

dangers, but the impossibility of the subordination of Government to Society. If the striving of a nationality for independence were merely directed to the negative end of getting free from state control, it would be equally well fulfilled by anarchy as by any constitution-making. In fact this end has a much more positive and complicated sense. It consists in tearing an old state down only to build a new one instead as a more adequate expression of the nationality in question. For the freedom of the Citizen is not entirely and not even chiefly independence of the State, but dependence on a State of his own making and of his own kind.

There is a legal problem the handling of which by the modern state is a very good illustration of the difficulties both of reducing this state to a mere external rule of law and of extending it to demand a more than external conformity of all its different citizens. This problem is the relation of criminal law to the fundamental rights of citizenship. Formally, it will hardly be contradicted that criminal legislation, as a necessary means of protecting public safety, must be permitted from time to time to revise the boundaries granted to individual arbitrary action. Materially, all democratic governments have in spite of this made more or less

energetic attempts at preventing their executives or even legislatures from using the sovereignty of criminal law as a cloak for arbitrary acts on the part of the state, as *e.g.*, your Constitution has done by its famous prohibition of *ex post facto* laws. Now you see that it must be impossible to decide on principle and once for all between the requirements of our formal rule and the limitations set upon it by material equity. A clear indication of this we find when we come to the connection between penal legislation and the natural self-preservation of the state over against revolutionary and hostile conspiracy, *i.e.*, the law of High Treason. Here we get, on the one hand, an old and deep-rooted tendency to put this crime at the top of social dangers and at the bottom of moral abjectness, whereas, on the other hand, we observe in international criminal law a movement, due to the international fight for democratic principles, towards first absolving "political" crimes from being classed with the "mean" forms of criminality, and next drawing from this practical consequences such as contained in the modern treaties of extradition. In its latest stage this development has even entered from the international into the national sphere of criminal jurisdiction, where reformers

want to account for the infinite varieties of collision between the state and individual opinion by extending the regard paid, say to the conscientious objector, to breach of the law in general if they result from similar conviction. Now there cannot, I think, be the least doubt that, however honorable it may be for the modern state to have paid this tribute to the moral personality of the citizen, it will be, once you have generalized the reserve of individual conviction, only a question of circumstances whether this reserve may not sooner or later become strong enough to dissolve the whole order of the state. The personality of the latter would then have been superseded by that of its citizens much in the same way as in former periods the personality of the citizens had been superseded by that of the state.

And here, I believe, we have reached the deepest point of the problem raised by the opposition of Democracy against the "metaphysical state." The democratic idea of the individual as the ultimate end of the activities of government could never have assumed the overwhelming force which succeeded in changing the whole face of the political world, if it had not rested on something more powerful than legal deductions and their underlying motives

of economic power and utility. It was the religious consciousness of the personal relation of man to his God and of the unique value his personality was irradiated with from this relation which was required to give to political individualism that last and absolute certainty which still forms the backbone of Anglo-Saxon puritanism. So the individualistic conception of citizenship turns out to be neither more nor less "metaphysical" in a deep and genuine sense than the collectivist conceptions it militated against. In its modern, protestant shape it is simply the old Christian idea of the equal human dignity of master and slave that had once before, and at least as thoroughly, revolutionized the world.

As soon, however, as we recognize the religious, and more particularly the Christian, foundations of political individualism, the chief difficulty is, I think, taken out of the way of realizing, with the same clearness, that the same Christian religiousness, only in another aspect, lies at the root of that other series of conceptions viewing the various forms of aggregation of individual personalities, such as the community of the family, the church, the party, or, mightiest of all, the state, themselves as so many personalities of higher power,

speaking mathematically, which lead their lives of potential immortality in the face of God as much as individual and mortal man. It would perhaps be true to some degree, though of course far from the whole truth, to say that, as Protestantism has centered round the renewal of Christian individualism, it has been the secret of Catholic thought to insist again and again on that great conception of the Community as a mystical body which held together the medieval world, but which can hardly be said to have disappeared even from our modern ways of understanding the laws and the meaning of Society. But as a matter of fact you will remember how forcefully collectivist mysticism has lived also in the modern protestant churches, and on the contrary, how by the unavoidable pressure of the Christian belief in the personality of man, Catholicism has been and still is being brought to develop strong democratic sides. The conclusive point for me here is not this or that historical connection between political and religious systems. It is the striking evidence that what first seemed to be a struggle of pure rationalism against metaphysics is in reality yet another expression of the eternal dualism of Man and the State, whose activities and claims may, for both alike, be exposed to

an ever-increasing keenness of logical and legal analysis, but whose nature must all the same remain equally wedded to religion as the most comprehensive term of the primitive, the emotional, and the traditional.

CHAPTER III

THE PLURALISTIC STATE

IN the two previous lectures I have treated the relations between the citizen and the state under something of an assumption that there is a general form of existence for each of the two, that it is in the main one kind of power we are subjected to as citizens of a state, and that accordingly it is one and the same side of our individual personality that is touched by citizenship. But although this mode of proceeding is both sanctioned by the traditions of political science and justified logically by certain universal aspects of the relations in question, I surely need no more than merely mention the fact that, in this case too, it is variety instead of uniformity we find when we search deeper into the nature of both citizenship and state. Not only in the sense that this nature varies historically and in these variations shows a functional dependence of each term upon the other, of forms of state upon forms of citizenship and vice versa, but principally in the much more intricate sense that there may be and there certainly are different forms of political power

and of a corresponding mode of subjection or coöperation existing side by side as included in one and the same system of political life at any given time.

In other words: when we contrasted our political allegiance with other ties binding us to non-political forms of social grouping such as the church or the family, we simplified our position in a preliminary way, in so far as we then disregarded the many aspects our political allegiance may take and actually takes in close analogy to those non-political bonds. As Americans, *e.g.*, you are clearly members of two, instead of only one, political communities, the Union and a State inside the Union, even though you do not count your subjection to or coöperation in the authorities of County, District, Corporation or Township as so many separate political relations more or less parallel to the first two. Now you may feel yourselves so far an exception to the general rule of the citizen's simple allegiance to one and only one chief political organization, although you know that this exception classes you in Europe with Unions such as Germany and Switzerland, and outside Europe, *e.g.*, with the still more important, because typical, form of Union assumed by the principal Dominions of the British Empire. But then you

forget that even the citizen of the uniform centralized state which we commonly conceive perhaps in faint remembrance of the ancient city state, as the type of the state generally, very often has a feeling of a narrower, but in proportion more intimate, citizenship inscribed, as it were, into the wider sphere of his national citizenship. And you may easily distinguish different grades as well as different personal or territorial objects of that feeling. With the Scotsman and the Welshman it is at least some degrees warmer, measured from the level of their English patriotism, than with the Breton or Provençal, measured from their French patriotism, and the comparison shows also that this degree of warmth is quite as strongly, if not more strongly, influenced by the particular character of each division of a state as by the general character of that state itself. So, speaking more of political realities than of legal constructions, you probably know by your own experience what an immense difference there may be between the status of the constitutionally equal member states of a Union. Truly, the cultural side of political organization may, under favorable circumstances, make up for the disadvantages conditioned by lack of political importance. The astonishing fact that in my

country Bavarians still talk as if their German citizenship were lagging a long way behind their feelings for their own particular state would seem to rest on an indeed exceptional blending of cultural peculiarity and practical political independence from the preponderance of the central Union. But, on the other hand, the citizen of Vermont will not love his State less, but perhaps more for the reason of its comparative economic and political insignificance, although of course nobody can tell what would be the case if the aristocratic tendency of your Constitution had not, behind the walls of the Senate and the law governing Amendments, secured your States a large measure of real political equality.

