BOOK THREE

Chapter II

CONCEPT OF SOVEREIGNTY - WESTERN AND INDIAN
Sovereignty is a much discussed subject in political thought and is in fact basic to any conceptions of political organisation. Yet it remains most elusive. It is not so difficult to answer the question 'What is sovereignty?' as it is to answer 'In whom does sovereignty vest?'. The controversy among political theorists may be said to arise out of (i) their inability to decide whether a person or a group of persons or an organisation or a principle actually or ideally is the sovereign; and (ii) their inability in framing consistently a criterion or criteria of sovereignty. Sovereignty, we are told sometimes, is actual, and sometimes it is said to be based on an effective control of social organisation. Sometimes it is declared to arise out of a delegation of the powers of God to a human agent or come out of an inborn right of an individual or a group to exercise sovereignty and so on. The confusion is worsened after a study of modern history where we find accounts of conflicts between the king and the parliament, the king and the constitution and between the bourgeoisie and the proletariat over authority. There are also
such 'revolutionary' theories as speak of the state itself as 'withering away' and the idea of sovereignty consequently becomes even more elusive.

The first controversy stated above relates to the enigma as to 'who or what organisation should be the sovereign?'. Political theorists sometimes argue that the state is the sovereign or that sovereignty is an attribute of the state. This automatically leads us to another question as to what a state is and what its attributes are. Regarding the first part of our supplementary question as to what a state is we must remark that there has been no general agreement on this point among political thinkers. While one school of political thought regards the state as the highest manifestation of human nature and ingenuity, the other considers it to be 'a necessary evil'. Some regard the state as the supreme organisation in society while others plead against the state and its supremacy and consider it only as an agency of the community and hence subordinate to it. In short there is such a wide variety of political opinions regarding the nature of the state that it is very difficult to rely on one or the other.

Thinking never takes place in a vacuum. Usually what men propound as social theories has relevancy to contexts and conditions. Political thought in
particular has its own limitations which are provided by the prevailing social circumstances. No political idea or theory is valid for all times. As Laski has said, "No theory of the state is every intelligible save in the context of its time. What men think about the state is the outcome always of the experience in which they are immersed". It is, therefore, the social environment which greatly affects our ideas and theories. Even the utopia of Plato bears an imprint and impact of the conditions prevailing in Athens and Sparta. Thus no political thinker has ever been able to free himself from the material pressures and stimuli engendered by the age in which he lives. And those who are able to escape the social pressures and excogitate purely in the realms of abstractions either construct a completely fantastic and unworkable utopia or commit the error of making the state an end in itself. Examples are not lacking in the history of political thought where we find many thinkers idealising or deifying the state. Hegel, for instance, regarded the state as 'the Divine Idea as it exists on earth'. He further stated, 'we must, therefore, worship the state as the manifestation of the Divine on earth, and consider that, if it is difficult to comprehend Nature, it is infinitely harder to grasp the Essence of the State.... The state is the march of God through the world'.
Further Hegel considered the state to be 'the realisation of the moral idea, the incorporation of the objective spirit and the actualisation of concrete freedom'. Such utterances about the state are certainly obscurantist since they impart to the state a supra-social character.

While the social contract theory suffers from the separation of the state from the individuals who compose it, they being related to it only by way of a contract, the organic theory of the state reduces the individuals merely to the subordinate level of cells in an organism. The latter theory, therefore, denies freedom to the individual. The problem is: how can we regard the state as a union having an intrinsic relation with the individuals that compose it, at the same time not depriving the individual of his status, of his freedom? Diverse opinions regarding the nature of the state and the relation of the state to the individual are the result of stressing the independence of one of those aspects (i.e. the state or the individual) at the cost of the other. A political theory which can balance both these claims remains yet to be worked out in the West. The paradox is: assuming that we cannot deny the individual his freedom, freedom constituting the very nature of the individual, and at the same time
accepting the state as a necessary pre-condition for guaranteeing individual rights, including that of freedom, it would impose restrictions on those very rights. The Marxists, for instance, have the set purpose of saving the proletariat from exploitation to guarantee to it its rights; but the state which they conceive of, is a structure which deprives the proletariat even of its most fundamental rights.

Laski is very critical of the state idealisation, and he derides many theoretical ideas regarding the state, its justification and its purposes. Arguing on the problem of the state in theory and practice he maintains: "Few institutions have received panegyrics more splendid than the state; and it is important to understand the grounds upon which they rest. They are rarely panegyrics of actual states; though there are occasions when the panegyrist has found his ideal embodied in actual society. More usually they are the defence of a system of purposes which the thinker deems good, and conceives as capable of realisation only through the peculiar form of a society we call the state". Laski, it may be mentioned here, has translated the state in terms of an association. In fact 'state in terms of being just one a co-operation among the many' marks a significant contribution of Laski to Political thought.
Defining the state Laski writes: "By a state I mean a society of this kind which is integrated by possessing a coercive authority, legally supreme over any individual or group which is part of that society". Further analysing the nature of society he maintains, "An examination of any national society will always reveal within its boundaries not only individuals, but also associations of men grouped together to promote all kinds of objects, religious, economic, cultural, political, in which they are interested. Such a society is state when the way of life to which both individuals and associations must conform is defined by coercive authority binding upon them all .... The state, then, is a way of organising the collective life of a given society". Laski thus considers society pluralistic in its structure; a structure abounding in men and associations for the fulfilment of their equally pluralistic needs and desires, and the state is just one association among many others which are equally important to men.

The state is certainly vested with coercive authority, but this does not belong exclusively to the state. There are other associations which also share this coercive power. Take the church, for instance; it used to exercise a considerable influence
over the individuals and the social institutions, an authority which has sometimes been coercive and hence parallel to the authority of the state. At certain periods of history its authority exceeded that of the state. In our own times the influence of the church and of other religious institutions has been reduced considerably, but its place has been taken by the party, as in totalitarian countries, and the press. Hence the state can claim only a conditional or partial allegiance of its members; the individuals are controlled by other associations also. Laski, however, has analysed the character of the state in empirical terms unlike many others who have mystified and deified it into a transcendental idea.

