

UNLIKE MUCH THAT IS WRITTEN AND SAID ON THE SUBJECT of sovereignty, this pamphlet is neither a demand for its disuse nor a plea for its retention. It has been composed in the conviction that, in debate on the future of world society, breath and ink might be saved and confusion avoided if participants always made plain to themselves and their public in which of its accepted senses they were using the word sovereignty in any particular context. It is printed in the belief that thought on the problems of peace would be positively aided were people more commonly alive to the distinctions it seeks to draw, and in the hope that, should it not itself have done so with the necessary point, it may at least move some one to draw those distinctions better. It incidentally contributes to juristic speculation on the vexed question of the law's binding force, a treatment which has not hitherto been available in print. For readers to whom its line of country will be novel, the austerity of the argument may perhaps be a little relieved by its having the informal guise of letters to a friend.

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Dear John,

It was most pleasant to hear that your convalescence is thought likely to be steadily progressive. I can well understand your desire to find "some moderately useful purpose" to which to devote your improving energies.

It so happens that I can put to you a specific proposal. You may remember how, as your tutor, I used to talk semi-jocularly of some day putting into a text-book certain points which, possibly for their very obviousness, seemed consistently to elude the attention of standard works on jurisprudence. I become increasingly sure that some of those neglected points should, if suitably presented, command interest in circles even wider than those of the lawyers. There are subjects on which the citizen is constantly stimulated to think, but on which his thought is often vitiated by confusions which it should be within the capacity of the humblest amateur of political theory to dispel.

Among your many excellencies I recall a genius for that dignified prose in which any ostensibly solid contribution to juristic science is expected to appear, and which always costs me at least double the time I would take to couch the identical line of thought in my private version of the vernacular.

I therefore propose to you a piece of sensible collaboration. The result would be the submission of ideas essentially mine, in language essentially yours.

The subject treated would be Sovereignty in world affairs to-day, and some current misconceptions in regard thereto. From time to time, as the spirit moved me, I could write you a letter, and you could devote your spare hours to reproducing my wisdom in a fit phraseology to win it the attention of the learned world. What say you to this?

Yours sincerely,

MILES STANDISH.

Dear John,

Good lad. Grand to have your encouraging, not to say enthusiastic, reply. It is an immense stimulus to know that you await with pleasure what some would dread as an insufferable chore.

I shall accordingly strike while the iron is hot, and forthwith tell you a little more precisely just why the topic of sovereignty seems to me ripe for reconsidered presentation at this time. After all that has been said and written on the matter in the past few centuries it might easily be supposed that there could be little left to say. Yet it is the very profusion of the literature which has been as much as anything to blame for the present condition of the debate. The sort of man who might have been useful on the subject is commonly loth to run into print before he has himself exhausted the material and consulted all the sources. The man who either does not know or does not heed the sources is, as often as not, competent only to add to the confusion. The which, mark you, is what they'll say of you and me. However . . .

Be that as it may, the sovereignty literature is not all of equal worth. We must try to indicate for the serious inquirer enough of the more significant contributions, while not scaring the lesser brethren out of the field with too formidable a parade of pedantic erudition. What most people want, after all, is light upon the facts of life, not intimacy with the minds of divers theoreticians now, unhappily, no longer in our midst.

The facts of life—and, in particular, I would say, the facts of international life. For it is in discussing the relationships between the several peoples of the world that publicists most commonly import, for their readers' befuddlement, a language which those readers too modestly suppose must be intelligible to others though not to them. It is presumed that the nature

of sovereignty is, or should be, a matter of general understanding, and that any speaker who talks of it must surely himself know exactly what he means. It sounds a weighty argument; and, in all likelihood, the bare assertion that sovereignty is being put in peril is enough to destroy what might otherwise have seemed an excellent case. (They tell me that, among Americans, the Monroe Doctrine is also rather like that.)

Towards proposals regarding international organization there are three main types of attitude: that which says "No, that would mean a surrender of sovereignty"; that which says "No doubt it would, but what of that?"; and that which says "On the contrary, it would leave sovereignty intact." Is it possible that in some sense all these three attitudes might prove to be alike well-founded? We must go into that. But not to-night.

Yours sincerely,

MILES STANDISH.