It seems almost hopeless to try to derive systematic conclusions from the chequered picture presented at first sight by these cursory observations on state-like communities within the state. And confusion seems to reach its summit when we notice that their range cannot be limited to territorial units such as we have so far taken our illustrations from, but that on the contrary under normal conditions it is just the lowest unit in the scale of political communities, the city or township, which usually appears as the rival of the highest, the state, in

the competition for the attachment of the citizen. On closer inspection, however, this apparently most perplexing of facts is found to contain the key to the whole question. Socially, the dignity of a political community corresponds to the degree of either historical priority or at least relative self-sufficiency it can claim over against the central state. Local communal units have everywhere been the germs of that process of political organization or integration at the end of which we see the modern state or union. What rural communities have missed in cultural development, they have gained in that at least relative independence from the modern capitalist market which has been so strikingly exposed wherever recently inflated currencies came to disturb or destroy this market. And for the relative self-sufficiency of the village the industrial city of course finds compensation in that at least equally relative preëminence of civilization which will always and in spite of all disturbances draw the less developed groups and areas in its wake. This is what is at the background of the problem discussed by administrative lawyers as to whether theoretically there is such a thing as an independent sphere of powers and activities to be claimed

by the local community as distinct from the powers delegated to it by the state.

What the advocates of original communal rights really mean to say is exactly what we have just stated concerning the historical priority of local over central political organization. But their opponents are a little hasty in jumping, from the recognition of this, at once to the conclusion that a "mere" historical circumstance could have no theoretical meaning whatever. Of course a historical fact which is nothing but an antiquarian datum dug up by researchers and taught in books could indeed have no imaginable influence on what interests us here, the real life led by institutions in the consciousness or subconscious mentality of the citizens organized under them. But there is another form of historical facticity, as a living memory of the past, a real co-existent condition of the present and the unbroken continuity of tradition, which not only may be relevant theoretically, but which to me seems to be the essence of things relevant in political theory. A high degree of decentralization, then, whether as a legal norm or as a political fact, ultimately rests on the political vitality of a nation being, so to speak, drawn together in a number of separate circles inside the great national circle.

And the political scientist, in order to explain the changing structures which embody this principle, will have to look out for the conditions strengthening or weakening its application. There has never been an extreme movement in the opposite direction, a degree however high of political centralization, which literally sprang from an isolated despotic will and which was not in reality borne by the political needs of powerful classes, such as the French bourgeoisie of the Revolution which demolished, even to the geographic names, the old territorial divisions of the country, in order to subject the whole of it to the stringent centralistic rule of its new civil and administrative law.

That this was far from being the only possible solution democracy had in store for the political problem of the one and the many is proved by the directly opposite course events took under the English parliamentary system. There, a national government which had astonished the Middle Ages by its early character of centralism had, from the dawn of capitalism on through the revolutions of the seventeenth century, acquired that proverbial alloy of decentralization which introduced the notion of self-government into political science. And, remarkably enough, when European liberalism arose out of the

great struggle between the government of Napoleon and the government of Burke, it was the abhorrence for absolutist centralism which made the bourgeoisie of Germany and other countries largely identify freedom with the ideas of provincial and local self-dependence. Wilhelm von Humboldt's famous essay on the Limits of State Activity, which furnished John Stuart Mill with the motto for his no less famous Essay on Liberty, went so far as to hold actually that not only the liberty, but also the unity of a modern nation could never be guaranteed by state institutions alone, because these always started from the principle of authority, while a "national community" must always ensure consent by the "free coöperation" of the citizens.¹

The only generalization it seems possible to deduce from these alternating aspects of the attitude of democracy towards what we may call pluralism of government, I take to be that the life of the state, historically as well as systematically, has ever consisted of a changing play of integrating and differentiating processes, not only horizontally in the changing relations of government functions to each other, but also vertically in the changing relations of larger and

¹ See K. Wolzendorff, *Der Reine Staat* (Tubingen, 1920), pp. 12 ff.

smaller units of government. One has been as "natural" as the other, and the various attempts made by political theory at establishing some preference of the one to the other, or at stamping certain compromises between them as preferable to others, have at bottom been the expression of the conflicting social and political forces which had shaped the institutions themselves. So when the German doctrine of pre-war constitutional law spent much ingenuity on proving the fundamental difference between a Union of states resting on organic laws and a Confederation of states resting on international treaty, or on teaching that only a republican Union could create a central sovereignty, while a Union of monarchical states must leave their sovereignties untouched, it was clearly, though of course as a rule unconsciously, ministering to the practical political wants of the new German Empire as opposed both to the older federations of the German nation and to a future which might sacrifice the monarchy to the Union.

I hope I have left no doubt that I do not think of disparaging such and similar constructions as time-serving instruments of the conversion of might into right. They are hardly ever left without their corrections and oppositions in thought or even in reality, but they always point

themselves to important elements of reality which are more than the mere "might" or mere "history" opposition would take them for. What they can generally teach us is a modest preparedness for the relative also in this field of political observation. Let me give only one example of this. Much too dogmatically political science inclines to the tacit assumption that the chief or even regular direction followed by the play of centripetal and centrifugal forces in the state is towards integration. For even if we adhere to the rationalist ideal of a slow advance of the political center of gravity from the village community to the League of Nations, it remains to be seen whether the stages on this main road will in each case be grouped in the same order and not perhaps exchanged for one another in unexpected fashions. I have before mentioned the liberal tendencies of decentralizing the absolutist state. This is not an extreme case, because it preserved as a rule, in spite of all decentralization, the frame of the so-called uniform national state, just as, on the contrary, the young nations rebelling from old Russia or Austria-Hungary seemed to see no alternative to forming completely separate new states. But South America and Asia show you instances of political movements lying between the preserva-

tion and the disruption of a national state. Mexico, Venezuela, and Argentina were converted from uniform into federal governments, and the ultimate solution of the problems of modern China will probably be the disintegration of the central formalism of the old feudal state into a Union of parliamentary states or provinces such as the British Dominions or the members of the Soviet Federation.

