

Evaluation.—The idealist theory in so far as it preaches state absolutism and subordinates the individual to the state has been rejected but on that account it must not be supposed that the theory is entirely valueless. The idealist theory did a distinct service to politics by duly emphasizing the supreme importance of the state as a social organisation. The idealist philosophers rightly point out that the state is above all other human associations, that it is indispensable to the perfection of man and that it is in the state that the individual enjoys liberty and his relation with others is adjusted. The state therefore can justly claim the allegiance of its citizens and demand utmost sacrifice from them, if necessary. Again the idealist theory holds before us the picture of an ideal state, though the picture is a bit over-coloured.

✓ Marxist Concept of the State.

The political theory of Karl Marx is to be found in two of his famous books, namely, "Communist Manifesto" published in 1848 and "Capital" published in 1867. Marx inculcated a new philosophy of life and a new political theory which not only mark a bold departure from the old political ideas and ideals but also paved the way for the beginning of a new era when the old political structure of society was demolished and built upon a new foundation. Just as Darwin invented the theory of Biological evolution so also Marx invented the theory of evolution of human history.

The central theme of Marxian doctrine is that with man the necessity for making provision for food, clothing and shelter is more important than that for high thinking or in other words, man's economic needs are more pressing than other needs and without minimising the importance of other needs, his economic needs have priority to other needs. From this he concludes that fundamental changes in human society are brought about by the material conditions of life. The mode of production in material life determines and influences the character of the social, political and spiritual processes of life. Therefore, the social structure of a particular time, its arts, philosophy, law, religion, customs, manners and political structure are shaped by material conditions by which he means production, distribution and exchange, more particularly production. He adds that in each stage of the prevailing economic system, there arises a corresponding political system and a corresponding class structure. This interpretation of human history in the background of material conditions of life has been called Economic Interpretation of History.

—Marx illustrates the importance of the influence of material conditions of life on the evolution of human society. The hunting stage, was perhaps the earliest stage in the evolution of human society. The implements for hunting and the hunted animals were regarded as common property and as such the social structure based as it was on common property was in the stage of primitive communism. The transition from the hunting stage of the pastoral stage was marked by the division of society into two classes, the class owning herds of cattle and the class without them. The social structure had undergone an important modification as a result of the diabolical device of private property in cattle. Thus, according to Marx, the haves and the havenots came into existence and the seed of class-war was sown in human society.

The division of society sharply into propertied and propertyless classes which came in the wake of pastoral stage precipitated itself when men settled down to agriculture. Cultivation of land was the most effective way of production and

as such the land-owning class gradually monopolised political power reducing the landless class to the position of absolute dependence giving rise to a class known in history as serfs. Clash of different interests constitutes a prominent feature of the history of this period.

The use of machinery in production revolutionised the system of production and ushered into existence the industrial age which marked the rise of the capitalist and employer classes in place of the landlords or feudal lords of the agricultural age. As all the means of production were in the hands of this capitalist-employer class, the propertyless class had no other alternative but to sell their labour to the capitalist class at a rate much lower than the money-value of the product of their labour. The difference between the market value of the product of labour and the wage paid to labourers measures, according to Marx, surplus value, the whole of which is appropriated by the capitalist class by depriving the labourers of their legitimate dues. The capitalist class with economic power in its hand monopolises political powers and controls arts, literature, law, philosophy, history to their advantage.

At an advanced stage in the process of industrialisation, competition among different industries will lead to the survival of the bigger ones which in the end will combine to form gigantic industries with a view to making larger profit. As the share of the capitalist class will tend to increase proportionately the share of the working classes will tend to diminish. As a result of this process of increasing exploitation, wealth of a country will be concentrated in fewer hands reducing the vast majority to abject poverty. At this advanced stage of industrial development, conflict of interests which began in the pastoral stage becomes more acute and fierce so much so that it takes the form of violent revolutions. The capitalist class all over the world unite to safeguard their class interests against the labour class who also unite in international labour organisation against their common enemy.

Therefore, according to Marxian interpretation of history, at every stage in the evolution of human society, the material conditions of life shapes the political structure of society, the effect of which is the rise of two classes with conflicting interests—the propertied and the propertyless classes. The propertied class seeks to maintain its power and position by various devices one of which is the state-structure by means of which they subdue their opponent. The state maintains its police and defence forces which help the ruling power to preserve and perpetuate its hegemony over the exploited class. The state, according to Marx, originated in force, exists by force and continues to exercise force for the sole purpose of preserving the class-structure of society. The state therefore represents class interests and exists to promote class interests by means of centralised brute force.

Criticism—Marxian concept of the state has been subjected to a good deal of criticism. First, it has been pointed out that his economic interpretation of history is unacceptable inasmuch as it ignores the forces other than economic which also shape the course of the evolution of human history. The truth is that Marx did not ignore the influence of other forces but simply laid greater stress on the influence of material conditions of life in shaping the course of human history.

Secondly, it is said that Marx has proved a false prophet at least in two of his propositions, namely that, the poor will become poorer as a result of increasing exploitation and that the first social revolution will take place in England

or in Germany. None of these prophecies has come true. As a result of the benefits of successful industrialisation, the poor have not become poorer and the first revolution has not taken place either in Germany or in England. But it may be said in support of the Marxian doctrine that the falsity of these two propositions does not invalidate his main thesis.

Thirdly, the state, according to Marx, is born of class-war and armed revolution and as such mutual distrust and lack of a spirit of fellow-feeling and co-operation are the inevitable characteristics of such a state which can never realise the ideal of a welfare state.

In spite of some of the serious limitations of Marxian doctrine, it must be said that Marx has not proved utterly a false prophet. Class-struggle existed in ancient and medieval societies and it still exists in modern societies though not exactly in the sense in which Marx has described it. Again by inculcating the theory of surplus value, Marx made labourers conscious of their legitimate rights. Lastly, it was Marx who, for the first time, made pointed reference to the age-old process of exploitation of one class by the other and urged upon the exploited class the imperative necessity of their united efforts to make an end of the ruthless process of exploitation. As a matter of fact, the improvement in the conditions of labour that we find today is largely due to the able preaching of Marx.

SUMMARY

The origin of the State.

We cannot definitely ascertain the circumstances under which the state made its appearance for the first time. The growing political consciousness of man coupled with the instinct for social life gradually gave rise to the state. There are five theories regarding the origin of the state.

(i) *The Divine Right theory*—The theory ascribes the origin of the state to divine revelation. Kings act as the agents of God, answerable only to Him. The theory held the field for a long time and was used as a defence for royal absolutism. It taught men the virtue of obedience to established authority.

(ii) *The Social Contract theory*—According to this theory, men originally lived in a state of nature. When life in the state of nature became unbearable men came out of the state of nature to form a Civil Society by their joint agreement. The theory thus attributes the origin of the state to a formal contract by which men escaped out of the state of nature and formed a political society in order that they might lead a more peaceful life. Hobbes, Locke and Rousseau were the principal exponents of this theory. Although they agree in fundamentals, they differ much in details with regard to their views on the state of nature, contract and the civil society that were formed by the contract.

The theory has been criticised as unhistorical, illogical and dangerous. The state, according to this theory, is represented as an artificial organization, deliberately created by man. But the state is more than a mere partnership. The element of truth in the theory is that the foundation of the state lies in the consent and co-operation of the people and not on force.

(iii) *The Theory of Force*—The theory attributes the origin of the state to physical force. It supports the principle. 'Might is right.' According to this theory, the state was created by the subjugation of the weak by the strong and the state also continues by force.

The theory errs by laying too much stress on one factor, viz., brute force. A state based solely on might cannot last long. But it is true in the sense that law and order cannot be maintained without some amount of force which must be based on the common will.

(iv) *The Patriarchal and Matriarchal theories*—Both the theories regard the state as an expansion of the family. The origin of the state according to these theories, is to be traced to the family where authority belongs either to the eldest male member or to the eldest female member according to the organization of the family.

The truth is that kinship no doubt helped strengthen the bonds of union among ancient groups of men, but there is no historical proof to establish that the state developed through an expansion of families patriarchal or matriarchal.

(v) *The Historical or the Evolutionary theory*—This is regarded as the most scientific explanation of the origin of the state. It looks upon the state as the outcome of historical evolution. The theory does not seek to ascribe the origin of the state to one particular factor rather it ascribes the origin to various forces, like kinship, religion, force, political consciousness, etc. The theory embodies the elements of truth in all other theories. Forces like the principle of nationality, internationalism and economic equality have also moulded the character of the modern state.

The Nature of the State.

(a) *The Organic theory*—The theory looks upon the state as a biological organism. Many well-known writers including Plato, Bluntschli, Rousseau and Herbert Spencer drew analogies between the state and the human body. There are no doubt points of similarity between the two but there are differences as well and the differences are more marked than the similarities. The theory seeks to uphold the despotism of the state but the theory served a very useful purpose by emphasizing the fundamental unity of the state.

(b) *The Idealistic theory*—The theory attributes a moral personality to the state. According to this theory, the state is a super-personal entity, mystical in form and unlimited in power. The theory idealises the state and inculcates a doctrine of complete subordination of the individual to the state. The theory has been rejected on the ground that it supports state-paternalism and thereby breeds absolutism.