Dear John,

One point there is on which we must see that our dust-cover leaves the reader in no manner of doubt, namely, that it is with the present and future, not specifically the past, that we are concerned. Philosophical speculation about the nature of politics and the basis of civil obedience is as old as history, and many of our notions on these things have pedigrees longer than yours and mine. For our present purpose, however, it will be possible, and indeed necessary if we are to be through this summer, to say almost nothing about kingship in the Bible, about Aristotle's classing of forms of government, about feudal conceptions of allegiance, about points of similarity and contrast as between Dante and Machiavelli and Hegel, or about the insights of John of this, Marsilio of that, and Nicholas of some other place now in enemy hands.

Warmly as we must sympathize with anyone wanting light on these themes, ours is a limited objective, and we must deny ourselves all but the "really necessary" deviations from the appointed path. It is possible, you know, in a discourse on modern artillery, to overstress the bow and arrow phase in its evolution.

Man is, or deems himself, a self-directing creature. On the face of it, there might seem no reason why he need bow, in anything, to the authority of another. In point of fact, however, most men have at all times been disposed in varying degree to acknowledge and submit to some sort of authority, to lend themselves to some measure of social control. Not only have they done so, but they have commonly had the impression that they ought. In practice there is indeed nothing absolute about men's submission to men. But it is their disposition to defer, at least in some degree, which accounts for the possibility of a measure of law and order on this earth. Most men, for many purposes, have shown themselves apparently content to be subjected to some kind of government.

In some societies, which we shall perhaps be justified in calling primitive, the line of separation between the religious and the secular is not consciously observed, and it is scarcely if at all perceived that there are indeed two distinct sorts of authority, both being held and exercised by the same incumbents and in effect lumped together as one. More familiar to you and me is the kind of régime in which the two sorts of authority are not merely distinguished in principle but vested in different persons and institutions.

History, at least a certain side of it, is the record of a never-ending competition for various forms of authority among men. Even though it be well accepted that pope and emperor, holding different sorts of authority, are each, under God, supreme in his particular sphere, debate may continue as to whether the one sort may not be considered in some sense derivative from the other. For in this competition for authority the

weapons are of many kinds; and not least among them is argumentation. To obtain what I want, I develop a doctrine, a theory, tending to establish that I ought to have it. Of itself such a weapon might not suffice to gain me the day; but as supplementing the influence of other sorts of weapon it may very well tip the scales of fortune in my favour and thereafter play an important rôle in conserving for me what I have won.

Though the modern conception of sovereignty draws some of its ingredients from a fairly distant past, it is necessary to appreciate that the finished article is a comparatively novel idea, having been evolved as the answer to questions which our medieval forebears had never found occasion to put. For Christendom in their day saw itself as forming a single polity with God on the Throne, and thanks, in particular, to feudalism, the ideology of public life was in general very different from what it later came to be.

It was, I believe, a pass candidate who said at his *viva*: "All I know about sovereignty is that it has something to do with absolute government and something to do with Austin." Let us, however, for the moment, leave poor Austin out of the discussion. Let us consider the sixteenth-century setting in which Bodin wrote his *Six Books of the Republic*. The salient facts about the France of his day were that, with the concurrence even of the clergy, French kings had vindicated their independence *vis-a-vis* the pope, not to mention the emperor; and that Frenchmen were coming increasingly to see that, as the sole alternative to the civil strife into which their religious divisions had led them, it were better that all alike, whatever their confession, should fall in with a tendency for political power to centre in the king.

Bodin wanted France to become and remain a "well-ordered State," and had his own vision of what that would mean. France, you know, had nothing quite like the English Parliament and the English Common Law. Legal authority, if France was to be well-ordered, must all come to be con-

sidered as rooted in a single centre. And, though Bodin's argument was professedly applicable in justification of absolutism in other forms too, his preference, in France's case, for a system of kingly government was hardly left in doubt.

Being in no way subject to any earthly superior abroad; and having a monopoly of legal and constitutional power at home: these were the essentials of that sovereignty whose presence was, for Bodin, the mark of a well-ordered State. Nor was France's the only case in which his ideal was to take practical form in the period then opening. And Tudor England, if not in form an absolute monarchy, did at least behave sufficiently like one to count perhaps as well-ordered. It was only during the next century, when England in turn was rent by civil war, that our local counterpart of Bodin's gospel was formulated by Thomas Hobbes. He too was a propagandist interested in seeing governmental majesty consolidated in some single pair, or set, of hands. In Britain, however, it was not the monarch who eventually came out on top.

