

**SOVEREIGNTY-ITS CONCOMITANT INGREDIENTS, ITS  
PRAGMATIC CONSTRAINTS AND ISLAMIC JURISPRUDENCE:  
A CRITICAL APPRAISAL**

**Dr. Nehaluddin A.<sup>Δ</sup>**  
**Multimedia University Of Malaysia**

**Abstract:** The modern concept of sovereignty has had many implications and many writers have tried to deal with them in their own way according to the circumstances in which they lived and, moreover, according to the problems they wanted to address through it.

In the wake of new developments and globalisation, which is associated not only with a new ‘sovereignty regime’ but also with the emergence of powerful new non-territorial forms of economic and political organisation in the global domain. Globalisation in this account is, therefore, associated with a transformation an unbundling of relationship between sovereignty, territoriality and state power. The traditional conceptualisation of sovereignty was simply a transitional phase in the legal philosophy and whether thoughts of Hobbes and Austin regarding sovereignty can no longer hold feasible in our contemporary world?

The paper will try to examine the concept of ‘Sovereignty’, the state power and territoriality thus stand today in a more complex relation than in the epoch during which the modern nation-states were forged in the post- world war era. It will also focus on Islamic viewpoint of sovereignty; we mean the whole range of those attributes which are imperative to dominate human intelligence and rationality while laying down the guidelines for the governance.

## INTRODUCTION

The modern definition of sovereignty is generally attributed to John Austin. No doubt, he was the first jurist who articulated its concept in such a manner that well suited the legal structure of England. Though written with the

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<sup>Δ</sup> MA, LLB, LL.M. (Luck. India) LL.M. (Strathclyde, UK), LL.D. (India), Principal Lecturer, Faculty of Business and Law, Multimedia University, Jalan Ayer Keroh Lama, 75450 Melaka Malaysia. E-mail: [ahmadnehal@yahoo.com](mailto:ahmadnehal@yahoo.com) Mobile No: +60166054353

predominant consideration of British legal system, yet the phraseology which Austin used to define the term 'sovereign' and 'sovereignty' still remains a juristic reality despite all the criticisms from various quarters.

'Sovereignty' - The theory of sovereignty which Austin adopts from Hobbes' political philosophy and, to a lesser extent, from Bentham's commentaries on Blackstone is intended to serve these purposes.<sup>1</sup>

What makes commands rules is the element of generality in them; what makes rules Laws- in the sense of positive laws, the subject of Austin's jurisprudence - is the fact that they are direct or indirect commands of the sovereign of an independent political society .These commands are addressed to the members of that society, who are thus subjects of that sovereign.

It is essential to note that he always means by sovereign the office or institution which embodies supreme authority; never the individuals who happen to hold that office or embody that institution through their relationships at any given time. Austin's sovereign is an abstraction —the location of the ultimate power which allows the creation of law in a society. As will appear later, this point is of the greatest importance, since he has often been criticised for describing sovereignty and the source of legal authority in 'personal' terms. Undoubtedly he felt no need to labour the matter for, in the tradition of political theory which he relies on; sovereignty is explicitly 'abstract'. Hobbes writing in the context of Cromwellian England, describes sovereignty as the 'artificial soul' of 'an artificial man', the latter being the state or commonwealth. The sovereign is an office not a particular person or particular people.<sup>2</sup>

Though generally credited with being the pioneer in the field, John Austin can simply be considered as the jurist who developed the notion of 'sovereignty', the raw material for which had already been supplied by Jeremy Bentham and prior to him by Hobbes. Making a comparison between Bentham and Austin on this point, Joseph Raz observes;

"Sovereignty"—Bentham, 'When a number of persons', he wrote, '(whom we may style subjects) are supposed to be in the habit of paying obedience to a person or an assemblage of persons, of a known and certain description (whom

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<sup>1</sup> Roger Cotterrell, *The Politics of Jurisprudence — A Critical Introduction to Legal Philosophy* 1989, (Butterworths, London and Edinburgh), 67.