This comparative flexibility of the process of federation imparts to it a peculiar fitness to solve the problems of that incessant economic and social change which seems to be inseparable from modern capitalism. Let me remark at the same time how largely modern ideas of federation go upon the lines of the older, pre-monarchical federalism represented by the medieval corporations system. It is certainly no matter of historical chance that the oldest of modern federal constitutions, that of the United States, has on the whole been the most successful and exercised the greatest influence of all. Indeed it has, like federal Germany, had to pass through trials of blood and iron. But these trials have in the main served rather to assert than to change the spirit of its fundamental law. And if different schools of thought and parties of action continue to lay stress on opposite sides of it, their

conflict would seem to be an indication less of real dissension on principles than of a healthy will to life and progress. Theoretically, I believe, your Constitution is one of the best examples of what Hans Kelsen means when he insists on the legal equality of a federation and its parts inside the bounds of what he calls the totality of its legal organization (*Gesamtrechtsordnung*). There is no subjection of the one to the other, but only a subjection of both to the legal order expressed in the constitution. So when this constitution provides that republican government is to be guaranteed to each of the States by the Union, it clearly has no intention of creating a one-sided relation of claim and liability in either direction, but just that mutual connection Lord Bryce wanted to denote in speaking of the equally "indelible" character of the Union and the States. This indelibility is far from precluding development even in the sense of an increase either of state or federal rights. Its meaning merely is that all such changes would have to take place, at least theoretically, by a constitutional consensus between the whole and the parts, analogous to the consensus constitutionally reached in a vote of democratic citizens or representatives.

But even the rigid interpretation of State

sovereignty in your Constitution did not prevent the insertion in it of Territories and the admission of new States, or more recently the addition of colonial annexes of different status. So you will not be surprised to find that the great economic and social upheaval caused in Europe by the late war has seized on the machinery of federalism and decentralization in order to adapt political organization to new conditions. When more than a hundred years ago Napoleon changed the face of the old German Empire by forming new centralized units of administration out of its patchwork of interlocking feudal territories, he could not think of using federalism as a means of combining these units under French supremacy. Direct annexation on the one hand, indirect dependence through international treaties or diplomatic influence on the other, were the only instruments at his disposition for building up what contemporaries were thus justified in taking for a renewal of the ancient and medieval plans of a "universal monarchy." At the close of the late war even conquest had to be clothed in the form either of what the French and their Eastern allies called "reannexations," *i.e.*, territorial transfers under the principle of national self-determination, or else of "mandates" to be exercised under the

authority, however nominal, of the new League of Nations. Both methods clearly made for federalism, as even "reannexed" populations such as that of Alsace-Lorraine or the Slovacs or Croatians are disinclined to suffer at the hands of racial relatives a degree of centralized government they had objected to under foreign rulers. Moreover, some sort of federal régime at least for legal and economic concerns will perhaps turn out to be the only remedy of an excess of national decentralization such as represented by the Baltic Border States or the so-called Austrian Succession States.

And now that I have mentioned economic motives as determining the political organization of modern capitalist Europe much more powerfully than that of the Napoleonic epoch, I may go on to say that economics generally seems to me to have placed European federalism on quite a new basis. What the boldest of your Interstate Commerce regulations would never dream of doing, has been achieved for federal Germany in the formation and under the rule of its new republican constitution. Former state sovereignties have been extinguished or redivided in a manner similar, if not in degree, at least in principle, to the interference of Napoleon. The whole center of my country, where

previously the traveller might have to cross a state frontier every half-hour, has been combined into the one Free State of Gross-Thüringen, and the Constitution has provided for a continuation of this process of either consolidation or dismemberment by a procedure of initiative and referendum which, while it has so far left the larger states untouched, has in a couple of cases been successfully put in execution to remove particularly flagrant contradictions between political and economic geography.

If we see, in the foregoing instances, the ratio of economic interests make its way indirectly *through the reshaping of political organizations*, this is not the only use the pluralistic state is put to in present day Europe. A good deal of what you commonly find described as anti-parliamentary or fascist movements in different European countries is nothing else than a variety of tendencies seeking to replace or supplement political centralization, and bound up more or less strongly with modern parliamentarism, by diverse forms of economic decentralization. In the comparative quiet of American politics it would no more occur to you to despair, on economic grounds, of parliamentary government than you would see occasion to alter existing state frontiers. The more

need there is for me to point out that in Europe almost everywhere the past experience of unpractical bureaucracy and the present economic muddle and distress have naturally fostered a spirit of sectional as well as regional independence from the central state. What is termed Industrial Democracy in England and the policy of Vocational or Professional Estates (*Berufständetum*) in Germany¹ is merely the outcome of this conviction that the management not only of local but also of certain general interests of a specific character, economic or other, had better be left by the central political machinery, bureaucratic or parliamentary, to separate bodies, as a rule parliamentary too, but created for the purpose out of sectional groups of the population.

Now you notice at once that progressive and reactionary elements are here mixed in a most curious manner. Reactionary (taking this word in its formal sense without intending moral or political qualifications) is the spirit that tends back from the mere numbers and machines of modern parliamentary and party democracy to a rule of the "expert" in its widest application, embracing the industrial worker from the "cap-

¹ Cf the writer's article in Volume IV of the *Grundriss der Sozialökonomik* (Tübingen, 1925).

tain of industry" down to the shop steward as well as the family and neighborhood communities on the consumer's side of the market. Progressive would be the feeling that the division of labor, underlying social and political as well as economic development and having created modern systems of bureaucracy and representation as well as modern systems of marketing,¹ would seem to have come to a standstill in the form of centralized parliamentarism and therefore to require continuation by a further specialization of political and economic administration. There is much to be said for both arguments, as you will be aware from your own attempts to prevent party life from repeating the process of petrification by officialdom that has been the sad experience of so many bureaucracies, or correspondingly to induce real experts to undertake public service by making it worth while for them to accept parliamentary seats or administrative posts. Nor is there reason to be disturbed by the fact that in Europe it is the dictatorial forms of government, *e.g.*, in Russia and Italy, that have made the largest practical use of economist and specialist by the

¹ See an exposition of this analogy in H. Kelsen's lecture on *Das Problem des Parlamentarismus* (Vienna and Leipzig, 1926), pp 7 ff

side of general political parliamentarism. It is quite possible that dictatorship at the outset was bent on nothing else but turning the flank of democracy with the help of "industrial democracy." But then it would only have been as shortsighted as was absolute monarchy when it created many institutions that were to overturn it one day. The Russian Dictatorship of the Proletariat, *i.e.*, of the highly privileged and closed Communist Party, is now fighting an impassioned struggle with the principle of workmen's councils or soviets which will perhaps succeed in developing from a nominal slogan into something like a real parliamentary democracy. And closely parallel is the direction taken by Italian Mussolinism when it could not help beginning to build up a trade unionism of its own in place of the socialist unionism it had taken such pains to destroy.