Does this mean that we have to dispense with the higher principles altogether? Or does it mean that we have got to bear in mind the possibilities of the realisation of the ideals before we set up these ideals or higher principles? If the former question is affirmatively answered then there would be no need for any political theory as there would not be any necessity to elaborate the purposes, aims and principles underlying social institutions. It would be purely a functional approach where we study descriptively what the state actually does or is and not what it ought to
be. This would certainly not do if we accept that there is anything like social progress which indubitably involves progress towards something not yet realised. Society, through its institutions has certain purposes to fulfil, however theoretical and unattainable these purposes may be.

However the second of the questions raised above seems to be justifiable inasmuch as any value sought to be realised in theory must have relevance to its practical possibility on the empirical plane. The Hegelian theory of the state is unworkable in so far as the supreme value assigned to the state hardly bears any relation to the actual state. Further, such a theory tends to ignore the individual and social incentive altogether by making its theory too deterministic by subordinating all existence to a predetermined order to which the former should conform.

Let us take the preamble to the constitution of India, for instance:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;"
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the
individual and the unity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this
twenty-sixth day of November, 1949, do HEREBY
ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The constitution of India, which follows
the preamble, seeks to realise through the legislature,
the executive and the judiciary the values set forth in
the preamble. The empirical, the positivist and even
the utilitarian approach to the nature of the state in
so far as they conceive of the state shorn of all its
moral purposes, are too inadequate. The above
preamble, for example, cannot be explained in terms of
the above attitudes but only in terms of moral purposes
behind the founding and the working of the state and
government of India, because what follows the preamble
may properly be regarded as attempts to realise the
ideals set forth therein.

All modern states in practice, excepting
those without a constitution, categorically place before
themselves ideals of some type or the other which they
endeavour, or at least declare that they endeavour, to
achieve. Even a monolithic state as that of Nazi
Germany was wedded to certain ideals, however objectionable its methods to realise these might have been. It is very difficult to visualise a political organisation without a declared purpose. A Marxist state, like the Soviet Union, for instance, prescribes in the constitution that 'he who does not work shall not eat'. An examination of the ideals of all constituted societies would reveal that they all have certain lofty ideals set before them. Thus to a political theorist any value judgement about the superiority of one system over the other seems to be impossible if one were to consider these ideals alone. The differences in the various political systems, we maintain, consist not in the ideals declared but (i) in the methods adopted to fulfil them and (ii) the extent of their fulfilment. To the layman such phrases as 'dictatorship of the proletariat', 'equality before the law', 'government of the people', 'welfare state' etc., do not carry any intelligible import and are just blank terms. One might mention here that some communist states call themselves People's Republics or People's Democracies while on the other hand the American democracy has been characterised as 'a government of the people, by the people and for the people'.

Thus political theory as theory would lead us
to scepticism. The states in theory profess almost the same ideals. Even the political parties within a state (if such party system is allowed by the constitution) have almost identical goals; for instance, what party does not state that it would like to make the people of the country happy and contented? As far as the state in practice is concerned, there is no absolute guarantee that the ideals declared would be realised, whatever be the system of political organisation.

Scepticism in political theory arises out of the human inability to judge the worth of a state purely on the basis of its declared ideals. The choice between one political system and the other would be on the basis of evaluation of the steps taken to translate these ideals into practice. Even here any judgement about the worth of a system can be formed only after the choice is made and the results good or bad have been achieved - a posthumous judgement. Perhaps in such circumstances the people might succeed in changing the government; but there is again no guarantee that the new leadership would in any way be better than the old. Thus there appears to be no escape from scepticism in political theory with regard to the ends of the state.

The positivistic theory of the state offers us
an alternative to this contradiction. The positivists, in the first instance, are against building systems. Secondly, to them a system without any reference to its operational and existential side is an empty form without content. An infinite number of formal political systems or utopias may be construed but they are all purely formal in so far as they are ideal (ideal in the sense of not being translated into practice i.e., non-empirical). Thirdly values change their characteristics in a positivistic conception of the state; they are not supernatural or ultimate but are only axiological rules meant for guidance in the actual working of political institutions. Law here ceases to be an eternal or divine principle but becomes only the rule of right deduced from social solidarity, as Duguit puts it. The origin and functions of the state are deduced from economic principles, the worth of a state from its ability to deliver the good, and guarantee of social welfare from an effective system of social institutions.

Under the positivistic view there would be no need for a separate branch of knowledge called political theory or even political science, as the so called political problems are more or less social problems which could be solved by an adequate social machinery. Political theory, for its most part, according to this
view, confuses politics with emotions. Positivists go even further and question the very basis of ethics. Any discussion of the nature of value, in so far as it is mixed up with an emotive use of language, is essentially meaningless. 7 A pragmatist like Dewey, for instance, would go even so far as to reject values in the supernatural or absolutist sense.

However, an actual reading of the constitutions of the various states and the history of the social institutions are sufficient to contradict the above view that society could function without certain declared ends. One would certainly oppose the Hegelian or Platonic myth as unrealistic, but values are certainly there as the driving force of all political and social institutions. It would be hard to visualise a structure in the political or social framework which does not bear the imprint of an emotional unity, from the ordinary club to the United Nations Organisation.

II

The concept of sovereignty is no less enigmatic and elusive as that of the state. The state as defined by most writers on political theory is comprised of four elements: territory, population, government and sovereignty.
Thus it refers to an assemblage of people, occupying a definite territory under an organised government, internally supreme to manage its affairs and subject to no external authority. However, one opinion among certain writers is to deny to the state the element of sovereignty and regard it only as a special quality of government. It is the government that is 'habitually obeyed' says Sidgwick; 'unlimited authority' belongs to it, maintains Zimmern, and Oppenheimer opines that 'it is sovereign'. The controversy is merely a legal quibble because the state itself is only an idea and it can act only through the instrument of government. For all practical purposes, therefore, it is government that is sovereign. The state neither thinks nor acts, it is the government which thinks and acts for the state. The law or order of the state is actually the law or order as promulgated by its government. MacIver defines a state as " an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order". Laski considers the state as " a territorial society divided into government and subjects, claiming within its allotted physical area, a supremacy over all other institutions". Thus in practice, the government
becomes synonymous with the state, and whatever authority is vested in the state is a privilege of its government.

