a supreme legal authority which is not, in his opinion, a completely moral authority. When the word is used in this way, I shall say that it is used in the moral sense.

(3) For another group of philosophers the word has meant a *supreme coercive power exercised by a determinate body of persons possessing a monopoly of certain instruments of coercion*. They have not usually defined what they mean by coercive power, nor clearly stated how it is to be distinguished from legal authority or political influence. But it has been generally understood that power in this sense is to be distinguished from legal authority at least in one respect, namely, that its exercise may sometimes be extra-legal. In this sense, the sovereign is a determinate body of persons capable of *enforcing* decisions against any likely opposition, no matter who *makes*, or *otherwise carries out*, those decisions. Usually such a body consists of a professional police or a standing army; usually, too, the decisions which it enforces are those of Parliaments, Ministries and Courts, but they may be

¹ *The Philosophical Theory of the State*, pp. 232 and 107.

the analogous decisions of persons who have no legal authority to make such decisions, although such persons may acquire such legal authority in virtue of their decisions being enforced, *e.g.*, the dissolution of the Long Parliament by Cromwell, or the overthrow of the Directory by Napoleon. This use of the word 'sovereign' is implied in Lord Bryce's concept of the Practical Sovereign, which he defined as "the strongest force in the State, whether that force has or has not any recognised legal supremacy."¹ T. H. Green also wrote as if he thought the word should ordinarily be used in this or some similar sense: "the term 'sovereign' is best kept to the ordinary usage in which it signifies a determinate person or persons charged with the supreme coercive function of the state."² I shall call this, sovereignty in the institutionally coercive sense.

(4) The word has again been used by some as equivalent to a *supreme coercive power exercised habitually and co-operatively by all, or nearly all, the members of a community*. Locke speaks variously of this kind of supreme coercive power as "the force of the community", "the force of the majority", and "all the force of all the people", in such a way as to imply a distinction between this and the coercive power of a professional police or a standing army.³ T. H. Green, although he did not favour the usage, held that the word *could* be used in this, or a very similar, way. "A majority of citizens *can* be conceived as exercising a supreme coercive power. . . . But as the multitude is not everywhere supreme, the assertion of its sovereignty has to be put in the form that it is sovereign 'de jure'." (p. 109.) This is also a meaning of the word which has sometimes, though not necessarily always, been implied both by those who have spoken of the 'sovereignty of the people', and by those who have spoken of the 'tyranny of the majority'. When the word is used in this way, it will be convenient to say that it is used in the socially coercive sense.

(5) It may now be noted that these four different senses of the word 'sovereign' refer to supreme authorities or powers, each of a different kind. But the fact that they are sovereigns of a different kind does not mean that they cannot, in some cases, be subordinated one to another according to some principle of subordination other than those already indicated. Some philosophers have, indeed, held that they can be so subordinated, and have tried to show accordingly which of these

¹ *Studies in History and Jurisprudence*, p. 511.

² *Lectures on the Principles of Political Obligation*, p. 103.

³ For examples see *Treatise*, Book II, paras. 3, 88, 89, 96, 130, 131.

sovereigns is 'really sovereign'. By so doing, they have used the word 'sovereign' in yet another sense. They have used it in a sense which is equivalent to what one might call the *strongest political influence*, where political influence is to be distinguished, in some way yet to be determined, both from legal authority and from coercive power. Many things may be regarded as sovereign in this sense, but usually this kind of sovereignty has been attributed to the popular majority, irrespective of whether the popular majority be also regarded as the coercive sovereign or not. The following examples from Locke and Dicey will indicate how the concept has been generally used. "Though in a constituted commonwealth", writes Locke, "there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate, yet the legislative power being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them." (para. 149.) "The plain truth", says Dicey, "is that as a matter of law Parliament is the sovereign power in the state. . . . It is, however, equally true that in a political sense the electors are the most important part of, we may even say are actually, the sovereign power, since their will is under the present constitution sure to obtain ultimate obedience."¹ This I shall call sovereignty in the influential sense.

(6) There is, finally, a usage of the word 'sovereign' which would make it equivalent to a *permanently supreme authority, power or influence*—the significant word in this case being the word 'permanent'. It seems to be a matter of custom among political theorists to make statements such as the following: 'Force is not sovereign in the state, for no state can be perpetually ruled by force alone'. Those who make such statements as this would not usually deny that a state may for some time be ruled by force alone; force may well be sovereign for some time, assuming some meaning of the word 'sovereign' already given. But if now the title of sovereign is to be denied to a 'sovereign' of this kind, clearly the word has once again shifted its meaning. It has shifted its meaning to the extent that a sovereign, in any of our previous senses, is no longer to be called sovereign unless it continues to exist for an indefinitely long time. Duguit says of Bodin, for instance, that "he defines sovereignty as 'the absolute and perpetual power in the state'";² and Professor Laski, with this definition

¹ *The Law of the Constitution*, eighth edn., p. 73.