QUESTIONS

1. How far is it true to say that the origin of the state lies in force?
2. "As an explanation of the origin of the state, the theory of Social Contract is now entirely discredited." Do you agree with this view? Give reasons for your answer.
(C. U. 1934; Gauhati, 1957)
3. Mention some of the salient points of difference and agreement between the Social Contract theories of Hobbes, Locke and Rousseau.
(C. U. Hon, 1929)
4. "Rightly understood all the best elements in the several theories of the state—the Divine Right theory, the Force theory, and the Contract theory—enter into the evolutionary theory of the state." Discuss.
(C. U. Hon, 1922, 1967)
5. Discuss the practical importance of the Social Contract theory in actual political development.
(C. U. 1949)
6. "The state is an entity over and apart from the people who compose it, with a real will and personality of its own." Examine critically the theory of the state embodied in the statement quoted above.
(Pat. 1941)
7. "Government rests on force: Government rests on opinion." Discuss these statements.
(C. U. 1948, 1967)

8. Discuss the importance of the Theory of Social Contract in the development of Democracy. (C. U. Hon. 1952)
9. "The accepted theory of the origin of the state in modern Political Science is the historical or evolutionary theory." Discuss. (C. U. 1952)
10. Discuss the Theory of Social Contract as an explanation of the origin of the state. Is there anything of permanent value in this theory? (C. U. Hon. 1958)
11. "Rousseau combines the premises of Hobbes with the conclusions of Locke." Discuss critically in the light of this statement the Theory of Social Contract. (C. U. 1963)
12. Discuss the Evolutionary Theory of the origin of the state. (C. U. 1963)
13. Explain with reference to the views of Hobbes, Locke and Rousseau the Social Contract Theory regarding the origin of the state. What are the defects of the theory? (C. U. 1969)
14. Analyse the Marxist conception of the state. (C. U. 1972)
15. Make a critical assessment of the Organic Theory regarding the nature of the state. (C. U. 1973)
16. Explain which theory as to the origin of the State best conforms to realities and in what respects other theories are lacking. (C. U. 1975)
17. Explain the Idealist Theory regarding the nature of the state. Analyse its virtues and dangers. (C. U. 1976)
18. Explain the Marxist theory regarding the nature of the state. (C. U. 1982)
19. Explain the organismic theory of the state. (C. U. 1984)
20. Do you agree with the view that the state is an instrument for class exploitation? Justify your answer. (C. U. 1988)
21. Do you agree with the view that the state is a living organism? Give reason for your answer. (C. U. 1989)
22. What are the basic tenets of the Idealistic theory regarding the nature of the state. Make an evaluation of the theory. (C. U. 1990)
23. Critically discuss the Social Contract Theory regarding the origin of the State. (C. U. Law 1993)
24. "Will, not force, is the basis of the state". Discuss the statement. (C. U. Law 1990)

CHAPTER 6

SOVEREIGNTY

References :

- *✓ Garner—Political Science and Government, Ch. 8.
Gilchrist—Principles of Political Science, Ch. 5.
MacIver—The Modern State.
Laski—Grammar of Politics, Ch. 2.
Laski—The Problem of Sovereignty, Ch. I.
Coker—The Attack upon State Sovereignty in Merriam, Barnes and others.
Bryce—The Nature of Sovereignty in Studies in Jurisprudence and History, Vol. II.

Its meaning. The word *Sovereignty* is derived from the Latin word *Superannus* meaning supreme. It means supreme power of the state. It is a power which is not subject to any other power and does not admit any other power to compete with it. "It is that characteristic of the state in virtue of which it cannot be legally bound except by its own will or limited by any other than itself." It means every independent state must possess this ultimate authority, an authority from which there is no appeal to any other higher authority.

*✓ The French writer Bodin who first elaborated the doctrine of sovereignty defined it as "the supreme power over citizens and subjects, unrestrained by law." Grotius, the Dutch Jurist, defined it as "the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden." The American writer Burgess describes it as "original, absolute and unlimited power over the individual subject and over all association of subjects." D. F. Russel defines it as "the strongest power and supreme authority within a state, which is unlimited by law or anything else, since otherwise it would be neither strongest nor supreme." Sovereignty, it should be remembered, is an essential mark of the state and not of the government. The absence of this characteristic reduces a state to the position of a mere dependency. An analysis of the different contexts with which the term is used will help explain its nature.

KINDS OF SOVEREIGNTY :

(a) **Internal and External Sovereignty.** The internal sovereignty of a state refers to the power of the state over all individuals or groups of individuals within its own territorial limits. Thus internal sovereignty implies the idea that the state is the final authority to command and exact obedience to its will. According to Laski, it is by virtue of this power and "what it proposes is right by the mere announcement of intentions." External sovereignty, on the other hand, means the power of the state to determine its own policy in relation to other states and the right to declare war and make peace. But a close analysis shows that the distinction between the two is unnecessary inasmuch as the very idea of sovereignty is associated with the idea of supremacy of the state not only as against all persons and associations within the country but also against all foreign wills. What external sovereignty really means is not that a state is sovereign in respect to certain matters outside its own territorial limits but that it is free from foreign control. In this sense, external sovereignty means nothing

more or less than 'independence'. A state is sovereign internally in the sense that it possesses theoretically unlimited power over all individuals, but in that sense, the state cannot be externally sovereign because statehood implies independence of all states from foreign control.

(b) **Titular and Actual Sovereignty.** Titular Sovereignty refers to that authority of the state which does not actually exercise any power but occupies a highly privileged position in the state. It is sovereignty by name only and reminiscent of the days when kings exercised absolute and unlimited powers without any reference to the will of those whom they governed. The King in England is the titular sovereign who reigns but does not govern. He is only the figure-head of the machinery of government. The actual sovereign is the British Parliament which actually rules the country without any reference to the will of the titular sovereign, namely, the King.

(c) **De facto and de jure Sovereignty.** The authority which is recognised by law as the sovereign is the de jure sovereignty. The *de facto* sovereign is the person or body of persons who can make his or its will prevail in the community whether with the law or against the law. The de facto sovereign may not have any legal claim to obedience, but he is a practical sovereign whose authority is based on physical force or moral persuasion. A military conqueror by capturing the whole or a part of a state's territory and compelling the people to obey him may be established as a *de facto* sovereign. In course of time, the *de facto* sovereign, by securing the consent of the people, may become a *de jure* sovereign. Thus when a *de facto* sovereign be he a conqueror or an usurper, succeeds in exacting willing obedience to him, other states will recognize his sovereign character. The best example of *de facto* sovereignty, in modern times, is furnished by the case of Spain under General Franco who captured the authority of the State by defeating the Republican Government of Spain. General Franco began to rule by force but gradually he was trying to be a *de jure* sovereign by winning the consent of the people. The *de facto* nature of sovereignty may be converted into *de jure* by an election by the people. Thus *de facto* sovereignty and *de jure* sovereignty are only two different aspects of one indivisible authority.

(d) **Legal and Political Sovereignty.** The law-making authority in a state is said to be the legal sovereign. It is that authority which is recognized by the law-courts as sovereign and whose commands are enforced by the executive officers in a state. The legal sovereignty thus gives us the lawyer's view of the sovereignty of the state. Dr. Garner describes it as, "the determinate authority which is able to express in a legal formula the highest command of the state; the power which can override the prescription of the divine law, the principles of morality and the mandates of public opinion." Austin developed the theory of legal sovereignty of the state in a masterly fashion. He recognized the supremacy of the legal sovereign. When a law has been duly passed, it is to be enforced by the executive officials without any reference to the will of the authority from whom the legal sovereign may derive its power. In every state there must be a legal sovereign, be he an absolute monarch or an elected parliament. Thus the legal sovereign is always a determinate and ascertainable body whose will, expressed in the form of laws, binds everybody in the state and breach of which entails punishment. The legal sovereign is the source of all rights and by its very nature it is not limited by any other will excepting its own. In England, the King-in-Parliament is the law-making body, and therefore, the legal sovereign.)

Political Sovereignty is said to reside in the general body of the Electorate in a modern democracy. It implies the power which lies behind the legal sovereign and whose will ultimately prevails in a state. But the political sovereign cannot formulate its will in the form of laws and the law-courts are not bound to recognize them as laws. In short, the political sovereign in a state is the will of the people and though the legal sovereign has unlimited power, it cannot ignore the will of the people. In England, the King-in-Parliament is the legal sovereign and the Electorate is the political sovereign from which the legal sovereign derives its power. The political sovereign exerts its influence through the press, the platform and through its right to franchise. A law passed by the legal sovereign may be unjust or oppressive, but the law must be enforced in spite of the opposition of the political sovereign. The legal sovereign must be obeyed so long as it is not overthrown either by constitutional means or by a revolution. But it should be noted here that while the legal sovereign in every state is definite and precise, the political sovereign is vague and indeterminate.

The distinction between legal sovereignty and political sovereignty carries with it the idea of a division of sovereignty. Legal and Political sovereign authorities do not imply a division of sovereignty but what they really mean is that they are two different manifestations of the one and same authority acting through different bodies. In formulating laws, the legal sovereign is to reckon with the opinion of the political sovereign and the political sovereign cannot make its will prevail except through the legal.

National Sovereignty. The notion of national sovereignty was invented by the French revolutionary school of writers for the purpose of refuting the old absolute principles of monarchical sovereignty. The concept of national sovereignty was not only opposed to the concept of monarchical sovereign it was also contrary to the views of Rousseau who attributed sovereignty to the 'General Will'. Thus according to this theory, the nation in its collectivity is the only holder of this power and as such neither the individual as a part of the national nor the people as a whole is sovereign. Although the theory of national sovereignty indirectly supports the theory of popular sovereignty, the two are not identical. Popular sovereignty, in the last analysis, implies the force of public opinion which, though powerful, is not recognised by law. True it is that legal sovereignty always resides in the nation as a whole which is the source of public opinion. Thus conceived public opinion assumes a distinct form and may be vested with legal power. But the notion of national sovereignty although it proclaims the supremacy of the nation as a whole is useless in practical life. It is a mere conception having no objective existence and as such incapable of making laws.