The controversy about sovereignty is rather out-of-date and does not seem to be taken seriously by modern writers like MacIver who complains of "much needless mystery" and says that the idea "has been surrounded by a halo that dates back to the tribal reverence which alone in primitive ages could sanction the obedience it must command". Later this idea became transformed into the idea of divine origin and to that of divine right. When monarchy became gradually an obsolete form of government, sovereignty was transferred from a person to a group of persons and the idea of divine right also became obsolete. Sovereignty is now clouded by so many abstractions that it is better if we eliminate the concept altogether from political science. Laski even goes to the extent of saying that "it would be of a lasting benefit to political science if the whole concept of sovereignty were surrendered". According to Laski what we are dealing with is not sovereignty but power, there being many ways in which the use of power may be organised; "the sovereign state historically is merely one of those ways, an incident in its
evolution, the utility of which has now reached its apogee". The problem has become more of moulding the modern state to serve the interests of the people.

In our opinion, it is not only in modern times that the 'interest of humanity' is central, but has always been so, though the mediaeval thinkers of Europe like Machiavelli and Hobbes gave it a new turn by making the monarch more important than the people. The totalitarian state has no doubt created a myth of the state being more basic than the individual, from which the democratic world is seeking to free itself to restore the people to their proper place of authority. It is in this context that we interpret the idea of freedom, for, freedom essentially involves freedom from unreasonable authority - freedom to think and act as dictated by one's own moral will, unfettered by any rule from above, except when such an exercise of freedom conflicts with the freedom of others or with accepted social norms. The traditional idea of sovereignty conflicts with that of freedom - the legal code can never replace the moral law. Our disagreement with the traditional political thinking in general, and ideas about sovereignty in particular arises out of the fact that these theories do not take cognizance of the moral law and try to interpret
sovereignty purely in a legalistic manner ignoring completely the moral implications as are inextricably involved in the concept and practice of sovereignty.

The Austinian and the Hobbesian conceptions are not those to which we can give any serious considerations here, as they are rather out-of-date and fortunately have very few supporters in the present day even in the country where they originated, as that country was one of the first to accept democratic principles in the constitution of its state. The totalitarian countries base their whole political structure on a form of authoritarianism not unlike that visualised by Hobbes or Austin. Sometimes the totalitarian structure is compared to the state visualised by Plato but what is ignored in such an analogy is the moral principle on which Plato based his idea of the state. Justice, for instance, is the raison d'être of Plato's ethical and political theory which incidently does not go well with authoritarianism. No doubt Plato mentioned that the philosophically - oriented men ought to be the rulers, but this was so because Plato probably thought that justice was capable of better enforcement in the social structure by the enlightened few rather than by the illiterate proletariat. Moreover, like his
teacher Socrates, Plato held that moral consciousness is the hallmark of intellectual wisdom (knowledge in other words being virtue) and since the philosopher coherently combines these two, he is most fit to be a ruler. In our view, sovereignty is not a problem at all in Plato's political thinking.

In fact sovereignty should not become a problem in any kind of political thinking but it has assumed a problematic position because political theorists try to explain political behaviour too rigidly, and in their attempts to achieve definiteness of political concepts they often tend to ignore the ethical basis of social and political thinking, on the pretext that ethical concepts are incapable of any precise definition. The simple fact is that society needs some kind of an organisation to regulate social behaviour in order that it may conform to ethical and social norms, and this organisation is that of the government. The government is sovereign in the sense that it enforces laws and sees that they are not violated, and in case an infringement occurs the wrong-doer is punished. Apart from this function, sovereignty does not seem to have any other meaning. The laws which are enforced by the government again must reflect the social acquiescence and social purpose.
They must not be the commands of an individual living in isolation from society or living above it, but these must ultimately be derived from the dictates of social needs or requirements. Naturally these are not to be unreasonable or malevolent in their effect, but these are to be just and simple rules of morality or conduct which can afford to every individual an ambit of freedom and enterprise without in any way jeopardizing the freedom and enterprise of other individuals. As the common saying goes, 'the best government is that which governs the least'. Thus state which is a kind of political society is sovereign in the sense that it is a custodian of social peace and has the power to enforce obedience to the laws which are essential to safeguard individual freedom and enterprise. Within such limitations the idea of sovereignty does not pose a problem at all. It has become a problem because political theorists have tried to make the idea of sovereignty supernatural or divorced from the needs of actual social life, thus creating much 'needless mystery' shrouding the concept.

Contemporary political theory views sovereignty as expressing itself in three forms: (a) legal sovereignty, (b) political sovereignty, and (c) popular sovereignty. The legal sovereignty is the authority
at the apex which by law has the power to issue final commands. In England it is vested in the institution of the king or the crown. The constitution of a state is the ultimate source of legal sovereignty. The most lucid interpretation of legal sovereignty was given by John Austin who endeavoured to discover in every state a determinate human superior who can issue orders to all and receive from none. This legal sovereign is subject to no limitations because it itself is the creator of law and, therefore, it cannot be subordinated to any other law or principle. In the ultimate analysis, law in the Austinian sense is a command of the sovereign determined merely by his will. Such a notion is not only outmoded but is indifferent to all ethics of authority. In fact, the whole idea of legal sovereignty is without any solid foundations. It has no practical utility except as a legalistic fiction concerning authority of the ruler.