² *Law in the Modern State*, trans. F. and H. Laski, p. 9.

apparently in mind, argues against Bodin as follows: "The government which acts as its (Professor Laski means the state's) sovereign organ never, as a matter of history, has the prospect of permanence if it consistently seeks to be absolute. Civil War and Revolution in the England of the seventeenth century, 1789 in France, 1917 in Russia, are all of them footnotes to the problem of sovereignty."¹ I shall call this, sovereignty in the permanent sense.

So much for the word 'sovereign'. It is necessary now to consider the word 'state'.

The word 'state' has been used by philosophers in at least three different ways. (1) To some, it has meant a *politically organised society*. "The state", says Sorley, "is not something separate from the citizen, and it is not something separate from the community or society to which it belongs. It is this society organised as a whole and able to act as a unity."² This is the sense of the word 'state' which we usually have in mind when we are dealing with matters of international politics, *e.g.*, when we speak of small and large states, backward states, industrial states, European states, etc. (2) To others, it has meant a *politically organised society in so far as it is ideally organised*. This, in the main, is the Hegelian use of the term. "By the State, then", says Bosanquet, "we mean Society as a unit, recognised as rightly exercising control over its members through absolute physical power." (p. 184.) Since this is a species of the state in the previous sense, it is not always clear that a person who uses the term in this way is using it in a sense which is different from the previous one. But, as with the moral sense of the word 'sovereign', we can be sure that a different sense is involved whenever the writer is prepared to deny the title of state to a politically organised society which is not, in his opinion, ideally organised. (3) More often in ordinary speech, however, and sometimes in political theory, the word 'state' has meant *government as an institution*. "The state", says Professor R. M. MacIver, "exists within society, but it is not even the form of society"; it is "a structure not coeval and co-extensive with society, but built within it as a determinate order for the attainment of specific ends."³ This is the sense of the word which we usually have in mind when we are discussing matters of domestic politics, *e.g.*, when we speak of state enterprise, state employees, the revenues of the state, the machinery of the state, etc.

¹ *Grammar of Politics*, p. 49.

² Creighton and others, *The Theory of the State*, p. 32.

³ *The Modern State*, pp. 5 and 40.

It may be that the words 'sovereign' and 'state' have been used in some senses other than these which I have indicated, but these at least are definite, it seems to me, as far as the history of political theory is concerned. Admittedly some of these senses are arbitrary, in that they are not the senses which are implied in the common use of the words by persons who are not political theorists; but to determine which is arbitrary and which is not is a question which need not concern us here, since it would not in any case affect any of the conclusions which may be derived from the foregoing analysis.

We are now in a position to answer the first of the traditional questions about sovereignty, namely, Is it necessary that there should be a sovereign in every state?

(1) If we are using the word 'sovereign' in the legal sense, it is not *logically* necessary that there should exist a sovereign in every state, on any of the three definitions of the word 'state', since it is clearly not self-contradictory to say that there does not exist in a state a supreme legal authority. But it is, however, *causally* necessary that there should exist a sovereign in every state, on any of our three definitions. I am now using the word 'cause' in the sense in which it is normally used in the practical sciences, and which has been defined by Collingwood to mean "an event or state of things which it is in our power to produce or prevent, and by producing or preventing which we can produce or prevent that whose cause it is said to be." In this sense it is causally necessary that a sovereign should exist in every state, since, in practice, government can only be carried on by means of laws, and laws can only be effectively administered if there exists some final legal authority beyond which there is no further legal appeal. In the absence of such a final legal authority no legal issue could ever be certainly decided, and government would become impossible.

(2) If, however, we take the word 'sovereign' in the moral sense, and if, in addition, we use the word 'state' in its second, or Hegelian, sense, then it is *logically* necessary that there should exist a sovereign in every state. For if the supreme legal authority which exists in a 'state' is not a completely moral authority, that 'state' is not an ideally organised society, that is, it is not a state on the present definition. This is an analytical proposition derived solely from the definitions of the terms used. But on any other use of the word 'state', of course, it is neither logically nor causally necessary that there should exist in any state a sovereign in this sense.

(3) It is not *logically* necessary that there should exist in a

state, on any of the three definitions, a sovereign in the coercive sense, since again, it is not self-contradictory to say that there does not exist in a state a supreme coercive power. But it is, nevertheless, *causally* necessary, in the present state of society, that there should exist in the state—senses (1) and (2)—a sovereign either in the socially coercive or in the institutionally coercive sense. Since it is a fact that many men in their present state are prone to disobey the law, it is necessary, if laws are to be effective, that they should be capable of being enforced. But laws can only be enforced in one of two ways, either by the habitual and co-operative exercise of coercive power in support of the law by indeterminate but exceedingly numerous persons in society, or else by the exercise of coercive power by a determinate body of persons, who are fewer in number, but who possess a monopoly of the instruments of coercion. Assuming, for the time being, that these two ways represent genuine practical alternatives, it is not causally necessary that there should exist in the state, as now defined, a sovereign in both the above senses, but only that there should exist a sovereign in the one sense or the other. But if, however, we are using the word 'state' in the third sense, the same facts would need to be stated rather differently. In this case we should have to say that it is causally necessary that an institutionally coercive sovereign should exist in the state, if there does not exist in society a sovereign of the socially coercive kind. That is, the state must possess a monopoly of the instruments of coercion, as long as there does not exist in society a sufficiently large number of persons capable of co-operating to enforce the state's decisions.

