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Evaluating the Jurisprudence of Sovereignty in John Austin

Ikenga K.E.
ORAEGBUNAM, PhD
Department of International Law and Jurisprudence
Faculty of Law
Nnamdi Azikiwe University, Awka

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Ikenga K.E. ORAEBUNAM, PhD

Department of International Law and Jurisprudence
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Abstract

John Austin's theory of sovereignty was espoused in his *Province of Jurisprudence Determined* (1832). Predisposed by the Hobbesian Leviathan, Austin's view is still quite distinct and unique. In his legal or monistic theory of sovereignty there is a line drawn between law and morality. Austin further affirms that every positive law is directly or circuitously issued by a sovereign person or body to members of the independent political society wherein that person or body is sovereign or supreme. In Austin, sovereignty is absolute, indivisible, permanent, and always resides in the determinate person or in a body of persons. He sees it as an integral and most potent weapon of a state without which it is impossible to function as such. Thus, the determinate human superior is the only law-maker. His commands are laws and without him the state can have no laws. This study critically appraised Austin's theory of sovereignty, weighing its effectiveness and feasibility of practice in modern day governance of independent political societies and states. This inquiry adopted the methods of analysis and hermeneutics, breaking down some of the complex concepts used in the theory and interpreting the use and meaning of terms for easy understanding and appreciation. It is discovered that although Austin understands sovereignty as an integral and necessary element of a states' existence, his view is antithetic to popular sovereignty, self-determination of nations within a sovereign state and public opinion as he vests unlimited power in the sovereign. The study concludes that while taking into cognizance the importance of sovereignty in a state as Austin opines, one would not accept his view that the sovereign is absolute and indivisible in the light of other indices that impact on the dynamics of societal growth and development of states.

Key Words: Sovereignty, John Austin, Jurisprudence, States, Evaluation

Introduction

John Austin's conceptualization of sovereignty as the bedrock of statehood has attracted a lot of attention and debate among scholars. This is as a result of its features such as absolutism,

indivisibility, permanence and exclusivity. It is however observed that although various understandings of sovereignty reproduce similar conceptual structure, they nevertheless differ in terms of content and consequence. While advocates of *monism* argue that absolutism, indivisibility, permanence and exclusive nature of state sovereignty helps the state to have effective control of its internal and external affairs without interference from other states, the proponents of “popular sovereignty” observe that absolutism as one of the key elements of sovereignty breeds tyranny or dictatorship and shields states and their leaders from liability under international law for human rights violations. This is so as sovereignty is used to undermine cooperation among nations thereby making international cooperation impossible if strictly applied. Conventional or traditional theory of sovereignty upholds supreme legal and political authority of the state in its internal and external affairs. The internal problem of sovereignty comes from the growing desire for recognition by associations, ethnic groups, nations and federating units which are as a result of the unlimited or absolute power and authority of the state sovereignty.

Judging from its Latin etymology, “*superanus*” (paramount or supreme), sovereignty means the highest, absolute, and uncontrollable power by which any independent state is governed. It also involves the supreme political authority, paramount control of the constitution and frame of government and its administration. It is the self-sufficient source of political power from which all specific political power is derived. Similarly, for Quincy, sovereignty, as a juristic concept used in connection with the state indicates supreme, final or ultimate power in the internal and external sphere (Palmer and Perkins (2004, p. 152). Gauba (2007) describes sovereignty as “that characteristic of the state in virtue of which it cannot be legally bound except by its own will or limited by any other power than itself. Bodin (1992) states that “sovereignty is the supreme power over citizens and subjects unrestrained by law”. In the same vein, Blackstone in Morrison (1999) opines that “sovereignty is the supreme irresistible, absolute, uncontrolled authority in which the supreme legal power resides.” Hugo Grotius defines sovereignty as the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden” (Gauba (2007). This study, however, seeks to evaluate John Austin’s view which holds that “if a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society” (Rumble, 1995).

Concept of Sovereignty in the Philosophy of John Austin

Classical theory of sovereignty as articulated by philosophers from Jean Bodin to John Austin laid emphasis primarily on the legal character of sovereignty. It is also known in some quarters as the legal theory of sovereignty. According to Srinagar (1999), this theory considers sovereignty as “absolute, universal, inalienable and indivisible. It commands that the state be one and indivisible”. It became dominant with the idea of philosophers like Hegel and Treitschke, Jean Bodin, Hobbes, Bentham etc.