While the concept of legal sovereignty drives us on to the recognition of a de jure sovereign, the notion of political sovereignty points to the de facto sovereign which alone makes the legal sovereign practical and effective. The political sovereign is the sum total of influences in a state which determines both the shape and the course of law. In a democratic state
political sovereignty resides in the parliament because it is regarded as representative of a wide cross-section of public opinion. Although the concept of political sovereignty is more practical and definite, it seems to be vague because it ignores the fact that the opinion of the majority party which ultimately gives expression to law is only a portion of the political opinion in the state (neither moral nor rational necessarily), and, therefore, it cannot be rightly called an opinion of the political sovereign. Thus in practice political sovereignty becomes vested in the party which commands a majority in the legislature. This is an equally naive and erroneous notion as that of legal sovereignty. It is a dangerous political creed to accept sovereignty residing either in the king or in the government controlled by the majority party. Since the will or opinion of majority is not necessarily a rational opinion, it follows that rule by majority cannot always be the ideal.

It is generally maintained in the contemporary political thought that the pyramid of sovereignty rests on a broad base of popular sovereignty. The power that ultimately determines the policy or the direction of state-action is the 'will of the people'. Thus in a democracy it is the popular sovereign or the
vast mass of enfranchised population that exercises the ultimate power to give substance to law or policies as pursued by the state. The political theorists have often endeavoured to assign to the popular sovereignty an effective and positive role despite the inherent looseness or ambiguity of the concept of popular sovereignty. Rousseau, for instance, interprets popular sovereignty in terms of *voluntas generale*. The 'general will', according to Rousseau, is essentially not the will of all or the will of majority nor it is that of the minority. As MacIver observes, "His one and indivisible sovereign was something greater, something powerful, something far more rational, than the conflicting will of the members of the state." What then is the source of 'general will' remains an unresolved mystery. No doubt Rousseau's 'general will' is a sincere guardian of the state intending to promote the maximum state-citizen-interest, yet it is difficult to comprehend either its source or its beginning. At best it remains only a mystical entity pregnant with all sorts of fatal consequences resulting from its diverse interpretations; and if agreed upon as the basis of sovereignty and given an unlimited opportunity to operate itself, it will become even in a democracy a mouth-piece of expression of the majority party only.
In the name of 'general will' the majority or the individual who acts on the pretext of enforcing the 'general will' may reduce the state to a form of tyranny - the events of the French Revolution being a case in point. Of course it is an unfortunate metamorphosis of Rousseau's 'general will', but that probably is the ultimate fate it is destined to meet. The malady in the idea of popular sovereignty is in no way different from that which lies in its legal or political notions. All the three concepts are inchoate and vague and do not reveal to us either the true nature of sovereignty or the substance of sovereign power.

In fact, if we objectively view the notion of sovereignty, we would inevitably arrive at the conclusion that the whole discussion about the concept of sovereignty is futile and unfortunate. The problem has only been a created one. Shorn of the constructions put on the idea, sovereignty would be very simple to comprehend.

Not only are the forms of sovereignty misleading, but even the categorically enunciated characteristics of sovereignty are superficial and impracticable: in theory we might imagine sovereignty to be indivisible, inalienable, all-comprehensive or
even omnipotent or absolute, but in practice these characteristics would always wither away because sovereignty has to be brought down to the workable level. In its functional or practical meaning, sovereignty is neither inalienable, nor all-comprehensive, nor omnipotent, nor absolute. It is open to different limitations and restrictions of ethical, social, legal and constitutional types. Absolute sovereignty is an absolutely ill-conceived idea. It is neither desirable nor practicable. Likewise the indivisibility of sovereignty is purely a theoretical concept and in its functional aspect sovereignty is enjoined to a host of social, political and governmental institutions. We are, therefore, constrained to remark that the concept of sovereignty has unnecessarily been made complicated. The sovereignty in the Western traditional sense is a misinterpretation and a loose construct and hence open to many objections.

III

What we have arrived at is that the less attention political science gives to the notion of sovereignty, the better it would be for the object of study of political and social institutions. We
may, however, state that the problem of sovereignty is peculiar only to the Western classical political thought. As regards the study of ancient Indian political and social institutions are concerned, there is hardly any dispute either about the nature of sovereignty or about its residence or its possession by an authority. This is because of the fact that the ancient Indian political thought does not have affiliations to any ideology or dogma and seems to be rooted in ethical principles. The moral code is itself the legal code; social mechanics are guided by moral principles. This is where the importance of rajadharma is significant as a moral code for the ruler rather than as a theory or polity determining the sovereign rights of a ruler.

Before asking questions about the nature of sovereignty in ancient Indian political thought, it becomes imperative that we should firstly understand the concept of state as conceived by the ancient Indian thinkers. We have, therefore, to examine the various constituents of the territorial state and establish the inter-relationship existing in these constituents. The Vedic literature hardly presents us any idea regarding the nature of the state. It is only later in the smriti and arthashastra writers that we can find a clear
enunciation of state and its constituents. Kautilya, for instance, in VI.1.258 declares that the king, the minister, the country, the fort, the treasury, the army and the friend and the enemy are the limbs of a kingdom (vījasamvadah). Only in the presence of these elements in the kingdom, kingship becomes meaningful; or we may say that sovereignty is a derivative of the seven components, and it comes into being only when the state possesses these seven limbs. Further in the same chapter Kautilya describes the excellent qualities that must be possessed by each of these elements and declares that 'a wise king can make even the poor and miserable elements of his kingdom happy and prosperous, but a wicked king will surely destroy the most prosperous and loyal elements of his kingdom. Hence a king of unrighteous character and of vicious habits will though he is an emperor, fall a prey either to the fury of his own subjects or to that of his enemy'.

Even if we assign the sovereign power to the king we will have to admit that in view of the conditions essential for the preservation of sovereignty enjoined upon a king by Kautilya, the enjoyment of sovereignty becomes an extremely cautious and limited act — for only a righteous king can effectively preserve
his sovereignty. Moreover the sovereign is to function in conjunction with the ministers and guided by their wise counsels in order to promote the interest of the country and its people; to consolidate the power of the treasury, the army and the fort, to win 'friends' and to vanquish the enemies'. Thus sovereignty of the king is meaningful only in terms of the above purposes which are obligatory for the ruler to safeguard and consequently we may conclude that there is hardly anything problematic about sovereignty, its nature or its residence or even its enjoyment by an authority in the scheme of political organisation as conceived by Kautilya. In Manusmrti, too, we find a similar mention regarding the constituents of the state.