A further point needs noticing in the absolutist picture. Not only did the ordinary law of the land come to be looked upon as a creation of the human will, but the prince, whose will it was typically held to embody, was, on a Roman Law analogy, considered as above, and unbound by, the positive, man-made, or as we should say municipal, law in force in his domain. All very nice, this, for the prince, if folks could be got to believe it. And to some extent, in some cases, they could.

Yours sincerely,
MILES S.

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Dear John,

I was reminding you of Bodin, and the tradition initiated by him. The point we must stress is that at least one of Bodin's successors has been rather commonly misunderstood.

John Austin, on the evidence of how, in his University College, London, lectures, and in his book *The Province of Jurisprudence Determined*, he had espoused and restated the doctrine of indivisible sovereignty, has, by the intellectually slapdash, been rated an adherent of despotism.

Actually Austin was in politics rather a Radical than anything else. There seems to me to be no ground for assuming that he would have been an opponent of popular rule. In contrast, however, with Bodin and Hobbes, Austin, in discussing sovereignty, was not making propaganda for any specific form of government at all. He was merely an interpreter of government as such. Interpreter: that is the word. The strictures which since his death have been passed upon his treatment of the relation between the individual and the community, and upon his picture of his "sovereign One or Number" as a sort of link between the two, become, as I think, largely irrelevant if once it is accepted that his study is not a description of any one political system, but an abstract and, so to say, diagrammatic representation of a general type of society—that in which government is smoothly conducted on a basis acquiesced in by the generality of the people. For the purpose of Austin's diagram, it mattered nothing whether a particular government were monarchical, oligarchical or widely democratic in form. For his "sovereign Number" might equally be many or few. And, though his analysis might equally fit an absolutist system, constitutional government is what it was chiefly concerned to explain.

Any such constitution as Austin envisaged may be expected to provide a procedure whereby the law of the land may be altered, a procedure, perhaps different, whereby the constitution itself may be altered, and a procedure whereby the legislative personnel are to be chosen. In law-making it is the will of the legislature which immediately prevails. In choosing the legislators it is another will, that of the electorate. And in the case of constitutional amendment? But wait a moment.

Has a legislature in fact a will? Has an electorate? The typical legislative process is one in which a multiplicity of wills combine to produce a resultant not necessarily in full accord with the precise desires of any one taking part. The result of a general election is not the choice of any one elector but the outcome of the concurrent action of a vast number of individual wills. When we ascribe what emerges to the will of a single entity, parliament or electorate as the case may be, what we do is to personify an abstraction. We conceive in our minds the picture of a "person" possessed, in the one case of law-making, in the other of parliament-picking, authority. No single person in fact has power to legislate or to pick a parliament. But the idea of such a power, and of a person, a personified collectivity, endowed therewith, may, for purposes of interpretation, be convenient nevertheless. And similarly, when the constitution undergoes modification, it may be convenient to conceive a collective person prescribing the change, and vested with the authority so to do.

In point of logic, the authority to amend the constitution is superior to either of the other two sorts. In logic all that passes either in parliament or at the polls may be read as happening at the pleasure of that personified abstraction, that collectivity, which might have required it to happen by some different process. That collectivity has in this sense the last word as to what shall happen. To acquiesce in the functioning of the system is to acquiesce in that collectivity, that "person," having the last word, and may, in other words, be construed as "obedience" to the person in question. Only so long as such acquiescence, such obedience, is forthcoming from enough of the people, can the system, the constitution, continue to work. So long as it does so continue, the "person" may be considered as holding supreme authority over the working of the system.

Now it is to this kind of supreme authority that Austin would apply the term sovereignty. Austin's, remember, is not

a description of particular historical facts. The mental picture his theory evokes is a simplifying diagram indicative of the dynamic relationship between the individual's free will and the authority of law. The emphasis with Austin is less on authority than on acquiescence, "habitual obedience," the psychological foundation on which government may be construed as resting. Without a correlative authority to be obeyed, the mental picture of obedience would be logically incomplete; so the "sovereign One or Number" finds "its" place in the plan, to receive the obedience, and to will the continuance or adaptation of the law, and the constitution, presently in being. Sovereignty with Austin is not a fact, but a tool of interpretation, an idea.