<sup>2</sup> Ibid 67-68.

we may call governor and governors) such persons together (subjects and governors) are said to be in a state of political society.’

One need only compare this passage with the following from the Province, p.194 to realize how great Austin’s debt to his master is. 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, and the society (including the superior) is a society political and independent.<sup>3</sup>

A vague idea had already been given by Hobbes, What is the sovereign of an independent political society? Hobbes had defined such a society as one which could defend itself, unaided, against any attack from without.<sup>4</sup>

Yet Austin, more than any other writer, provided the compact and systematic formulation of a conception of law which allowed an escape from the tradition-bound theory implicit in classical common law thought.<sup>5</sup>

#### SOME BASIC CHARACTERISTICS OF SOVEREIGN

Describing the basic characteristics of sovereign as enunciated by John Austin, Roger Cotterrell says;

‘Some characteristics of Austin’s sovereign: It must be common (that is only one sovereign can exist in any political society; the sovereign is, in that sense, indivisible although it can be made up of several components) that it must be determinate (that is, the composition of the sovereign body or the identity of the sovereign person must be clear). A further characteristic has produced more controversy than any other aspect of Austin’s conception of sovereignty. That is that the sovereign is illimitable by law. This follows directly from Austin’s definition of law. Every law is the direct or indirect command of the sovereign of an independent political society.’<sup>6</sup>

Austin provided what historical jurisprudence could not; a clear designation of the scope of legal knowledge, an orderly theory of law which allowed the legal to be distinguished from the non-legal and the logical connections between

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<sup>3</sup> Joseph Raz, *The Concept Of a legal System - An Introduction to The Theory of Legal System*, Second Edition- 1980 (Clarendon Press –Oxford), 6.

<sup>4</sup> Roger Cotterrell, above n 1, 68

<sup>5</sup> Ibid 52.

<sup>6</sup> Ibid 69.

legal ideas to be made explicit. Finally he offered a way of looking at law which made legislation central rather than peripheral. Thus his legal theory recognized the reality of the modern state as a massive organization of power.<sup>7</sup>

One of Austin's most important successors (Hart, 1955) goes on to remark that 'within a few years of his death it was clear that his work had established the study of jurisprudence in England'. (Austin died in 1859)<sup>8</sup>

The basic ingredients of Austinian concept of 'sovereign' and 'sovereignty', according to Joseph Raz,

'Existence criterion - A law is a general command of a sovereign to his subjects. In contrast to Bentham (and Kelsen) Austin thinks that only general commands, i.e. those obliging to acts or forbearances of a class', are laws.<sup>9</sup>

For Austin a command is defined in terms of the following six conditions: C is A's command if and only if (1) A desires some other persons to behave in a certain way (2) he has expressed this desire (3) he intends to cause harm or pain to these persons if his desire is not fulfilled; (4) he has some power to do so (5) he has expressed his intention to do so and finally (6) C expresses the content of his desire and of his intention and nothing else. In Austin's own words; '.....But a command is distinguished from other significations of desire by this peculiarity; that the party to whom it is directed is liable to evil from the other, in case he comply not with the desire. (Province, p.14 and p.17)<sup>10</sup>

A law is part of a legal system if and only if it was enacted directly or indirectly by the sovereign of that system (Austin), or if and only if it is authorized by the basic norm of the system (Kelsen), or if and only if it ought to be recognized according to the rule of recognition of the system (Hart). These three philosophers were not concerned with the material unity of legal systems.<sup>11</sup>

'Austin says that sovereignty is the power of affecting others with evil or pain and of enforcing them, through fear of that evil, or fashion their conduct to one's wishes'. (Province, 24)<sup>12</sup>

Where there is the smallest chance of incurring the smallest evil, the expression of a wish amounts to a command and, therefore, imposes a duty.<sup>13</sup> 'Any

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<sup>7</sup> Ibid 69.

