

CONCEPT OF SOVEREIGNTY

The concept of sovereignty is Bodin's real contribution to political philosophy. He for the first time tries to give systematic and tangible idea of what sovereignty is and under what limitations it should work. He was of the view that sovereignty originally vested in the people who have an authority to exercise that but it has become customary for the people to delegate their authority to a single person, called sovereign who also exercises that.

Bodin defined sovereignty as "supreme power over citizens and subjects, unrestrained by law". He called it a perpetual power as distinguished from any power that is limited to a specific period of time. It is an unlimited power of the state for making law for itself. The sovereign must exercise the right to make peace and war, to appoint magistrates, to decide all causes in the last resort and to grant pardons. Bodin does not quite separate the conception of sovereignty from the idea of a group of legal prerogatives. Mere customary law can derive authority only from the sanction of the Sovereign. It is unrestrained by law because the sovereign is the source of law. The sovereign cannot bind himself or his successors. He cannot be made legally accountable to his subjects. The law of the land is simply the sovereign's command. Accordingly any limitation on the sovereign's power to command can be only extra-legal. The power to give laws to citizens collectively and severally, without the consent of a superior, an equal, or an inferior is the primary attribute of sovereignty. The other attributes such as the power to declare war and treat for peace, to commission

treatment of sovereignty postulates a clear-cut distinction between state and government. The state consists in the possession of sovereign power which government consists of the apparatus through which such power is exercised. A monarchy may delegate his power widely and govern popularly while democracy may govern despotically.

Function of Sovereignty

Sovereignty has its mark upon the entire body of the state including subordinate organs: The function of Parliament is advisory in a monarchy, power exercised by the magistrates is one delegated by the sovereign. All subordinate bodies which exist in the state owe their powers and privileges to the sovereign. All institutions are constructively derived from the sovereign.

Bodin seems to assert the existence of an unlimited authority in all republics to which all owe obedience as a duty. But he gives no answer as to whence this authority is derived and on what it is based. He viewed sovereignty to vest in recognition. He never suggested that he conceived of sovereignty as capable of existing unrecognized. He thought of this recognition now as creating the state, now simply as highly desirable and now connected with the conception of the true end of the state or even as necessary in view of that end. But he did not make it clear how this recognition originated or even why it is desirable.

Bodin also speaks of sovereignty as being established or appropriated by force; but sovereignty that is either inherent or necessary is not created by force in any sense, even though an actual sovereign may be. He also speaks of sovereignty as being conferred. But this is a mere transference of legal sovereignty from one hand to another. The people that confers it must, at least, have possessed it.

Bodin seems to hold that legal sovereignty must be the formal expression of a sovereignty inherent in the nature of a human association and determined by its ends. If the end is the realization of all possible good, if therefore, the government should have power to control all relations, the recognition of a sovereignty unlimited in law is a necessity. It is the symbol of the legality of the state. It is above other laws except those which it imposes upon itself of its own. Bodin defines sovereignty as the "Supreme power over citizens and subjects unrestrained by the law." Maxey says, "Living in a period of political chaos, and conceding that the religious and other disturbances of the time were attributable in the last analysis to the incompetence of political authority, Bodin naturally arrived at a view of the state which exalts unity and power."

Characteristics of Sovereignty

1. **Perpetual.** According to Bodin sovereignty has certain characteristics. It is perpetual and not meant for any specific period.
2. **Inalienable.** The sovereign cannot delegate this authority or power to an authority either without or within the state.
3. **Unrestrained.** The sovereign is the source of law and as such sovereignty is unrestrained by law. The laws of the land are under command of sovereign. As such to think of any legal bindings on this account is simply extra legal. By virtue of his legal authority the sovereign is competent to impose and collect taxes. The sovereign is not bound by his advisers. Advice rendered by them is simply a request. It is purely at the discretion of the sovereign either to accept that or not.
4. **Supreme Authority.** The sovereign is the head of the state and as such the head of all corporate associations because these corporate bodies exist only at the will of the state. By declaring that sovereign was supreme authority in

the state, Bodin gave a rude shock to the claim of papacy for being a partner in supremacy. Sovereignty is the highest will that can exist in the human society. Maxey says, "It is the unity which stands above all diversity in human society, the centripetal force which exceeds any countervailing centrifugal forces."

5. Limitations of the Sovereignty. Bodin did not plead that the sovereign authority was unlimited and unrestricted. Under the following restrictions it was limited :

(i) *Laws of God and Nature.* The sovereign, though being the head of the state and foundation of law was not above all kinds of laws. He must obey the laws of God and Nature, which are above all other laws and product of right reasons of mankind and hence unquestionable and above everything else Sabine says, "For him as for all his contemporaries, the law of nature stands above human law, and sets certain unchangeable standards of right; it is the observance of this law that distinguished the true state from mere effective violence."

(ii) *No penalty for violation by Sovereign.* Bodin, however, has not suggested any penalty for a sovereign who violated the laws of nature, because he felt that for such violations he was accountable only to God alone and did to his subjects.

(iii) *Honour the Commitments.* The Sovereign is supposed to make certain promises at the time of his coronation. It is not legally challengeable in the court of law, yet morally he is bound to honour those commitments.

(iv) *Respect for property.* The sovereign must respect the institution of private property. He must not confiscate it without very valid reasons. The property is a social institution. Sovereignty is political rather than social. Both should not be intermingled.

(v) *Constitution.* The state is bound by certain laws called the constitution of the state. These are the basis for the every existence of the state. Once the sovereign has agreed and has given royal assent to the constitution he is bound to respect the constitution. Hence a sovereign should not defy constitution.

