

Dear John,

How nice of you to tell me so bluntly when you find me unconvincing. Yours is just the kind of help I need if I am to anticipate some of the attacks of the unsympathetic.

You question my description of the "reserved domain" as having brought to birth a new conception of sovereignty. Surely, you ask, there is nothing novel in the recognition that, in concluding a treaty, the State puts a limitation on its sovereignty? Surely it was always known that, given enough of such limitations, the State's sovereignty might be eventually reduced to vanishing point, and so be rendered null and void?

I am delighted that you have raised the point, for it shows how important it is to underline the distinction between two similar ideas. I agree that there is little difference between saying that a treaty limits sovereignty and saying that it limits the field within which sovereignty continues unlimited. Yet a difference there is. For you will prefer the one form of words or the other according as you picture sovereignty in one way or another in your mind. And if people approach the discussion with different mental pictures of what sovereignty amounts to, it is unlikely they will agree in what they find to say on the subject.

Those who speak of the limiting of sovereignty are usually content to talk alternatively of the surrender, the giving up, or at least the curtailment, of sovereignty. Sovereignty, with them, is quantitatively conceived. It is imagined as something of which less remains after a treaty is made than there was of it before. Treaty-making means letting some of one's sovereignty go, though it is not always clear where it is supposed to go to; sometimes, indeed, the portion of sovereignty given up is "pooled," but sometimes it is simply given up.

Those on the other hand who talk of a "reserved domain" seem to me to conceive of sovereignty, not in quantitative and

relative terms, but as something absolute. If I am monarch of all I survey, I am equally a monarch however restricted the field of my vision. A headmaster remains just as much a headmaster even if his school has shrunk to a fraction of its former numbers. The mental picture here is of a limitation and curtailment, not of sovereignty itself, but of the field of its unquestioned exercise. And it may be worth much to the prospects of some proposed reform if it is not understood to mean diminishing the sovereignty of the States. The weakness, to my mind, of the "reserved domain" interpretation is that it seems to me so unlikely that the mental picture it evokes would have been familiar to the classical writers on international law. And can we be surprised that there should persist in some places a disposition to scrutinize new proposals for their possible effect on sovereignty as the classical writers understood it?

We must return, by and by, to the classical writers. Meanwhile let us, in passing, observe and appreciate the bewilderment with which members of what I call the "curtailment" school find themselves almost daily confronted with fresh proofs of the stupidity of their fellows. It passes their comprehension how reputedly intelligent people can continue unperceptive of what seems so plain to them. The blindness is not peculiar to the man in the street. Even the learned, many of them, can still to-day be heard repeating the same absurdity about the members of the League having continued, as members, to retain their sovereignty unimpaired! Did the Covenant create no obligations? Was it not a treaty? Of what use was the League if it represented no abatement of sovereignty? The public is doubtless accustomed to expect that it can eat its cake and have it, but experts should know better than that!

Yet of all those numerous Governments to whom in 1930 Briand addressed his famous invitation to join in seeking the closer integration of Europe, without impairment to the

sovereignty of their States, one only, that of the Netherlands, scored a good mark in the Chatham House Survey by criticizing the project as inherently self-contradictory. It was like the child in Hans Andersen who disconcerted his elders by noticing the nakedness of the king. "All the world is queer save thee and me!"

Yours ever,  
M. S.

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Dear John,

The odd thing about our friends of the "curtailment" school is the readiness with which they attribute their own understandable bewilderment to the muddleheadedness of others. It seemingly does not occur to them that they and those they criticize may be talking at cross purposes and that there may in fact be two kinds of cake, of which folks may eat the one while continuing to have the other. The possibility does not strike them that old Briand may after all have meant what he said and that it was they who had not understood what he meant.

Now that the problem of Europe's future is once more a challenge to progressive statesmanship, and phrases such as European union and the European family are again in the air, it certainly does behove responsible leaders of opinion to avoid at least in their private thinking the stultification that comes of attempting to live in two incompatible worlds. And, while I myself believe that Briand quite well understood the scope of his proposals, I cannot say the same of some of the advocates of closer continental integration. My friends the "functionalists," for instance, almost permit themselves to suggest that, by concentrating on cooperation for practical ends of a non-contentious nature, the problem presented by Europe's too many sovereignties might be by-passed altogether. The dozing dog would be allowed to lie. Governments



would get together on questions of health, continental transportation and the like. Every day and in every way Europe would become more and more unified. And lo, one fine morning, Poland would wake up and find herself as little, and as much, a sovereign State as Pennsylvania. (This even on the assumption that Poland, after shaking off the Nazi yoke, would have reasserted a sovereignty as unqualified as was that of Pennsylvania after she had shaken off the British.) So thoroughly "mixed up" would the inmates of the European barracks have become that they would shave each other's chins in mistake for their own. Use is also made of the simile of the scrambled egg.