John Austin was the main supporter of *Monistic Theory* of sovereignty. He was greatly influenced by Thomas Hobbes and Jeremy Bentham. It should be recalled that Hobbes argues that as men emerged from the state of nature which was characterized by lawlessness and anarchy, and decided to form a state to attain order, peace and security, they created a sovereign for this purpose. They surrendered all their natural rights to the sovereign to be protected by the sovereign. This surrendering was “complete, final and irrevocable”. By this, Hobbes created an absolute sovereign who is now seen as a mortal god. Bentham, the famous English utilitarian,

argues that sovereignty was not limited by law, but was subject to moral limitations. He maintained that sovereignty was limited by the possibility of resistance, and there were conditions under which resistance was morally justified. Bentham therefore insisted that the Sovereign should justify his authority by useful legislation with the objective of promising the *greatest happiness of the greatest number*.

John Austin's discussion on sovereignty is inferred from his analytical jurisprudence which is contained in his book *Province of Jurisprudence Determined* (1832) where the basis of his idea on positive law was analysed. He rejected the concept of natural law and stated that sound changes cannot be brought in Europe through legal naturalism. So his main aim was to design a coherent system of law wherein he divorced law from morals, ethics, religion and other social norms. He defined law as "a command given by superior to an inferior" (Srinagar, 1999). According to Austin, law is binding on the people because of the power to impose punishment on them by the sovereign. It is the duty of the people to obey the command of the sovereign. Austin classified laws into two categories, namely, "positive law and positive morality". The former are laws or commands lined by the political superior. The positive law is characterised by four elements: command, sanction, duty and sovereignty. On the other hand, positive morality is considered as laws which are not set directly or indirectly by a political superior. In this category are diverse types of rules such as customs, tradition, natural law, rules of clubs, laws of fashion and of honour, laws of natural science, the rules of "so called" international law and the principles and precedents of constitutional law. To all these, Austin gives the name "positive morality".

John Austin states his theory of sovereignty as "If a determinate human superior not in the habit of obedience to a like superior receives habitual obedience from the bulk of a given society that superior is sovereign and that society (including the superior) is a society political and independent". Therefore, the background to Austin's notion of sovereignty is anchored on the influence of his predecessors on sovereignty and his attempt to develop a positive law through the command of the sovereign. He wanted the sovereign powers to be unlimited, absolute and as such answerable to no form of moral rules.

Austin places the notion of sovereignty at the basis of his theory of law, leveraging on his experience through his encounter with the development of institutions in Europe. First is the sudden breakup of the Roman Empire after thousands of years of peaceful rule which made people realize that peace can be maintained only through a single or body of unified authority with infinite power of command at its disposal. Austin wrote his works at a time when England was in need of vast legislative reforms. As a trained lawyer at Coke Institute, Austin was deeply dissatisfied with the form of English law as a result of chaotic and haphazard legal records available. He attributed this chaos to loose thinking and did not regard natural law as a useful tool to bring sound changes. Since his aim was designed to search for a coherent system of law, he divorced law from morals, ethics, religion and other social norms.

Therefore, following the perspective of his writing, Austin conceives laws as command of the sovereign supported by sanction. The word law presupposes a command that obliges a person to a course of conduct; being a command it must be issued from a determinate person with the threat of punishment if not obeyed. He uses the concept of sovereignty to define law and the content of jurisprudence. Austin succinctly states that:

The matter of jurisprudence is positive law, law simply and strictly so called or laws set by political superiors to political inferiors. A law in the most general acceptance in which the term is employed may be said to be laid down rules for the guidance of an intelligent being by an intelligent being having power over him... of the laws set by men to men, some are set by political superiors, sovereigns; by person exercising supreme government, in independent nations or independent political societies. This is the subject matter of positive science of law (Hart, 1954).

For Austin, the superiority which involved sovereignty and the independent political society that sovereignty implies is distinguished from other superiority in other societies by the following characteristics. The bulk of the given society are in habit of obedience to a determinate and common superior, and that common superior could either be an individual or a certain body aggregate of persons or institutions. However, this individual or body of individuals is not in habit of obedience to a determinate individual. Though law set by opinion (laws improperly so called according to Austin) may affect the conduct of this body, yet there is no determinate person or aggregate of persons to whose command this individual renders habitual obedience. In fact, to state it in the words of Austin, “if a determinate human superior not in a habit of obedience to a superior receives habitual obedience from the bulk of a given society that determinate superior is sovereign and that society is society independent and political”.