I have before claimed for my country the unique constitutional experiment of a federation consisting of flexible instead of rigid elements. I now want to lay stress on another feature of the Weimar Constitution that, I think, stands out with similar boldness as an attempt to utilize the modern conception of the pluralistic state, not in its regional, but in its sectional capacity. Germany today is the only

great country possessing, by the side of its central political parliament, a central economic parliament as an organization destined to embody the more positive and progressive aims of that syndicalism which has proved so impotent in the French and English countries of its theoretical origin. Of the detailed system of economic representation outlined in the closing article of the German constitution only two institutions, at opposite ends of the scale, the Workmen's Shop Councils (*Betriebsräte*) at the lower end and the Imperial Economic Council (*Reichswirtschaftsrat*)¹ at the upper end, have so far gained actuality through corresponding legislation. To the Shop Councils there is a parallel in the English system of Whitley Councils. The Economic Council, which is just at present being transformed from its hitherto merely provisional into a final composition, has up till now no analogy in constitutional law. Practically, it might be said that a parliamentary body like it, composed of delegates of the official Chambers and other representatives of agriculture, industry, commerce, the professions, and the consumers, and with legally rather limited rights of initiative and advice as to

¹ H. Finer, *Representative Government and a Parliament of Industry* (London, 1923).

economic legislation, at best comes to what traditional political parliamentarism reaches in a less circumstantial way by its system of parliamentary committees, be they internal meetings of more or less specializing and expert members of the Legislature or external and possibly mixed commissions charged with the conduct of public enquiries. While granting the similarity and in certain cases perhaps even the superiority of these older parliamentary methods, one must not overlook one chief difference, which is, I think, also an advantage, of economic parliamentarism.

In economic theory and practice the present capitalist world has left behind the old rigid alternative between systems of free competition and systems of state or other interference in favor of mixed organizations in which often the tables are turned and government comes to protect the market against private monopolies of all kinds and sizes. But even there the matter has not ended for us. As we saw that politically a new conception of the meaning and limitations of property has been slowly evolved by our generation, economic life itself has been productive of new forms of activity which appear to refute the prophecies both of socialism and of capitalist apologetics by taking a leaf out of

either's book. If legal persecution of trusts for discrimination and restraint of trade has today ended almost everywhere in the state regulation of public utility enterprise, the reason is clearly neither, as free trade dogmatism would have it, that government has proved incapable of any planning of its own, nor, as socialists have turned the same statement, that government has been drawn into collusion with the economic policy of the ruling classes. What has happened is again the unexpected result that both parties to the old controversy have been forced to arrive at a compromise at least endeavoring to preserve the strong sides of each of them. To perceive this one need not think of the big licensed trusts of Soviet Russia or even of that German system of syndicates that has wrongly been held responsible for most of the envy and distrust incurred by our pre-war industry. Let me just remind you of a passage on the question in Professor John Bates Clark's book on *The Control of Trusts*:¹ "A nearly ideal condition of organization would be that in which, in every department of industry, there should be one great corporation, working without friction and with enormous economy, and compelled to give to the public the full benefit of that economy."

¹ Revised edition, p. 29.

Now this is indeed an *ideal* program depending for its execution, I believe, on economic suppositions and political technique that it will yet take many years to work out even in the leading capitalist countries. For as yet government control will be as liable as private enterprise to slide back from the way of compromise into the old methods of force, open or clandestine, and it may be questioned if the latter will not be found on the average better adapted to the new policy than the former. In different countries the separate powers of government, legislature, executive and judiciary, will probably have contributed their own very different parts to the solution of the problem, but when all has been said, it is quite possible that new governmental machinery will have to be devised to continue and finish the process. So the leading part played, in America and elsewhere, by communal administration on the one and the law courts on the other hand may perhaps have to be supplemented by the creation or evolution of other instruments of a more general and less casual description. And some of these, I am convinced, will lie in the direction indicated by economic parliamentarism.

Conclusive proof of this seems to me to be furnished by the development of the Economic

Council idea in Germany. And here I must venture on a few explanatory remarks, as it is rather common today to hear the case misstated even by many countrymen of mine whose position in economic or scientific life would enable them to know better. The present organization of the German Economic Council as well as of the various collective bodies representative of employers' and workmen's interests on which the Council rests bears the unmistakable marks of compromise with all the weaknesses attaching to compromise in its initiatory stages. It is a compromise not only between the two chief class divisions of capitalist society I have just alluded to, but still more so perhaps between both of them taken together on the one hand and bureaucracy on the other. Bureaucracy and industry have emerged from the deadly struggle of the Great War, each with the more or less conscious ambition to get rid of all the elements of war government that hamper its own interest and authority, but at the same time carefully to preserve all the elements that may be of benefit to itself. Their present balance, therefore, may be construed from opposite standpoints into exactly contrary views. The attitude of industry, especially of the employers, mostly, is a deep aversion to and suspicion of

the government side of economic parliamentarism, and there are few of them capable of appreciating the fact that state regulation of big industrial syndicates like those of the coal and potash production, the widening range of state, communal or "mixed" enterprise, or even the increasing body of social and labor legislation, is the necessary complement to the immense amount of political influence accruing to industry from its new official and corporative organization.¹ There is even an impression that this organization, as it unites employers' and workmen's delegates in a representation of common producers' interests, has done much to promote a kind of egotistic solidarity across the division of classes which would be directed against both the consuming public and the state as its advocate. This being so, you will not be surprised by passionate echoes complaining with equal one-sidedness on behalf of the public and the state, as some of you will remember from the writings of my colleague, M. J. Bonn of Berlin, that government is being "dissolved" by the great employers' and workmen's combinations coming forward to negotiate with the

¹ See P. Giesecke, *Die Rechtsverhältnisse der gemeinwirtschaftlichen Organisationen* (Jena, 1922).

state on economic compensations for their consent to political measures.

It is not easy, while one cannot but admit the large measure of correctness contained in either of these views, to make a positive and optimistic forecast of an organic principle neither side seems in want of. But at any rate, if Germans would turn from criticism of their own industrial democracy to the theoretical thought of foreign political science, they would be surprised to come across recommendations closely corresponding to the development that has taken place in their country. In commenting on the necessity "to bring the members of the legislative assembly into some organic connection with the executive departments," Harold J. Laski,¹ while staunchly opposed to the ideas of the Guild Socialists or even Mr. and Mrs. Sydney Webb's *Social Parliament*, proposes to evolve from parliamentary committees a series of consultative bodies of some dozen members each, "selected, not so much as representative of parties, though parties would be represented upon them, as of the specialized ability on particular questions which the legislature contains.

¹ *A Grammar of Politics* (1925), pp 349 ff, supplemented, indeed, by the proposal of "advisory bodies" of the Executive on pp 376 ff

They would work . . . as a means of bringing to the legislature a definitely competent opinion upon the working of the administrative process. They ought to have access to all papers save those of an especially confidential kind. They should have the power to initiate inquiries in the departments. They should be able to summon public servants before them for the taking of evidence upon particular questions. They should have regular meetings with the minister at which his policy, and especially his legislation, is freely discussed and explained. To them should be submitted those ordinances which every executive is compelled to issue out of its discretion and without immediate legislative sanction."