Yours sincerely,
M. S.

5

Dear John,

Since some of our readers will certainly want to do some browsing on their own in the literary meadows, we ought, I think, to give them the means of distinguishing for themselves the grass from the thistles. So I propose we bring early to their notice at least four distinct services that a writer on sovereignty may be seeking to render.

In presence of a given order of affairs his concern may be to justify, to discredit, to illuminate, or merely to describe. Anything written, for instance, in pre-Revolutionary France concerning the sovereignty of the people was presumably for the weakening, rather than the underpinning, of the then existing order. The like is true of anything to-day affirming the sovereignty of humanity as a whole. Conversely, wherever kings commanded obedience, the doctrine of their Divine Right was for the buttressing of the *status quo*. The statement that submission is seldom absolute is, on the other hand, a way of simply describing, rather than excusing or condemn-

ing, the facts of common experience. And fourthly, there is writing whose business it is to interpret, for one purpose or another, the given material. An assertion, for instance, that the king is the father of his people is unlikely to be received as a statement of fact. Every one will, on reflection, perceive that it expresses in an interpretative metaphor what the monarch means to his people. It is a portrait, rather than a photo, of their relationship.

The value of any such interpretation of facts lies not in its pretension to be true, but in its effectiveness for the purpose it subserves. To call the king a rubber stamp would equally be an interpretation, and might, for some different purpose, be even more effective.

As I rather tend to reiterate, Austin's theory of sovereignty seems to me meant neither as advocacy nor as apologetics nor as mere description; but essentially as an interpretation of the phenomenon of the ordered political co-existence of free-willing humans. You may, of course, dissent. Between his lines you may think to discern the propagandist note, the implicit defence of this or demand for that. With most interpretations this, I admit, is readily done. From the first, for instance, there was only one American Union. But its nature was amenable to differing interpretations. Your choice of either was itself a disparagement of the other. And the Civil War, *alias* War between the States, was fought between the exponents of the rival interpretations.

Yet Austin's sole purpose, as I see it, is simply to explain and render comprehensible. We may reject his interpretation as distorted, confusing, or otherwise inept, but hardly as tendentious. Of much that has been written on sovereignty in international affairs it may suffice to say that it is blatantly tendentious—advocacy posing as clarification or even as mere description. All too rare are the writings of those whose single aim it is to bring out for the student's enlightenment the essence of things as they are. It is in Austin's footprints

that you and I must endeavour to tread. We must pursue, and promote, intellectual insight as though it were an end in itself.

Yours ever,
M. S.

6

Dear John,

From your sympathetic reaction to my last letter it is clear to me that you need no further convincing as regards insight as an end in itself. So long as I contrive to keep to the straight and narrow road I need fear no obstruction from you. And if peradventure I should stray into bypaths of propaganda, I shall count on you to recall me to my task.

This evening, at least, I open on a strictly academic note by making a further series of dull distinctions. Our reader must notice on what a diversity of planes is distributed the subject-matter to which our arts of description and analysis must be applied. Not enough simply to say that a line must be observed between fact and theory. The currency and status of a theory themselves are matters of fact. And there are theories and theories. Our reader must know the bearing of these on one another.

Sometimes by a theory we mean some sort of an hypothesis. Our book is planned on the theory that in current thought about sovereignty there is remediable confusion. Experience may presently verify the confusion but falsify its assumed remediability. (We shall then go fishing, on the theory that theorizing is a waste of effort.) Hypothetical too, but in a somewhat different sense, is the sort of theory propounded by Marx or Lenin as a basis for revolutionary action by the working-class.

Not every theory is conjectural at all. You will remember, before the Fire Guard Plan was introduced, the lectures we all attended on the "theory" of the plan. Again, of the "in-

fant," who in England is incapable of making some sorts of contract, we say that his is an incapacity existing in legal theory. All law, in this sense, is theory. We perhaps shall find that sovereignty, like incapacity, occurs in different kinds, being in some contexts matter of fact, in others matter of law. The so-called sovereignty, that is the legislative supremacy, of king in parliament, though we tend to regard it as a fact, has its true abode in the realm of legal theory. (That this theory of parliamentary sovereignty stands to-day uncontested is, on the other hand, a matter not of theory but of fact. It simply describes the view prevailing now.)