The sovereignty nowhere poses a problem, whether it is placed in the king, or it is exercised in consultation with the ministers or it is wielded with the help of the army; one thing remains clear that sovereignty is always subordinated to a purpose and it manifests itself only in the fulfilment of that purpose; and the moment the purpose is not served by it, it withers away. No Leviathanic mask is required by sovereignty in order to become real and no 'general will' is needed to become its essential progenitor. Nor is there any need for any classification of the
forms of sovereignty as legal, political or popular in the notion of sovereignty as understood and expounded by most of the ancient Indian writers. Nor do the much stressed characteristics of sovereignty as considered essential by Western classical political thinkers, like its absoluteness, omnipotence, indivisibility or its inalienability have any place in the ancient Indian interpretation of the notion.

In our view any application of the idea of sovereignty to ancient Indian political systems is irrelevant mainly because the authority, whether political or social, does not spring from any individual or any institution but is derivative from the moral principles underlying dharma. This is fully consistent with the general trend of Indian thought to give society an ideal rather than a real basis; the individual occupies a lower position in the hierarchy as compared to the principle. Dharma as ideal principle directs the real, and yet supersedes them all and is different from them in its fundamental nature, as it is more a principle than a fact. Society in this sense is to be conceived as an expression of the way in which the higher principle manifests itself in lower forms of moral experience. All activity, individual, social or political, must conform and be
guided by the supreme idea; dharma is not the mere means, but the end of all action; it is not as is very often supposed by some interpreters of ancient Indian political thought, a principle that is born or constructed out of the real world but the latter itself owes its origin and order to dharma. Among the three ends of conduct, dharma, artha and kama, dharma occupies the place of supreme importance. As regards the fourth, moksa, it can be said that it is an ideal for individual conduct and not for social conduct.

In such a context it would not be right to speak of sovereignty with reference to ancient Indian political institutions. The moral law is the sovereign; and in individual and social conduct, the king, the institutions of government and even the family have only an instrumental value. The king is not the law-maker. The sources of law are the scriptural authorities, the smritis, reason and conscience. Some interpreters of Indian thought apply Western categories of social and political thinking to ancient Indian political thought and this, in our opinion, has led to conclusions wholly unwarranted and sometimes even absurd. In fact some of the categories of social and political thinking are not applicable even to modern Western political institutions. As our discussion of the idea of
sovereignty should not, in our opinion, be sought to be discovered in ancient Indian political thought. In practice however, sovereignty might or might not have been vested in the king or in his priests or council of advisers; this point is for the historian to investigate. The student of ancient Indian political thought who bases his study on the available texts, does not find any scope for discovering sovereignty.

The contrast between the Western ways of thinking and the Indian ways of thinking should be obvious even in a superficial study. It is not difficult, for instance, to find out who should exercise sovereignty according to 'The Republic' of Plato or 'The Prince' of Machiavelli or the 'Leviathan' of Hobbes but in Kautilya or Manu or the Mahabharata although the virtues or the duties of the pāñjā are clearly laid down, yet nowhere is it suggested that he is the absolute sovereign. In fact the burden of all the śruti texts is that dharmā is the highest principle and that naiṣadharma is only a part of the total social order.

IV

In view of the conclusions drawn above regarding the notion of sovereignty which is conspicuous
by its absence in the scheme of social and political organisation in ancient India, it would be even right to deny the conceptual existence of state in ancient India as it is understood in the West. The ancient Indian idea of state bears no resemblance to the Western conception of state, although it does not mean that the ancient Indians lacked in any way a scheme of social organisation. The state-idea even in the West is an abstraction; and, as we have argued earlier, ultimately, for all practical purposes, the state connotes government. The state itself is incapable of any action as it is only a name given to an organisation formed of the elements of population, territory, government and sovereignty. Theoretically the state stands for the collective wisdom and force of the community channelised, harnessed and organised for the good of the community, and its significance and role lies only in its being a means to that end and not in being an end in itself. Prosperity of the state lies in the prosperity of its people and its happiness in their happiness. The state is unintelligible except in terms of an organisation intended to defend and promote freedom of the people that compose it.

What is, therefore, important is not the idea
of the state but the purposes for which it is designed. For that matter any community even if it is not a political community and it does not bear the superficial mark of state is an organised community and a collectivity so long as it is able to create an order of peace and harmony for its members and successfully regulate their conduct and is able to protect their life, liberty and property. We may or may not call such a community a state but we shall have to admit that the community is performing the functions that belong to a state without being itself a state in the narrow juristic sense. The idea of state thus is both inadequate and abstract, and if the ancient Indians did not conceive of this idea, it in no way implies their political inability or backwardness. The ancient Indians thought and viewed human life as a unity incapable of being segmented into the social, the political, the religious and the moral. The political, the social, the religious and the moral spheres of human life are regarded as one by all Indian thinkers, as dharma is the unifying principle of all these spheres of activity. Thus there is no need in such a scheme of thought for visualising a separate political norm distinct from social ethics. The varnadharma is such a norm.
As for political norms in ancient Indian thought, there seem to be none distinct from the ethical norms. The rise of despotic or totalitarian systems have forced thinkers to distinguish between civil law or law enforced by courts and moral law. St. Thomas Aquinas' (one of the greatest exponents of 'scholasticism') distinction between the several kinds of law is a case in point. He distinguishes various kinds of law as (1) Eternal Law, (2) Natural Law, (3) Divine Law and (4) Human Law. Law in St. Thomas Aquinas does not depend upon either reason or conscience but on the will of God. This he calls Eternal Law as springing from Divine Wisdom, Reason or Logos. "Human Law is a derivative from Natural Law, which is a reflection of Eternal Law; and Divine Law supplements the limitations of human reason". Thus all the various forms of law are related to one another and Eternal Law is their fountainhead and it is eternal because God's rule is not subject to time but eternal. The connection between the various forms of law is due to the fact that Eternal Law is the reason of God; Natural Law is the reflection of divine reason in all creation; Divine Law is the direct revelation of the reason of God as in the scriptures, and Human Law is the more specific application, by
human reason, of Natural Law to particular human situations.