Moreover, on the limits of the sovereign powers, Austin posits that every law in an independent political society is directly or indirectly made by a sovereign person to a person(s) in a state. Therefore, it follows from the nature of sovereign that the power of a monarch is incapable of legal limitation. If a monarch was bound by the commands of another superior, he cannot be the sovereign. The power of the sovereign imposing restraints would be free from fetters of positive law. According to Austin, “even though sovereign bodies have attempted to oblige themselves or to oblige their successors to their sovereign powers, the position that they are incapable of any limitation will hold true universally”. He clearly states that the laws imposed by sovereign on themselves are merely “rules of positive morality”. Thus, they are merely principles that they adopt as guidelines. The sovereign is not constrained to observe it by a legal or political sanction, for if the sovereign was legally bound to observe it, the sovereign would be in a state of subjection to a higher superior or sovereign.

On the issue of rationale behind obeying a sovereign, Austin postulated that the purpose for which the sovereign exists is the greatest possible advancement of human happiness and flourishing. From this proper purpose for which sovereign exists Austin infers the cause of habitual obedience which he says is anchored on the principle of utility. If the enlightened masses thought that sovereign accomplished its proper purpose, this would be their motive to obey, but if they deemed the government to be faulty, a fear that the evil of resistance might surpass the evil of obedience would be their inducement to submit to the sovereign, for they would not persist in obedience to a government which they deemed imperfect if they thought a better government might probably be gotten by resistance. He takes into account also those who are not adequately informed or enlightened. He says that such people render obedience as a consequence of custom; they pay obedience as they are in a habit of obeying. Hence, prejudice (prejudice here refers to opinion and sentiments which have no foundation in the principle of general utility) and not utility is the factor that is responsible for obedience. The habitual

obedience arises from a perception by the bulk of the community of the utility of the government or a preference of any government to anarchy. Thus, according to Austin, the general cause of permanence of government is that the general masses were desirous of escaping to a state of government from a state of anarchy or Hobbes' state of nature. This is the reason they submit freely or voluntarily to a sovereign.

From the submission above, it shows that Austin's concept of sovereignty has a fundamental divide, which is "sovereignty in the state" and "sovereignty of the state". Sovereignty concerns a certain type of relation within the state, namely, supremacy, as well as a certain type of relation between the state and outside parties, namely, independence. The supremacy and independence are referred to as internal and external sovereignty respectively. The traditional problem in political theory which the notion of sovereignty ignites, which was equally central for Hobbes, is how social order is to be maintained in the face of the tendency to disorder, a tendency towards a "state of nature". For there to be a state, there must be a group comprising the sovereign, with unlimited power and the people. This is the basis of the traditional notion of sovereignty. For the proponents of traditional notion of sovereignty, social order is not possible in the absence of a Sovereign. As such, sovereignty becomes a necessary condition for statehood.

The Sovereign and the Command Principle

Ruminating on the rationality of Austin's laws strictly so called is a demand for a discussion on the sovereign's role in law making. Austin, like Bentham, also conceives law essentially in terms of command of a "competent authority" backed by sanction, Austin then defines "command" as any signification of a desire by the sovereign. Law, for Austin is the command of a sovereign enforced by sanction. The purpose of the sanction according to Omoregbe is to enforce obedience by the threat of evil consequences for disobedience (1994, p. 131). The evil consequences therefore are there to coerce those subjects into compliance with the law. The evil which will probably be incurred in case a command is disobeyed or in case a duty is broken is frequently called a sanction or an enforcement of obedience. It is only a person or body of persons who can make law and that is the sovereign. In every political and independent state, the will of the sovereign is supreme over all individuals and associations and he is not subject to any control, direct or indirect. Command is the essence of law; whatever the sovereign commands is law.

Austin conceives sovereignty in a Hobbesian way as one who is obeyed by all while he owes obedience to no one. The command of a sovereign is law. Since law is essentially the command of a sovereign, it follows that only positive law can be law. This concept of law excludes natural law, international law, customary law and constitutional law. Indeed Austin (1832) speaks of "positive laws or laws strictly so called" meaning that in the strict sense of the word, only positive laws are laws. Natural law, international law, customary law and constitutional law are not commands of a sovereign and so they are not laws according to Austin's definition. "Laws" in the proper sense of the word mean:

Positive laws or laws strictly so called, are established directly or immediately by authors of three kinds: by monarchs, or sovereign bodies as supreme political superiors, by men in a state of subjection, as subordinate political superiors: by subject or private persons, in pursuance of legal rights. But every positive law, or every law strictly so called, is a direct or circuitous command of a monarch or sovereign number... to a person or persons in state of subjection to its author.