And not by that school only. Why assume that Poland's former sovereignty will indeed be reasserted? As you know, there are some who, pointing to present conditions, deny that the concept of sovereignty has now any relevance to the European scene. No need to deprive the States of their sovereignty: that, whether formerly a fact or a fiction, has now been destroyed. Unless purposely recreated it may be reckoned as dead. Nor was it we who killed Cock Robin.

Let us hope that in any approach we may make to the unification of Europe we shall envisage realistically the sovereignty issue, since there lies the crux of the matter. We must know what in this context sovereignty really amounts to and relate our proposals to that. A sufficiently obvious precaution, you say? Yet the failure to perceive that a term like sovereignty may mean different things in different contexts is more common than you may think. Where sovereignty is an obstacle in your way, there is much sense in seeking to minimize its implications, there is some sense in seeking to supersede it, but there is little sense in seeking to interpret it away. As well might you re-interpret a grumbling appendix.

It may be that, taking sovereignty context by context, we shall not find its meanings unmanageably numerous after all. Nor unfamiliar either. We may find that we ourselves have

escaped our own notice using the term in more senses than one. We may also find that others have used the term with no meaning at all, for euphony's or pomposity's sake. Most important of all, we may find that there is such a thing as merely titular, courtesy, complimentary, sovereignty; which is disingenuous only in so far as it is expected to take anyone in. I do not call it fictional, but you may if you like.

We must further be prepared to see instances of a sovereignty which is claimed but contested, parties agreeing to differ on a point of principle while finding day-to-day solutions to practical problems of common concern. It would be unsafe to assume that ambiguity in such matters is always accidental or invariably unpropitious. In praying that statesmen planning the future Europe may have sound ideas on sovereignty, I do not insist that they shall always call a spade a spade. Politeness costs nothing. It may even be found to pay.

Yours ever,

M. S.

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Dear John,

It is the frequency with which, in regard to sovereignty, the statesman has availed himself of the arts of political camouflage which has made so intriguing the process of ascertaining just what sovereignty in any given context amounts to. And anyhow, it is an exercise with which no serious student of international politics can prudently dispense. For it must, I imagine, be the universal experience of teachers of this new-fangled subject that the novice, in his first term, is as likely as not to make for himself the electrifying discovery that what the world most urgently needs is to become politically united under some single government. He may even devote some ingenuity to elaborating his idea of what that global system of government might be like. And it may come



to him as something of a shock when it presently dawns on him that his real task is to identify and assess the factors, adverse and otherwise, which condition the possibility of his blue-print ever getting put into terms of real life. One such factor is the influence in contemporary politics of the notion of sovereignty.

That sovereignty is indeed but a notion, is a point on which the student does well to pause. Its first effect may be a sense of encouragement: for surely, says he, it should be a relatively simple matter to modify a mere idea. A fact is a fact, and there is no escaping it. If it requires faith to remove a mountain, sober reflection should serve to correct an idea. To say nothing of what may be expected of a little forthright abuse. So the student perhaps follows Professor Catlin in stigmatizing sovereignty as a "poisonous lawyer's myth." Which of course is far more devastating than calling it a "poisonous myth" of authorship undisclosed.

The question is why the bad name bestowed upon it by Professor Catlin has not long since sufficed to hang the sovereignty dogma. And it is not as though his had been the only attack. Read H. G. Wells.

What the student has to discover is that to class something as a myth, or, as the French say, *un mystique*, does not of itself ensure its early demise. (It all depends, you know, on what is being mystiquen for what.) If your myth has its roots in a deep-seated irrational sentiment it may survive a deal of buffeting. The best course our reader can be recommended to take, if he wants a corrective to Catlin, is to get Carl Becker's recent *How New will the Better World Be?* and read his chapter called "Can we Abate Nationalism and Curb the Sovereign State?" Linking sovereignty with nationalism, Becker, you will rightly infer, does not put it all down to the lawyers. Nor should we.