(4) If now we use the word 'sovereign' in the influential sense, it is neither logically nor causally necessary that there should exist a sovereign in every state. This is true on any use of the word 'state', since the strongest political influence may be exercised by bodies which exist, or events which occur, outside the boundaries of the state, *e.g.*, the influence of another powerful state, or of international economic events, etc. If we use the word 'state' in sense (3), moreover, there is the additional reason that the strongest political influence may be that of public opinion, which itself lies outside the state as the state is now being defined.

(5) It is, finally, neither logically nor causally necessary that there should exist in the state, on any of the given definitions, a sovereign in the permanent sense. In order, for instance, that the King in Parliament may be the legal sovereign to-day, it does not seem to be either logically or causally necessary that

he should continue to be the legal sovereign for an indefinitely long time.

Summing up now the above argument, it is possible to say (a) that it is necessary, *in the sense of logically necessary*, that there should exist a sovereign in every state, if we use the word 'sovereign' in the moral sense and the word 'state' in the sense of a political society ideally organised. It is also possible to say (b) that it is necessary, *in the sense of causally necessary*, that there should exist a sovereign in every state, if we use the word 'sovereign' in the legal sense or generically in the coercive sense, and if we use the word 'state' in any of the three senses indicated. On no other usages of the words 'sovereign' and 'state' can it be said to be necessary that a sovereign should exist in every state.

The three remaining traditional questions may be dealt with more briefly, since we shall no longer be concerned with the variations in the meaning of the word 'state'. The answers may be given in three groups corresponding to the three traditional questions.

(1) To the question, Is it necessary that the sovereign, if it exists, should be indivisible? the following answers may be given: (a) If by the word 'sovereign' we mean the legal sovereign, it is in one sense logically necessary that the sovereign should be indivisible, since it would be self-contradictory to hold that there could be more than one final decision on any one legal question; but it is neither logically nor causally necessary that the sovereign should be indivisible in the sense that every legal question should be finally decided by one and the same legal authority. This is equally true, if by the word 'sovereign' we mean a moral sovereign, since sovereignty of this kind is only a special case of sovereignty in the legal sense. (b) The same would also be true, *mutatis mutandis*, if by the word 'sovereign' we meant the institutionally coercive sovereign, the socially coercive sovereign or the influential sovereign. It is, in one sense, logically necessary that these sovereigns should be indivisible, since it would be self-contradictory to say of any two coercive powers which were of the same kind, or of any two political influences, that they were both at one and the same time the strongest. But it is neither logically nor causally necessary that these sovereigns should be indivisible in the sense that the power or influence in question may not be divided between two or more bodies. (c) If, however, we use the word 'sovereign' in the permanent sense, no questions about indivisibility arise, other than those already answered in connection

with its other meanings. The additional qualification of permanence now introduced does not affect the present issue.

(2) The answers to the third of the traditional questions, namely the question, Is it necessary that the authority or power or influence of the sovereign should be unlimited ? will depend on what political theorists have meant when they have used the word 'unlimited'. The word has been used in at least two different ways. (a) Some have used it as equivalent to 'omnipotent'.¹ When it is used in this way, it is clearly neither logically nor causally necessary that sovereignty, in any sense, should be unlimited. In the United States, for instance, there exists no legal authority which can legally deprive any State within the Union of its equal representation in the Senate. Standing armies everywhere are dependent on other persons for their supplies of arms and equipment, and the larger the army the greater its dependence, in this respect, on the rest of the population. Equally, there are few political groups which can successfully influence legislation without compromising to some extent with rival groups. On no usage of the word 'sovereign', therefore, is it necessary that sovereignty should be unlimited in this sense. (b) The word 'unlimited' has often been used, however, in a weaker sense, to mean 'exceedingly great' or 'superior to any other'.² When the word is used in this way, it is logically necessary that sovereignty, in any sense of the word, should be unlimited. But to say that it is, is now to utter rather a pointless tautology. It is simply to say that a supreme legal authority must be supreme, and so on, *mutatis mutandis*, for any other use of the word 'sovereign'.

(3) The fourth of the traditional questions, namely, Where is the sovereign located ? may now be easily dealt with, since it resolves itself into a series of entirely empirical questions requiring straightforward historical, legal or sociological answers. It is not necessary here, therefore, to establish what the correct answers are in this case, but merely to indicate what kinds of answers would be appropriate. It would be appropriate, for instance, though not necessarily true, to say that the sovereign was located in the King in Parliament, or the Cabinet, or the House of Lords (legal or moral sense), or in the bulk of the people or in the army (coercive sense), or in the electoral majority or in the economically dominant class (influential sense), or nowhere,

¹ *E.g.* Laski, *op. cit.*, pp. 51-53; Popper, *The Open Society and its Enemies*, vol. i, p. 107.