Then again there is a theory that parliament's powers are held on a footing of trusteeship. This, however well-grounded, is not legal theory, but theory concerning law. It is not a theory such as any Court could apply. If sound, it is sound not legally but in some other sense. It is sound in terms of some sort of extra-legal theory. Likewise the theory that law binds you and me is theory concerning law. Logically it is not merely extra-legal, but pre-legal, since law presupposes it. Nor can it be called in question, for it is orthodox. It is, I take it, a dogma of the constitution.

Similarly, that the constitution binds us is in turn a piece of theory concerning the constitution. It is logically pre-constitutional. And orthodox too. It is an assumption necessary to the functioning of the entire governmental system. It serves to make sense of the system.

We are free to use the term sovereignty in whatever sense or context we choose. But in our own minds we had better know whether it is pure description we offer and, if so, whether what we describe belongs to the world of fact, of legal or constitutional or logically pre-constitutional theory, or whether again we are not describing merely but propounding, like Austin, a generalized sociological interpretation of government as a ubiquitous phenomenon. At least for our own private purposes we should know what we are about.

different from those we have noticed hitherto. As understood in international law, territorial sovereignty may be described as a legal relation between a "person" (an international person, that is to say, a State) and, what shall we call it: a portion of the earth along with its superincumbent air-space? It is a legal relation in virtue of which the State is authorized to exercise there the functions of government. In this relation there is no doubt something analogous, albeit loosely, to the ownership, in municipal law, of land. Both belong to the general category of legal relations between "persons" and "things."

It may be appropriate at this stage to recall a point that arose when, after the Great War, certain States were appointed as "mandatories" to administer certain territories detached, professedly for this purpose, from German and Turkish "ownership." There was a careful avoidance of language such as might have suggested that the territories in question were passing to the mandatories in full sovereignty. Whatever the resulting relationship, it obviously was not, or at least it was not obviously, that. Yet without doubt those mandatory States were invested, in respect of those territories, with authority to govern them, despite the American definition, it would appear as if authority to govern could be thought of as separable from the territorial sovereignty in which it ordinarily inheres. This at least looks like being true as regards the position in international law. Is the position, municipally, the same?

A man named Christian, not in Bunyan but in South-West Africa, was tried and sentenced for treason. The ground, the only ground, of his subsequent appeal was that treason, as traditionally defined, was a crime against "majestas," or "sovereignty," and that, there being, as he contended, no "sovereign" power, there could be no treason: not in a territory under mandate. Apart from one judge who went yet further, the Court, in rejecting Christian's appeal, perceived

that the sovereignty involved in a question of alleged treason was, not the international law relationship between person and thing, but a competence, or status, existent in municipal legal theory.

It happened that in Christian's case the "authority to govern" of which the Court took cognizance had been created by an international instrument: but one could imagine a municipal Court being satisfied, for domestic purposes, with less. It must indeed be a rather unusual thing for a State's legal authority to govern the territory *de facto* under its control to become a matter for judicial appreciation in the domestic Courts of that State. Such authority seems rather to be presupposed by their existence and functioning as Courts.

Meanwhile we may notice that in a suitable context the dictum we are considering might have been formulated with reference to that further kind of authority which exists simply as a fact. Some degree of *de facto* authority over territory seems a *de facto* prerequisite of its *de facto* control. It is true that the actual whereabouts of *de facto* authority may not always coincide with its seat as deducible from the theory of the constitution. In other words, so-called "sovereignty" as *de facto* authority is not identical with the sovereignty of Austin's theory. But in either case it is worth recalling, the authority is not the basic factor in the situation. What is basic is the psychology of what Austin calls habitual obedience. Authority *de facto*, and Austin's sovereignty, are alike mere counterparts of this.

Yours ever,
M. S.

8

Dear John,

Before we leave this subject of the *de facto* psychological basis upon which government reposes, there are two schools of objectors against whom our reader had better be forewarned.