Nationalism being what it nowadays evidently is, the best political tactic, in the event of a European, or west-European,

federation being inaugurated, will probably be to follow the precedent of 1787 and find some such formula as will sugar the federal pill for those who think they prefer the Europe from which we have suffered hitherto. Let everybody keep his sovereignty, and stick it in his hat on Sunday: by which I mean let it cease to be anything but nominal. Let us have, on paper, the best of all the worlds. But let the student perceive exactly what has happened, namely that federal union and the essential sovereignty of the component units being mutually exclusive ideas, the case is not one of a diminished "reserved domain," nor even of a curtailment, however drastic, of a sovereignty quantitatively conceived, but amounts on the contrary to the merging, submerging, extinction and supersession of the mysterious element to which such importance is still widely attached.

But stay. Ought I to call it mysterious? Is there really anything so obscure? What, in brief, is it that is thus incompatible with inclusion in a federation? The answer is implied in the reminder that a federation lives in terms of a constitution, and that the relations between its parts are "constitutional." They are no longer international relations: not, at least, in the formal sense. (Despite "international" football, the relations between Wales and England are not formally international.) And what distinguishes New Mexico from its senior namesake is that old Mexico is not, constitutionally, a part of something more inclusive. Old Mexico, in short, is constitutionally self-contained. Indeed, a sovereign State.

Yours ever,

M. S.

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Dear John,

When Briand assured the world that his proposals envisaged no impairment of the sovereignty of the States, that, I judge, was merely his way of saying that relationships be-



tween them would still be international and diplomatic, not municipal and constitutional. The sovereign States were to continue, in the same sense as their forerunners, the sovereign princes, legally non-accountable. And, when I say "in the same sense," I refer of course to the way those princes, while repudiating any responsibility *vis-à-vis* the emperor, made no doubt of their continued subjection to the law of God and the law of Nature, or, as it came to be termed, international law. So far as international law is concerned, neither the sovereign princes nor their lineal successors the present-day sovereign States have ever made any doubt of it since. In so far as "sovereign" used to be understood as meaning "above the law," it was municipal, not international, law that was meant. Only for those who overlook this fact need the idea of an international law binding on sovereign States seem a contradiction in terms.

And again I would say that, in so far as "sovereign" used to be understood as meaning "above everything," or supreme, it was for domestic, internal, not for external, purposes that this was claimed. The notions of supremacy and of legal non-accountability, albeit related, are distinct. Only for those who overlook this fact need the idea of a society of sovereign States seem incongruous. Yet there are learned and perspicacious writers who essay to explode the idea of the external sovereignty of States by insisting that sovereignty means supremacy and that it is absurd to talk of a society of States each supreme in relation to the rest. Presumably such writers would likewise reject the thought of a Mothers' Meeting. A lovers' meeting they could understand, since love is reciprocal. Maternity isn't. People cannot be one another's mothers. Ergo, a Mothers' Meeting is no more plausible than is a society of sovereign States.

I am not, however, contending that the notion of an international law binding on sovereign States is self-explanatory. On the contrary I know it to have been the cause of many a

headache. But the difficulty lies less in seeing how the States can possibly be sovereign than in seeing how the law can possibly be binding. The sovereign prince had an immortal soul and was answerable to his Maker. The law of God and the law of Nature were commonly not kept apart. And, even if Nature were not identifiable with the Will of God, its precepts were regarded as the dictates of Reason. The sovereign prince, as a reasonable creature, was manifestly subject to these. Now, however, that municipal law is perceived to derive its effectiveness not from its inherent reasonableness but from its interdependent relationship with government—the factor of government being conspicuously absent on the international plane—the question arises how an international law unsustained by anything resembling international government can nevertheless have authority to bind the sovereign members of an international society.

This question has more in it than meets the eye. It has engendered a substantial literature, to which you and I may some day add our contribution. We shall escort our reluctant reader, writer by writer, over all the well-trod ground, exposing as inadequate one theory after another, until he has become suitably impressed with the seeming insolubility of the riddle. We shall then surprise him by claiming that we could make an equally destructive analysis of things written on the binding character of law in general, including that traditional Common Law by which Englishmen abide. We shall then remind him of Comte's differentiation between the theological, metaphysical, and positivist stages in the progress of man's mind. A stock illustration, I fancy, is the sleep "induced" by opium. At one stage this was explained as due to the will of Allah. Then it was put down to a soporific principle resident in the opium. Now, in man's positivist stage, we say that sleep is wont to ensue upon the use of opium. With law, we shall show, man is still, most fortunately, in the metaphysical stage. Law's binding force is still



due to a binding principle resident in the law. If you ask me to anticipate what, in man's positivist stage, will be said on the point, I must disclose that law is not, in strictness, binding at all. It is merely regarded as binding, deemed to be binding, just as the sun is looked upon as rising with the day. In effect, though not in fact, the sun rises; and in effect the law binds. As the term sunrise is a metaphor expressive of how we conceive things, the same may be said of the binding force of law. Philosophy is still at the stage of seeking to isolate the soporific principle. Philosophy therefore is beside the point. Concerned with how things are, it omits to ask: But are they really? The question of law's binding force relates not to how things are but to how they are conceived.