The theory of Popular Sovereignty. The theory ascribes the ultimate power of the state to the people. But Popular sovereignty is to be distinguished from Political sovereignty which proclaims the power of the Electorate. The theory of Popular sovereignty, as advocated by the earlier writers, identified it with direct democracy, a form of government which was managed directly by the people.

The anti-monarchical writers including Marsiglio, William of Ockam, Althusius and others used the theory in order to discredit the authority of the ruler. But the theory received a definite shape and a new meaning in the hands

of Rousseau who made it the basis and watchword of democracy.' Rousseau emphatically asserts that sovereignty belongs to the people and that the general will of the people is the supreme power in a state and therefore it constitutes sovereign authority. The theory of Popular sovereignty is based on the famous dictum '*Vox populi vox dei*—the voice of the people is the voice of God. The theory of Popular sovereignty exerted a tremendous influence upon the minds of the people at the time of the American War of Independence and the French Revolution. In recent times, Prof. Ritchi has laid great stress upon the doctrine. Prof. Ritchi asserts that the people exercise sovereignty both directly and indirectly, directly through their right to vote and indirectly through the press, platform and lastly through threat of rebellion. In some states, the sovereignty of the people is exercised through devices like the referendum, the initiative and the recall.

Criticism—The theory of Popular sovereignty has been criticised on the ground that superior physical power is not possessed by the people. A well-disciplined army can keep down the masses in subordination. Besides, the people to whom sovereignty is ascribed, are so unorganised that they are incapable of clearly expressing their will. Even the most clear expression of the will of the people will have no legal validity unless it is expressed in legal form through constitutional channels. Can the supreme power of the state be exercised by the people including minors, idiots, lunatics, insolvents and criminals? It should be borne in mind that the state is not a mere aggregate of human beings settled down in a particular territory but it is a people, as Woodrow Wilson states, organised for law within a definite territory. Furthermore, it is far from truth to say that the exercise of franchise is a criterion of Popular sovereignty. Only a small per cent of the total population of a state are electors and even these electors do as they are directed by their leaders. Supreme power therefore belongs not to the voters but to the heads of organization.

Sovereignty of the people, on close analysis, corresponds approximately to the force of public opinion. The theory duly emphasizes the fact that public opinions is a force to reckon with in every state and that it cannot be easily flouted. An organized public opinion is an effective check on the sovereign authority because of its power to bring about a revolution. From the lawyer's point of view, the theory may be regarded as superfluous, but in reality "Sovereign power comes in the last resort from the people, and that whoever exercises it in a state exercises it by 'delegation from the people'. From the legal point of view, the people may not be the possessor of sovereignty but they in their collective capacity constitute an effective check on the legal sovereign. It is therefore imperative on the part of every government to conduct its affairs not in opposition to, but in accordance with, the public opinion of the country.

Attributes of Sovereignty. The characteristics of sovereignty are said to be permanence, inalienability, all-comprehensiveness, absolutism, indivisibility and imprescriptibility.

(a) **Permanence**—It implies that sovereignty exists so long as the state exists. A change of government does not bring about an end of sovereignty. Sovereignty is the life-force in the body of a state and therefore no state can exist without sovereignty and no sovereignty without the state.

(b) *Inalienability*—This means that the state cannot part with its sovereignty. When it alienates its sovereign power, it ceases to be a state. But this does not mean that a state cannot cede a part of its territory to another state or that it cannot delegate some of its powers to different bodies. The truth is that "sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality without self-destruction."

(c) *Self-Comprehensiveness*—It means that all individuals and every kind of association within the state are subject to the authority of the state. The state may, of course, waive its authority over some voluntarily. The extra-territorial privileges enjoyed by foreign diplomatic agents in a state may be curtailed or even denied to them by the state to which they are accredited.

(d) *Absoluteness or illimitability*—This characteristic implies the absence of any restraint, internal or external, on its authority. It is often pointed out that a state is limited both by constitutional law and international law. But these are self-imposed checks and may be set aside whenever it likes. The power of the sovereign is legally unlimited.

(e) *Indivisibility*—Sovereignty is a unit and therefore cannot be divided and shared by more than one authority in the state. Powers may be delegated to different organs but sovereignty, being a single absolute power, cannot be divided in any way. The principle holds good even in the case of a federal state where also sovereignty resides in the nation as a whole. It is not sovereignty but powers and functions of the government which are divided and distributed by the federal constitution between two sets of government—national and regional.

(f) *Imprescriptibility*—This implies that sovereignty is neither lost nor destroyed by mere lapse of time. A people may not have exercised sovereignty for sometime on account of subjugation by an alien people but non-exercise of sovereign power does not put an end to sovereignty.

State Sovereignty and Constitutional law.

There are many writers who have challenged the theory of unlimited sovereignty of the state. They argue that as the activities of a modern state are regulated by constitutional laws, these laws constitute an effective check upon the authority of the state which must confine the exercise of its powers within the limits set by the constitution. To counter the above argument, it is pointed out that as the state is vested with the power of amending the constitution at its free will, constitutional laws cannot be said to be real checks upon the authority of the state. They further argue that it is not the state but the government which is limited by constitutional law.

A group of modern writers headed by MacIver uphold the view that the state is really limited by the provisions of a constitution. They are of the opinion that there is a very fundamental difference which is often overlooked between ordinary law and constitutional law. Ordinary law differs from constitutional law not only in its nature but also in its purpose though not in legal validity. Ordinary law regulates the behaviour of men in their social relationships and as such the state determines the standard of this relationship. So the sanction behind ordinary law comes from the state. Constitutional

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law, on the other hand, regulates the state organisation in its entirety and as such the organisation itself cannot be regarded as the sanction behind all its activities. The fact, according to this school of writers, is that the state is only one of the many associations within society and has a limited purpose. Judged from this point, the state is subordinate to the community whose will is enshrined in the form of a constitution. The constitution is the expression and embodiment of the collective will of the community to which the state is definitely subordinate. This subordination of the state to the community makes it necessary in many countries like the U.S.A., Switzerland and others that amendments to the constitution require special procedure or a popular referendum or sitting of a special convention. Thus the theory of unlimited sovereignty of the state should be interpreted not from an abstract or theoretical point of view but in the light of actualities in modern political set-up.

Austin's Theory of Sovereignty. The leading exponent of the theory of legal sovereignty is John Austin who published his book on Jurisprudence in 1832. The Austinian theory of sovereignty is intimately connected with his general theory of Law. Closely following Bentham, he stated his views on sovereignty thus, "If a determinate human superior, not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society and that society including the superior is a society political and independent".

Austin begins his theory with an emphasis on the necessity of a sovereign authority which is essential to the existence of a political community. In fact a political community is unthinkable without this sovereign power.

Analysing his definition, the following conclusions as to the nature of sovereignty can be drawn.

First, sovereignty must reside in a 'determinate persons' or in a 'determinate body'. Therefore neither the general will as enunciated by Rousseau nor all the people taken together can be sovereign. *Secondly*, the power of the determinate superior is unlimited or absolute. He can exact obedience from others but he never renders obedience to any. *Thirdly*, the obedience in the Austinian sense has a positive and a negative side. The test of sovereignty, according to Austin, is therefore that people must habitually obey the commands of the determinate superior. Obedience rendered by a people to an authority occasionally will not constitute that authority into sovereign power. What Austin drives at is that obedience rendered to sovereign authority must be voluntary and as such undisturbed and uninterrupted. Thus the presence of the Russian army in Germany even though the foreign military power received temporarily the obedience from the bulk of the community, did not suffice to make the invading power sovereign in the political society. Austin also points out that it is not necessary that all the inhabitants should render obedience to the superior. It is enough if the 'bulk' i.e., the majority of a society render habitual obedience to the determinate superior. *Fourthly*, sovereignty is one indivisible whole and as such incapable of division. It cannot be divided between two or more parties because there can be only one sovereign authority in a state. *Fifthly*, Austin is strongly of opinion that command is the essence of law. In whatever form law is couched, it has no other source excepting the will of the determinate human superior and that breach of the command entails punishment.

Anticipating his critics, Austin himself admits that it is very difficult to ascertain what constitutes the 'bulk' of any given society or how long the obedience must be rendered in order to call it "habitual". He also admits that there is, in actual practice, hardly any nation which does not at times render some obedience to another. But the most essential characteristic of sovereignty, according to Austin, is its definiteness—that it must be readily ascertainable. It must be located in a definite person or group of persons who are singled out either by personal or by class characteristics.

Thus the sovereign in the English nation is regarded by Austin to be "the King, peers and commons" whom he would regard as a determinate body inasmuch as this body receives obedience but is not in the habit of obeying another like determinate body and is therefore sovereign. In the U.S.A., the sovereignty, according to Austin, rests with the state governments "as forming one aggregate body". By government, he, of course, means 'the body of citizens' which elects the ordinary legislature. Such bodies as these, Austin regards as determinate and as capable of corporate conduct and therefore 'fitting repositories of supreme power'.