Austin does not mean, of course, that every command of a sovereign is law. He distinguishes between “general command” and “particular commands” and says that only the former are laws. A general command is a rule, and when it comes from a sovereign and is accompanied with a threatened punishment that will be inflicted on anybody who disobeys it, then it is law. Where it obliges generally to acts or forbearance of a class, a command is a law or rule. But where it obliges to a specific act or forbearance, or to acts or forbearances which it determines specifically or individually, a command is occasional or particular. Austin, does not restrict this command to that which comes directly from the sovereign.

The general commands of subordinate political authorities or superiors, in as much as they have the blessing of the sovereign, nay “His Will” that they be obeyed, are also laws. By “his will” that such commands be obeyed, and by his readiness to punish those who disobey them, the sovereign has, as it were, appropriated them as his own, and they are therefore laws. The same applies to the commands of previous sovereigns or previous regimes. If it is the wish of the current sovereign that the commands of his predecessor continue to be obeyed, he has by this very fact appropriated these commands as his own, and so they continue to be laws hence, Austin speaks of “direct or circuitous commands, the former being those commands that come directly from the sovereign while the latter are those from his subordinates or those from his predecessors, but with his approval in either case.

From Bentham-Austinian conception of law, the sovereign himself is above the law of the land. He is himself not bound by any law, since he is the ultimate source of all laws in the land. This sovereign of Bentham and Austin is evidently the “mortal god” of Hobbes, and their concept of law is obviously Hobbesian. “Law”, Hobbes states “is not counsel but command. Nor (is it) the command of any man to any man, but only of him whose command is addressed to one formally obliged to obey him. Apart from making the sovereign a “mortal god” and placing him above the law, the command theory of law has other serious defects. It so narrows the concept of law that it excludes some categories of universally accepted laws, such as constitutional law, international law, customary law, and *power-conferring* law, that is, laws that confer on people the power to exercise certain functions. What gives law its obligatory force, according to this theory, is threat of punishment for its violation, but is respect for authority and moral consciousness not more solid foundations of obligation than the fear of punishment?

Austin severely rejects Blackstone’s contention that any law that is in conflict with natural law is null and void. For him, law is law whether or not it conflicts with natural law. Whether law is moral or immoral has nothing to do with its validity. The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or not conformable to an assumed standard, is a different enquiry. A law which actually exists is a law, though we happen to dislike it, or thought it varies from the text, by which we regulate our approbation and disapprobation. This truth when formally announced as an abstract proposition is so simple and glaring that it seems idle to insist upon it. But simple as it is, when enunciated in abstract expressions the enunciation of instances in which it has been forgotten would fill a volume.

Sir William Blackstone, for example, says in his “Commentaries,” that “the laws of God are superior in obligation to all other laws; that no human laws should contradict them, human laws are invalid if contrary to them; and that all valid laws derive their force from that divine origin. It means rather that no law which conflicts with the divine law is obligatory or binding. In other

words, that no human law which conflicts with the divine law is a law. One of Austin's disciples, Amos, credited him with having delivered law from the dead body of morality that still clung to it. Thus, Austin is credited with having saved law from the claws of morality. He is also credited with having successfully brought about the recognition of the truth that the law of a state is not an ideal law, but something which actually exists in other words, that the law of a state should be seen for what it, *de facto*, is; i.e., as it actually exists and not as it ought to be.

Austin violently attacks Blackstone's definition of law as "a rule of civil conduct prescribed by supreme power in a state commanding what is right and prohibiting what is wrong. He denigrates the ethical element of right and wrong, saying that the existence of law is one thing, its merit or demerit another. Austin (1832) argues that positive law carries its standard in itself and a deviation from or disobedience to positive law is thus:

Unjust with reference to that law, though it may be just with reference to another law of superior authority. The terms just and unjust imply standard and conformity to that standard and a deviation from it; else they signify a mere dislike which it would be better to signify by a groan or a groan than by a mischievous and testable abuse of articulate language.