Yours ever,

M. S.

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## 15

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Dear John,

In studies on law's binding force confusion sometimes occurs between two questions: the force of law's detailed provisions and the force of the legal system as a whole. Let me explain. Suppose, in England, you sign a lease. It thereby becomes binding on you if, and inasmuch as, you have done it in the form and manner recognized by English law as effective for the purpose. So too, when Parliament passes an Act, it becomes operative in virtue of the due observance of appropriate forms. The lease, and the Act of Parliament, both owe their validity to having satisfied the technical criteria of English law.

But why is English law itself binding upon you and me? This cannot likewise be so in virtue of the law's own technical requirements. The system cannot support itself by its own boot-straps. No: the legal system as a whole derives its force from an assumption logically prior to the law itself. What sort of an assumption is it? It is an assumption which



cannot be proved but which must not be questioned, at least not by you or me. It is a pre-legal assumption which we must not deny. Why must we not? Because it forms part of a small but important body of doctrine which we may call English constitutional dogma. Constitutional dogma is the theoretical foundation which a legal system needs to stand on in order that it may function as it is meant to. A functioning legal system presupposes the binding force of law just as religious worship presupposes the existence of a Deity.

What else does a functioning legal system presuppose? In other words, what else forms part of constitutional dogma? One further assumption, at any rate, I would have you notice. Philosophers, as you know, are still divided into determinists and those who believe in the freedom of the individual will. Neither position, it seems, can be proved or entirely refuted. Whichever view we act upon must remain in the realm of assumption. And that is how it is with law. Law as such assumes that the individual is indeed responsible for what he "wilfully" does. It assumes that he might have chosen, and freely chosen, to do otherwise. It assumes, what cannot be proved, the freedom of the individual will. Well, there you have another assumption of English constitutional dogma. No use trying to contest it in a court of law; for law as such presupposes it.

To the questions, Is law binding? and, Is the individual will free? there is in each case an orthodox answer, namely, Yes. It is a matter of dogma, not susceptible of scientific endorsement. It is dogma binding, constitutionally binding, on you and me. Ah yes, I know what you are now going to ask. Why, in its turn, is constitutional dogma binding? To this question, unlike the first, there exists no orthodox answer. You may hold about it any view you fancy. Or perhaps I should say it is a question it is unbecoming to ask. Anyway, people don't commonly ask it.

Now you see how all this can be restated in international



terms. That international law is binding upon the "persons" subject to it, and that these "persons" are endowed with freedom of will, are assumptions without which the system could not function: they form the doctrinal foundation upon which it needs to stand. They are assumptions which admit of no proof. But they cannot be called in question; for they are matters of orthodox dogma, binding upon "whom it may concern," and in particular upon the "persons" members of the international family. And it is perhaps slightly unbecoming to put the unanswerable question as to why this sort of dogma binds. It is another of those questions on which you may hold what view you fancy.

You will notice I have conveniently eliminated the great issue as between those for whom international law binds by nature and those for whom it binds by some form of consent. For me it does not bind at all; it is merely *deemed* to bind. "Binding" is a metaphor representative of a mental picture. It is not, that is, descriptive of a situation of fact. There is after all no need to account for what is not a fact.

You will notice also that we have now returned by a different route to our own definition of sovereignty. When we say that the subjects of international law are sovereign States, what do we mean? We mean—is it not obvious?—that they are States endowed with what corresponds, in the case of the individual, to his freedom of will. Equally with the individual, they are assumed—for it cannot be proved—to be responsible for what they do. For they alone decide it. They are, in short, constitutionally self-contained.

Yours ever,  
M. S.

16

Dear John,

When, in 1919, the League of Nations Commission in Paris decided to include in the Covenant what is known as

the unanimity rule, it was suggested by some, and denied by none, that this course was inevitable in view of the sovereignty of the member States. Sovereignty was taken, or alleged, to be incompatible with membership in an organization proceeding by majority vote. That this was known to be fallacious is deducible from the fact that the Commission, in the same breath, made an exception in the case of decisions on points of procedure. There was, of course, nothing, except its own free choice, to preclude a sovereign State from freely choosing to enter a system whereby it would become bound, in the sight of international law, by decisions which its delegates had unsuccessfully opposed.