<sup>8</sup> Ibid 52.

<sup>9</sup> Joseph Raz, above n 3, 11.

<sup>10</sup> Ibid 11.

<sup>11</sup> Joseph Raz, *The Authority of Law — Essays on law and Morality*, 1979, (Clarendon Press — Oxford), 79.

<sup>12</sup> Josef Raz, above n 3, 12-3

particular law may be disregarded and constantly violated, and still exist, so long as the legal system of which it is a part is on the whole obeyed.<sup>14</sup>

### THE PRAGMATIC CONSTRAINTS OF SOVEREIGNTY

Hobbes, Bentham, Austin and others who followed them in advocating the institution of sovereign having absolute powers within a given society might have been prompted by the political set-up of their own times. They perhaps wanted to discourage any effective challenge to the unbridled authority of the person or persons that happened to be at the helm of affairs and thus to strengthen the existing institutions.

The sovereign state thus emerges to vindicate the supremacy of the secular order against religious claims; and it forces the clerics into the position of subordinate authority from which, after the Dark Ages, it had itself so painfully emerged. It is argued by Bodin, as later by Hobbes in a period of similar disintegration, that if the state is to live there must be in every organised political community some definite authority not only itself obeyed, but also itself beyond the reach of authority. This was the root of Hobbes' argument. The will of the state must be all or nothing. If it can be challenged the prospect of anarchy is obvious. ... A sovereign people, they argued cannot suffer derogation from the effective power of their instruments. Its will must be unimpeachable if it is to direct the destinies with which it is charged. We must not forget the atmosphere, not merely in which the theory of sovereignty was born, but also in which, at the hands of each of its great exponents, it has secured new emphasis. That has been always, from Bodin to Hegel, a period of crisis in which the state seemed likely to perish unless it could secure the unified allegiance from its members.<sup>15</sup>

Laski elaborates,

“Those who have most powerfully shaped the theory of sovereignty — Bodin, Hobbes, Rousseau, Bentham and Austin — were, with the exception of Austin, all of them writing before the nature of federal state had been at all fully explored. Either, like Bodin, they thought in terms of unlimited power of the prince, or, like Bentham, in terms of the unlimited power of the legislature; and

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<sup>13</sup> Ibid 13.

<sup>14</sup> Ibid 16.

<sup>15</sup> Harold J.Laski, *A Grammar Of Politics*, First published in 1925,1982,( George Allen and Unwin Publishers Ltd.), 46.

they might, like Rousseau, deny legitimacy to any act which emanated merely from a representative organ.<sup>16</sup>

Bodin developed one of the most celebrated definitions of sovereignty. Sovereignty, in this account, is the untrammelled and undivided power to make laws. It is the supreme power over subjects; ‘the right to impose laws generally on all subjects regardless of their consent.’<sup>17</sup>

It was Hobbes, however, who was the first to grasp fully the nature of public power as a special kind of institution — an ‘Artificial Man’, defined by permanence and sovereignty, giving life and motion’ to society and body public.<sup>18</sup>

Further in the words of Fiona Robinson, ‘As Peterson and Runyan argue, sovereign men and sovereign states are defined not by connection or relationships but by autonomy in decision-making and freedom from the power of others .Security is understood not in terms of celebrating and sustaining life, but as the capacity to be indifferent to ‘others’ and, if necessary, to harm them’.(Peterson and Runyan,1993,p.34) By interpreting as indifference what is normally understood as prudent non—intervention ,we begin to highlight a serious moral deficiency of both political liberalism and the so-called morality of the states’.<sup>19</sup>

Notwithstanding the traditional definition of sovereignty and the political compulsions that induced its general acceptance, the political climate in which we find ourselves does not permit its continuance in that form. No doubt, the sovereign bodies within the fixed geographical limits will remain and continue to be acknowledged as such but their absolutism as the supreme law-makers, totally beyond challenge from any corner, has been brought under severe strain.