Criticism. The theory of Austin has been vehemently criticised by many writers including Sidgwick, Maine and others. The main point of criticism against Austin's theory is that the theory is inconsistent with the modern idea of popular sovereignty. He advocates a theory of legal despotism of the state which runs counter to the basic principle of modern democratic government. Again, he is so much fascinated with the powers of the legal sovereign that he completely loses sight of the source of that power, viz., the political sovereign. He fails to lay due stress on the force of public opinion which exerts a tremendous influence on all governments and which a government can ignore only at its peril. Dicey points out that "Behind the sovereign which the lawyer recognises, there is another sovereign to whom the legal sovereign must bow." Austin completely ignores this sovereign. Furthermore, Austin has been criticised for defining law as the command of the sovereign. But this definition does not apply to the great body of customary laws which are not issued in the form of commands. In the oriental countries, customary laws are supreme and influence to a great extent the conduct of despots. Maine cites the example of Ranjit Singh of the Punjab who fits in with the Austinian conception of human superior. But even a despotic ruler like Ranjit Singh dared not change the customary laws which regulated the conduct of his people. Austin meets this objection by saying that "What the sovereign permits, he commands." But the maxim does not apply to Ranjit Singh because he had no other alternative but to permit what he could not change. Lastly, Austin attributes sovereignty to a determinate human superior,—a visible sovereign. Therefore, sovereignty, according to him, belongs to the government. But modern political science regards sovereignty as an essential mark of the state and not of the government which is merely an organ of the state with delegated power.

The legal absolutism of the state attributed to it by Austin has been assailed by the Pluralists who rightly point out that the state does not possess absolute power. The power of the state is limited internally by the power of various associations and externally it is subjected to international regulation and international control.

The Neo-Austinian writers have, however, modified the Austinian theory of sovereignty in response to the above criticisms. They point out that the theory is mainly a theory of legal sovereignty—a theory that suits the purpose of the lawyer. A lawyer is concerned only with the law; he need not go beyond the

legal sovereign whose commands are supreme in a state. But in spite of these defects, Austin's definition of sovereignty is clear and precise. He has done a distinct service by clearly distinguishing the legal from the political sovereign. He clarifies the idea of sovereignty and thus dispels the mist that came to hang round the theory of sovereignty. His chief error lies in the fact that he unduly emphasizes the importance of the legal sovereign and ignores the forces and influences which lie behind the legal sovereign. Austin's theory may therefore be said to be an incomplete theory of sovereignty but not an incorrect one.

It should however be pointed out here that the Austinian theory of sovereignty has been misinterpreted and misunderstood by many of his critics including Green, Maine, Laski and MacIver. According to these critics, Austin advocated a theory of sovereignty which was based on the idea of force, having no reference to the will of the people. In fact, one critic has gone so far as to suggest that the conception of sovereignty as developed by Austin is "far more applicable to a slave plantation or to a menagerie than to the actuality of political life." But this is a gross mis-statement of facts. These critics attribute to Austin a view which was not actually held by him. A careful study of his views as discussed in Lecture VI of his 'Jurisprudence' will bring out the truth. Austin did not stop simply with the analysis of the juristic conception of sovereignty, but he dived deep, as an utilitarian jurist, to discover the forces and influences which lie at the back of formal law. Having analysed the cause of habitual obedience which he attributes to the preference for any government by the bulk of the community to anarchy, Austin unequivocally declares that since "a government continues through the obedience of the people, and since the obedience of the people is voluntary or free, every government continues through the *consent* of the people or the bulk of the political society.....and that, if the bulk of the community ceased to obey it habitually the government would cease to exist."

The above statement clearly proves that the usual criticism which is levelled against Austinian theory is wholly unwarranted except in some other respects. ("Austin and the Basis of Obedience to Law" by Prof. D. N. Banerjee, *Calcutta Review*, August, 1942).

The Theory of Limited Sovereignty. The Monistic and Idealistic schools of writers advocated a theory of absolute sovereignty of the state. The Monists assert that the power of the state is legally unlimited and that the state can enforce its laws on the citizens against their will. The Idealistic school also advocated a theory of state absolutism. They regard the state as an end in itself and as such the sovereignty of the state is not limited in any way. But the absolutism of the state has been challenged by many writers who want to limit the power of the state. They speak of two kinds of limitation : one of a non-legal nature, such as, prescriptions of divine law, law of nature, etc. ; the other of a legal nature, such as constitutional law, international law, etc. Bjuntschli asserted that "Even the state as a whole is not almighty, for it is limited externally by the rights of other states and internally by its own nature and by the rights of its individual members."

So far as the first kind of limitations is concerned, it has been argued that they are not limitations at all. No state is legally bound to act in accordance with the dictates of humanity and reason. A law which has been passed by the law-making authority of a state will be enforced by the law-courts even if it be unjust or contrary to the principles of morality. In the same way, constitutional laws do not provide any limitation upon the exercise of sovereign authority.

Constitutional laws regulate the activities of a government by defining its sphere and thus act as a check on the authority of the government. But the sovereign power always reserves the right to amend the constitution. It has been stated by other writers that international law constitutes an effective check on the authority of the state. International law no doubt regulates to a certain extent the conduct of civilized states in their mutual intercourse with one another. But in the absence of a superior authority to enforce them, these laws are not legally binding upon states. A state is free to repudiate a treaty or violate a law of nations. It is to be considered as a law only in so far as and only so long as a state chooses to abide by it. The check imposed by international law rests more on expediency than on its legal validity. This is the reason why international law is honoured more in the breach than in the observance. Thus international law is no more than a self-imposed check on the sovereignty of the state. The Pluralists argue that the state is only one of the many associations to which the individuals happen to belong. Every association has its own laws for the guidance of its members and there is no earthly reason why the laws of the state should have priority of claims over those of other associations. Jurists like Krabbe and Duguit point out that laws exist even before the birth of the state and the state therefore cannot claim exclusive control over them.

The above analysis points out the absolute character of the sovereignty of the state. The limitations mentioned above have no legally binding character except in so far as the state chooses to recognise them. But in actual practice, the state very seldom acts in a way which is likely to disregard public opinion. Similarly, in the domain of international politics, the freedom of action of a state is limited by the universally recognised principles of international responsibility. According to Chief Justice Marshall, it is the consideration of common benefit and gain that makes it necessary for every state to relax its absolute and complete jurisdiction which sovereignty is said to confer. The state is therefore theoretically absolute and legally, the sovereignty of the state is unlimited though certain restrictions are imposed on the powers of the government for achieving the ends of the state. Thus when we speak of limited sovereignty, we mean physical limitations and not legal limitations. Sovereignty is no doubt defined as a power both unlimited and irresponsible but in practice it is neither.

The Theory of Divided Sovereignty and Federalism. The existence of a number of part-sovereign states like protectorates, condominium and mandated territories led some writers to think that sovereignty of the state could be divided and partitioned. The question of a Dual Sovereignty of the state assumed greater importance in practical politics with the formation of composite states in the form of Personal Union, Real Union, Confederation and Federation. The advocates of the theory of Dual Sovereignty point out that in a Federation sovereignty is divided between the government at the centre and the governments of the component units. They argue that each of the national and regional governments is supreme within its own sphere as defined by the constitution of the union.

Criticism. The advocates of the theory of Dual Sovereignty err on account of their failure to distinguish between state and government. It is the state which is sovereign and not the government. Government is the machinery which exercises the powers of the state. What is divided in a federal state is not sovereignty but only the powers and functions of the government. There is no

partition of sovereignty in a federal state rather there is a division and distribution of governmental powers between the two sets of government by the sovereignty itself. Dr. Garner objects to the theory of Dual Sovereignty and quotes Jellinek in support of his view : "The theory of divided sovereignty in a federal state rests upon a confusion of sovereignty with political power. What is divided is neither sovereignty nor state power but rather the objects upon which their activity is exercised." Sovereignty is a unit. Division means its destruction.

Recent changes in the conception of Sovereignty : The Pluralistic conception of Sovereignty. The traditional theory of sovereignty which is otherwise known as the Monistic theory attributes absolute and unlimited power to the state. It regards the state as the source of all powers—legal and political and seeks to make the individual and groups of individuals forming different associations completely subordinate to the state. The state, according to the Monists, is supreme not only within but also without. Its will is not limited by any other will save its own. This traditional theory of sovereignty has been assailed in recent times by a group of writers known as the Pluralists. The Pluralistic theory of sovereignty came by way of protest against the undue exaltation of the power of the state advocated by the earlier school of writers known as the Monists. As a result of the teaching of the Monistic school, the state came to grow into a veritable 'Leviathan', clothed with an unlimited power. Puffed up with the infallible and mystic character imputed to it by the Idealistic school, the state gradually extended its long arm over every sphere of human life with the result that the personality of the individuals and of other associations was completely crushed under the mighty weight of the 'Leviathan'. The Pluralists opposed this tendency of heightening the pretensions of the state to an inordinate pitch. The Pluralistic theory received a great stimulus from the writings of the German jurist, Otto Gierke, and in England, the theory has been very ably upheld by writers like Figgis, Maitland, Lindsay, Barker, Laski and MacIver. In its practical aspect the theory was considerably influenced by the formation of powerful economic organizations which came in the wake of the Industrial Revolution and which also claimed autonomy in their own spheres in order to safeguard their group interests. The state was now faced with the problems of adjusting its relations with these groups. The position of the state in the face of so many associations in society has been very aptly expressed by Barker thus. "No longer we write Man vs. the State, we write Group vs. the State."