The real reason for not proposing such a system undoubtedly was that few if any of the then existing sovereign States can have been thought likely to enter, of their own free choice, into such a system. Certainly the most important prospective member States would have been unlikely to do so.

What lent plausibility to the argument was the analogy of procedure at an ordinary diplomatic conference not meeting under any such special arrangements as were being provided for in the Covenant. For customary international law has not as yet evolved any recognized method of creating new international obligations save by the freely accorded consent of those they are to bind. In other words, the sovereign members of the international family retain, as the law now stands, a veto on any proposed addition to the sum total of their obligations, any "limitation", as some call it, upon their sovereignty. This right, or better, this power, of veto may, for aught I know, be yet another candidate for designation as sovereignty. It is absolute. It is enjoyed by sovereign States. It is—is it not?—an impediment to "progress." The temptation to call it sovereignty is wellnigh irresistible. Yet it could, I consider, suffer abrogation without detracting from sovereignty in what seems to me the essential meaning of the term. For the members of the international family would continue



thereafter as before, to be constitutionally self-contained; and thus solely competent, in terms of pre-legal international dogma, to decide for themselves, not indeed what they legally ought to do, but how far they would in fact do as they legally ought. The States would remain, in the same sense as you or I, the sole judges of whether to behave like good citizens or face the results of behaving otherwise. That capacity they must be assumed still to possess if international law of the kind we know is to continue making sense. International law, as a functioning system, presupposes the sovereignty or free will of the members of the international society. For those who, supposedly for the strengthening of international law, have desired the supersession of sovereignty, this is doubtless a hard saying. International law they would wish to keep. They would destroy the Nelson column while leaving Nelson where he is: even in imagination a difficult thing to do.

My point, that international law presupposes sovereignty, was put, plainly enough, by Vattel long ago. "International law," he wrote, "is the law of sovereigns." And again: "Sovereignty is the qualification for being subject to international law."

It may be that a strengthened international law would bring a deepened sense of world unity, with better prospects for an eventual simultaneous disappearance of sovereignty and of international law itself. The edifice of world society would have become so solid that the scaffolding could go. The world State, with a global system of cosmopolitan (not international) law, would take the place of the present "chaos of sovereignties." For ceremonial and courtesy purposes the component territories might continue to style themselves sovereign. But their mutual relationships would have become constitutional, not international: they would no longer be constitutionally self-contained.

Or it may be that the constitutional integration of the planet could more expeditiously proceed, in the first place, by re-

gions, beginning, say, with the whole or part of Europe. Let us at any rate avoid supposing, with folks I could name, that, in the "transfer" of powers by France to the Union, let us say, of western Europe, there would be nothing more revolutionary than there is in the transfer of particular powers by the London County Council to the Ministry of Health. There is not involved, in this latter instance, any creation of a new citizenship, any substitution of one object of ultimate political loyalty for another: for there is not any substitution of new, constitutional, for hitherto international, bonds.

Yours ever,

M. S.

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Dear John,

I am indeed grateful to you for raising these further doubts. They certainly demand to be cleared up, lest others feel them too.

You remind me that sovereignty has been by some defined as the State's claim to be judge in its own cause, a claim considered inconsistent with the idea of an international law binding upon States. Of course I ought to have dealt with that point. Actually it is a picturesque but misleading way of putting the indubitable fact that, except where a State has agreed to submit a dispute to arbitration or judicial settlement, there is no way in which "third-party judgment" can pronounce upon the matter in a manner binding upon the State. No State has any need to "claim" that this is so. It simply *is* so as a matter of customary international law. But I have a more important objection to make than that. The formula I am criticizing seems to me to suggest that the judicial function is indeed performed, but performed by an interested party. It may be that the man who does without a doctor's advice can in a sense be considered as playing doctor to himself. But the State which refuses to take its case before



a judge does not thereby itself assume to do the judge's job. That job remains undone. The ambiguity in the word "judge" becomes unmistakable if I put it that every State is the judge of whether it will have one. (A State may judge that it would be injudicious to submit its case to the judicial judgment of a judge.) The disturbing thing is not that words should so commonly lend themselves to such confusing use, as that intelligent folk should so commonly lend themselves to be the victims of such confusion. The wounds with which men's minds withdraw from the battle for truth and insight are all too often self-inflicted.