² *E.g.* Bryce, *op. cit.*, pp. 522-523; Laird, *The Device of Government*, pp. 83 f.

because no such sovereign at present exists (moral or permanent or any other sense). Needless to say, this question, or rather these series of questions, may still be difficult to answer, but if so, that is now due to insufficient empirical evidence, rather than to any ambiguity or other logical impropriety in the question. Not all questions which are difficult to answer are logically improper questions.

Answers have now been given to the traditional questions about sovereignty. If these are satisfactory, and I trust they are, then the traditional questions are not pointless questions, however much they may require analysis, and the theory of sovereignty may still be used in such a way as to present at least a consistent theory of politics.

II

The analysis which has now been given, I submit, removes the ambiguities in the traditional theory. Unfortunately, however, it does so only at the expense of making the theory so complicated that it is no longer economical or serviceable to use. The dilemma with which we are faced, therefore, if we wish to retain the concept of sovereignty, is very great. If we preserve the traditional simplicity of the concept, it is too ambiguous to be of service, but if we draw the distinctions necessary to avoid these ambiguities, the analysis of the concept becomes so complicated that its use is no longer helpful. Is there, then, any way of overcoming this difficulty? Is it possible to recommend a use of the concept which will both remove the ambiguities of the traditional theory and preserve it as a useful instrument of political analysis? It seems to me that this is possible, and I shall now endeavour to show how I think this can best be done.

In the first place, the use of the word 'sovereign' in the permanent sense may, with every advantage, be abandoned altogether. If the word 'permanent' is taken literally to mean 'lasting for an indefinitely long time', then this usage is objectionable for two reasons. (1) If we are referring to states which have existed in the past, the concept is so imprecise that no two historians could easily agree as to whether or not a sovereign in this sense did or did not exist in any given state. Did such a sovereign exist, for instance, in the Roman Empire? Some would say not. (2) If we are referring to contemporary states, it is impossible to *know* that a sovereign in this sense exists in any state, for even though it is conceivably possible that some

existing 'sovereign' may last for an indefinitely long time, it cannot possibly be *known* that it will. Nor is it easy to see what other use of the word 'permanent' would justify the retention of the concept. It may be, of course, that some theorists have meant by 'permanent' the same thing as 'stable', but, although it is causally necessary that a sovereign should be stable, this does not justify a separate use of the word 'sovereign'. The fact that a certain characteristic belonging to a thing is a *causally necessary* characteristic, in the sense of causal necessity used here, does not justify our making it a *definitional* characteristic of that thing. A well-drained soil is necessary to grow most plants and vegetables, but the fact that it is not well-drained does not mean that we no longer call it soil.

In the second place, the concept of the sovereign as the moral sovereign may also be abandoned without loss. All the issues which can be discussed with the help of this concept can be discussed more adequately and more usefully with the aid of the concept of obligation. If we define the state in such a way as to identify it with the ideal state, then we can quite logically speak of the sovereignty of the state in the moral sense, but this simply means that we are defining the state and the sovereign in such a way that no organisation is a state, and no authority a sovereign, unless we recognise a moral obligation to obey them. There is nothing logically objectionable about this, so long as it is understood that this is simply a way of approaching the problems of political obligation. But in practice this method of approach is objectionable for two reasons. (1) Since the definition of the state is arbitrary, the method is liable to slip from being a method of approaching problems of political obligation to being a method of justifying any state or political régime which happens to exist. This occurs whenever the meanings of the words 'state' and 'sovereign' slip from their announced meanings into one or other of their more familiar meanings. (2) It tends to prejudge certain questions of ethical theory. The concept of the sovereign as a moral authority tends to establish a strong *presumption* in favour of the view that there are certain moral standards which are the same for all persons, at least within any given political group. But although it may well be true that an objective theory of some kind in ethics is the correct one, this is a question to be examined in the light of our moral experience as a whole, and not one to be prejudged in the interest of a political theory.

This leaves four other concepts, the value of which needs now to be determined.

There is no doubt that the concept of legal sovereignty is valuable in any discussion of the legal aspects of the state's activity. On any definition of the state, as we have seen, it is causally necessary that a sovereign of this kind should exist in every state, and the question, Where is the legal sovereign located? is a fundamental question for every lawyer. Indeed, no contemporary political theorist seems to be prepared to deny the utility of the concept in this limited field, and those who have attacked the use of the concept have done so simply because its utility is confined to this particular field. Since its utility is confined to this field, it is argued, the concept is worthless for more general political purposes. This is a criticism which may fairly be levelled against anyone who maintains that this use of the word 'sovereign' is its only "proper" use, and who then ignores its other, allegedly "improper" uses. For, in that case, the theory of sovereignty becomes predominantly a legal theory without relevance to political issues, except in so far as these also happen to be legal issues. But suppose we allow, as certainly we should, that there can be more than one "proper" use of the word 'sovereign'. What then becomes of this criticism? A theory of sovereignty which permits a number of proper usages of the word 'sovereign', may easily allow that the concept of legal sovereignty is only useful within a limited field, without thereby limiting its own utility to the same field.