The Pluralists argue that society is essentially federal in nature and the state is only one of the many associations to which the individual happens to belong. Man's social nature finds expression through various associations pursuing various ends and that is the reason why the social man has built up numerous associations, economic, political, religious, professional, etc. These associations, the Pluralists point out, have grown out of the needs of time and as such they are purposive associations each one of them having a mission to fulfil. Each association has its own laws and can exact obedience to the same independently of the state. Thus the state has now become more an association of individuals, already united in various groups for promoting various interests of their members and less an association of isolated individuals. The state, therefore, has no business to encroach upon the proper sphere of their activities.

Power of every association, MacIver points out, should be related to, and commensurate with, its function. If the functions of the state are clearly

scrutinized, it will be evident that the state cannot regulate all the aspects of a man's life. It regulates only one part, namely, the outstanding external conduct of a man's life. The state cannot do what the family or the university does for the promotion of the interests of the individual. Besides, a man is not merely a citizen; he has his duty to his family, to the community and to himself. The state, as an association, has therefore a limited function, no matter how great that be. But it exercises an unlimited power which far transcends the limits of its functions. The function of the state, the Pluralists argue, does not justify its being entrusted with so formidable a power, viz., power of life and death over all associations no less than over persons. The state which is vested with a function of a limited nature, must not be clothed with an unlimited power. Thus the Pluralists want to take away from the state the absolute sovereignty which it enjoys according to the Monists. They want to drag down the state from its position of preeminence and to place it on a footing of equality with other associations like the university, the church, the trade union, etc. Sovereignty, according to them, is no longer indivisible and all-comprehensive but all associations are equally sovereign within their respective sphere. The state cannot claim allegiance from them by virtue of mere force or by its right to make war and peace.

The Pluralists go further to suggest that the state is also not absolute in relation to other states. They argue that International law is no longer considered as self-imposed by mutual agreement but it has its necessary sanction behind it in the form of International rules, treaties and conventions. The absolutism of the state in international affairs is fraught with dangerous consequences. It will leave Italy free to attack Abyssinia and Germany, Poland. State-sovereignty is therefore limited externally by the rules of International law. Thus it is aptly said that "The Internationalist binds the Leviathan with chains and the Pluralist performs the necessary operations in the interior."

Jurists like Krabbe, Duguit and others have totally denied sovereignty to the state by placing law above the state. According to them, laws are not made by the state; they grow spontaneously and are obeyed by men out of a sense of advantage and benefits which obedience to law confers on men. They are enforced not by the physical force applied by the state but by the force of public opinion. Hence critics like Laski assert that it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered.

Criticism. The Pluralists therefore want to re-write the theory of sovereignty ascribing it to different groups within the society. But the Monists ask a pertinent question—who will adjust the relation between these autonomous groups? In the absence of the sovereign state, there will be no authority to adjudicate upon the disputes among different groups and our society will be reduced to a state of semi-anarchy. The Monists rightly point out that there must always be some ultimate authority in every society, otherwise the complex social structure is sure to collapse. The Pluralists meet this point by giving the reply that in case of disputes, the state will act as an impartial umpire in bringing about a compromise among warring groups. It will play the role of a co-ordinating authority among various conflicting claims. The Monists reply—to give the state the power of co-ordination and reconciliation is almost tantamount to clothing it with sovereignty. Thus, "While most Pluralists have sought to drive sovereignty out of the front door of their new society, they quietly smuggle it again through the back door, more or less disguised, but nevertheless a sovereignty". The

pluralistic idea of divesting the state of its sovereign character is therefore not only impossible but it is not one to be desired in practice. To make the state equal in status with other associations is to deny the state of its sovereignty, but without sovereignty, the state ceases to be a state with no power to supervise and control the activities of other associations.

Secondly, the Pluralists want to limit the power of the state in order to enlarge the scope of individual liberty. But the curtailment of the power of the state will only result in an increase of power of the groups which in its turn leads to group tyranny and suppression of individual personality.

Thirdly, Laski in his subsequent writings revised his precious opinion about pluralism. He asserted that so long as a classless society was not brought into existence as a result of the socialisation of the means of production, the state could not and should not be divested of its sovereign power.

Lastly, the modern states are undertaking so many welfare functions that these require for their planning as well as implementation a strong and a centralised authority. The exigencies of a modern total war also make it necessary for the state to assume the role of a final decision-making authority. All these recent developments tends to strengthen monism.

Evaluation. We cannot therefore accept the theory of the Pluralists *in toto*. The Pluralists have, however, done a distinct service by rightly emphasizing the importance of the various social groups. The various associations in a society serve useful purposes and they should be given the largest amount of autonomy within their own sphere. It would be wrong on the part of the state to exercise a paternal control over them. The Monistic view-point therefore remains almost intact with this modification that the state is *supreme* though not *absolute* in relation to other social groups.

In its external aspects, however, the theory of the absolute state has been discarded. International law is coming more and more to impose legal limitations upon the authority of the state and not merely self-imposed restrictions. Garner says that "the absolute sovereignty of the state in its international relations is not only a legal fiction but a baneful and dangerous dogma which ought to be abandoned and that the notion should be expunged from the literature of International law." The truth is that the doctrine of state absolutism was born in a historical environment in which necessity for restoring order clothed the state with internal sovereignty while the economic self-sufficiency of the age made it independent of other states. But now that the idea of the state as a power-system has been replaced by that of the state as a welfare system and the age of self-sufficient states by that of states mutually interdependent, a re-orientation of the classical theory is necessary to fit in with the actualities of life.

Location of Sovereignty. It is very difficult to say where sovereignty resides. Different writers hold different views with regard to the seat of sovereign power. The different views may be summarised as follows :—*First*, there are writers who ascribe sovereignty to the people. We have already seen that the people are incapable of wielding the power (see the Theory of Popular Sovereignty). The theory of popular sovereignty therefore falls to the ground.

Secondly, there is the view that sovereign authority resides in that body which can make and amend or modify the constitution of a state. In England, the King-in-Parliament is the sovereign body because it can pass both ordinary and constitutional laws. In France, revision of the constitution must be approved by 2/3rds majority of the National Assembly, or 3/5ths majority of both the chambers, and are to be submitted to a referendum. In the U.S.A., neither the Federal Legislature, i.e., the Congress nor the State Legislatures can amend the constitution. They can pass certain laws relating to their respective spheres. The body that is competent to amend the constitution is a complex and cumbersome one. Article 5 of the U.S.A. constitution prescribes four different methods of amending the constitution. *First*, the Congress by a two-thirds majority may propose an amendment which requires for its validity ratification by legislatures of three-fourths of the states. *Secondly*, an amendment may be proposed by a convention called at the request of legislatures of two-thirds of the state and the legislatures of the three-fourths of the states may ratify it. *Thirdly*, the Congress may propose an amendment by a two-thirds majority of its members and conventions in three-fourths of the states may ratify it. *Lastly*, a convention called at the request of the legislature of two-thirds of the states may propose an amendment which must be ratified by conventions in three-fourths of the states.

Objections have been raised against the location of sovereignty in a federal state in the constitution-making body. These constitution-making bodies are only temporary; they are created whenever necessary. But one of the essential attributes of sovereignty is permanence and continuity. Moreover, some of these constitution-making organs are merely parts of the governmental machinery and hence cannot be vested with sovereign power. So Laski rightly remarks that the task of locating sovereignty in a federal state is an 'impossible adventure'.

There is another theory advocated by Gettell which attempts to locate sovereignty in the sum-total of the law-making bodies within the state. These bodies are (i) Legislatures, national, provincial and local, (ii) Courts which interpret and apply laws to particular cases, and supplement existing laws, (iii) Executive officials who make laws by issuing ordinances and proclamations and (iv) The Electorate which exercises the power of referendum, initiative and plebiscite.

But the above theory is fallacious inasmuch as almost all the law-making bodies, mentioned above, are parts of the government and as such derive their power from the state which alone is sovereign.

History of the Theory of Sovereignty.

(Sovereignty is an essential mark of the state and with every change in the conception of the state, the concept of sovereignty has also varied from age to age. The concept of sovereignty with all its modern implications was unknown to the ancient political philosophers, although the Greek Philosopher Aristotle spoke a lot about the "supreme power" of the state. The Roman jurists were also familiar with the notion as is evident from their writings. During the Middle Ages, the idea of sovereignty was associated either with the authority of the King or with the theocratic control of the Pope. Feudalism no doubt helped bring the territorial state into existence, but this simply created strong monarchies which became the repository of supreme power. Thus a theory of sovereignty was

formulated in order to lend support to the absolute rulers who wanted to consolidate their authority after the decline of the power of the papacy.)

✱ The first writer to make a systematic treatment of the theory of sovereignty was Jean Bodin, a French jurist, who published his famous book Six Books of the Republic in 1576. According to Bodin, sovereignty is the supreme power over citizens and subjects, unrestrained by the laws. It must not only be supreme but also perpetual. The chief characteristic function of sovereignty is the making of laws. The Sovereign, like the subjects, is bound by the law of God and of Nature, but his obligation in this respect is to God, by whom it will be enforced. Thus Bodin made sovereign authority supreme, though not absolute.

Among other writers who made notable contributions to the doctrine of sovereignty, mention may be made of the Dutch jurist Hugo Grotius, Hobbes, Locke, Rousseau, Bentham, Austin and the whole of the Pluralistic school. Grotius also developed a theory of state sovereignty both in its internal and external aspects. But he laid great stress on the external aspects of sovereignty, emphasising the equality and independence of states which later on served as the basis of international law. Hobbes, like Bodin, attributed unlimited sovereignty to the ruler, basing his theory on a social contract without any provision for guarantee of individual liberty. Both Bodin and Hobbes made the same mistake in so far as they attributed sovereignty to the government, identifying it with the state.