This is certainly a very good account of much that is admittedly wanting in the average parliamentary preparation of legislative and administrative acts. The only outstanding question appears to be why Mr. Laski, for the purposes he enumerates, keeps so carefully within the orbit of the legislature which might be taken, with regard to much of the business in question, to be no less a party than the executive and consequently to admit of a third element standing more or less impartially between them. As far as I can see, he does not consider

that the present system of committee management already fulfils his design; at least he pronounces expressly against the way he believes committees of Congress or of the French Chamber interfere with their administrations "to nauseation." The only reason why he should decline admitting to his consultative bodies non-parliamentary "representatives of specialized ability" would seem to be that they would lack the formal sanction of universal election. But surely as long as their coöperation, on the lines of his scheme, would be limited to consultative functions, this lack would be far from a disadvantage, if not positively advantageous, to the institution, provided only there was some other sanction such as delegation by vocational representation which would prevent the executive from packing the committees with its own nominees.

That Mr. Laski should not have seen this might almost astonish us in an author who is known to be one of the strongest advocates of decentralization in the regional sense, and whose respect for municipality as the groundwork of government goes so far as to recommend municipal service as a necessary qualification for parliamentary service. Yet this apparent contradiction may perhaps lead us to

the final problem raised by all pluralistic conceptions of government, *viz.*, whether there is not indeed a certain degree of artificiality adhering to the various devices of making the state innocuous by going beyond the present and the classical degree of separation and specialization of its powers. Whether we study the vertical scale of institutions rising from local to central or federal government, or the horizontal scale of institutions dissolving sovereignty into a system of checks and balances, we seem to notice almost unconsciously that there is a point beyond which the independence of these single institutions may not be stretched with impunity. The violent concentration of sovereignty conditioned by the recent war governments of belligerent and even neutral states has assuredly created a situation reminiscent in more than one particular of the last days of absolute government on the eve of the French Revolution and at the dawn of the new theories of political and economic liberty. There are many persons in all parts of the European and American world who would agree with Franz Oppenheimer¹ that the traditional tightness of central bureaucratic government is a plaster bandage useful for holding broken

¹ *System der Soziologie* (1926), vol 3, p 774

limbs together, but worse than useless when fracture has subsided into the natural life of the organism. Still we feel that there is some fallacy at the bottom of such arguments.

Theories of a pluralistic state have a way of repeating in another, more subtle manner the career of those individualistic conceptions of government as a necessary evil in Mandeville's commonwealth of bees where normally the counterplay of a hundred egoisms results in social harmony. Pluralistic politicians are far from being so crude as that. But instead of the alchemy turning individualism into sociability they think they have another means of getting rid of the forceful side of government whose international application was emphasized by President Wilson in a famous war-speech. Nationally as well as internationally they trust on founding political organization on the exclusive consent and coöperation, not of atomistic individuals, but of those natural and organic groups of individuals extending from the family and the neighborhood to the nation and merging its sovereignty in that of an international league. It was precisely this sense in which the English and American forerunners of socialism, a William Godwin and a Thomas Paine, were proud of calling themselves "an-

archists." But although you see that this positive and constructive anarchism has nothing to do with the creed foreigners are required to renounce on entering the United States, you feel at the same time that in it there are traits hardly less utopian and destructive. It is not only ignorance or neglect of the unruly element of human nature or, more important than that, of the terribly mechanistic character inseparable from the rule of capitalist society, that debars the gospel of love and comradeship from direct application to the government of millions and continents. It is, when all is to be said, the ignorance of the more generous sides of government and obedience as representing an eternal compromise and exchange between living forces. As liberalism has come to understand that there is no despot able to dispense with a minimum measure of consent on the part of his subjects, if only that expressed by the limits of tradition, so and much more so fascism will recognize one day that there can be no majority rule so arbitrary as not to contain in its dictates a measure of regard for minority opinion. A minimum measure, also, it may be, but even that large enough to warn against reversing the process by any form of minority rule. The idea of sovereignty seems to me to mean, not so

much the concrete existence of a force, military or other, of sufficient strength to enforce any mandates it chooses, as that without which any such force is no more than a transient shape: the balanced determination of a whole society to submit to one indivisible form of political existence.

CHAPTER IV

INTERNATIONAL CITIZENSHIP

WHEN modern individualism began to appeal from the absolute power of princes to the rights of man, the conception of the birthrights of Englishmen, Frenchmen, Germans, or Christians generally was not the only one it found ready to hand. To the abstract and logical nature of those rights any such historical construction must after all seem inadequate: the idea of the rights of man led on to the abstract and logical idea of a cosmopolis, an international community of men regarded in their fundamental equality and fraternity, apart from all distinctions of nation or religion, race or color. You know that it has been the fate of the riper stages of democracy to come slowly climbing down from the heights of this political logic and to end almost invariably, at least for political practice, with an awkward feeling that political thought had been over-reaching itself in this utopia of international citizenship. When no longer absolutism but democracy itself was obliged to cope with its practical applications, such as the treatment of

political heresy or the large field of color and national differentiation, it began to dawn on politicians that even logically adding up a sum total is by no means comprehending a totality. So the pendulum of opinion has perhaps come to swing out to the other side as radically as before to the one. We refuse to realize that when our forefathers in the eighteenth century were enthusiastic about feeling themselves "citizens of the world," they were probably moved by much the same texture of cant and ideology, but also of deep spiritual earnestness and conviction that lives in the nationalism of their descendants. Scientifically, it seems to follow that there is nothing left to us but to try to get behind the alternative prejudices of cosmopolitan pacifism and nationalist citizenship by facing the social realities that underlie each of them.

In this attempt, I believe, we may get assistance from the study of the parallel course taken by the development of the notion of international law. To the schools starting from the rationalist faith in a system of natural law, this notion of an international legality not only presented no difficulties, but was the logical rounding off of a view in which national systems were merely more or less skilful and vir-

tuous approximations of the great rules binding all mankind. The more realistic way of looking at the problem that was chosen by the theorists of political sovereignty was practically one continuous protest against the assumption of an international law as embodied in the ideal of an international state. If they saw reason to insist that law and government are inseparable from a concrete power wielded by a concrete body of men, international law must evidently lose to them the possibility of "sanction" accorded to it by the idealists of natural law. The society of nations must cease to deserve that name and instead become the very image of that Hobbesian state of nature and war of all against all that may be only partly removed by the organization of national sovereignties.

Now the first thing to be said in criticism of an opinion that is still responsible for much self-contradiction in the sphere of international law is simply that it is by no means a true description of either past or present realities governing international relations. Just as in any particular state cases of real anarchy usually are events that lie at the limits of probability, so there has hardly ever been such a case in the intercourse of a group of particular states. There has been and still is such a thing as different

spheres of political and cultural organization existing side by side like circles neither touching nor intersecting each other. But as soon as even they come into some contact with each other, I think it clear that this contact must at once lead to the production of forms and habits no less liable to crystallize into rules of custom and law than those prevalent inside each of the two organizations themselves. It is true that this regulation of intersocial contact is far from representing, in its later as well as in its primitive stages, the peaceful harmony pictured by Rousseau's state of nature. But we know that the dream of a golden age, taken too literally, applies neither to group nor to intergroup life, while on the other hand we should be far wrong in undervaluing the element of social order contained even in the hostile relations of separate groups with each other. Not without reason we find a primeval reciprocity of war and trade, hostility and hospitality forming the groundwork of all international law and having left its traces even in the language expressing the position of alienage. For international jurisprudence to speak of a law of war is not a modern cant, as popular opinion is sometimes inclined to suppose, but merely the continuation of that primeval tradition regulating the negative side of

international intercourse as punctually and ceremonially as the positive.