6. Rights of the Sovereignty

(i) *Dictation.* According to Bodin the for most right of the sovereign is to dictate and to expect obedience from the subjects.

(ii) *Imposition of Taxes.* The sovereign has a right to impose taxes individually as well as collectively and to make arrangements for their collection.

(iii) *Coining Currency.* The sovereign has a right to coin money for proper regulation of state transactions.

Political Thought

(iv) *Appointments*. The state has the right of making appointments. A sovereign must appoint all categories of officers in the state both for his own interest and in the interest of the state and the individuals.

CONFUSIONS IN THE THEORY OF SOVEREIGNTY

1. **Sovereignty or Recognised Power.** According to Bodin there must be recognised legal sovereign with unlimited powers in every state. It is not an adequate solution to the problems of the discovers of the state to say that sovereignty must be or is a recognized power. Bodin seems to think that the conception of legally complete sovereignty at once explains and justifies political society. It ensures order and unity, defines the duty of citizens and answers all questions. It has existed for long both in law and in fact. But Bodin is more concerned to argue that *it must exist*, because it is implied in the very notion of man-made law and because it alone explains political society. The long continuance of political society proves to Bodin that its existence accords with the will of God. As it is the will of God than man should realise good in political society, the sovereign prince may even be called God's vicar. But the reference to God seems to be a formality of the time in which he lived. His Prince is not like Barclay's who is sovereign by virtue of a special divine commission. Sovereignty is for him always a human creation. It arises from the nature of man and from human needs and aspirations.

2. **Limited Sovereignty.** "You can eliminate from Bodin's Republic all his references to God and to Prince as a lieutenant of God and yet the whole structure remains intact. But if you eliminate God from the system of Barclay his whole structure collapses."¹

Bodin does not appear to conceive of sovereignty as necessarily involving a strictly unlimited power, even in law. His sovereign is limited in various ways: He is limited by natural law by which he is bound. He is also restrained by the fundamental laws of the realm, that is, by the *leges imperii*. He is bound to respect the sanctity of property and the family which together form the foundations of the state.

3. **Restrictions Over the Sovereign.** Bodin defines sovereignty as unlimited power to make law or to command, but the exercise of sovereign power in his state is by no means unlimited, for he allows a number of restrictions over the sovereign as he actually governs the state. Thus he never doubts that the sovereign is bound by the law of God and the law of nature. While he defines law as a sheer act of the sovereign's will, he never supposes that the sovereign could make law by mere fiat. The law of nature stands above human law and creates certain unchangeable standards of right. It is the observance of this right that distinguishes the true state from mere effective violence. There

contrary to law. In cases of flagrant violations of natural law by the sovereign will be or ought to be disobeyed. "Law is at once the will of the sovereign and the expression of eternal justice, and the two may be in conflict."¹²

4. Fidelity to Constitutional Law. Another confusion in Bodin's theory of sovereignty arises from his fidelity to the constitutional law of France. All his natural inclinations both as a lawyer and a moralist, were on the side of constitutional government and respect for ancient usages and practices of the realm. There were certain things which the King of France could not do. He could not change or modify the law of succession called the Salic Law and could not alienate any part of the public domain. At the same time, Bodin views the French King to be sovereign in full sense of the term. In fact, he is, as the example par excellence of a sovereign. Bodin admits the existence of a peculiar set of laws which are necessarily connected with the exercise of sovereignty itself and which even the sovereign cannot touch or change. These are the *leges imperii*, implying laws of the empire.

which the prince cannot change. . . On the other hand, if the state is a political community having laws and a constitution of its own, it is impossible that the sovereign should be identified with the prince."¹³

6. Need of a Powerful King. In fact Bodin wanted a powerful king who could command the allegiance of the nation and keep it united and strong. Only a visible king, seen as a Vicar of God could hold the French nation together and make it strong. But a visible, really sovereign the king is not easy to insert into a system of juristic concepts.

7. Defective Method. The confusion is also due to the method of study aimed at building a synthetic, all comprehensive philosophy: It was a method that sought to combine history with philosophy, factual evolution with logical analysis. In the perspective of history, the realm of France, the political community must be taken as a single social organism, continuous and self-identical through an indefinitely long series of gradual changes. But from the point of view of analysis it would be equally necessary to make a cross-section through the historical stream and consider the formal relation between the part of the legal constitution. No analysis, Sabine remarks, would fit all stages of the story history, and for this reason the history would violate the canons of any formal analysis.

8. Views About Private Property. Another confusion in Bodin's theory of sovereignty arises from his view about private property: He considered private property an inviolable right even if it is based only upon a law of nature. He made it so sacred that the sovereign cannot touch it without the owner's consent. Taxation for him required the assent of the estates though he called it only advisory in capacity.

9. View of State. The confusion springs equally from his view of state and the definition he attempts of it. The right of property is an indefeasible attribute, a necessary concomitant, of the family, or its very basis, and the family is the unit existing independently and naturally out of which the state has arisen. Property is to the family what family is to the state: The institutions are inextricable interwoven. A well orders stated, however, requires a sovereign whose legal power is absolute. Bodin fails to combine the indefeasible rights of the family with the unlimited legislative power of the sovereign. The family is essential to the state as property is essential to the family; but the power to tax is the power to destroy. The state cannot process the power to destroy its own members. Bodin's thought thus breaks in two at the point where the theory of the family ought to be joined to the theory of the state.¹⁴