See separate file

First, there are those who question the aptness of "habitual obedience" as descriptive of that attitude on the part of "the bulk of the community" *vis-à-vis* the "sovereign One or Number" which, in Austin's theory, differentiates the politically organized, from the anarchical condition of society. Is the attitude correctly described as obedience? If so, is it rendered as a matter of habit? Even if so, is it rendered in favour of any determinate element (whether One or a Number) in the community? Is it not rather a state of feeling in regard to the Constitution, a sentiment of approval, acceptance, acquiescence, reverence, towards a scheme of things in the substantial justice of which the rank and file have by various propaganda techniques been brought up to believe? In short, is Austin's account of the facts true?

You will know my answer before I give it. Austin's is not an account, but an interpretation, of the facts. For Austin's purposes it is *as if* his interpretation, his diagram, were a true picture. Let some one propound a more illuminating and pertinent interpretation if he can. But let him not think to improve matters by rejecting Austin's picture in favour of what affects to be a meticulously exact description of what actually occurs. For that, in order to earn full marks, would need to reflect all the varying moods of each of an indefinite number of numerous individuals in many times and places. Nonsense, is this? Well, perhaps it is. At most, you'll say, some one might ask for a generalized account based on a sample of available evidence. And one may for the sake of argument concede that some up-to-date method of psychological investigation might deliver the data so demanded. Yet it would all be unnecessary for one not professing to write history. His "habitually obedient bulk of the community belongs to the same order of reality as does the economic man of the classical economist". The economic man is not a person such as anyone need pretend to have met. He is an interpretation, an intellectual device, whose value

of the pluralists is a conceivable, and in that sense a "possible," world; but it is not the kind of world that interested Austin. As an interpretation of the world we see, it should, I suggest, be classed as an instance of tendencious analysis, a covert plea for what the pluralists believe would be a better kind of world.

Yours ever,
M. S.

9

Dear John,

You may have been tempted, in reading my account of the pluralistic theory, to wonder how anyone familiar with the facts of daily experience could ever have mistaken that theory for a fair impression of current social realities, or hoped to sell it as such. Whatever the underlying motive for such an interpretation, it was bound, you may have felt, to fall entirely flat.

Yet I doubt if the pluralists were ever quite so naïve as you may imagine. It is not as if their picture were wholly devoid of plausibility. And you have only to look at history to see that a doctrine is by no means foredoomed to futility merely because its bias is written on its face. That the pluralists so obviously had a chip on their shoulder might not of itself have stultified their attack upon the moral foundations of the existing order. The reason their doctrine proved so damp a squib was because it fell among a public so little predisposed to disaffection. No one chooses the role of a rebel merely because he has been furnished with the reasoning wherewith to excuse himself therein.

The future of a tendencious reading of the facts of life depends upon whether it finds enough hospitable soil. It will be swallowed by those to whom it is palatable. It will be taken up by those whose policy it promises to reinforce. For them it may make the whole difference between failure and success.

And when, by their victory, a new order is ushered in, the theory in question may become, for the first time, a fair reading of facts as they are.

By the sovereignty doctrine in its early forms three purposes at least were served. It justified the rejection of papal and imperial claims. It vindicated and enhanced the growing *de facto* authority of the local régime. And it gave logical coherence to the municipal legal system by asserting the formal necessity for a single centre of reference in which to vest the last word on what the law should be, what it was, and how it should be applied. All these purposes were, in their several ways, answered by the single formula of legal non-accountability. Sovereignty meant being beholden to no earthly superior abroad, having supreme authority to run things, and in particular to legislate, at home, and being superior to the law resulting from that legislation.

In the first of these aspects sovereignty was already on the way to being a convincing interpretation of existing facts. In its other aspects its history was rather less simple. Supreme authority, remember, may be conceived as matter of law, or else as in some sense logically pre-legal. In England, for instance, no one, certainly not him they called the Sovereign, had ever been indisputably above the law. His Majesty's non-accountability was of a very peculiar kind. Neither was he the only organ of government. Even with respect to the powers lawfully his, various compromises were struck, as between law and politics, form and substance, ceremonial and serious business. To the logical singleness of law's authority it was not necessary for some single organ of State to correspond. We shall not need to trace the stages through which sovereignty came variously to be attributed now to the People, now to the Nation, now to the State, now to the Constitution. It has even been ascribed to a factor called "the sovereign complex of organs." I am not sure if South Africa is the only country whose Constitution, since 1925, has

opened with an acknowledgment of the sovereignty of Almighty God. By the way, I wish you could have been there the other day to hear old man Gerbrandy reminding our would-be makers-of-a-new-world of this once generally accepted assumption. It was in his Taylorian Lecture. Mind you read it.