In order to show that struggle does not mean anarchy internationally it might seem to suffice to point out the normality of social phenomena like crime and litigation in national societies. But this carries us at once to the chief point of controversy on the possibility of international law. Even if, in the face of the League of Nations and all sorts of other elaborate systems of international treaty law, sceptics are precluded from playing out the absence of organization as an argument against the legal character of the law of nations, they may still fall back on the old question whether there is any real guaranty of the decision of international litigation and the punishment of international crime comparable to that given by the average government of a national state. To that question we may answer first of all by the counterquestion whether even among civilized states the execution of their laws can always and in every field be depended upon with a degree of probability coming up to practical certainty, and whether the rule of law is not frequently interspersed, not only with single cases, but with whole blanks where the law is known and suffered to be more or less helpless and out of force over

against social reality such as duelling, smuggling or the practical obsolescence of the Fifteenth Amendment in your Southern States. As soon as we are ready to grant this truth, we can hardly undertake to ground a fundamental difference between national and international law on the fact that the practical guaranty of the latter is as yet some degrees below that of the former. But at any rate if we do not mean by guaranty such an expectation of what is going to happen, but the idea of somebody or at least some legal authority being responsible for what happens, we cannot but admit that in principle the common will of nations creating a system of treaties and conventions intended to bind every one and all of them stands on the same footing as the common will of the citizens of a single nation creating a national system of laws and conventions.

The reason why we find it usually so difficult to see this fundamental identity is twofold. There is first the strong impression of contrast between the rules of national law being normally wielded by strong authority over comparatively weak subjects, and international law being upheld against the strongest of existing political forces by comparatively weak and rudimentary authority. Even where this impression is ade-

quate, it ought not to prevent us from acknowledging that we must not be seduced by it to mix up theoretically the two altogether different parts played by government as a national and as an international organ. Being used to consider government one-sidedly from our individual standpoint as the organ of national citizenship, we easily forget that viewed from outside it is at the same time an organ of international citizenship. As much and as little as it can be said that government is itself bound by its own laws in the sense I have tried to elucidate in my second chapter, it must also be assumed that it is bound by the laws established by itself in international coöperation with other governments. And it is only the overstrained conception of sovereignty denying any such obligation of government internally that is justified in denying also the existence of external or international obligations.

Secondly, however, closer examination of the popular comparison between powerful national and powerless international authority shows that in most cases it is heterogeneous things that are here compared. Under the term of national authority we prefer to think of what ought to be, while under that of international authority our attention unconsciously shifts to

what is. We need only try to correct this fallacy, and we shall become aware how largely the impression voiced above of the different guaranty of national and international law is, as a matter of fact, inadequate. Trying to face in both cases what is instead of what ought to be, we need not join socialism in its "economic interpretation of history" in order to see that, nationally as well as internationally, the constitution of authority is a problem not only of legal construction, but of the social distribution of strength in a political organism. What appears, legally, as the rule of law or the government upholding it, we have long ago learned to understand, socially, as the rule of stronger over weaker classes and groups of individuals. Exactly the same is the case in international organization. Both pacifists and their nationalist adversaries have too often made the common mistake of supposing that the international society of governments consisted of equal units corresponding to the modern notion of national sovereignty and having, like the individual citizens of political rationalism, no choice but between complete unison or complete anarchy. Reality presents us, as it so often does, with a third case. As national government has to be created every day afresh from compromise between the stronger

and the weaker, majority and minority, so international government too takes its rise from among units, and groups of units, of totally different and ever-changing political force and influence. As in national government almost any form of ruling has its exploitation side on which the benefits the rulers take tend to overbalance the benefits they give, so in international government the rule of the strongest is the more apt to be suspected of exploiting egotism, as it is usually surrounded by stronger and more watchful competitors. On the other hand, Britannia's rule of the waves was only intermittently combated by weaker sea powers and disinterested land powers until the rise of great modern rivals lent new accents both to the political fact and to its international appreciation.

That an international hegemony of such magnitude should have been so long felt as almost beneficent, while on land European nations were united in opposing any recurrence of "universal monarchy," is perhaps the most striking proof that the mere presence of political prevalence may well further international as well as national order, as long as it rests on the traditional sufferance and some degree of more or less subjective welfare of all concerned. It is true that in foreign exactly as in internal politics

there is going on that ceaseless development of intellectual and moral consciousness that results at every turn in promoting new political units from tutelage or exclusion to the full-grown membership of a community, and this development certainly makes for democratic liberty and equality in the larger sphere precisely as in the smaller. So (to mention only the greatest example in history) Christianity raised barbarous tribes to the status of nations just as it raised slaves to that of citizens. However, as I have tried to show in my first chapter that this process of individualization must, in the government of the state, be counterbalanced by corresponding processes of new integration, the mere agglomeration of free and equal states cannot be the last word of international policy either. Individual differences of nature or of economic position between citizens are no better accounted for by ignoring them than by simply translating them into political differences. So, internationally, treating a small and weak state formally as the equal of a large and powerful one may be the worst service you can render it. The whole international law of neutrality has been a continuous and coherent attempt at providing for justice to be done to the weaker states in the same manner as what we call social policy

is trying to do justice to weaker citizens. The necessity for both lines of action would only cease under the condition that it should become possible to eliminate all relevant differences of position among nations as among citizens, and you see that international society is at least as far removed from this communist ideal as is national society.

On the contrary, what we discovered to be the chief task of a realist conception of citizenship, *viz.*, to reconcile its natural and traditional elements with the abstract and rational postulates of democracy, we see here transferred to the problem of international citizenship. Instead of wishing to eliminate the organic bonds of common interest and common feeling in favor of a mere legal coördination of units, we ought once more to make bold and see whether we cannot build the international community the stronger by cementing its foundations by the natural coherence of nations and groups of nations. That is the great idea expressed by General Smuts when he declared that the League of Nations, in spite of all its incompleteness and all the new difficulties it presented, ought to make it easier than before for a self-conscious member of the British Empire like the South African Union to reconcile its national with its

imperial allegiance. His meaning clearly was not only that the tension of imperial control would relax when the Empire itself was subjected to the control of a higher organization, for you know best how comparatively insignificant this higher control is for the moment. The much deeper sense carried by the General's view was one that we may test on yet many other points of the present international situation. It is only a very poor or at least a preliminary understanding of international citizenship that would make the superstate appear as the natural ally of citizens against their national or federal state. It is a view that has unfortunately done much to stamp pacifism as the born enemy even of genuine patriotism. If democracy shows a way to combining a healthy jealousy of the rights of citizenship with as healthy a conviction of its duties, it must surely find a means too of consolidating internationalism by strengthening, instead of weakening, comradeship in all the smaller circles to be circumscribed by a League of Nations.