It will be seen from the above analysis that the theological conception of the state leaves very little scope for secular ethical norms; this is so because there is hardly any scope for freedom in action. The whole foundation of ethics in our view is based on the Kantian postulate of freedom. The moral consciousness arises from man's ability to choose and feel responsibility for all his actions. The source of law then must be traced to man's intrinsic being and not to any external agency. The external agency in the theologians view of ethics is God or the scripture: man's right to choose is restricted, if not altogether denied, by the imposition of a supernatural authority over human.

Such a conception of ethics is not much different from that of totalitarianism. In totalitarian philosophy the state is the supreme symbol from which emanates the life of man. In the words of one of the chief exponents of modern philosophy of totalitarianism: "The man of Fascism is an individual who is nation and fatherland, which is moral law, binding together individuals and the generations into
tradition and a mission, suppressing the instinct for life enclosed within the brief round of pleasure in order to restore within duty a higher life free from the limits of time and space: a life in which the individual through the denial of himself, through the service of his own private interests, through death itself, realises that completely spiritual existence in which his values as a man lies. 19

Mussolini further remarks, "This higher personality is truly the nation in so far as it is the state. It is not the nation that generates the state, as according to the old naturalistic concept which served as the basis of political theories of the national states of the nineteenth century. Rather the nation is created by the state, which gives to the people, conscious of its own moral unity, a will and therefore an effective existence ... The state in fact, as the universal ethical will, is the creator of right". 20

Limitations are, therefore, imposed on ethical freedom by both the theological and the totalitarian thinkers so much so that human reason, or conscience are regarded by them as not being the right type of agencies either to comprehend or give
substance to ethical norms. The theologian makes ethical freedom as something derivative of the law of the scripture and the totalitarian regards it only as dictates of a ruler, calling himself the Führer and claiming all the wisdom to himself. Both the viewpoints exile the individual from the realm of ethical values and reduce him only to a non-entity. The totalitarian merely replaces God by the state or more precisely by the party. The theologian advocates a state virtually ruled by the church claiming to itself divine wisdom. St. Thomas Aquinas says: “Thus in order that spiritual things might be distinguished from earthly things, the ministry of this kingdom has been entrusted not to earthly kings but to priests, and most of all to the chief priest, the successor of St. Peter, the Vicar of Christ, the Roman Pontiff. To him all the kings of the Christian People are to be subject as to our Lord Jesus Christ Himself. For those to whom pertains the care of intermediate ends should be subject to him to whom pertain the care of the ultimate end, and be directed by his rule”.

Thus both the systems harbour a diabolic mistrust in man as if mankind were a suspect of the Gestapo and therefore inept to cultivate any ethics or exercise freedom. Their theories when carried to
their logical extremes would mean that freedom is dangerous especially to man; ethics is something inconceivable by human intelligence; the source of law is outside man; sovereignty resides either in the king, subject to the priest or the state; and the state is nothing but a machine, either functioning under the proprietorship of church or under the paternal guardianship of a dictator. It would be seen from the above views that the state as St. Thomas Aquinas would view it and that as Mussolini views it have a fundamental point of agreement. They both limit human freedom: In the former case it is the dictate of the Gospel and in the latter it is the penal code which replaces the moral imperative from within.

The idea of reducing law to the level of rules dictated by the Christian church is quite in contrast to the Greek or Roman idea of law. The contrast is quite obvious when we consider that Greek society was a free and democratic society. The ideals which the Greek political thinkers set before themselves were such as to regulate the whole of moral life. Barker commenting on the Greek political theory aptly remarks, "Law is not so much, to Plato or to Aristotle, a force acting on the individual
from without, as it is a spirit which he must be trained to draw in his own inward being". There is hardly any distinction in Plato between legality and morality. Only today we are accustomed to draw a distinction between law and morality; free moral action proceeding from man's intrinsic nature is different from law that is enforced by the courts. For Plato law is the sole and supreme sovereign and is identical with reason. Plato's ideal is that the government must be constructed in the interest of this law. It is only on this principle that the state will prosper or die. It is thus in this connection that the common law of the state is identified by Plato in 'The Laws' with the sacred and golden chord of Reason. The Graeco-Roman conception of justice and the Stoic conception of natural law also have a deontological basis, i.e., arising out of man's inward consciousness of what is right or wrong and not out of law enforced from without. Dharma too has a similar character as it is the law of being or that which inheres in the nature of things both human and non-human.

In fact the twin concepts of dharma and karma in Indian thought do not leave much scope for theology. For such philosophical schools as have
the idea of karma or of dharma do not need to bring in God at all. Dharma is the ultimate authority. It is the law which governs the natural phenomena and also the individual and the social order. It is not a divine law in which St. Thomas Aquinas would use the term. It is not the word of God; it is not created by God; its validity and finality rests on itself. Even if God is brought into such a system it would only be as deus ex machina. When such is the position that even God is restricted in this scheme of reality, the powers of the king or the rāja as dharmapravartaka are even more limited. Furthermore there would be no need for a king if the events both human and natural took the course as prescribed by dharma or the eternal law. But because human beings are prone to choose the path of adharma, that danda becomes a necessary complement of dharma. The king or the rāja, therefore, becomes the wielder of danda as also of dharma.

In Indian thought legal norms have not been given either an independent nomenclature or a separate status from the moral norms. Both are regarded as emanating from the same source. Dharma in dharma-sūtras, generally speaking, is neither superhuman nor supernatural but it inheres in man's rational
and moral sense. The supremacy of inwardness over the external things is basic to the Indian concept of relationship of man and nature. Dharma as an end of life, is the attainment of a spiritual and moral order in the individual and society. Dharma is an inner discipline which every man must achieve in order to attain self-fulfilment by external action. It comes according to the dharmasastra view not through mere contemplation but through active participation in life. This view is of course quite unlike the Vedantic conception of man; the Vedanta, the advaita school in particular lays great stress on \textit{jnana}, rather than on \textit{karma}: On passive realisation of oneness of the self and the reality by contemplation (\textit{jnana}) rather than on self-fulfilment through voluntary action (\textit{karma}) in conformity with the dictates of moral law or Dharma.