According to this view, a law which actually exists is a law, disregard of which can never be legally justified, though it might be excusable from a purely normal point of view. The simple reproach often made against this positivistic conception of law is that it recognizes the "frenzied edicts of a crazy despot" as law so long as they satisfied the formal criteria. Austin's theory of law has aroused great and diverse criticisms and the ensuing debate has usually advanced the understanding of law as a form of social control. Hart considers it a great merit to Austin's lucid and penetrating work to have provoked it.

Morris considers that Austin's chief virtue was that he systematically developed, defended and refined the idea that law is simply the impression of the will of the stronger upon the weaker and stripped it of "excess philosophical baggage" (Joel (2007). After Austin, he writes "now we understand better what there is in law that connects it with coercion and what there is in law that does not". Austin's great contribution to jurisprudence lies in his vigorous and dispassionate analysis of law and legal concepts. According to Lloyd, Austin's determination to see things as they are, to resist metaphysical explanation and to probe analytically and with vigour into the fundamental concepts of law on which so much confused thinking existed, has a lastingly beneficial effect in persuading lawyers in common law countries that, as Holmes, puts it "the common law is not a brooding omnipresence in the sky" but a phenomenon susceptible of scientific analysis and investigation" (Lloyd, 1972). Therefore, Austin who was under enormous influence of utilitarian principle conceived command as an instrument of cohesion for promoting peace, harmony and happiness of the greatest number of people. So also is the command of the sovereign. Thus, the command is for the greatest happiness of the sovereign people, which is the fundamental function of the Government as the trustee of the sovereign power of the people to maintain peace and order in the state.

Elements of Sovereignty in John Austin

The following cardinal features of sovereignty are adduced from John Austin's concept of sovereignty:

Absolutism: Sovereignty is absolute. Legally it is unlimited and unfettered. The legal positivists argue that sovereignty is unlimited even by the constitutional law. The state is the government

and not the state which is subject to constitutional law. Thus sovereign state can at any time amend the constitution. Absolute sovereignty encompassed the internal and external spheres. In Austin's perception, Campbell (2002) observes that "all persons and associations within the frontier of the state are subject to the absolute and unlimited sovereignty of the state". Restrictions on the sovereignty, if any, are self-imposed by the state and not by any individual or groups of individuals. In the external sphere too, sovereignty is absolute. This implies that the sovereignty of a state cannot be restricted by another state. All states are independent and equal in status. International law, treaties and conventions impose restrictions on the sovereignty of a state not because sovereignty in the external sphere is limited but because the particular state voluntarily agrees to abide by those restrictions. No other state can force the state to subject itself to another perceived determinate superior, because sovereignty in the external sphere also is absolute.

However, legally speaking, sovereignty remains absolute in practical affairs, both in the internal and external sphere. There may be limitations placed on it by the natural and inherent rights of the individuals and in the external affairs by international law. With the dawn of democracy, the struggle or desire for recognition and the clear recognition of the basic rights of the individual, undermined the power of the state from acting arbitrarily to crush the individual or group rights. Similarly with the emergence of international law which all civilized states recognized and honour, states have to conduct their affairs with each other according to set principles.

Universal: John Austin's Sovereignty has the feature of universality. This means that it is universally applicable. It is all comprehensive and applicable to all individuals and associations, which are subject to the supreme power of the state. It makes no exception and grants no exemption to anyone. If exemptions and immunities are granted in the case of diplomatic representatives who are subject to the laws granting the exemption, it means that such exemption has been established for the promotion of mutual respect, goodwill and co-operation among states.

Inalienable: Sovereignty is inalienable. It is incapable of being given away by the state. A state can never part with its sovereignty without annihilating itself. When a state voluntarily cedes a part of its territory along with its population to another state, it gives up its sovereignty to that specific area only, for instance, when Nigeria ceded part of her territory to Cameroon, she did not stop from being a sovereign state. Her sovereignty on the rest of the territory remains intact, undiminished and uneroded. Equally, in case the people of a state rebel and succeed in overthrowing the king, sovereignty is never alienated or given away; only a change in government, the sovereignty of the state still stands.

Permanent: Sovereignty is also permanent. Jean Bodin, who belongs to the monistic or classical school of sovereignty, describes sovereignty as perpetual power of commanding in a state. It lasts as long as the independent state lasts. On the death of a ruler, sovereignty is shifted to his successor. It needs mention here that the ruler exercises sovereign power on behalf of the state as its agency. "No sovereignty" means "No politically independent state", when sovereignty is ended, it means the state itself has ceased to exist.