Sovereignty, the state power and territoriality thus stand today in a more complex relation than in the epoch during which the modern nation-state was forged and the post-war era during which the idea of human rights too hold. Indeed, globalisation is associated not only with a new ‘sovereignty regime’ but also with the emergence of powerful new non-territorial forms of economic

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<sup>16</sup>Ibid 49.

<sup>17</sup> David Held, *Democracy and the Global Order - From the Modern State to Cosmopolitan Governance*, 1995 (Polity Press), 39.

<sup>18</sup> Ibid 40.

<sup>19</sup> Fiona Robinson , *The Limits of a Rights—Based approach to International Ethics in Human Rights* in Tony Evans edited ,*Fifty Years on —A re-appraisal*, 1998, (Manchester University Press), 63.

and political organisation in the global domain, e.g. trans-national social movements, international regulatory agencies, and so on. The modern institution of territorially circumscribed sovereign rule appears somewhat anomalous juxtaposed with the trans-national organization of many aspects of contemporary economic and social life. Globalisation in this account is, therefore, associated with a transformation or to use Ruggie's term, an unbundling of relationship between sovereignty, territoriality and state power.'(Ruggie, 1993; Sassen 1996)<sup>20</sup>

The globalisation which has definite impact on the traditional notion of sovereignty has changed the basic character of those institutions which were hitherto regarded as the foundation of a nation's sovereign independence. Moreover, in the fast changing international atmosphere which is encountering the terrorist and nuclear threats, the global community, if it adheres strictly to the principle of non-intervention on the pretext of the collapsing edifice of sovereignty, the doom of the world is inevitable. Most pertinent in this connection are the following observations of Harold J.Laski,

“The pluralists therefore argued that, however majestic and powerful, the state in fact was only one of many associations in society, that, in experience, there were always limits to its powers, and that those were set by the relation between the purpose the state sought to fulfil and the judgment made by men of that purpose.”<sup>21</sup>

What ,as I think now, was right in the pluralist doctrine, were its conceptions,(1) that a purely legal theory of the state can never form the basis of an adequate philosophy of the state .(2) that the state is, in fact, no more entitled to allegiance than any other association on grounds of ethical right or political wisdom; and (3) that its sovereignty is at bottom, a concept of power made valid by the use of a coercion which, in itself, is morally neutral. Society as a complex whole is pluralistic; the united power of the state which we call sovereignty, that legal right as Bodin put it, to give orders to all and receive orders from none, is made monistic ( as in the classical legal theory) by the fact that it has behind its will ,on all normal occasions, the coercive power to get its will obeyed.<sup>22</sup>

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<sup>20</sup> Anthony G. Mc Grew ,Human Rights in a Global Age Corning to Terms with Globalisation, in Tony Evans edited, *Human Rights Fifty Years on — A re-appraisal*, 1998 (Manchester University Press) 193.

<sup>21</sup> Harold J.Laski , above n 14, XI( Introductory Chapter).

<sup>22</sup> Ibid XI (Introductory Chapter).

‘When a class- society in this sense is destroyed, the need for the state, as a sovereign instrument of coercion, disappears; in Marx’s phrase it “withers away”. As that is achieved, both the nature of authority and the law it ordains undergo a fundamental transformation.’<sup>23</sup>

‘.....The scale of modern civilisation has made the national and sovereign state an institutional expedient of which the political un-wisdom and moral danger are both manifested.’<sup>24</sup>

The sovereignty of states is seen to be a fiction as soon as they attempt the exertion of their sovereignty. Their wills meet with one another; they can not cut a clear and direct route to their goal. Their wills meet, because their relations grow ever more intimate, and the institutions of the sovereign state fail to express the moral wants of those intimate relations.<sup>25</sup>