As Tagore says, "The freedom of seed is in the attainment of its dharma, its nature and destiny of becoming a tree; it is the non-accomplishment which is its prison." Thus in the case of man the fulfilment of his nature lies in the accomplishment of \textit{karma}. \textit{noksa} in the Vedantic sense however, is the spiritual rebirth of man culminating in the liberation of the inward spirit
from the bonds of karma or action. For the dharma-sastras, conformity with dharma through karma is realisation of dharma and through it of mokṣa. In this sense mokṣa would not be possible without dharma, as the instrument through which it is attained.

There also exists no conflict in Indian thought between religion, law and morality, because the end of all these is one and the same. The religious code, the moral code and the legal code were all one in ancient India; aptly called 'dharma-sastra'. Moreover in Indian thought there exists no contradiction between individual and social purposes. They are not viewed as conflicting ends but identical. The social problem arises only in respect of the individual in relation to other individuals. Individual conduct is meaningful only in the social context. Social perfection is complementary to individual perfection. Thus there can be no social ethics apart from the individual ethics. The varṇaśrama scheme is an apt illustration of this point: it is a regulation of one's conduct in accordance with one's individual capacities in the social context.

The importance of Rajadharma, therefore,
should be obvious. If social values are expressed in the performance of individual duties according to one's station, *rajadharma* becomes the foremost principle of the social order as a unifying force; it is the king or the ruler who maintains perfect unity of purpose in the social and political institutions over which he presides. It becomes then his duty to see that everyone in his domain fulfills his duties and lives up to the dictates of dharma. He is therefore a moral governor of the nation in a limited sense. That explains why he is endowed with *danda* - the power to punish those who transgress dharma. His dharma is to enforce dharma and he is sovereign only in this sense. Kautilya speaks of *matsyanyāya* or the law of the fish as the extent to which a society can degenerate if there is no authority to enforce dharma. As we have already seen, Jaimu equates dharma with danda. This clearly shows that ancient Indian thinkers placed the *rajā* in the highest position of authority to prevent violations of dharma.

In short, the ancient Indian writers visualized dharma as expressive of an eternal order from within and, therefore, as a conscious inheritance of tradition (*smṛti*). Dharma lives and moves with
life itself and is inconceivable apart from it. Revolutions might change the material order, but values of dharma always remain the same because they are an expression of the eternal order. All values - social, political and even religious emerge from dharma and they exist only in relation to it. It is from this viewpoint that the smrtis treat dharma in the dharmaśastras.

V

Very often it is pointed out that the smrtis visualise a set-up where priests and not the king have the ultimate authority; the king being used only as an instrument of the priestly power. A reading of Manusmṛti will give one the impression that a Brāhmaṇa, enjoys the position of being the apex in the social hierarchy and a power sometimes higher than that of the king. The social legislation and the award of punishment in respect of the Brāhmaṇa is discriminatory. For the same offence a Brāhmaṇa according to Manu should be awarded a light punishment and a Śūdra a heavy one. Even Kautilya fosters an attitude of discrimination between various classes. Thus one jumps to a conclusion that the ancient Indian social and political
institutions can be characterised as tyranny of the priests. Superficially speaking this appears to be a correct assessment but on closer analysis we find the 'Brāhmaṇa' as referring not to a class or caste enjoying their privileges by virtue of birth but by virtue of their learning and character. A well-known Chinese proverb cynically says, "Do not insult a scholar but rather kill him." The scholar cannot be insulted as any insult to him would be an insult to his learning. The brāhmaṇas certainly enjoyed a high social status by virtue of their learning and character and were held in high esteem in the same way as a clergyman is still regarded as a dignified individual. The powers which the priests enjoyed over the king were due not merely to the fact that they were brāhmaṇas but because they were regarded as men of great intellectual ability, wisdom and integrity. Ancient Indian thinkers visualised the nation as a rational community - rational because it was guided by men of wisdom.

Another objection in this connection may be considered: dharma as expounded by some thinkers is regarded as consisting only in the Vedic injunctions and prohibitions. The Mimamsaka thinkers, for instance, define dharma in this narrow sense:
Codanālakṣapūrto ṇahrno (dharma consists of directions regarding do's and don't's). Dharma here appears more to be religious law rather than moral law. Thus one would object that when it is said that the law is to be derived from the scripture there is no scope for interpreting dharma as arising out of man's consciousness of his moral being. The objection is based on ignoring the various senses in which the term has been used in Indian thought. In this work we are concerned with dharma as used in the ethical sense and not in the ritualistic sense. The sources of law according to Manu and Yājñavalkya are not only the Vedas but also the śṛṃtis, the practices of the sītaas or the good people and one's own conscience. Thus interpreted dharma becomes not merely the law as expounded by the scriptures but includes conventions and usages and the moral law. In case of conflict between śṛṃtis and śṛṃtis, the former was regarded as finally authoritative. The Vedas do not pronounce dharma as moral law but more as ritualistic injunctions and prohibitions. Hence such a conflict is only imaginary in the case of morality, though quite possible in the case of the observance of rituals. It is in the wider moral sense that we...
concerned with dharma here and rājadrharma as is discussed here is also used in the wider ethical sense.

There may yet be a third objection to the point of view expressed above. The totalitarian ideologies, it was pointed out, tend to dehumanise the individual by subordinating him to the will or dictates of the party or of a dictator. The moral law in the totalitarian state is nothing more than the penal code formulated by one or a few who rule and rigidly enforced. Such a criticism may also be advanced against dharma that it is nothing but the will of the king or of the priests or of the injunctions and prohibitions of the scriptures. It may be pointed in effect that the ethics of dharma is deterministic. This criticism appears to be far-fetched unless the interpreter of dharma narrows down the meaning of the term. Dharma as rājadrharma or as the ritualistic dharma are only two of the many aspects of this all-comprehensive concept. To the present writer dharma stands for the law in general and its moral implications in all walks of life and in fact throughout the universe cannot be ignored.