Indivisible: Sovereignty in Austin is indivisible. It cannot be divided without being destroyed. Sovereignty is always full and indivisible. The monistic scholars argue that in every state,

sovereignty must be vested in a single body that is legally competent to issue command; the body is indivisible and absolute.

Exclusive: Sovereignty is exclusive. The state alone is in exclusive possession of sovereignty. Therefore, state and sovereignty are inseparable. The state excludes any outside agency in the exercise of sovereignty. No individuals or association within a state or outside can wield sovereignty and be equal to the state.

Evaluation and Conclusion

The jurisprudence of sovereignty as mounted by Austin is articulate and at the same time challenging and engaging. After having closely and carefully studied Austin's concept of sovereignty, it is apt to note that his idea of sovereignty is strictly not in agreement with popular sovereignty which is one of the major drivers of modern democracy especially as it has been and is still being practised in many parts of the world. The idea of popular sovereignty which is the fulcrum of democracy has been ignored by Austin. In democracy, supreme power rests on the people but unfortunately, one reads Austin's theory to be hierarchical and thus fails to fit in with democratic ideals that have widely been acclaimed. Austin's idea of sovereignty conspicuously undermines the power of public opinion and the political sovereignty. By his famous quote and view "...determinate human sovereign is superior to all," (Rumble, 1995), he undermines and ignores the power and the influence of the electorates and public opinion.

Similarly, Austin is of the opinion that the determinate human superior is the only law-maker and his commands are laws. The definition of law by Austin as a command given by a "superior to an inferior" not only appears abusive but also largely unacceptable as the development of the common law was the great political stir which could not be averted by the sovereign, for which reason the sovereign had no other alternative than to allow the common law to exist. Some philosophers have argued that most people abide by the laws not because the laws are the dictates of the sovereign but because these laws are perceived as means of fostering social unity. For instance, Garg (2022) is of the opinion that:

In modern democracy, people don't abide by laws merely out of fear of sanctions, but they do so voluntarily as well out of morality and responsibility. This leads to the cooperation between the state and the subjects and this cooperation and understanding between the people and the state helps in the effective execution of the law and smooth introduction of social change.

Austin's sovereignty is all-powerful and is answerable to none. This is relatively, though not completely, useful only when considered in terms of external sovereignty. But when it comes to the dynamics of political interactions within the State, modern day democratic systems have in-built mechanisms which guarantee that leaders are accountable to their subjects.

The sovereign as posited by Austin is one who wields the highest and absolute authority. Some people have argued that so far there has been no sovereign in the world that may be truly identified with the model of the Austinian sovereign. According to Sir Henry Maine, even the great Tartars of China and the Mughals of India could not be taken as the concrete examples of the sovereign as described by Austin (Johari, 1989, p. 115). The reason is that even the most power-drunk rulers of the world have bowed their heads before the might of some natural or supernatural agency. The power of the sovereign, from all indications, has certain limits that may

be in the form of some religious or social, customs having their sustenance in the deep-rooted convictions of the people.

Another point to note is that the Austinian view of sovereignty is immersed in the world of law. It ignores the importance of the social usages and the customs that definitely have a binding character. Sociologists, for instance, contend that people obey their established practices in the same way they obey the laws of the state. A wise sovereign will never commit the error of toiling with the customs of the people and imposing upon them a law that disagrees with the well-established practices and sentiments of the people. According to MacIver (1962), customary laws are in their origin spontaneous, not created by any deliberate will to organize, certainly not created by the will of the state. "The state has little power to make custom, and perhaps less to destroy it."

The sovereign, in Austin's view, obeys none and receives habitual obedience from the bulk of a given society. This stand is strongly disputed in so many political societies where there are different arms of government which check and balance one another. Where there are the Executive, Legislative and Judiciary arms of government, these three are ultimate authorities and are far independent of each other, and can rightly be described as "three sovereigns" within the same state. In this case, while the legislative arm makes laws (which are an attribute of a sovereign according to Austin), the Executive implements the laws and policies, while the Judiciary interprets them. Austin's sovereignty obviously does not envisage nor make provisions for the existence of this system of government.