The first writer to impose any constitutional limitations on the absolute character of sovereignty was the English writer Locke. He restated the theory in order to bring it in harmony with the representative form of government that was fast developing in his country. Locke avoided the word sovereignty in his two treatises and located the inevitable supreme power of the state in the people who vested limited sovereignty in the government.)

Rousseau did for the people what Hobbes had done for his ruler. He attributed unlimited sovereignty to the people who could only exercise it directly in a mass meeting. He reduced government to the position of an executive agent of the general will, denying to the government any share in the exercise of sovereignty. Thus both Locke and Rousseau clearly distinguished between state and government, attributing sovereignty to the state alone. Bentham, an analytical jurist, reverts back to the assumption of governmental sovereignty but he accepts the view that sovereignty, though legally unlimited, is not morally so. Sovereignty is limited by the right of resistance when resistance is morally justifiable. Although he pinned his faith for social improvement solely in the activity of the state, he recognised the fact that such activity of the state is to be adjudged by the calculus of the greatest happiness of the greatest number.

Austin closely following Bentham developed a theory of legal absolutism of sovereignty, attributing it to the supreme government.

The idealistic school in Germany led by Kant, Hegel and others also developed a theory of absolute sovereignty of the state with the addition of a mystic super-personality to the state with the result that the state grew into a veritable 'Leviathan'. It ignored not only the personality of its own citizens but also invaded the rights of other states.

A new theory of sovereignty known as the Pluralistic theory came into the field as a protest against the omnipotent state. The Pluralists recognise the sovereignty of the different groups within society but deny to the state a monopoly

of the attribute. They also seek to reject the notion of external sovereignty of the state. They point out that sovereignty is no longer to be considered as an essential attribute of the state because the modern state is a social service organisation which has no necessity for being vested with the power of life and death over other associations no less than over persons. Prof. Ritchi lays stress on the ultimate sovereignty of the people inasmuch as it is the people who can make and unmake the government. The modern tendency therefore is to reduce the sovereignty of the state to a position in which it becomes harmless internally as well as externally. The recognition of individual liberty and the growth of the ideal of internationalism have led to a decline of the sovereign state. Men have realised that the nation-state is not the ultimate unit of human organisation and hence not of ultimate human allegiance. Hence a state is conceivable even without its sovereignty.

Marxist Theory of Sovereignty. Sovereignty is the supreme power of the state by virtue of which the state exercises unlimited and unlimitable authority over everything within its territory and enjoys the same range of power in relation to other states. But the Marxists look upon the state and its sovereignty from altogether a different point of view. According to them, the state from its very beginning has been used as an instrument of exploitation of the many by the few and sovereignty implied the sovereignty of the few. The concept of sovereignty was unknown when man lived under primitive communism for there was no rule and subjection. The appearance of slave society is the starting point of the exploitation of the slave labour by the master and the concept of sovereignty was invented for the defence of the absolute power of the master over his slaves. It is in this way that with changes in the structure of society caused by economic factors, power passed on from one class to another—from the slave master to the feudal lord, from the feudal lord to the capitalist and lastly to the bourgeois class. So in every age, though the structure of the state changes, its essential characteristic, namely, its class structure does not change. Economic power determines which class shall rule and that class rule is maintained by force and the state is utilised for perpetuating the class rule with the help of the police and the fighting forces. The theory of absolute sovereignty of the state advocated by Machiavelli, Hobbes, Austin and other writers received a severe jolt after the Glorious Revolution of England in 1688, the war of Independence of America in 1776 and the French Revolution of 1789 and the success of these revolutions simply changed the character of the state-structure. The theory of popular sovereignty was invented at this stage to celebrate the triumph for the people over the King and the feudal lords. But what these revolutions achieved was not the establishment of popular sovereignty but only that of the bourgeois class. So the state still remained a class state to promote class interest. True it is that at this stage democratic institutions like elected parliaments, independent judiciary, universal franchise and the like come into existence and all these institutions proclaim and prove that state sovereignty is in the last analysis vested in the people. Dicey has made an admirable analysis of the legal and political aspects of sovereignty. Though he has attributed sovereignty to the electorate, the electorate cannot be sovereign as it cannot act except through parliament. The Marxists point out that in a class-state, political sovereignty really rests with the class which controls economic power. Parliaments in class-states like Great Britain, U.S.A., France and other states represent the capitalist class and legislate for upholding interest of the dominant class. This dominant class by virtue of

its unlimited power over the entire economy of the country determines the super-structure of the state, i.e., its political organisation, namely, police force, army, legislature, judiciary, etc.

Some writers say that the true repository of sovereignty is the constitution of the state because it is the constitution which is the source of all state powers. The Marxists ask: Who makes the constitution? It is the same class which controls the economic power of the state. In bourgeois democracies people may have plenty of political rights but so long as they are deprived of economic rights sovereign power cannot be said to rest with the people. Political rights alone cannot make a people truly supreme. Political rights supplemented by full economic rights can only make the people sovereign. So in the so-called democracies of the world where people are denied basic economic rights, sovereign power rests in the economically dominant class. It is only in the socialist state like the Soviet Union that the people are really sovereign in as much as it is a classless state where equal rights of all men—social, political and economic—have not only been recognised but are also enforced.

SUMMARY

I. Sovereignty is an essential characteristic of the state and not of the government. It means supremacy.

II. *Kinds of Sovereignty*: (a) *Internal and External*. Internal sovereignty means the supremacy of the state within and external sovereignty means freedom from foreign control.

(b) *Titular and Actual*. The nominal head of the state is known as the titular sovereign as the king in England. The actual sovereign is that person or body of persons who actually exercise the sovereign power as the British Parliament.

(c) *De facto and De jure Sovereignty*. The former refers to "that person or body of persons who can make his or their will prevail whether with the law or against the law." *De jure*, on the other hand, has a legal status but he may not be the *de facto* sovereign. Similarly, the *de facto* may not be the *de jure* sovereign.

(d) *Legal and Political Sovereignty*. Legal sovereignty resides in the supreme law-making authority whose commands the courts recognise as laws and apply to particular cases. Political sovereignty means the power that lies behind the legal sovereign. The legal sovereign derives its power from, and is responsible to, the political sovereign,—the Electorate.

III. *The theory of Popular Sovereignty*. It means the power of the people to regulate the affairs of the State. But in practice, Popular sovereignty has come to mean the administration of a country by the representatives of the people in consultation with the opinion of the general public. But the authority of the people must be exercised through legal channels, e.g., through Electorate.

IV. *Attributes of Sovereignty*. These are, (a) permanence, (b) inalienability, (c) all-comprehensiveness, (d) absolutism, (e) indivisibility, and (f) imprescriptibility.

V. *The Austinian theory of Sovereignty* proclaims the supremacy of the legal sovereign—the body that makes law in a state. But it ignores the political aspect of sovereignty. His definition of law also excludes customary law. Austin's theory may suit the purpose of the lawyer, but it is on the whole an incomplete theory of sovereignty.

VI. *The theory of Limited Sovereignty*. The sovereignty of the state is unlimited in the sense that its authority cannot be questioned by any body. It can do whatever it likes.

But some writers point out that public opinion, moral rules, constitutional law, international law, etc., constitute effective check on the sovereign power of the state. But really speaking, these are self-imposed limitations. In actual practice, however, no state will generally disregard the force of public opinion or act contrary to the principles of moral law or international law. These are not to be regarded as legal checks but they are checks so far as and so long as the state chooses to recognise them.

VII. *The theory of Divided Sovereignty.* Sovereignty is indivisible. The tripartite division of functions into Legislative, Executive and Judicial or the distribution of powers between the central and local governments in a federation is not a case of divided sovereignty rather a division and distribution of governmental powers by the sovereignty itself.

VIII. *Recent changes in the conception of Sovereignty.* The traditional theory of sovereignty has been assailed from three points of view : (a) First, the Pluralists have questioned the omniscience of the state in relation to other social groups. According to them, the state is only one of the many associations in society. An individual is a member of many such associations and the state therefore cannot claim the exclusive allegiance of the individual by virtue of being the state. (b) Secondly, the state has been denied its absolute character in relation to other states. The limitations of International law are becoming more effective and real on the sovereign character of the state. (c) Thirdly, Sovereignty of the state has been challenged on the ground that laws are anterior to the state and they exist independently of the state.

In spite of those criticisms, the state continues to be the highest form of human organization which supplements and co-ordinates the activities of other associations in society. It also settles the disputes between other associations.

IX. *Location of Sovereignty.* The location of sovereignty in a state is a difficult problem which can be studied from two points of view. Legal sovereignty resides in the body that can amend the constitution and political sovereignty is located in the will of the people. The truth is that sovereignty is an indivisible unit which resides in the state and state alone.

X. *History of the theory of Sovereignty.* The French writer Bodin was the first to make a systematic discussion of the theory, though the concept was not unknown to the earlier writers. Hugo Grotius laid stress on the external aspect of sovereignty. The three Social contract writers—Hobbes, Locke and Rousseau also made definite contributions to the development of the theory, the former advocating absolutism of state sovereignty while the latter two using it as an instrument of popular sovereignty. The analytical school of Jurists including Austin used the theory for upholding the legal despotism of the state. The Idealistic school also inculcated a doctrine of absolute sovereignty of the state with a mystic super-personality imputed to the state. The absolute character of state sovereignty has, however been assailed by a group of writers who known as the pluralists want to limit the powers of the state internally by group autonomy and externally by the rules of international law.