You ask me also whether sovereignty is not inherently evil since it is in virtue of their sovereignty that the great Powers are at liberty to bully the small. I reply that you are in error. Rather is the boot upon the other foot. It is their strength, not their sovereignty, which enables the strong to get their way: whereas the small States, were it not for their sovereignty, might be bullied even worse than they are. Their sovereignty is their veritable shield and buckler, their quasi-strength. A province of three million inhabitants may in most countries find itself affected by every kind of unwelcome legislation. But a country of three million inhabitants has all the doctrinal prerogatives of the most mighty of its fellow sovereign States. For seventy million other Europeans to override the formal dissent of three million Swiss would be almost an unheard-of thing. Which means that, were it to happen, the whole world would hear of it at once, with horror. Undermine man's semi-superstitious veneration for sovereignty and it is not on the powerful that you will have inflicted the greater hurt. There are, in all conscience, few enough scruples now left active in the world. Let us not hasten to exorcise such vestigial inhibitions as remain. Is it not precisely because Hitler cares so little about sovereignty that we have to put him down?

You ask me whether the British self-governing Dominions, with their common allegiance to the same King, are con-

stitutionally self-contained. My answer must be Yes, and No. As regards allegiance, Yes: for the object of Australian allegiance is King George of Australia. But in another respect, No. The reason the Statute of Westminster, 1931, was effective to advance the status of the Dominions, was because the King in his London Parliament had the necessary competence to do that kind of thing. In short the Dominions, until 1931, were not constitutionally self-contained. And, technically, it is plain that the Statute of Westminster could have been repealed on the following day. No one supposes that the Statute will ever in fact be repealed. The very prospect of such a thing might well serve to provoke a revolution. But that indeed is what we should have to call it. And in the meantime the sovereign Dominions, with their sovereign Governments and sovereign Parliaments, will continue taking sovereign decisions as before.

Yours ever,  
M. S.

18

Dear John,

What a fellow you are. How dare you call "specious" my nice little argument about the sovereignty of Switzerland? I would be greatly aggrieved were it not that I cannot quite dismiss the idea that there may be something in what you say. The purpose of this letter is, if possible, to clear my mind.

Is there not, you ask, a sense in which the strength of the strong States is the greater by reason of their sovereignty?

The point you are after has, I suspect, been suggested to you by your own experience with malaria. Your strength is effectively yours only in the intervals when you are well. And so it is with States. When is the great power of a Great Power at its greatest? When it is morally, psychologically, spiritually, most united. And, while I am not prepared to say that the kind of cohesion here in question is itself a manifestation of



sovereignty, what I do have to admit is that, but for the facts of which the sovereignty doctrine is an interpretation, the cohesion might not be there.

Disputation concerning sovereignty is least likely to arise where people in general are attached, or at least resigned, to the existing order. It is by those with some alternative to canvass that inquiry as to what sovereignty is, where it is, and whether that is where it ought to be, is most likely to be begun. What gives a State its worst form of malaria is the presence within it of a sizable element sceptical as to the basic assumptions on which authority is enjoyed. In times past it was enough that the *status quo* could be represented as part of a divinely appointed order of things. Nowadays it is more often necessary for government of the people to appear as government by and for the people as well.

A strong State will be one whose régime is built upon a widely acceptable theory of the siting of sovereignty. As Bodin called on Frenchmen of old to sink their differences in common submission to their king, so in these historic days we hear Frenchmen being summoned to accept the lead of a Committee claiming to stand for the sovereignty of the people of France. Were this claim rather better established in point of form, its moral validity might be taken as axiomatic. As it is, every care must be shown to strike in official attitudes that note of defiant self-sufficiency best in keeping with the popular conception of a national "general will." For a distinction is not always seen between the legal non-accountability which, in a certain technical sense, is what sovereignty amounts to and a supposedly "sovereign" indifference to the judgment of mankind. And better a prickly but united France than a France sweetly reasonable in council but unable to deliver the goods.

On the whole I think I was right about Switzerland. National sovereignty is not in itself something of which even a powerful people need feel ashamed. What should cause

shame is not sovereignty, but its abuse. Sovereignty, internationally, means an organized people's freedom of will. A free will is a will free for better as well as for worse. Where would the world be to-day without the might, the organized might, of the United States? United, mark you. United, notwithstanding all the inveterate individualism of the American citizen.