There are problems of which the impact upon humanity is too vital for any state to be felt to determine by itself what solution it will adopt. The notion of independent sovereignty, for example, leaves France free to invade Germany when and how she pleases; and the only retort that can be made is either a dissent which does not alter the fact, or a war which destroys civilization. Once we realize that the well-being of the world is, in all large issues, one and indivisible, the co-ordinate determination of them is the primary condition of social peace.<sup>26</sup>

In such an aspect the notion of an independent sovereign state is, on the international side, fatal to the well-being of humanity.<sup>27</sup>

The recent instances of how the international community is mobilised in its crusade against terrorism and the efforts to exert pressures on the nations to avert war, lest it should escalate into nuclear conflagration leading to some cataclysmic destruction, have established this reality that what Hobbes and Austin thought of sovereignty can no longer hold feasible in our contemporary world.

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<sup>23</sup> Ibid XIII (Introductory Chapter).

<sup>24</sup> Ibid 587.

<sup>25</sup> Ibid 662.

<sup>26</sup> Ibid 65.

<sup>27</sup> Ibid 65.

THE STRUCTURAL INGREDIENTS OF SOVEREIGNTY AND  
ISLAMIC PERCEPTION

‘Allah! There is no god but He, - the Living, the Self-subsisting Supporter of all. No slumber can seize Him, nor sleep. His are all things in the Heavens and on earth. Who is thee can intercede in His presence except as He permitted?. He knoweth what ( appeareth) to His creatures as Before or After or Behind them. Nor shall they compass aught of His knowledge except as He willeth. His Throne doth extend over the heavens and the earth, and He feeleth no fatigue in guarding and preserving them. For He is the Most High, the Supreme (in glory)’<sup>28</sup>

It is enough, for the moment, to postulate the disappearance of state - sovereignty as the conditions without which the life of reason is impossible to states.<sup>29</sup>

‘The developments relating to disruptive nationalism and to the all- affected idea of democracy clearly suggest, then, that important new ideas about the nature of ‘the people’ may be emerging.’<sup>30</sup>

The above observations clearly suggest that the theories of ‘state-sovereignty’ and ‘nationalism’, despite all the claims regarding their final acceptability, are still not firmly rooted and it appears as if a time has come which is necessitating a fresh definition of these terms. Their traditional meanings and significance have collapsed under the weight of changing circumstances. The Hobbes, Locke, Bentham and Austin’s definitions of ‘sovereign’ and ‘sovereignty’ might have appealed to reason at the time when the abstractions of natural law had totally confused the juristic approach but now with a radical change in the global circumstances, they are heading towards redundancy. Barry Holden observes on this point,

‘The ‘sovereign people’ came to be identified with the nation and ‘until recently at least’, has accepted a given world divided into nation-states. But it is now being asked whether, in a changing world, this is any longer ‘the given’. There is both a questioning of the presumed coincidence of existing nations and states

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<sup>28</sup>The Holy Qur’an, (Abdullah Yusuf Ali trans.1938), Surah 2- Al- Baqarah, Ayat.255.

<sup>29</sup> Harold J.Laski, *A Grammar of Politics* , Eleventh Impression -1982 ( George Allen and Unwin Ltd),65.

<sup>30</sup> Barry Holden ,Democratic theory and The Problem of Global Warming, in Barry Holden Edited *The Ethical Dimensions of Global Change*, First Published Great Britain in 1996 (Macmillan Press Ltd),142.

and some dissolution of the division of the world into watertight compartments.<sup>31</sup>

He says further,

‘However, the fact that the central democratic value — mass control of governmental activity - is re-embodied in this emerging conception gives it a definitive importance such that it can be said to re-define ‘the people’. The question of who constitute the people’ comes to be answered by reference to a fresh specification of which sections of the masses should do the controlling.<sup>32</sup>