But there is a further requirement which needs to be met if the concept is to be worth using at all, and that is to define more precisely what is meant by supreme legal authority. To exercise authority, in its widest sense, is to determine a person's actions in certain intended ways by means of a rule. It is possible, however, to distinguish different kinds of authority by distinguishing the different ways in which different rules, and sometimes the same rules, may oblige a person to act. In this way, the following kinds of authority may be distinguished: (1) authority of a moral kind, where a rule obliges a person to act in virtue of its being accepted by his own conscience, (2) authority of a customary kind, where a rule obliges him to act in virtue of his desire not to incur the disapproval of some other person or persons, *e.g.*, the authority of a tribal chief or of a father of a family, and (3) authority of a coercive kind, where a rule obliges a person to act in virtue of its being enforced, usually with a penalty attached, in the event of disobedience. There are, however, two further sub-species of this latter kind of authority: (a) authority of the kind where the rule is usually enforced by a coercive power, but not by a supreme coercive power, *e.g.*, the

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authority of a schoolmaster (in some respects), of a trade union, or of an umpire at a cricket match ; and (b) legal authority in the strict sense, where the rule, whether it takes the form of a written regulation or of an unwritten convention, is enforced either directly by the exercise of a supreme coercive power, or indirectly by a serious threat of the exercise of such power, *e.g.*, the authority of a king, of a parliament, or of a judge. Legal authority, therefore, is one species of authority, and, when exercised, may be defined as the determination of a person's actions in certain intended ways by means of a law, law being defined as an unwritten convention or a written regulation, enforceable either directly by the exercise of a supreme coercive power, or indirectly by a serious threat of the exercise of such power. From this standpoint the definition of what is meant by the exercise of legal sovereignty presents no further difficulty. To exercise legal sovereignty, or supreme legal authority, is to determine the actions of persons in certain intended ways by means of a law as previously defined, where the actions of those who exercise the authority, in those respects in which they do exercise it, are not subject to any exercise by other persons of the kind of authority which they are exercising.

The definition of law given above is not yet entirely satisfactory since the concept of supreme coercive power, as yet undefined, occurs in the definition. This will be remedied in due course. Leaving the matter for the time being in abeyance, the definitions now given differ in two respects from the definitions given by Austin : (1) the definition of law is wider and designed to include customary law as well as case law and statute law, and (2) legal sovereignty is defined in terms of law rather than *vice versa*. The latter point has important implications, in that it enables us to reduce constitutional law, as it exists in either the United States or in Great Britain, to positive law. This is theoretically important, since it enables us to bring the theory of legal sovereignty into line with the more fundamental aspects of constitutional and federal government. Moreover, it enables us to do this without necessarily abandoning the command theory of law, since anyone who wishes to hold that theory may still claim that, although judges and legislative assemblies say what the rules are, it is the command of the *coercive* sovereign (*not* the legal sovereign, as Austin seems to have thought) which gives those rules the status of law.

As to the concept of coercive sovereignty, it is clear that this is no less important than the concept of legal sovereignty. Where it is necessary that a legal sovereign should exist, it is

also necessary, as we have seen, that a coercive sovereign should exist. There is, in fact, a functional connexion between them. Human nature being what it now is, it is necessary, if certain rules are to be obeyed, that they should be capable of being enforced; and, in order that they may be capable of being enforced, it is necessary that there should exist some body of persons sufficiently strong to enforce such rules against any likely opposition within the community. It is this functional connexion which was recognised in our definition of law and of legal sovereignty, both of which were defined, at least partly, in terms of supreme coercive power. There is little doubt, it seems to me, that the utility of the concept is great, and that its use in political theory is fully justified.

There are separate objections, however, which might be raised against both what I have called the institutionally coercive sovereign and the socially coercive sovereign. These require to be considered.

It might be objected that the concept of the institutionally coercive sovereign is itself ambiguous. As it has been usually employed, this is certainly a fair criticism. Very often, the sovereign in this sense has been understood to be, not the army or the professional police, but the person who has the legal or effective control of the army or the police, *i.e.*, not Cromwell's army, but Cromwell. This is a practice based on one of two different kinds of confusion. The first is the identification of a whole with a part, or of a group with a member. When the army, commanded by Cromwell, enforces the decisions of Parliament, Cromwell is a *member* of the coercive sovereign and may himself be called sovereign only by a metaphor. The second confusion is to identify coercive sovereignty with legal sovereignty. When Cromwell's army enforces the decisions of Cromwell as against the decisions of Parliament, or even the decisions of Parliament as dictated by Cromwell, Cromwell is not the coercive sovereign; he is simply appropriating legal sovereignty. Provided these two confusions are removed, however, the concept is no longer ambiguous.

The utility of the concept of the socially coercive sovereign might be questioned on the ground that no such coercive power can in fact exist. There is no doubt, however, that there have been historical examples of a supreme coercive power of this kind, notably the police system known as the frankpledge system in medieval England, and similar systems elsewhere. There are, nevertheless, fairly definite conditions under which a coercive power of this kind may be exercised. It can be exercised

only, (1) if all or nearly all adult men can be effectively organised for police duties, (2) if all or nearly all men have access to certain kinds of arms and are trained in their use, and (3) if there do not exist serious social cleavages within the community. Where any one of these conditions, and more especially the third, is lacking, law can only be maintained in the last resort by a professional police or armed force. Very often, however, the two coercive systems may exist side by side within the same community. It is often the case, as in England for many centuries, that the socially coercive power performs the coercive functions necessary in the case of those breaches of the law on which society is not deeply divided, such as crimes committed against the common law in times of peace, while the institutionally coercive power is held in reserve to deal with possible large-scale breaches of the law, such as a riot or a threatened revolt or uprising. Of more theoretical interest, it is the existence side by side of these two coercive systems which enables us to regard customary law as genuine law, and thus justify the wide definition of law previously given.