When we try to study a federal system in the context of the Austinian theory of sovereignty, we run into some problems. In the federal system of government, powers are divided between the central government and the federating units and each is taken as autonomous in the sphere allotted to it. This appears like a division of sovereignty. In most cases, the federating units have the status of coordinate governments vis-à-vis central government. This means that neither the central government nor the federating units have an authority that may be termed absolute, exclusive and indivisible to be treated as essential qualities of sovereignty. According to Laski (1936), "It has been pointed out that the discovery of sovereignty in a Federal system is, practically, an impossible adventure."

Another difficulty one may encounter in upholding Austin's theory of sovereignty is in considering the strong opinions of the pluralists who contend that the sovereign state has no right to discard the real significance of numerous social groups and associations that have a "personality" of their own and also play a quite important part in satisfying the needs of the people. Buttressing this, Laski (1936) states:

Men are members of the State; but they are members also of innumerable other associations which not only exercise power over their adherents, but seek also to influence the conduct of government itself....But not less important as a limitation upon its power to determine itself is the control exercised over their own sphere of activity by different associations

The internationalists have also attacked the theory of sovereignty as canvassed by Austin. John Austin, following Thomas Hobbes and Jean Jacques Rousseau, denies the existence of any authority, control or regulation outside and above the state. This clearly implies that every state has the right to produce weapons of mass destruction, or to settle disputes by means of force, or

to do anything in violation of the principles of international law and morality. The experience of the two world wars has taught us that such a view of sovereignty must be discarded. It is necessary that the power of the state must be regulated, even controlled, by some international authority in order to save mankind from the disaster of another world war, with its attendant implications and consequences. Laski forcefully argues that the notion of an independent sovereign state is, on the international side, fatal to the well-being of humanity. The way in which a State should live its life in relation to other States is clearly not a matter in which that State is entitled to be the sole judge. Continuing, he states that international government is axiomatic in any plan for international well-being. But international government should imply organized subordination of States to an authority in which each may have a voice, but in which also, that voice is never the self-determined source of decision. Such international bodies such as the United Nations, European Union, African Union, Economic Community of West African States, etc have different diplomatic and effective ways of intervening, though not interfering, in the affairs of member nations in order to correct some excesses observed. This can be done through sanctions, international trade boycott, travel ban, or any other international policy changes that will be detrimental to the economy of the state involved.

It is important to make a critical point here. Virtually all of the above criticisms and “weaknesses” of sovereignty as taught by John Austin have their significance, and at the same time, Austin’s interpretation of sovereignty has its own significance as well, especially if we limit its consideration solely to its purely juristic character. Most of the weaknesses and flaws seen in it only emerge when we study it from the sociological, political or other standpoints. As a strict legal concept, it is the opinion of this study that Austin’s theory is, on the whole, clear and logical. One may, however, ask a question, namely, of what use is a logical and clear theory if it cannot fit into any practical and realistic socio-political system in order to benefit humanity?

Time and effort have been spent in espousing the concept of Austin’s sovereignty as it affects present-day governance and this work obviously concurs with the fact that its importance and place in the human society cannot be wished away. While one concedes that sovereignty is essential for statehood as Austin upholds, one would not argue as he did that the sovereign is absolute and indivisible, one whose words are laws and at the time not bound by any law. It is instructive to note that democracy has been widely acclaimed to be the best system of government and has even been argued by Fukuyama (1992, 2012) to be “the last form of political evolution”. Unfortunately, it is the contention of this study that Austin’s concept of sovereignty does not agree with the principles and tenets of modern democracy which seem for now to be the last hope for any nation that wishes to grow politically and economically.

There is no gainsaying that citizens of a state should be carried along in the process of law-making, before the representative of the sovereign (e.g. the President or governor under a democracy) promulgates such into law. When the people’s views are not sought in the process of constitution drafting and policy making, they find it difficult to offer the sovereign their “habitual” obedience. It is believed, for instance, that the 1999 Constitution (as amended) which is presently in use in Nigeria is a “Military Constitution” drafted during the administration of General Abdulsalam Abubakar before the 1999 election that brought in a democratic government. There has been a growing call for that constitution to be replaced by one which represents the free will of the Nigerian people. Another instance is that the agitations for secession and self-determination arising from different sections of Nigeria are reflections of the fact that the political system in place is not working well and many of the tribes and ethnic

nationalities are demanding that Nigeria as it is today be renegotiated. While one understands the principles and antecedents which influenced Austin's contentions as regards Sovereignty, and the need to guarantee the peace and stability of the state, it is the strong submission of this study that the basic rights and freedom of individuals and groups within the state should not be compromised in this quest to attain a stable sovereign state.

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