

SOVEREIGNTY.¹

Our theme to-day is Sovereignty. What is it, and where does it reside?

In the last lecture we prefaced our consideration of the rival tendencies in Foreign Affairs by making certain assertions as to the units and claims that make up politics. We said that there was more involved than the old-established antithesis of the individual and the State, and we suggested that politics was a battle between an ever-extending variety of claims for loyalty. This is a theme that we must now expand, taking up more closely the claim of one of these units, the State, to a supreme allegiance on the ground that it is the very body and soul of a power called 'Sovereignty.'

We have grown so accustomed to the identification of Sovereignty with the State that we find it hard to realize that the spirit now in prison was once, and may be yet again, her captor's most untiring foe. For those who follow the strategies of the soul the struggle that led to the capture of sovereignty is easily the most exciting story of the last thousand years; and I wish we could really tell it here. If you have no time to read more deeply of it, let me recommend to you the following books:—"Political Theories, Ancient and Mediæval," by Professor Dunning, and its sequel, "Political Theories from Luther to Montesquieu"; and "From Gerson to Grotius," by Dr. Figgis. The first two are admirable summaries, the third is valuable also as an original contribution. Those little books can then be followed by such works as "The Great Society," by Graham Wallas, and three works by a former brilliant lecturer at this University, Mr. Laski, entitled "The Problem of Sovereignty," "Foundation of Sovereignty," and "Authority in the Modern State."

It was the Church of the Middle Ages, looking for weapons against secular power, that discovered on one side of the principle of monarchy, the idea of popular sovereignty, on which the King's authority was based, on the other side of monarchy the idea of a spiritual absolute called the law of nature to which the King was obliged to conform. In inventing popular Sovereignty the Church and its partizans had no special love for the people or for liberty; it was calling forth a second power which it hoped to persuade. In supporting the Law

¹ The above is the first of two lectures on Sovereignty in a course on "Politics," given at McGill University in 1921-22. The second will appear in a later number of the REVIEW.

of Nature, a conception borrowed from the Roman Law, it set up a moral authority into which it might be expected to have a peculiar insight. Dr. Figgis quotes the saying of Lord Acton that "not the Devil, but S. Thomas Aquinas was the first whig," meaning the first to set up the defence of doctrine against secular power. For the Church, sovereignty lay outside that power, as its constant critic; not inside it as its justification.

Strangely enough, while it was the absolutist Church that championed political independence, it was the Protestant Reformation that first fostered political authority and the pretensions of the modern State. Allies were needed against Rome, and the strongest allies that could be found in Germany were Princes. To them was presented the idea that sovereignty was the property and essence of the State and that Princes were such by Divine right. But when Princes would not be Protestants, then recourse was had again to the older idea that authority was itself a subject and was bound to the supreme claims of a Divine purpose of justice, on the one hand, and of public welfare on the other.

The State, however, had got a taste of the benefit of the doctrinal justification of supremacy, and was not going to abandon so precious and so fruitful a support. As Mr. Laski puts it: "The medieval worship of unity, in fact, is inherited by the modern State; and what changes in the four centuries of its modern history is simply the place in which the controlling factor of unity is to be found. To the Papacy it seemed clear in mediæval times that the power to bind and loose had given it an authority without limit or question. The modern State inherits the Papal prerogative. It must, then, govern all; and to govern all there must be no limit to the power of those instruments by which it acts. . . . The representatives of the State must be sovereign, and if the Stuarts abuse their prerogative, the result is, not its limitation, but its transference to Parliament. Always the stern logic of theory seems to imply that the denominating institution is absolute. Locke, indeed, saw deeper, and argued to a State that thought it had already won its freedom, that power must be limited by its service to the purposes it is intended to accomplish. But the accident of foreign rule gave that power a basis in what could, relatively at least to continental fact, be termed popular consent. Thenceforth the sovereignty of Parliament became the fundamental dogma of English constitutionalism. Without, there might be the half-articulate control of public opinion; but that, as Rousseau said, was free only at election time. Its control was essentially a reserve power, driven to action only at moments of decisive

crisis. 'A supreme, irresistible, uncontrollable authority, in which the *jure summa imperii* or rights of sovereignty reside' is, as Blackstone says, the legal theory which lies at the root of the English State. For practical purposes, that is to say, the sovereignty of the English State means the sovereignty of the King in Parliament."