There is no doubt, therefore, that these two concepts of coercive sovereignty are useful. Since they represent, however, two species of a single genus, the theory of sovereignty may be simplified without loss of comprehensiveness or clarity, if we use the word 'sovereign' in a generic sense only. Traditionally, in order to simplify the theory, it has been the custom to confine the use of the word 'sovereign' to one or other of the relevant species. This is what was recommended by T. H. Green, for instance, when he said that "the term 'sovereignty' is best kept to the ordinary usage in which it signifies a determinate person or persons charged with the supreme coercive function of the state". But this is simply a further example of the common error of assuming that some one possible meaning of the word 'sovereign' is a "proper" meaning, while all other possible meanings are to be ignored. In this case, indeed, the error is committed twice over. Not only is it assumed that one generic usage rather than another (*i.e.*, the coercive rather than the legal usage) is the proper usage, but also it is assumed that, within this genus, the word is properly confined to one of the species. There is no solution of our problem along these lines. The only solution lies in accepting both usages, or, if the requirements of simplification are over-riding, in accepting only a generic usage. In this case, there is everything to be said for retaining only the generic usage.

This means that it is necessary now to define what is meant

by supreme coercive power, and, in particular, to distinguish coercive power from legal authority and from political influence. To exercise power, in a social and political sense, is to determine the actions of persons in certain intended ways. There are, however, different species of power, and these may be distinguished according to the means used to determine persons' actions. We thus have the following species. (1) Power in the sense of authority, especially legal authority, where the means used is the formulation of, or the reference to, a rule of law, *e.g.*, 'the powers of the President', 'the powers of local authorities', etc. This species of power we have already considered. (2) Coercive power, where the means used consists either in the direct use of physical force, or else in a serious threat of the use of force, *e.g.*, 'the power of the police'. (3) Power in the sense of influence, where the means used may be any means other than the employment of a rule of law or of physical force, *e.g.*, 'the power of the priest'. In all these cases, of course, one often finds, in addition, figurative expressions in which the power is ascribed to the means used rather than to the persons using it, *e.g.*, 'the power of the law', 'the power of the bayonet', 'the power of money', etc.

It is now possible, however, to define coercive power. Coercive power, when it is exercised, is the determination of a person's actions in certain intended ways, either by the direct use of physical force, or else by a serious threat of the use of force. Only a further step is therefore necessary in order to define what is meant by the exercise of coercive sovereignty. A person or a body of persons may be said to exercise coercive sovereignty, or supreme coercive power, if it determines the actions of persons in certain intended ways by means of force or the threat of force, and if the actions of the persons who exercise the power, in those respects in which they do exercise it, are not themselves capable of being similarly determined.

This leaves one more concept to be considered, namely, that of the influential sovereign. The most serious objection which might be raised against the retention of this concept is that it is seldom possible to determine the existence of an influence, and never possible to determine its strength, even when we know that it exists. In the case of legal authority and coercive power we can directly observe certain written rules and punitive instruments; we can observe the ways in which these are being used, and thereby discover chains of authority and power. But how does one determine the existence of an influence and, more especially, the strength of an influence? The objection is one of

fundamental importance, since, if there is no means of doing this, the concept is obviously pointless.

It does not seem to me, however, that this objection is finally convincing. The determination of degrees of influence is a job which economists, historians, anthropologists and politicians have often to undertake, and one which they often undertake quite successfully. There are two ways in which this can be done. (1) By means of experimental methods, *i.e.*, by deliberately changing the supposed determinants with the view to observing the concomitant changes, if any, in the behaviour of the persons whose actions are supposed to be influenced, *e.g.*, in order to test the extent of the influence which slum surroundings have upon children, it is possible to remove a number of children from these surroundings and observe the changes, if any, in their behaviour. (2) By means of historical abstraction, *i.e.*, by abstracting past variations in the supposed determinants and correlating these with the variations, if any, in the behaviour of the persons or bodies of persons whose activities are supposed to be influenced, *e.g.*, in order to determine the influence of economic factors on the techniques of instrumental music, it is not necessary to change the economic system here and now; it is possible by means of abstraction to isolate past economic changes and to correlate these with past changes, similarly isolated, in techniques of instrumental music. In order to determine degrees of political influence, however, it is true that the first of these methods is rarely applicable, since, although the determinants of political influence are capable of being changed, they are seldom if ever capable of being changed experimentally, *i.e.*, the changes once carried out are not reversible, so that they cannot usually be carried out at all unless there exists a widespread desire to abandon the older state of affairs for good. But the method of historical abstraction is generally applicable and its practical possibilities are greater the greater the accumulation of historical knowledge. There does not seem to me, therefore, to be any valid objection to the use of the present concept on the ground that it is not possible to determine degrees of political influence.