Revolutionaries do not always get the results they had thought to see. If you regret the sovereignty of the strong, it is perhaps because you see in sovereign statehood an obstacle to the establishment of a universal State. Perhaps you suppose that to national government, on the basis of national sovereignty, there is only one alternative, government on a world-wide scale. Actually there is also another possibility, namely, no government at all. If it may prove difficult to civilize a world of sovereign States, it might be found even more difficult to organize a world of sovereign individuals. Let us at least be quite clear as to which of these tasks we propose to attempt.

Yours ever,  
M. S.

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Dear John,

Still not satisfied? Well—it does credit to your temperament as a forward-looking friend of mankind. Thanks especially for all your "authoritative" quotations (for my museum!).

You remind me of my own point about sovereignty's being a novel idea. What warrant have I, you ask, for assuming that the structure of world society has to-day attained its final form. None whatever, I admit. All I would ask is that if, as your contribution to the millenium, you decide to work for the moral emasculation of the sovereign States, you should please not begin on those whose influence in recent times has been most used in the service of peace. *Que messieurs les*



*assassins commencent.* Physical disarmament is not the only form of social suicide.

Your King-Hall quotation, by the way, leaves me unmoved, unless it be to tears. "Is it not obvious," he writes, "that in theory, and still more in practice, 'national sovereignty' must be subject in the last resort to the control of a superior or international sovereignty? . . . A child of twelve can see that." What is the Commander's idea? A world federation? Its assumed desirability would not of itself render its inevitability obvious. An improved form of international organization? That, by definition, would not be sovereign. Either aspiration is respectable, but the Commander is not here at his lucid best.

Others of your quotations suggest that you still have a soft spot for the argument from global interdependence. Thanks to aviation and all that, sovereignty, you suspect, is now an anachronism and a fiction. Tut tut. Thanks to aviation, you know, Great Britain is no longer an island; or so they also say. Yet this, as a child of twelve can see, is merely a *façon de parler*. The denial of Britain's insularity is simply an artistic way of pointing to how its implications have changed. And as, despite aviation, Britain is still technically an island, so, despite everything, Mexico (Senior) is still constitutionally self-contained. The implications of her sovereign statehood are doubtless kaleidoscopic, but sovereign she remains.

The reason why your authors and I seem to talk at cross purposes, is because a mere attempt to show things as they are is so rarely accepted at face value. Since Bodin and Hobbes were political propagandists, Austin, you'll remember, had to be tarred with the same brush. Oh yes; I've heard all about conditioned thinking. My motives are other than I suppose? Well: your authors at least know what they are out for. Whereas my only *conscious* prejudice is not against progress, but against mystification in the use of words.

Yours ever,  
M. S.

Dear John,

My remark about "mystification" was, of course, aimed at your "authorities" and not at you. And I did not mean that it was always intentional. Sometimes it is sheer simplicity of mind. I could name one scholar who seemingly finds remarkable the fact that sovereignty has been defined in so many different ways. It is true there are words, such as wheelbarrow, or even gentleman, for which a single agreed definition might conceivably be sought. But nobody, at least in this coal-extracting kingdom, is nonplussed to find the word royalty used in several senses. Why not sovereignty too?

Nor is any one surprised if, to the question, "Who is the head of this household?" you reply by inquiring for what purpose the question is put. If Father pays the rates, it may be Mother who rules the roost, and Baby who calls the tune. Sovereignty, like household-headship, means different things for different purposes. Unreasonable to assume that Austin, for instance, was defining it for your purposes, not his.

Another loose practice is that of identifying sovereignty with its normal implications. There are rights, functions, powers, which we may class as governmental, and which in a monarchy would doubtless belong to the sovereign. These are commonly characterized as sovereign rights and powers. Less excusably, an exercise of sovereign rights is termed an exercise of sovereignty. This results in an identification of sovereignty itself with its incidental rights. Whoso has such rights has sovereignty and therefore is sovereign with respect to them. When the theretofore sovereign commonwealths merged their several sovereignties in an American Union, they reserved many of their pre-existing rights and powers. With respect to these, their sovereign rights, they continued, it was said, to *be* sovereign. Hence, on a popular, pleasant, but deceptive interpretation of the position, they continued



to be sovereign States. A man, after marrying, may retain some of his bachelor attitudes, habits and friendships, but he does not for that reason continue a bachelor. For a sovereign State to enter a federation and yet continue sovereign seems no more possible than it is for a man to marry and yet remain single.

