

W. J. REES

The Theory of Sovereignty Restated⁸⁴

1. The word ["sovereign"] 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.⁸⁵ "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."⁸⁶ 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.

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."⁸⁷ 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 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

⁸⁴ [Reprinted from *Mind* (1950) in Laslett (ed.), *Philosophy, Politics and Society* (1956), to which page references are here given.]

⁸⁵ [For a good discussion of sovereignty and authority, see Stankiewicz, *Aspects of Political Theory* (1976), Chaps. 3 and 4.]

⁸⁶ *The Modern Democratic State*, vol. 1, pp. 217-218.

⁸⁷ *The Philosophical Theory of the State*, pp. 232 and 107.

State, whether that force has or has not any recognised legal supremacy."⁸⁸ 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."⁸⁹ 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.⁹⁰ 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 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."⁹¹ This I shall call sovereignty in the influential sense.

⁸⁸ *Studies in History and Jurisprudence*, p. 511.

⁸⁹ *Lectures on the Principles of Political Obligation*, p. 103.

⁹⁰ For examples, see *Treatise*, Book II, paras. 3, 88, 96, 130, 131.

⁹¹ *The Law of the Constitution* (8th ed.), p. 73.

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'"⁹² and Professor Laski, with this definition 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."⁹³ I shall call this, sovereignty in the permanent sense.

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,"⁹⁴ 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.

⁹² *Law in the Modern State*, trans. H. J. Laski, p. 9.

⁹³ *Grammar of Politics*, p. 49.

⁹⁴ [The three definitions given are:—a politically organised society; a politically organised society in so far as it is ideally organised; government as an institution.]

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 event 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. . . .

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.⁹⁵ (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 answer 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."⁹⁶ 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 a 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."⁹⁷ 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. . . . [pp: 57-65]

. . . 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

⁹⁵ [Sovereignty may even be divided between the state legislature, and some other body which is supra-national. For the problems arising from membership of the European Economic Community, see *ante*, 259.]

⁹⁶ e.g. Laski, *op. cit.*, pp. 51-53; Popper, *The Open Society and its Enemies*, vol. i, p. 107.

⁹⁷ e.g. Bryce, *op. cit.*, pp. 522-523; Laird, *The Device of Government*, pp. 83 *et seq.*