Even the aloofness of the United States from the present League might be adduced in support of this argument. For so far as it represents, not disapproval of the constitution or aims of President Wilson's creation, but only a Washing-

tonian dread of entangling alliances, it is only an expression of the fact that as yet the Union and the League, and perhaps on another side the Russian Union of Soviet Republics, are each of them smaller units inscribed in the larger unit of the diplomatic and legal community of civilized nations. Here we touch upon a decisive feature of the present international situation that brings us back to the moving picture of pluralistic state organization I had occasion to speak of in my third lecture. The frequent failure of governmental action on the side of both parties to the late war has naturally been ascribed by the individuals and nations concerned to inefficiency of personnel and institutions, and the more clearly (and in most cases narrowly) we have learned to limit the responsibility of personal ill will or incapacity, the better we are enabled to conceive the failure of war policies and lastly the war itself as due to insufficient degrees of adaptation between more or less old-fashioned government machinery and an economic and social world confronting it with entirely new problems. So, the idea of state sovereignty as something not only fixed and sacred legally, but above change and progress technically, has undergone much shaking from outside as well as internally. As citi-

zens have more and more come to ask whether a good many public interests might not be better served by institutions of a smaller range than that of the central state, so the modern type of citizen of the world, who has been transferred from the ideological atmosphere of the eighteenth century into the treaty-making and constitution-building of the practical lawyer and business man, has sat down to reflect whether the same may not hold good of institutions of a larger range than the national. Regionalism, sectionalism, or any federalism on the one hand, the policy of international organization on the other, are only different aspects of the same process of transition to new forms of political life, which is too easily viewed by established authorities as one of dissolution. Guarded from excesses and led on to the fields where its quickening and fertilizing influence is most wanted, the process ought to prove and has already proved capable of the richest integrating, constructive, and even conservative effects.

Suspicious nationalism often reproaches this spirit of international federalism with the large preponderance of economic concerns that is its next practical outcome. Something like an innate and deep-set materialism, supposed to be poorly clothed in philanthropic phraseology and

showing off very unfavorably against the spiritualistic attributes of nationalism, is thus made to represent the canting soul of internationalism. There is, however, nothing more natural than that international law and policy should have taken such a decisively economic turn. This fact stands out in clear relief from our comparison of international with national federation. All the great constitutional federations of modern times, your Union based on Hamilton's tariff and banking policy, the new German Empire based on the Zollverein, and the Canadian, Australian, and South African federations based on similar interests of traffic and finance, have followed the law of political readjustment in the wake of the widening of economic areas. But nobody, I think, will dare to say that these proud federal organizations were mere artificial mechanisms meant to serve no purposes but those which had been foremost in actually promoting federation. The laws of social organization are not so simple as that. Neither are the American Fathers of the Constitution sufficiently characterized by those features of consistent plutocracy that have been worked out by modern economic historians, nor would it be right to forget that parallel to the economic expansion resulting in the Zollverein went the

moral and intellectual revival of the German middle classes that gave us the ever memorable Frankfort "Parliament of Professors" of 1848. So inseparably are material welfare and cultural progress bound up with each other in intricate social systems of reciprocal causation.

Let us then be wary not to misinterpret the present economic aspect of international organization. International parliamentarism, as embodied not only in the institutions of Geneva, but much more broadly in the spreading practice of international conference,¹ has that in common with the economic parliamentarism I treated in the last chapter that it gives vent to the democratic principle of discussion and co-operation upon sides hardly yet given sufficient attention by either the bureaucratic or the parliamentary state. As inside this state special bodies of local or sectional interests demand to be taken care of by new special administrative machinery, so outside the state too there are constantly opened new fields of common international concern that transcend the professional diplomat's skill or understanding and consequently tend to develop administrative machinery of their own. It is not only political areas of relatively small size compared with the

¹ See e.g., Sir M. Hankey in *The Round Table* for 1921.

requirements of modern giant capitalism, such as the quarrelsome family of European states, that feel the necessity of international economic arrangements like the common administration of rivers passing through more than one national territory or the financial and technical combination of mining and metallurgic districts lying across the frontiers of two or more of such territories. Even a system of huge political units such as America has after an interval of national rivalry returned to the ideas of international federation symbolized by the Monroe Doctrine or the Pan-American program, and surely this return is not the worse for slowly ceasing to hide economic penetration under the cloak of high-sounding political catch-words, and instead making economic questions, as *e.g.*, that of the fisheries or of capital export and the exploitation of national resources, the open object of public negotiation and conference between equals.

Instead of frightening us, then, as to the genuineness of modern internationalism, the growing universality of economic life ought rather to reassure us of the solidity of its foundations. While former times constantly wavered between lofty ideologies building international castles in the air, and coarse scepticism or even cynicism

believing in nothing but national egotism, we see the present international order growing out of the robust, yet complicated, solidarity of economic and cultural relations that has not so much undermined as overleaped national frontiers. If the theory of international law in my country has recently been perhaps more radical than elsewhere in laying stress upon the independent validity of the international legal order, if it has inclined to shift the predication of sovereignty, in the sense of the largest comprehensive political unit, on from the national to the international sphere,¹ it has clearly been inspired to do so not only by an excess of theorizing instinct but by the great experience of the present age that seems to show the center of political gravity really moving away from an autocracy of the strongest nations towards that state of balance and compromise that ought to be the international corollary of national democracy. If, for example, the modern doctrine of the so-called succession of states has come to emphasize, not so much what the individual state is itself ready to assume of the rights and liabilities of its predecessor, as what it is interna-

¹ This is the drift of the work of Hans Kelsen; for a special application, see Paul Guggenheim, *Beiträge zur völkerrechtlichen Lehre vom Staatenwechsel* (Berlin, 1926)

tionally bound to assume, this is evidently only the scientific expression of the very marked degree in which questions of "sovereign" assumption or repudiation of internationally relevant obligations today depend upon public international opinion and discussion, not only in the case of comparatively small states like those of the Austrian or Russian succession, but even in the case of a world power like Soviet Russia.