To those who see in plans for international organization a threat to American sovereignty, Wendell Willkie and others, not content with showing that thesis untrue, have answered that treaty-making, so far from impairing sovereignty, is an exercise thereof. Logic poor: there is no reason why every exercise of sovereignty should leave sovereignty unaffected. A bee can sting, once. The sovereign act of entering a federation can never become habitual. But my main point is that it is not useful to dignify treaty-making capacity by the high-sounding name of sovereignty. When I buy a horse I do so in exercise of my capacity to bind myself by contract. My horse-buying is no doubt also a manifestation of my personality. Though I do in one act manifest both my personality and my legal capacity, I do not commonly identify the two. My personality, in particular, is pre-legal, my contractual capacity exists only in virtue of the law. A State's sovereignty is pre-legal, its treaty-making capacity is not. No point in identifying the two.

What Mr Willkie was really attacking was the "curtailment" school. Sovereignty, in the relevant context, means for them "that which suffers diminution when a State concludes a treaty." It means, that is, "the sum total of a State's legal liberties" as at the moment before the treaty is concluded. In the same way, by drawing and cashing a cheque I reduce my bank balance. Thereafter, with any luck, I shall just as much have a bank balance as I had before, albeit the said balance no longer will amount to just as much. Entry into an international organization would indeed reduce American sovereignty, in this peculiar sense. "If total war is

the price of total sovereignty, the price is too high." An admirable sentiment, except that America's sovereignty, in the sense implied, neither is nor ever has been total. Even the United States has never been left, by international law, in enjoyment of unlimited legal liberty.

Another example. There are many things that a sovereign State does not usually like, and is usually in a position to forbid. They thus are not usually done. It might be hastily inferred that this is because, if done, they would constitute an infringement of sovereignty. But it is one thing to refrain lest sovereignty be infringed, and another to refrain merely in order not to offend a sovereign State. There are many things her Allies may this summer need to do which may injure France's self-esteem, but which only by a verbal artifice will bear description as infringing the sovereignty of France.

So too, when a sovereign State elects, under pressure of events, to submit to *de facto* control by another, this need not detract from its status as sovereign. A protectorate may leave sovereignty formally unimpaired. Or bases may be leased without prejudice to territorial sovereignty. Bunkum, you say? It is only bunkum if you insist on assuming that by sovereignty is always meant just what you are accustomed to mean by it. Your plight is due to your having identified sovereignty with some of its more familiar implications.

That too is what seemingly ails those who cry bunkum if sovereignty is ascribed to the lesser European countries to-day. Has not Hitler's jackboot trampled the plausibility out of the theory that they once were sovereign? No doubt they styled themselves such, but have they not been confuted by events? The answer is that, if sovereignty meant being physically omnipotent, strategically self-sufficient, and generally immune to attack, the pretension to sovereignty would be about equally bunkum whether put forward by a small State or a big one. Constitutionally self-contained, yes. But that is different.



Well that, John, is all for now. You go ahead and put these lucubrations into some sort of sequence and some sort of prose. Try to express them in words that will be understood of the laity without being so light-spirited as to debar their perusal by the academic angels (for whether or not we can claim to be on their side we would like to have some of them on ours). Be careful to warn the reader that he will still keep coming upon what strikes him as mere "sound and fury," passing as erudition, on the sovereignty theme. Let nothing of that sort him dismay. Nay rather, let him collect, as we do, a museum.

My immortalized namesake had, as you know, an adage to the effect that, if you wish a thing well done, you must do it yourself. Your sympathy gives me the opportunity of proving how fatuous a maxim it was. As if there could ever be a wiser plan than to find the best man for a job and entrust it to him. Does anyone really suppose that, with young Alden, the "maker of phrases," in the offing, the old "maker of war" could ever for himself have touched the heart of "the angel whose name is Priscilla"? A dog's chance, that's all his ever had been, believe me.

Yours accordingly,  
MILES.

P.S. You suggest that our title-page carry some motto, or quotation, giving the keynote for what is to follow. Well, why not? You may perhaps care to seek out the reference, and the correct wording, for a remark I have seen imputed, credibly enough, to Lord Balfour. It ran, as I remember, somewhat thus: "They tell me people complain that I am given to drawing subtle distinctions. I am. High policy has a way of turning upon subtle distinctions. If people find they cannot understand them, they should entrust their affairs to those who do."

to A.M.J.  
from Miles

# SOVEREIGNTY

## FOR THE COMMON MAN

by

C. A. W. MANNING