There are, in addition, strong positive reasons for retaining the use of the concept. Questions about influence are as important in politics as questions about legal authority and coercive power. Are the decisions of the legislature, for instance, primarily determined by the interests of a social class, or by the state of trade, or by the opinion of the majority of the electorate formed independently of class interest and in ignorance of world conditions, etc., etc.? All these questions, and many others like

them, are questions about political influence. Generalised, they amount to the one question, Where is the influential sovereign located? What the correct answer to this question may be is, of course, a different matter, but that the question itself is an important one seems to me to be beyond doubt. It is important because a correct answer to it would enable one to intervene more effectively in political affairs. If we wish to determine what Acts of Parliament shall be passed, without being ourselves Members of Parliament, it is important to know which is the most effective way of doing so, whether to try and convince the majority of the electorate, or to try and convince or overthrow the ruling class, or to do something else.

There is, however, one important qualification which needs to be stated if the concept is to be successfully used in this way, namely that the strongest political influence has to be a domestic and not a foreign influence. When the persons, or bodies of persons, who exercise a certain influence within a state, normally reside outside that state, then either it is impossible for any citizen to affect their actions or else, if he can do so, he can usually do it only through the legislature. In either case, his knowing where the strongest political influence lies, will not help him to determine the activities of the legislature. The concept is useful, therefore, only when the actions of the legislature can be regarded as being predominantly determined by the actions or wishes of persons who normally reside within the state, whether they be the whole people or a part of them. Its utility is clearest, of course, where there exist political conventions expressly designed to secure the supremacy of a certain kind of influence, as when a government is given a 'mandate' in an election; but its utility may be equally great in practice where there exist no accepted political conventions of this kind, as when the government is in fact an instrument of an oligarchy or a priesthood.

Since we must, therefore, as it seems to me, accept the concept, it now remains to define it. This is a difficult matter, since the concept is a residual concept and can only be defined negatively in terms of other concepts. I propose, however, to construct a definition in the following way. To exercise influence, as we have seen, is to determine a person's actions in certain intended ways, by some means other than by a rule of law or a threat of force. But in order that any influence may be regarded as a political influence, it must be an influence on politics, and to say that anything is an influence on politics is to say that it determines the actions, jointly or severally, of the legal and

coercive sovereigns. For instance, certain elements of a country's culture, such as knowledge of the country's history, can often in this sense be a means of political influence, in a way in which other elements of its culture, such as a knowledge of mathematics or a taste for good music, very seldom can be. To exercise political influence, therefore, is to determine in certain intended ways the actions, jointly or severally, of the legal and coercive sovereigns, provided always that their actions are determined by some means other than by a rule of law or a threat of force. It is now possible to define what is meant by the exercise of sovereignty in the influential sense. To exercise sovereignty in this sense is to exercise political influence, as now defined, to a greater degree than anyone else, provided that those who exercise it normally reside within the state whose legal or coercive sovereign they are supposed to influence.

Before leaving these definitions, there is one further point to be made. The definitions now given do not define sovereignty, but the exercise of sovereignty; that is, they define different kinds of events or occurrences. Words like 'sovereignty', 'power', 'authority', and 'influence', however, have this peculiarity, that when used in a sentence they do not inform us of any events now happening or about to happen, but of the probability of such events under certain understood conditions. In this respect, they resemble the names of dispositions. To say that x is sovereign, for instance, is to say, among other things, (1) that if a new law were to be enacted, and if no revolution occurred in the meantime, etc., then x would enact it (legal sense); or (2) that if an uprising were to take place, and x was not itself disaffected, etc., then x would suppress it (coercive sense); or (3) that if a new law were to be enacted, then x would determine the kind of law which the legislators would enact (influential sense). To say that a certain body of persons is sovereign, therefore, is not to say that it now determines the actions of persons in certain intended ways, etc., but that it recurrently succeeds in doing this under certain understood conditions, and will continue to do so under the same conditions in the future. This is the element of truth in the otherwise misleading view that sovereignty implies permanence. Sovereignty does imply recurrent activities of a certain kind under certain understood conditions, but it implies nothing about the duration of the conditions. It is also the much larger element of truth in the still somewhat misleading view of Austin, that sovereignty implies *habitual* obedience on the part of the bulk of the subjects. To say that sovereignty implies habitual obedience is false, if by

'habit' we mean a disposition of which the occurrent manifestations are voluntary and automatic, as in the case of smoking and swearing. Sovereignty does, however, imply recurrent acts of obedience, as distinct from habitual obedience in the strict sense, and to this extent Austin was right. Once we understand the proper logical function of words like 'sovereignty', 'power', 'authority', etc., we can easily embrace the element of truth in these views, without at the same time committing ourselves to the errors which they have helped to propagate.