QUESTIONS

1. What are the characteristics of Sovereignty ? When we speak of 'limited sovereignty', do we understand physical or legal limitations ? (C. U. Hon. 1928)
2. Explain clearly the doctrine of Popular Sovereignty. What are its limitations ? (C. U. 1947, 1949)
3. Discuss the question of Sovereignty.
4. "The state is limited within ; it is also limited without." Examine this statement, Discuss in this connection the essential attributes of sovereignty. (C. U. 1957)

5. Define Sovereignty, and distinguish between (a) Legal and Political Sovereignty and (b) *De Jure* and *De Facto Sovereignty*. (C. U. 1960, 1963)
6. Discuss the nature and limitations of Pluralism as a critical political theory. (C. U. Hons., 1963)
7. State and criticise Austin's conception of sovereignty. (Gauhati, 1964)
8. State and criticise the pluralistic theory of the state. (Gauhati, 1965)
9. Attempt a critical estimate of 'the theory of limited sovereignty.' (C. U., B.A., Hons., 1966, 1981 Pass)
10. "It would be of lasting benefit to Political Science if the whole concept of Sovereignty were surrendered" (Laski). Do you agree to this view? State your reasons fully. (C. U., B.A., Hons., 1967)
11. Discuss the attitude of political pluralists and internationalists towards the doctrine of legal sovereignty. (C. U. 1975)
12. Evaluate the doctrine of popular sovereignty. (C. U. 1985)
13. Discuss the monistic theory of sovereignty. (C. U. 1986)
14. Explain Austin's theory of sovereignty. (C. U. 1988)
15. Evaluate the pluralistic theory of sovereignty. (C. U. 1989, 1993)
16. Analyse the different forms of Sovereignty. (C. U. Law 1987)

CHAPTER 7

LAW

References :

- * Rodee, Anderson, Christol and Greene—Introduction to Political Science, Ch. 4.
- W. Wilson—The State, Ch. V.
- W. W. Willoughby—The Fundamental Concepts of Public Law, 1931, Chs. 10, 16.
- MacIver—The Modern State, Bk. II, Ch. 8.
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Nature and Definition. The word law is derived from an old Teutonic root lag, meaning something which remains fixed. In English, the word means that which is uniform. The word law is used in various senses in modern times. Thus we speak of natural laws, moral laws, social laws. A natural law is one which denotes a sequence of cause and effect. The laws of Chemistry, for example, relate to the action and reaction of chemical agents. Secondly, a law may refer to rules regulating human conduct and be applied to two spheres of action. If the rules refer to motives and internal acts of the will, they are called moral laws; if, on the other hand, they are concerned with external conduct, they are called social or political laws. Political Science deals only with political laws.

A political law has been defined from different points of view by different schools of writers. Austin, the leader of the *Analytical School* of Jurists, defines law as a command of the sovereign. Whatever may be the form in which a law may be expressed, it is, according to Austin, in the last analysis, reducible to commands issued by the Political superior to the Political inferior. Command is the basis of law. The essence of law is therefore that it is consciously made and that an enforcing authority is the criterion of law. But Austinian definition of law has been criticised by Sri Henry Maine, the leader of the *Historical School*, on the ground that it excludes all those cases of customary laws which are not issued in the form of command rather they represent dictates of customary procedure. Nevertheless, they are enforced by law-courts and obeyed by the people. Thus the *Analytical School* of Jurists opines that law is static and not evolutionary and has therefore no other source than the sovereign authority, namely, the law-making organ of the state. The *Historical School* asserts that law is the product of progressive social forces like custom, legislation, judicial decisions and that all laws are not issued in the form of command. To meet the criticism of the Historical School, the *Neo-Austinians* have modified their definition of law. Dr. Woodrow Wilson defines law in a manner so as to reconcile the views of the Analytical School with the criticism offered by the Historical School. "Law," according to Woodrow Wilson, "is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government."

* The best definition of law has been given by Prof. Holland—"A law is a general rule of external action enforced by a sovereign political authority." Thus

the Neo-Austinians have conceded to this extent that a law is a rule of external conduct *enforced* rather than imposed by a sovereign authority. The view of the *Sociological School* is that law is based on the common consent of the community. A law which fails to secure popular support, is sure to be ineffective and inoperative. Common consent of the people is therefore the only source of law—be it the product of custom or legislation or judicial decision.

Thus these three different views lay emphasis on three different aspects of law but it must not be supposed that they are mutually exclusive, rather they are complementary to one another. The truth is that laws in the fundamental sense are the rules of conduct which derive their formal sanction from the sovereign authority but their actual content is determined both by progressive social forces and also by the sense of right, not of an individual, but of the majority of the community in the state. The latest writers on law have given a wider conception of law. They assert that law is the very antithesis of command. It applies to all. It binds the legislator as well as the subjects. The obligations involved in law are based not exclusively on organized force, but on the individual consciousness of social approval or disapproval of any individual action. Thus laws are rules of conduct which demand conformity and are supported by the compulsion of the state. But it does not follow that conformity to political laws is solely due to compulsion but it is due to the consciousness of benefits which such conformity confers. Laws are obeyed because they are destined to promote social good irrespective of the source from which they come. To whatever factor this obedience to state law may be attributed, the fact remains that state laws are compulsory and it is in this that they differ from laws formulated by other authorities. But the compulsion of law is a necessity of its existence in order to preserve and promote the benefits of social life. "Without this element of compulsion" says a great authority, "there is no guarantee of the generality which we have seen to be inherent in law. Because it is general in its application, the law of the state must be compulsive; because it is external in its injunctions, the law of the state can be compulsive." It should however be remembered that the state simply sustains law but the state itself is sustained by the community. Therefore both the state and law are means to promote the common interests of society.

Marxian Concept of Law. Marx differs from all other writers in regard to the nature and character of law. According to him, the character and contents of law are inseparably connected with, and dependent on, the character of the state. He totally rejects the notion that law is the expression of the will of the people based on the principles of social justice. He argues that in a class-state where the machinery of the states is used to promote the interest of the class in power, law cannot express the will of the people. It simply expresses the will of the ruling class.

The state, according to Marx, with all its paraphernalia like the police, defence forces, judiciary, etc. has been used as instrument for the protection, promotion and perpetuation of the interest of the class in power. Thus under the slave system, feudal system and capitalist system, the state had a class-structure having for its end nothing but exploitation. Such a class-state cannot make laws based on justice, liberty and equality for all. It is only under a socialist state which is a classless state where the dictatorship of the proletariat has been firmly established, it may be said that law reflects the popular will based on the principle of social justice.

Marx's view on the character of law cannot be accepted *in toto*. Some of the laws enacted in different democratic countries may not correctly reflect the popular will but on that account it will be going too far to say that the popular character of law is to be found only in socialist states, such as the Soviet Union. The devices of initiative, referendum and recall are living examples of the popular character of legislation in Switzerland. In England too, public opinion is a force to reckon with. Even in socialist states, popular character of legislation seems to be incompatible with the presence of a Breznev, a Mao-Zedong or a Tito.

Contents of Law. Now it may be asked if laws are backed by the common consent of the people, what is the necessity of the common consent of the people, what is the necessity of the coercive power of the state? The answer is that as perfect generality is the essence of law, it must apply to every body at all times. It is necessary that all people must obey laws always. A law is no law which can be violated with impunity. Woodrow Wilson thus states, "Law is both a mirror of conception and an active force. It exercises both an ethical and a physical compulsion." Every law is an embodiment of the prevailing social sense of justice and injustice or right and wrong. The character of a community can be judged with reference to the laws passed by it. Thus law, is, on the one hand, an index to social progress or set-back and on the other, an active force which compels men to conform to a particular course of outward conduct. Every law involves an 'ought' and a 'must'. There are people who obey laws because they consider it their moral duty. To them, law exercises an ethical compulsion. But there are other people who obey laws not because of the fact that laws are just but because of the fear of punishment involved in every breach of law. To this group, law exercises a physical compulsion and involves a 'must'. The moral support behind every law is to be sought in public opinion while the organized force of the government acts as a physical compulsion when the moral force fails.

It follows from the above discussion that 'law should have both validity and value'. The validity of law is enforced by the coercive power of the state. Conformity to the legal imperatives of the state is an essential criterion of law in the absence of which the legal imperatives are shorn of their compulsory and universal character. But the compulsory and universal character of law is solely due to the source from which it comes, namely, the fiat of the state. The fiat of the state can give it only validity but not value. For value, one has to go beyond its source, namely, coercive power of the state. A law is obeyed not because it emanates from the all-powerful state but because it embodies the inherent sense of justice. This sense of justice which law ought to embody and enforce lends value to the legal system as a whole. Thus when the legal system as a whole has its foundation on the prevailing sense of justice or injustice, right or wrong, law acquires moral value which in its turn helps make it valid. So the validity of law is not independent of its moral value. Both these attributes, namely, validity and value, are essential for the smooth operation and enforcement of law.

✱ **Essentials of Law.** The above analysis gives us an idea about the essence of law. Law is, according to Woodrow Wilson, "the will of the state concerning the civic conduct of those under its authority." Three things are therefore necessary for the existence of law. First, there must be a civic community

capable of exercising a will of its own. *Secondly*, there must be certain recognised rules of conduct regulating their mutual intercourse with one another. The first thing necessary for a numerous body of men for living together in a community is a body of definite rules of conduct, all of which may not be written down. *Thirdly*, there must be a sovereign power to enforce obedience to these rules. As laws safeguard the rights of the people by compelling them to behave in a particular way, the state is vested with the power of punishing those who violate the rules of conduct.