It is with the idea of legal non-accountability in its external aspects that you and I have chiefly to deal. With Hegel, you may remember, the State (that is, in particular, Prussia) was in the last analysis not bound by international law at all. In this respect Hegel has had his imitators; but fewer than you might think. Among the uninstructed, however, there might I believe nevertheless be found a common conviction that this Hegelian thesis has only too often been officially adopted in the power diplomacy of modern times. There even seems to exist a popular impression that such an imagined condition of international anarchy is inevitable. Are not sovereign States, by definition, non-accountable—"judges in their own cause"? Surely, for such as they, subjection to law would be a contradiction in terms? Or else, while assuming the subjection, folks are at a loss to tell themselves how it can ever have been brought about, unless by reducing sovereignty itself to a fiction. We shall have no difficulty in adducing instances of this bewildered note.

Yours ever,
M. S.

10

Dear John,

At the end of my last letter I mentioned that school of progressive internationalists who, from the assumed existence of international obligation, think to deduce the non-existence of sovereignty, on the principle that sovereignty and international obligation are two logically irreconcilable ideas. This is perhaps the convenient point for noticing certain other current

"proofs" of the achieved, or impending, obsolescence of sovereignty, and some of the grounds given for rejoicing thereat.

Twin-brother to the argument from the assumed existence of international obligation is the argument from manifest global interdependence. To be non-accountable internationally is presumably to be independent of control. Sovereignty, in short, means independence. Whoso therefore is not independent is, by definition, something less than sovereign. And there are at least two irrefutable demonstrations of the unreality of the alleged independence of the modern State. Look, it is said, at the facts of international intercourse. No State can live unto itself alone. Peace, progress, prosperity, are all alike indivisible. The very idea of national independence is a hang-over from the horse-and-buggy age and no longer in accordance with the facts. And if a second method of proof were needed it would suffice to point to the lessons of this war. What, under Hitler's jackboot, remains of such so-called independence as the smaller States of Europe might still have been thought to possess? And what is so patently true of the small States is only a little less obvious in the case of the great. National isolation, independence, sovereignty—have not all these now been decisively knocked on the head?

It sounds, does it not, almost too good to be true? What if there should be found a flaw in the argument? Some writers, with the best sovereignty-smashing will in the world, are content to proceed by degrees. Sovereignty with them is only in *process* of disappearing. The millenium is not yet here. Nevertheless they can see it coming. At Paris in 1919, out of deference to certain susceptibilities reported as still alive in the American Senate, the League Covenant was caused to include a now celebrated paragraph about "domestic jurisdiction"; or, in French, "*compétence exclusive*." The implication would seem to be that international law was understood to recognize a class of situation in which a State might say to

all the world "This is my business!" and expect to get away with it. But the thing to know is that even a matter initially of domestic jurisdiction will automatically lose that status the moment a country's freedom of action in regard thereto has been placed under the limitations of a treaty. The alleged disregard of such limitations would not be a merely domestic matter. Or so the Hague Court is understood to have declared in 1923.

A not unimportant result of this Hague ruling apparently was to suggest to some impetuous spirits a new conception of sovereignty, whose merit lay in pointing the way forward to the eventual total elimination of that "pernicious" idea. Sovereignty still existed; but had theretofore been imperfectly understood. It was at any rate ripe for reinterpretation now. Sovereignty still signified legal non-accountability; but only within a limited category of affairs. Sovereignty and subjection to law were indeed irreconcilable, and this the Covenant was now understood to concede. International law had its full force, save only within what came to be labelled the "reserved domain." Within the limits of that domain the State's sovereignty continued to apply. But with the multiplication of treaty-commitments the extent of the reserved domain would, it might be hoped, progressively dwindle. Sovereignty's final elimination should thus be only a matter of time.

That this was a desirable consummation hardly anyone has ever ventured to doubt. If States are anti-social, is not this due to their sovereignty? How many a beneficent programme of reform has not suffered shipwreck on the sovereignty rock? Was not the League's recognition of sovereignty a root cause of its "failure"? Its stultifying unanimity rule: was that not an inevitable expression of the sovereignty idea?

Yours ever,

M. S.