David Held attributes the emergence of the whole notion of sovereignty to the collapse of the established forms of the authority and it was through this new juristic notion that the vacuum could be filled up. The falling power of the Church in Europe, resulting in the clash of authority between the clergy and the aristocracy made it imperative that some new strategy be invented that should be acceptable to both as the centre of power. He writes;

‘Sovereignty became a new way of thinking about an old problem; the nature of power and rule. When established forms of authority could no longer be taken for granted, it was the idea of sovereignty that provided a fresh link between political power and ruler ship. In the struggle between Church, state and community, sovereignty offered an alternative way of conceiving the legitimacy of claims to power.<sup>33</sup>

The modern concept of sovereignty has had many implications and many writers have tried to deal with them in their own way according to the circumstances in which they lived and, moreover, according to the problems they wanted to address through it. Hobbes had his own way of defining it as Raymond Plant observes;

‘Hobbes’ account of the nature of the sovereign is concerned to draw conclusions about the necessity of the sort of power the sovereign wields from facts about human desire, particularly the desire for power, and the relationship between individuals which follow from a proper understanding of their nature.<sup>34</sup>

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<sup>31</sup> Ibid 139.

<sup>32</sup> Ibid 142.

<sup>33</sup> David Held, *Democracy and the Global Order - from the Modern State to Cosmopolitan Governance*, first ed. 1995 (Polity Press), 39.

<sup>34</sup> Raymond Plant, *Modern Political Thought*, 1991 (Basil Blackwell), 11.

John Austin who is generally credited with having given one of the most precise and accurate definitions of sovereignty was also motivated by the political situation prevailing in England during his lifetime. His definition has been the most controversial one in the sense that whether the sovereign of his imagination is the absolute law-giver, not controlled by any other consideration. Many jurists conclude that the concentration of all powers in the hands of sovereign, to the exclusion of all other factors, is outside the Austinian hypothesis. For example Roger Cotterrell observes;

‘First, Austin does not suggest the sovereign is free of limitations but only legal limitations. Thus positive morality (reflected in public opinion, widespread moral or political expectations and ultimately the threat of rebellions) may provide important constraints. Secondly, most of Austin’s discussion of sovereignty relate primarily to the conditions of representative democracies. (Especially Britain and the United States) Thirdly, Austin’s concept of delegation by the sovereign is used by him to express the possibility (which has become a reality in most complex modern industrialised societies) of very extensive dispersion of legislative, adjudicative, and administrative authority with the overall hierarchical framework of a centralised state.’

Austin’s sovereignty is not a legal but a pre-legal notion. It is the logical correlate of an assumed factual obedience. (Manning 1933: 192,202) It is not “a specified organ” or complex of organs, but it means that individual or collectively at whose pleasure the Constitution is changed or subsists intact. (C.A.W. Manning, 1933:192)<sup>35</sup>

Discussing the views of Rousseau about sovereignty, Martin, J. Walsh observes, it should be observed that the ‘sovereign’ means, in Rousseau, not the monarch or the government, but the community in its collective and legislative capacity.

‘The social contract can be stated in the following words. Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole.’ This act of association creates a moral and collective body, which is called the state’ when passive, the ‘sovereign when active, and a power’ in relation to other bodies like itself<sup>36</sup>

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<sup>35</sup>Roger Cotterrell, *The Politics of Jurisprudence -A Critical Introduction to Legal Philosophy*, 1989, (Butterworths) 70.

<sup>36</sup> Martin. J. Walsh, *A History of Philosophy*, 1985,( Geoffrey Chapman London ), 670.  
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Making an elaborate observation about the theory of Jean-Jacques Rousseau, Ian Adams observes,

‘Jean-Jacques Rousseau (1712-78): His argument was that what distinguishes the human from the animal was not that humans have reason, but the fact that human beings are capable of moral choice and, therefore, men must be free in order to exercise that choice. If people are not free, or if their freedom is restricted, then their humanity is being denied and they are being treated as sub-human, as slaves or animals.’