The objector may immediately face us with
a rejoinder; If dharma is that all-comprehensive reality, how is it different from the Hegelian Absolute? The character of dharma is, that it is an ordering principle that provides coherence to all thought and action. In fact the Brhadāraṇyaka Upanishad identifies dharma with Brahman or the absolute. It appears therefore that we fall into the same shortcomings which the Hegelian theory of reality suffers from. The Hegelian theory of the state was criticised by us as founded on determinism, affording little or no scope to individual freedom. Can dharma in this sense be regarded as a deterministic conception of the universe?

This question can probably be answered in the affirmative only if and so long as we regard dharma as merely transcendental. Dharma is indeed possessed of all the characteristics of Absolute, but at the same time, in our opinion, it does give a scope for individual initiative. The moral law arises from one's consciousness of what is right and wrong. The ethics of dharma is based on its being one of the ends of the individual conduct, the other three being artha, dharma and mokṣa. In any case the ethical problem arises only out of one's relation with fellowmen; Robinson Crusoe cannot in any sense
be said to have a system of ethics. The moral code arises out of the need to protect the rights of all in the social sphere and out of the necessity to allow each one in the community to exercise free choice within the limitations imposed by the social structure. In our enthusiasm for individual freedom we should not ignore the social reality. Dharma offers an empirical basis for understanding the individual's status in relation to the community and in that sense is not transcendental. Transcendentally dharma is the ideal, but empirically it provides the practical means of living in a society, guaranteeing to all individuals a measure of freedom commensurate with each one's station. And social dharma is the most important of all dharmas as it prescribes in general the moral principles underlying the social and political organisation in order to ensure that an equilibrium in society is maintained.
Chapter II


5. Ibid., p-21.

6. Ibid., pp- 21-22.

7. Such a view is elaborated by F. Kaufmann in his book *Methodology of the Social Sciences*.


11. Ibid., p-45.


15. "The Vedic scriptures (*śruti*), the Sacred Law (*smṛti*), the practices of the good, whatever is agreeable to one's own self, and the desire which has arisen out of the wholesome resolve - all these are traditionally known to be the sources of dharma". - *Yajnavalkya Smṛti*, I.1.6.
Vasisthadharmaśūtra provides:

"Dharma is declared by the Vedas and the smrtis; on failure of these two the practice of the sītas is the authority (for finding out what dharma is); a sīta however is one whose heart is free from (worldly) desires and (only) such acts of sītas are (to be held as) dharma for which no (worldly or secular) cause (or motive) can be assigned."

- 1.4-7.

Cf. Gautama XI 19-25 show that the king was to find the law required for the decision of causes from the following:

a. The Vedas, dharmasāstras, the aṅgas, the upavedas and the purāṇas;

b. Customs of countries, castes and families that were not opposed to the Vedas;

c. Usages;

d. Ratiocination; and

e. the opinions (delivered by the assembly [Parisad] of men deeply learned in the three Vedas).

16. A.S. Altekar in State and Government in Ancient India (second edition, p.47) remarks:

"One school held that the king was not above the law or dharma; but that the latter constituted the essence of kingship. Dharma was sovereign over the sovereign, and it may therefore be said that the sovereignty vested in it. But though the king was below the dharma and was bound by it, though it was the law (dharma) which made the king, the ancient Indian polity provided no constitutional means or checks to call the king to account if he transgressed law."

Altekar's view is perhaps correct. The texts do not prescribe any checks to the constitutional power of the king though theoretically it was expected of the king to conform strictly to dharma. The fact that there were possibilities of the violations of dharma or the historical instances to show that it was violated do not in any way limit the ideal supremacy of the principle.
17. A.L. Basham's view may be cited in support of our argument:

"It is society and not the state which is looked on as fundamental. Classical Hinduism recognized the existence of the state and even ascribed divinity to kings, but in theory at least, the only function of the government was to preserve society from the chaos and anarchy which, in this benighted period in the evolution of the world, would inevitably supervene without government based on force. For Hinduism society transcends the state and state is the handmaid of society. The general ethics of Hinduism are based on the needs of a functional social order, the purpose of which is to further the three aims - dharma, artha and kama. These aims in turn are subordinated to the fourth - moksa. Thus all social activities, all governmental activities, are fundamentally religious activities and there is no aspect of life which can be divorced from dharma."


20. Ibid., p-614.


24. Rabindranath Tagore - Sadhana, p-75.

26. P.V. Kane observes in his paper on Vedic Basis of Hindu Law (1939):

"When it is said that the Vedas are the source of Dharma, it is not meant that the Vedas lay down precepts or injunctions (vidhi) on points of Hindu Law, as later works like Manusmrti or Vajñavalkvasmrti do. All that is meant is that the Vedas contain incidental references to matters that are of interest to students of Hindu Law, that they take certain facts as well-known and make use of them for various purposes. The information that is contained in the Vedas on matters of Hindu Law is in the nature of what are known as arthavādās in the Mīmāṃsā system. As arthavādās form a syntactical unity with the positive injunctions (vidhis) laid down in the Vedas, they are authoritative. They indicate with sufficient clearness what the state of things then was. If one were to collect together the scattered Vedic texts on such topics of Hindu Law as marriage, adoption, joint family, partition, inheritance, sīrśdhana, he would find that the information is of considerable importance and is not quite so meagre as one is apt to suppose. The conclusion will irresistibly force itself upon us that the foundations of the Hindu Law are deeply laid in the Vedic age itself, that the peculiar characteristics that distinguish the Hindu Law of modern times from other systems of law had their germ in the Vedic period and that later Hindu jurists were not wrong when they relied upon the Veda as the first source of Dharma".

- Quoted by K.V.R. Aiyangar in Rājadharma pp- 80-81.

27. Cf. Radhakrishnan - Hindu View of Life, p-78:

"Every form of life, every group of men has its dharma, which is the law of its being. Dharma or virtue is conformity with the truth of things; adharma or vice is opposition to it. Moral evil is disharmony with the truth which encompasses and controls the world".

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