I have already spoken in a former lecture of a restraining sense of fitness, of the frequent instinct on the part of those who wield majorities for the point at where to draw the line. You have there a dim recognition that the State's hold on Sovereignty is somewhat precarious. But this recognition is not often declared. The general assumption is that States, autocratic or democratic, whether controlled by minorities or by majorities, and perhaps most certainly when controlled by the latter, may command and legislate as they please, whatever private judgment may be passed upon their acts. In short, for the modern State, might is right, and if it cannot find some grander expression it will direct itself against cigarettes and one-piece bathing-suits, and will be perpetually longing for the hour when it may ordain, not only what we may drink and what we may wear, but what we may say and what we may read and even what may be our thoughts. And so long as the pure doctrine of State-sovereignty prevails, the widening of the franchise does not give the State new masters, it only helps to point out new fields to conquer. You may remember the phrase that Erasmus puts into the mouth of Cornelia in "The Parliament of Women"—I quote for all of us of both sexes—"Let everyone here deliberate with herself upon these matters, that an Act may be passed concerning everyone of them." There you have the true note—that laws are flats that can be arbitrarily made and arbitrarily enforced, rather than guarantees to persons and their intercourse, and statements of the essential workings of society.

There then are the pretensions of the modern State. How far are they true in fact, how far are they merely an over-successful mesmerism? And if it turns out that sovereignty is not the captive that it seemed, in what legitimate measure may the State expect its support? The answer seems to depend on an examination of factors and functions.

I repeat, then, that we seem to have as modern factors, firstly, persons in themselves; secondly, persons in intercourse, or society; thirdly, the State, or will-shape of any given community; and, fourthly, all those other artificial persons like the Canadian Pacific Railway Company, or societies and will-shapes, secular or spiritual, within or without or across the State, such as the Canadian Manufacturers' Association, or the Trade Unions, or the Church, or the

International Communists, or the League of Nations. Each of these, in so far as its existence is justified, has a function to perform, or an essential demand. But the State has no original being. It is the creature of persons and society, and is only fulfilling its function when serving the essential needs of its two begetters, namely, personal freedom and social liberty. Where these require obedience, the State can and must command, whatever individuals or associations or will-shapes must go to the wall. As Mr. Laski puts it: "Authority can act without restraint only where its end is in fact coincident with its ideal object. Its policy, that is to say, is only a sovereign where it is serving the sovereign purpose." Where no such need arises for its assertion, and where other will-shapes in their essence or activity do not challenge the sovereign purpose which it serves, the State may tolerate an infinite variety of efforts and ideals, and if minor will-shapes cannot be allowed to tyrannize, still less appropriately can the general will-shape lord it over its creators in any of their essential expressions, or set up as an end in itself.

Considerations of this kind may help us in appreciating or in judging the outstanding political puzzles of our time.

A suffragist, imprisoned for assaulting a Prime Minister, goes on a hunger strike. What is the Government to do? Is it to release her, or to let her die, or forcibly to feed her? Is it a sovereign State which decides this question, or is it decided by a public opinion which revalues what society has at stake, weighs society's sentiments against society's nerves, and possibly forces authority to capitulate because a subconscious decision had already been made in favour of the suffrage for women?

A nation at war conscripts its men. Some of them have conscientious objections to warfare, or belong to religious bodies that forbid them to fight. The State, though needing every man, decides to exempt such persons from combatant service. Is it the sovereignty of authority that speaks, or does authority defer to something separate from itself, and is that something the will-and-ideal shape of a Church, or is it some sovereign principle claiming the deepest loyalty of society?

The railway workers engage in a nation-wide strike in order to compel the adoption of the public ownership of the railways. All the resources of the Government are used against them, and the strike fails. Is the victory won for authority as such, or because authority was actually serving society as a whole against one aspect or section of it? Is the evil of "direct action" an evil of method through not

using Parliamentary and constitutional means, or is it an evil of purpose and morals?

And, when we argue that "direct action" is unconstitutional and should be put down by the State, or when we say that some proposed legislation of Parliament itself is unconstitutional, what and where is the outraged sovereignty to which we are really appealing? The more we examine these matters the more we shall see that in the last analysis the 'Supreme, irresistible, uncontrollable authority' must be sought for elsewhere than in the State.