Rousseau then went on to insist that if people had to live according to laws they did not make themselves, then they are not free, they are slaves. It made little difference if a law-making body had been elected by the people, since it was still other people making the laws; those subject to them were still denied the freedom which was their natural right as human beings. On Rousseau’s theory, vast majority of us living in today’s liberal democracies are denied their rightful freedom and, therefore, ‘slaves’.

If everyone voted according to what they knew was the common good, and not their own interests, then the laws passed would be valid and binding; in obeying them everyone would be free because they would be obeying themselves. These laws would be, as he put it, an expression of the ‘GENERAL WILL’.

He only wishes that the GENERAL WILL is always right and that ‘the voice of the people is the voice of God’. But apart from these theoretical difficulties, Rousseau’s notion of an assembly of all citizens is clearly not possible in modern states....<sup>37</sup>

Commenting on Rousseau, Bertrand Russell, says, (Jean Jacques Rousseau - 1712-78) The social contract involves that whoever refuses to obey the general will shall be forced to do so. ‘This means nothing less than that he will be forced to be free’..... ‘The conception of being forced to be free’ is very metaphysical....<sup>38</sup>

In the wake of the developments that have been taking place, especially after the First World War, which have witnessed the emergence of the written constitutions working with the internal dynamics of law, it appears that the

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<sup>37</sup> Ian Adams, *Political ideology today*, 1993, Manchester University Press, 20-21.

<sup>38</sup> Bertrand Russell, *History of Western Philosophy and Its Connection with Political and Social Circumstances From the Earliest Times to the Present Day*, 1955,(George Allen and Unwin London) ,671.

traditional conceptualisation of sovereignty was simply a transitional phase in the legal philosophy. The first such assault on sovereignty came from the Pure Theory of Law as expounded by Hans Kelsen who evaluated legal theory, not in terms of sovereign and its subjects, but as an integrated structure of the hierarchy of norms. Discussing Kelsen, Roger Cotterrell observes,

The pure theory of law dissolves away the state's legitimacy as a potential agency of intolerance. It insists that the state is properly seen as merely the effect of the structure of norms governing the relationships of individual human beings. For Kelsen the doctrine of sovereignty is harmful precisely because it asserts the existence of a supreme entity above law.

Equally, the pure theory of law does its best to dissolve away the nation, as a supreme entity, too. Kelsen argues that the logic of the pure theory leads to the recognition of International law as a single supreme legal system; one in which the norms presented as the basic norms of national or municipal legal system, now appear in a new light as subordinate norms within the international legal order whose validity is ultimately governed by a basic norm of International law.<sup>39</sup>

The great fanfare which marked the advent of the sovereignty, as we presently understand it, is gradually fading away. There was a time when the emergence of the British Parliament as an omnipotent sovereign body was heralded in legal philosophy as a landmark development but now it is being considered as having produced a negative impact on individual freedom F.A. Hayek writes on this development. "The triumphant claim of the British Parliament to have become sovereign, and so able to govern subject to no law, may prove to have been the death-knell of both individual freedom and democracy."<sup>40</sup>

In the context of the sovereign's unlimited powers, Joseph Raz, while quoting Robert Paul Wolff, observes,

'Robert Paul Wolff, to take one well-known example says that authority is the right to command, and correlatively, the right to be obeyed.' (Robert Paul Wolff- In Defence of Anarchism. New York, 1970.p.4)<sup>41</sup>

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<sup>39</sup> Roger Cotterrell, *The Politics of Jurisprudence , A Critical Introduction to Legal Philosophy*, 1989, (Butterworths), 115.

<sup>40</sup> F.A. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, first published in 1978, 1990 ,(Routledge),154.

<sup>41</sup> Joseph Raz, *The Authority of Law - Essays on Law and Morality*, 1979 (Clarendon Press- Oxford), 11.