III

We are now in a position to deploy the results of the above discussion. The main purpose of the discussion so far has been to simplify the theory of sovereignty as analysed in the first part of this paper, while at the same time avoiding the logical ambiguities of the traditional theory. This has been done by reducing the six concepts, mixed up in the traditional theory, to three concepts, now systematically defined and analysed. These three concepts, taken together, constitute an analysis of the concept of power as used in political theory. If this analysis is in general correct, then the applicability of the theory of sovereignty to modern political conditions should follow as a matter of course. A test of its correctness, therefore, is whether its applicability to these conditions does in fact follow.

The usual objections raised against the theory of sovereignty on the score of its inapplicability to modern political conditions, are the following: (1) that the theory is inapplicable to the most important political developments of the last hundred years, namely, political democracy, political federalism, and public law as represented in welfare legislation; (2) that it is incompatible with belief in international law, and (3) that it is powerless as a theoretical device to safeguard the individual against despotism. I shall now briefly consider whether the above analysis of the concept does in fact meet these objections.

In the case of democracy, not only is the theory outlined above consistent with the facts of the case, but it enables a classification of democratic systems which, in itself, it seems to me, is both interesting and useful. If democracy is defined as majority rule, we may distinguish the different species of democracy by distinguishing the relations which may exist (1) between the majority and the legal sovereign, and (2) between the majority and the coercive sovereign. In both cases, there are two relations

which may exist between them: (a) the majority may itself constitute the sovereign or (b) it may be the strongest influence on the sovereign (*i.e.*, may itself constitute the influential sovereign). These are the relations commonly referred to, more especially when used with reference to the state's legal functions, as direct democracy and indirect democracy respectively. Since, however, every state has both legal and coercive functions, and since either function may be characterised by either of these two relations, we have four ideal forms of democracy, as follows: (1) Direct legal and direct coercive democracy, *e.g.*, the political organisation of some highly developed tribal societies; (2) Direct legal and indirect coercive democracy, *e.g.*, the political organisation of some of the Greek city states; (3) Indirect legal and direct coercive democracy, *e.g.*, the state of affairs existing on the American frontier during the last century, approximately; (4) Indirect legal and indirect coercive democracy, *e.g.*, Parliamentary democracy where it exists at its best. Whatever the merits of this classification, it demonstrates, at least, that the theory of sovereignty now presented is fully applicable to the general conditions of political democracy.

We may turn then to the argument from federalism. This has been held to be fatal, in particular, to the concept of legal sovereignty. Where in the United States, for instance, is the legal sovereign located? One school replies that the legal sovereign is the constitution; but since the constitution can be legally amended by both Houses of Congress acting in conjunction with three-fourths of the States of the Union, this is hardly plausible. Another school consequently replies that the legal sovereign is both Houses of Congress acting in conjunction with three-fourths of the States of the Union. But since this body has acted as a body only on twenty-one occasions in a hundred and sixty years, and since both Houses of Congress, in any case, derive their own legal existence from the constitution, this is even less plausible. The question is clearly an embarrassing one, and becomes even more embarrassing once it is realised that there is nothing in the nature of the dilemma which makes it one peculiar to federal states. It is a dilemma which arises whenever we have to deal with legal systems which distinguish between ordinary law and constitutional law, whether the constitution be federal or otherwise. What then is the answer to this dilemma?

There is, of course, a perfectly simple answer, namely that in constitutions of this kind—and in almost any constitution, for that matter—there exist at least two supreme legal authorities,

one having supreme authority in one set of decisions, on one level of generality, and the other supreme authority in another, on a different level of generality. The traditional objection to this straightforward answer has been that legal sovereignty is not, in that case, necessarily indivisible. But as has been previously shown in this article, the phrase 'sovereignty is indivisible' can mean in this context two quite different things. In one sense it is logically necessary that sovereignty should be indivisible, namely in the sense that it would be self-contradictory to hold that there could be more than one final decision on any one legal question, but it is neither logically nor causally necessary that the sovereign should be indivisible in the sense that every legal question should be finally decided by one and the same legal authority. Although traditional theory was right, therefore, in holding that sovereignty is in some sense indivisible, it is not indivisible in the sense necessary to sustain the above objection. In which case, there is no further difficulty.

The argument from welfare legislation has again been held, with greater apparent justification, to be fatal to the concept of legal sovereignty. The argument is put by Duguit as follows (p. 31):

"If the state is not sovereign in one only of its activities it is never sovereign.

"Yet in those great state services which increase every day—educational, the Poor law, public works, lighting, the postal, telegraph and telephone systems, the railways—the state intervenes, but it intervenes in a manner that has to be regulated and ordered by a system of public law. But this can no longer be based on the theory of sovereignty. It is applied to acts where no trace of power to command is to be found."

In this statement, two criticisms of the theory of legal sovereignty are implied. In the first place, it is implied that since all welfare legislation *legally* binds the government to provide certain services for the community, such a government can no longer be regarded as *legally* sovereign. Secondly, it is implied that the theory of legal sovereignty requires one to hold a command theory of law, whereas in welfare legislation there is, in fact, no trace of command to be found.

The first of these criticisms is much the more important of the two. To meet it at all, it is necessary seriously to face the question: How can a supreme legal authority be *legally* subject to its own rules? Hitherto it has been well-nigh universally