Relation between Law and Ethics. Political laws and moral laws, though they touch at many points, present striking contrasts in their essential character. The province of political law is confined to outward actions of men, while the sphere of morality extends to motives as well as actions. "Ethics is concerned with the whole life of the man, his thought and motive as well as his actions while political law is concerned with the regulation of external relationships of mankind." The province of law is therefore much more limited than that of morality. *Secondly*, they differ with regard to their sanction. Breach of moral law is not punished by the state but condemned by the conscience of man as well as by public opinion. Violation of political law is punished by the action of the state. Thus while the fear of punishment acts as a deterrent to the breach of political law, qualms of one's conscience as well as social condemnation constitutes a check upon immoral act. *Thirdly*, political laws are more precise and definite as there is a regular organ in every state for the formulation of laws. Ethical laws lack this precision and definiteness because there is no authority to make and enforce moral laws. *Fourthly*, *Ethics* prescribes absolute standards of right and wrong, justice and injustice; Law, on the other hand, follows standard of policy pursued by the state at a particular time. Thus there are acts which are immoral, though not necessarily illegal. Again, Law prohibits many things that are not morally wrong. They are wrong or illegal because forbidden by the state (*Mala prohibita*). Falsehood and ingratitude are immoral but not illegal. They fall within the sphere of morality. The Indian Legislature has prohibited the marriage of girls below the age of fourteen and of boys below eighteen. Such marriages are illegal not because they are immoral but because they have been declared as illegal by the government. *Fifthly*, political law is universal in character and application while moral law is individual and as such appeals differently to different persons. The sense of right or wrong and justice or injustice is not the same rather it differs from individual to individual. But perfect generality is the essence of political laws. Furthermore, the safety of the state may sometimes make it necessary to adopt certain measures contrary to the principles of morality. It is argued that "the safety of the state is its first law, and to realise this end it must be above morality." The state is justified in maintaining its independence and integrity by any means however repugnant it might appear from the ethical point of view. This is the view upheld by a school of philosophers who seek to justify all acts of the state irrespective of their nature and contents. But the view cannot be accepted unconditionally. True it is that the principle of self-preservation is as much a necessity with the state as is with the individual and equally true it is that the existence of the state is a condition necessary to the fullest development of the individuals composing the state. But on that account it must not be supposed that the state is free to enact any measure it likes. The state, being a means and not an end in itself, can act immorally only when such immoral acts are introduced as

temporary measures for the preservation and promotion of that condition in society which makes the realisation of good life possible. Without this condition, the state will grow autocratic and autocracy seeks to perpetuate itself by means of repressive laws enacted not so much for social good as for its own safety. So the moral irresponsibility of the state is only conditional and not absolute. The truth is that law is based on expediency and considerations of public safety and therefore acts which are immoral are not necessarily illegal only for reasons of public interest.

In spite of these differences, there are close connections between the two. The Ancients, however, believed that political laws and moral laws are inseparable. With the progress of political society, a clear-cut division has been made between the two, but still morality cannot be entirely divorced from politics. The ultimate end of the state is promotion of general welfare and the moral perfection of men in society. It is the duty of the state to formulate such laws which will elevate the moral standard of the people and remove those that hinder the realisation of the moral ideal. The laws of a country must conform to the prevailing standard of morality. Only such laws as are supported by the moral sentiment of the people are respected and obeyed by the people. Moreover, the principles of law and of morality are complementary to each other. If a law is far in advance of the prevalent moral opinion of the people, it has very little chance of being obeyed. There are certain universal moral codes to which every government must give legal sanction. The laws prohibiting murder, arson, robbery, etc., are cases in point. These acts are immoral as well as illegal. Gilchrist states the relation between law and morality thus: "The state, however, has a direct function in relation to morality. The function is both positive and negative. As a positive moral agent, the state makes good laws, that is, laws which are in accord with the best moral interests of the people. Negatively, the state must remove bad laws." Thus the government of India is making effort positively and negatively to elevate the moral standard of the people. Positively, the government is enacting good laws such as introduction of prohibition, various kinds of factory laws and tenancy laws; negatively, it is removing bad laws and social customs and institutions like child marriage restraint act, removal of untouchability, abolition of the zemindary system, etc.

✓ **Source of Law.** The development of the legal system in its present form has been influenced by various factors. These factors have been described as the various sources of law. Holland enumerates six such sources, viz., customs, religion, adjudication or judicial decision, scientific discussion, equity and legislation.

(a) **Customs**—Customs are the earliest source of law and have played an important part in the growth of law in every country. Certain common rules of conduct observed by the members of a community crystallised into customs. When the state came into existence, it recognised some of these customs and in this way customary rules based on common consent acquired the status of law. The best example of customary law is furnished by the 'Common law' in England.

(b) **Religion**—Customary laws prevailing in primitive societies were mixed up with religious practices. These laws were more scrupulously obeyed by the people because breach of these laws was regarded as a sin and considered as

detrimental to the spiritual interest of man. The Hindu and the Muhammadan laws in India derive their origin from religious practices.

(c) *Adjudication*—It refers to decisions made by courts of law. The function of the judge is to apply a particular law to a particular case and in applying the law, he interprets it in his own way. The new interpretation put upon the existing law often modifies the legal system of a country. Sometimes judges have to try cases not covered by any existing law. The findings in a particular case are followed by other judges in trying similar cases. Thus the judiciary as the interpreter of law is also a maker of law.

(d) *Scientific discussion*—The views of great Commentators like Manu, the Roman Jurisconsults, Blackstone, Story, Kent and others have influenced the actual legal systems in their respective countries. Commentators gather past customs, decisions and laws and arrange them in a logical form. In this way, they are able to arrive at new principles which, in their turn, serve as the basis of new according to the needs of the time. Commentators thus contribute to the development of law by interpreting the existing law, removing ambiguity and deducing principles applicable to specific cases.

(e) *Equity*—It is also a kind of judge-made law. It is made when the judges decide cases in accordance with the principles of justice and good conscience. Thus equity is made not in the process of interpretation of the existing law but in the act of applying the principles of fairness and equality to the cases of persons whom the existing law can provide no relief. Thus adjudication is an interpretation of the existing laws while equity is an addition to it. The best example of equity is furnished by the decisions of the Roman Praetor or of the English Lord Chancellor who used to decide cases according to this principle. The decisions were intended for giving relief where existing law provided none.

(f) *Legislation*—The last, though not the least, important source of law is Legislation. With the spread of democratic ideas, the collective will of the people is expressed through the Legislature in the form of laws. As it is the declared will of the sovereign, legislation is regarded as the principal source of law in the modern world. Although the influence of other sources is definitely on the wane in modern times, the Legislatures, in formulating laws, cannot altogether ignore the customs, religious practices and equity prevalent in a country. Customs, religious opinion, equity etc., in order that they may be enforced by courts of law, must have to be recognised by the legal sovereign. Woodrow Wilson states, "All means of formulating law tend to be swallowed up in the one great deep, and broadening sense, Legislation."

Oppenheim in his famous book on *International Law* asserts that there are not many sources of law but there is only one source of law, viz., common consent of the community. According to him, custom, religion, equity, etc., are not, strictly speaking so many sources of law. Every law is based on the common consent of the people and this common consent is expressed in different forms through different channels known variously as custom, religion, scientific commentaries, etc. They merely mark the different stages in the evolution of law which is nothing but the expression of the sovereign will.

Classification of Law. For purpose of political science, law may be classified in two different ways; *first*, according to the agency through which it is formulated and *secondly*, according to the public or private character of persons

concerned. According to the authority through which laws are formulated, we may classify them as follows :—

(a) *Statutes*—These are laws formally enacted by the Legislature in a state. These form the bulk of the existing laws in every country.

(b) *Ordinances*—These are commands or orders issued by the Executive for administrative purposes. These are generally temporary in character and of limited application.

(c) *Common Law*—It is a body of legal principles which have their origin in customs but are recognised and enforced by law-courts as statute law.

(d) *Constitutional Law*—These consist of “those fundamental principles that create government, outline the scope of its power and prescribe the method of their exercise.” It is only in countries having a rigid constitution that the distinction between statute law and constitutional law is observed.

(e) *International Law*—It is a body of rules that regulate the activities of civilized states in their mutual intercourse with one another.

Secondly, according to the character of the persons concerned, Holland classifies law into broad types, viz., (1) *Municipal* or National and (2) *International Law*. Municipal laws are those laws which apply within the territorial limits of a state and are enforced by the sovereign authority of the state. Municipal laws of one state do not apply to other states. Municipal law may again be subdivided into (i) *Private Law* and (ii) *Public Law*. Private law regulates the relation of individual and individual. It defines and regulates the rights enjoyed by the citizens against one another. Public law deals with the organization and function of the state and protects the rights which the citizens enjoy as against the state. Thus public law regulates the relations between the state and individual. Public law may further be classified into : (a) *Constitutional Law* which defines the form, organization and the manner of exercising governmental power ; (b) *Administrative Law* which prevails on the continent of Europe. It is a separate set of rules which make provisions for the trial of public officials by courts other than the ordinary courts of law. Government officials, for offences committed in their official capacity, are hauled up before these courts known as administrative courts and the laws applied by these courts are known as administrative law ; (c) *Criminal Law and Procedure*. Criminal law deals with crime and its punishment by the law-courts in a state. Criminal Procedure defines the manner in which punishment is to be awarded.