David Held, while explicating the various structural ingredients of sovereignty, writes, ‘The idea of state sovereignty was the source of the idea of impersonal state power. But it was also the legitimating framework of a centralised power system in which all social groups in the long run wanted a stake. How elements of both state and popular sovereignty were to be combined coherently remained far from settled.’<sup>42</sup>

If sovereignty is the rightful capacity to take political decisions and to enact the law within a given community with some degree of finality, it must be entrenched in certain rules and institutions from which it cannot free itself.<sup>43</sup>

### CONCLUSION

Coming to Islamic conception, the most important thing is that the concept of sovereignty as inferred from the attributes of Allah bears many similarities to the modern concepts. Not only that, but it appears that Islamic concept is the progenitor of the whole philosophical conceptualisation regarding the definitions of sovereignty. The wordings of *Kalima*:<sup>44</sup> the first declaration of faith- that ‘There is no god but Allah and Muhammad is His Messenger bear a strong proximity to the Austinian theory that ‘If a determinate human superior, not in the habit of obedience to a like superior’ and to Kelsen’s theory of ‘the hierarchy of norms’, meaning thereby that the Grundnorm is the justification for all subordinate norms whereas no norm can be used to justify the existence of Grundnorm. It is self-subsisting. All the conceptual aspects of sovereignty, its positive and negative implications, as found in Austin and Kelsen’s theories are present in the *Kalima*. The following verses are most relevant to understand the Islamic philosophy of Divine Sovereignty;

‘O ye who believe! Spend out of the (bounties). We have provided for you, before the Day comes when no bargaining (will avail), nor friendship, nor intercession. Those who reject Faith, they are the wrong-doers.’<sup>45</sup>

‘Allah! There is no God but He, - the Living, the Self-subsisting, Supporter of all. No slumber can seize Him, nor sleep. His are all things in the Heavens and on earth. Who is thee can intercede in His presence except as He permitteth? He knoweth what (appeareth) to His creatures as Before or After or Behind

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<sup>42</sup> David Held, *Democracy and The Global order from the Modern State to cosmopolitan Governance*, first published – 1995,( Polity Press),46.

<sup>43</sup> Ibid 157.

<sup>44</sup> Explanation of the word ‘Kalima:’ There is no god only Allah and Muhammad is the messenger of Allah

<sup>45</sup> The Holy Qur’an, (Abdullah Yusuf Ali trans 1938),Surah. 2-Al- Baqarah, Ayat. 254.

them. Nor shall they compass aught of His knowledge except as He willeth. His Throne doth extend over the heavens and the earth, and He feeleth no fatigue in guarding and preserving them. For He is the Most High, the Supreme (in glory).<sup>46</sup>

‘Whatever is in the Heavens and on Earth, doth declare the praises and glory of Allah, - the Sovereign, the Holy One, the Exalted in Might, the Wise. It is He Who has sent amongst the unlettered a messenger from among themselves, to rehearse to them His Signs, to purify them, and to instruct them in the Book and Wisdom, - although they had been, before in the manifest error.’<sup>47</sup>

‘Whatever is in the heavens and on earth, doth declare the Praises and Glory of Allah: to Him belongs dominion, and to Him belongs praise: and he has power over all things.’<sup>48</sup>

In the present context, it is not only necessary that the existence of the ultimate authority as the last grundnorm must be established but the form of that authority is equally important. The authority, from the viewpoint of the faith may be taken as the Creator or Sustainer of the entire universe, but this aspect of the Authority is not enough to fulfil the need for which we discuss it from the juristic angle. In law the supposition of such an authority assumes a totally different dimension. When in jurisprudence we discuss this concept of authority, we mean the whole range of those attributes which are imperative to dominate human intelligence and rationality while laying down the guidelines for the governance.

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<sup>46</sup> *Ibid.* 255.

<sup>47</sup> *Ibid.* Surah, 62- al-Jumuah, Ayat. 1-2.

<sup>48</sup> *Ibid.* Surah, 64- at - Taghabun, Ayat, 1.