But, some one may say, what about the Government of such a country as India? It is and for some time must be separate from the people of India. In the struggle now coming to a head between it and the non-co-operative movement of Mahatma Ghandi, must not the Government assert a very definite claim to supreme, irresistible, uncontrollable sovereignty; assert it or leave India in chaos? Well, India is not a nation state, and the considerations that we have been discussing do not fit its case. But its Government, if not constitutionally responsible in any real sense to the people of India, is yet only an instrument. It is part of the will-shape of another people it is true, but it is also serving the personal and social liberty of India. It acknowledges something superior to itself as its excuse for being, a moral responsibility to a people that has achieved no coherence of its own. And not as an end in itself, but accepting a present duty whatever history lie behind it, it cannot abdicate, it must take up the challenge of Hartal; it must maintain order and communications; or go down in the attempt.

What is the distinction between that situation and the situation in Ireland or in Egypt? or between the rebellion of the American colonies and the American civil war? Does the whole matter merely come down to this, that if the Government be stronger the Government will win and the rebel will lose? Or is there a higher logic at work? Why does there seem to be some moral backing behind Washington the rebel, the successful maker of separation, and yet a backing equally moral behind the grand determination of Lincoln to maintain the American Union? When Lincoln declares that he can never allow the South to secede is he merely declaring that sovereignty is with the undivided State, and that the sovereign State will fight for its own hand whatever the consequences?

In the case of Ireland you have the puzzle in yet more baffling guise. Mr. Lloyd George quotes Lincoln to show that there are certain bonds of unity that can never be loosed, but when he feels that he has guaranteed those bonds, he grants Dominion status and sup-

ports it with the same fervour as he maintains the commonwealth of British nations.

In Egypt the problem is of an entirely different nature. If it is asked why do we not feel as bound in duty to remain in Egypt and continue the work of Cromer, it must be remembered that our tenure in Egypt was always of a special character and was never intended to be permanent; while Egypt has had a national civilization for thousands of years as a unit.

Just where the dividing line can be drawn between these various cases, it would take a book to discover, and there is no space in a course such as this to deal with it. But the real point for us now is that whether the separatist movement be successful or be defeated; whether the outcome depend upon the extent to which separate nationality has really been achieved in all senses; the fact appears to remain that Government seeks some justification beyond itself, and is never content to base its struggle upon the mere claims of power. A similar recognition has inspired the provisions as to mandates. You will recollect the phrase from Article 22 of the League of Nations Charter:

“To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.”

These examples are all cases where the sovereign State recognizes or at least suspects that the last word is not with itself. But sovereignty is *the last word*. All that we can say then is that the State is sovereign only when it is carrying out the behests of sovereignty, and what they are we have still to settle. Sovereignty may decide to throw in her lot, on some issue, with the private conscience, if it serves her better.

In a day then when the State seems most triumphant it is really being subjected to a variety of chastening influences. And if in certain directions it asserts excessive powers of interference, it has to a very great extent allowed to exist inside its borders other powers and will-shapes of a formidable character. In so far as they do not interfere with the essentials of personal and social liberty, trusts, trade unions, industrial councils and a variety of other bodies are in a sense themselves servants of sovereignty. In some cases they may repre-

sent a distribution or localising of the powers of Government. And there are those who would develop the process to a very considerable extent.

You will remember that in the first lecture we referred to the proposed constitution of the Sydney Webbs that we should have a consumers' parliament and a producers' parliament side by side, a political parliament to deal with foreign affairs, defence, government of dependencies, the maintenance of order and justice, and a social parliament to deal with social conditions, national resources, public services, education, industry, industrial relations and taxation. Both these bodies would be State will-shapes, and if any such scheme ever came into being there would undoubtedly be brought to a head the most vital conflicts of sovereignty. We should have to ask ourselves before attempting such a scheme whether the economic side of man was really entitled to a loyalty co-equal with that due to his political nature, and we might decide that there was a fundamental need not of arbitrary authority, but of social discipline which could only be guaranteed by giving paramount position to what we call government. But the proposal again shews the refusal to identify political government with absolute sovereignty.

Finally, we have seen that even our fundamental and supremely valuable doctrine of the sovereignty of Parliament has its practical limitations. There are certain laws which it cannot change, there are certain laws which it cannot make. Such laws are those governing commercial dealings or those setting forth the responsibility of each of us for the damage done by his fault, these are law because they are community itself. For the rest, you know the maxim, "It is a wise commander who makes sure of obedience before he gives commands." The State can make new laws and enforce them, only because the community has decided in advance to obey. What is the ground of the community's decision? And in obeying, what is the sovereignty that it recognizes?

We set out by asking—What is Sovereignty and where does it reside? We have not yet answered our question. We have only found out where sovereignty does not reside in any absolute sense. The attempt to find a positive answer to our question is the main subject of the next and last lecture.

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