It can do no harm to face again and again the fact which Mr. Robert Lansing has recently emphasized in his *Notes on Sovereignty*, that communities of nations as well as nations themselves are ultimately governed from time to time by different sets of preponderant individuals or groups of individuals. Only it would be a mistake, clumsier still in the case of international than in that of national communities, to take a too simple or static view of these preponderating groups. They need not, in order to govern international relations, be themselves national groups, but they may as likely and even more frequently be themselves of international composition, whether groups of powerful statesmen representative of different nations in diplomatic correspondence or conference, or groups of still more powerful, if less publicly visible capitalists or labor representatives co-

operating either directly or indirectly through the mouthpiece of their respective political or diplomatic apparatus. And the international balance of power resulting from the play of all these influences will present ever new and changing aspects, as it will go on from one particular stage or one particular field of international relations to the other. The International, or the several Internationals, of labor are by no means the only organizations that intersect the frontiers of the national state. Popular political nomenclature has used a whole palette of colors to point out that by the side of the Red International there is the Golden International of capital, the Black International of the Catholic Church, or even the Green International of peasants and farmers and the Blue or White International of monarchs and feudal aristocracies. So that nothing would after all be more misleading than to think of modern internationalism as watched over by nobody but pacifist associations and the officials of the League Secretariat at Geneva. Nor would it, on the other hand, be advisable to imagine the diverse sets of international interests I have just referred to as being the mere fleeting and ephemeral instruments of individual or class egotisms ready to fall asunder at the first op-

portunity of rising quarrel or diminishing interest. Under the surface of the old stock of *public* international law, as an organization of states, there is slowly forming another body of rules, conventions, and institutions that take hold of individual citizens and groups of citizens more directly than by means of their political governments. It is the body of international *private* law that has been built up slowly and almost unnoticed by the politician as the legal frame of the growing international range of private business. And perhaps the supreme violence offered to private economic interests by the Peace Treaties that ended the late war will be only the death struggle of a policy of national imperialism already doomed to make room for a new commonwealth of international economic activity. To think so need by no means come up to obsolete Manchester doctrines of the natural harmony of competing economic forces in the world market. It would merely be drawing attention to the way in which these forces tend increasingly to interlock and consolidate, if only for the necessity there is of creating systems of common usages and jurisdictions similar to those the modern national or federal state was called upon to create for a variety of local or regional interests. Po-

litical governments may again and again succumb to the temptation of evading or repudiating, in the name of national honor or "vital" interests, even the strongest ties of international treaty, arbitration, or jurisdiction. But they may take a different view of the binding force of international agreements when they come to provide guarantees of legal form and execution for the international activities of their big national business. And this development of business safety in international law seems recently to have taken a course which makes for an ever increasing degree of international solidarity insomuch as it runs, in contrast to the classical development of modern society generally, from contract to status instead of from status to contract. In pre-war days the chief contents of international private law consisted of matter such as the law of cheques, bills of exchange, or bankruptcy, that was sufficiently provided for by parallel national legislation dealing with individual contracting parties. Today the free international market of which these individual contracts were typical is more and more losing ground to the big and lasting international combinations that are the inevitable outcome of national trusts and syndicates. To deal with

these international combinations, the states that form the modern community of the capitalist world will have by and by to do much more than to harmonize certain internationally more important parts of their legislation. They will have to go deep into the whole structure of their law of civil and commercial association and corporations, with the result of ensuring not only general security of legal procedure, but a series of common legal and judicial institutions for the unhampered flow of international business.

Again, only shortsightedness of a kind not too prevalent, I infer, in America, can incline to underestimate the cultural value of these interesting processes and, while granting their material importance, put them in an absolute contrast to ideal movements like international scientific research, "world literature," or the ethical propaganda of peace and good will among nations. Indeed, if we wanted to be paradoxical, we might almost reverse such popular judgments by insisting that all these spiritual movements must ultimately draw their lifeblood from the natural gifts and traditional impulses treasured up in the mind of the great modern nations whereas economic and social relations might boast of creating independent

and autonomous international spheres of their own. In one of the best recent German books on America, Professor Julius Hirsch's *American Economic Miracle*,¹ there is the amazing story of a German engineer asking an American colleague what he thought the threatening deforestation of the American continent might end in. The American answer is characteristic: "Don't worry, then some damned German will invent something." So even the development of such, to all appearance, purely rational interests of mankind as science and technique is assumed to be rooted deeply in the historical soil of national character. But science and technique are on the boundary line between the idealist pursuits of civilization and the realist activities of economic life and can consequently teach us best to do justice to the inextricable connection of both in all forms of political and social organization. We ought to beware of identifying both national and international political thought too closely with either the idealist or the realist sphere of social action.

So far so good. The standpoint our discussion of international citizenship has reached resembles in some way that which we gained in

¹ *Das amerikanische Wirtschaftswunder* (Berlin, 1925), p. 133.

the last chapter with regard to the problem of decentralization of government. Modern political theory and practice exhibit in both respects a strong liking for solutions that lead away from the hard and fast notion of sovereignty so typical of 'pre-war political science. But as our review of the new possibilities of a pluralistic state only led us at last to an intenser and profounder conception of the central idea of the state, we may ask in conclusion of all that has been said on the ever-widening empire of international political life whether we should not be rash to infer from this grand and hopeful vista that national forms of political existence are on the wane before the onward trend of internationalism. Let me here ask you to look away for the moment from the vast complex of experience and emotion bound up, for every one of us, with our consciousness of *national* citizenship, and coolly fix your eyes upon the possibility pacifists like to take for a certainty, that the present national or federal states may be mere passing stages in the political organization of mankind, no higher in dignity than the feudal territories of Europe or the single colonies of America. Something of a bad conscience would then, and in the dogmatic pacifist's opinion really does, attach to anything that might tend

to preserve and prolong unduly the life of those decrepit institutions, just as to the attitude of the medieval nobleman defending the law of the sword against the law of the state.

* Let us begin examining this kind of position from the purely logical, unemotional side. Hans Kelsen has overpointed his ingenious theory of the sovereignty of international law by contending that the state had no alternative but that of either recognizing the superior rank of international law or else setting up its own national law as a sovereign principle theoretically binding every other state in the international community. Now I doubt whether even the most reckless conqueror has ever come up to the level of the second of these alternatives. From the *Pax Romana* to the revolutionary Empire of Napoleon, what we possess of theoretical attempts to lay claim to universal government agrees in proving that the foundation of this claim was always sought in the realization of supra-national ideals of order, welfare, or civilization. But what interests us here is not so much the answer to Kelsen's question as its logical form. Does what we legally comprehend as the idea of a valid international law really make an end of the chief elements connected with our notion of national sovereignty? There

is a clear logical difference not only between a whole and its parts, but also between the last grade in a series of graded combinations of parts, from which there is only the one step of transition to the whole itself, and all the other grades from each of which you can step up and down the ladder as you like. The modern national or federal state in its fully developed form as guardian not only of its own laws, but of its own culture and historical tradition, seems to me to be in the position of that ultimate grade of part inside the whole of a politically organized world. Or, to express myself more logically and freer from historical accidentality: Any political organization that could have no imaginable superior but an organization (if only theoretical) of the whole earth is, to my mind, in a unique situation forbidding comparison with any organization of a lower standing, not only in the sense of privilege, but mainly in the sense of the duty incumbent upon it to be primarily responsible for the maintenance of that highest international organization.¹

As in the old German Empire that was destroyed by Napoleon direct membership was

¹ See this idea worked out in my contribution on Political Science and Sociology to the *Erinnerungsgabe für Max Weber*, Vol. II (Munich, 1923).

denoted as Imperial Immediateness (*Reichsunmittelbarkeit*), I could here illustrate my meaning by speaking of a World Immediateness of the national and federal states as a direct membership of the *Comitas Gentium*. In fact it is the peculiar consciousness of a highest circle of equals taking pride in common subjection to a still higher form of organization that would be well expressed by this simile. Historians of modern times have again and again been struck by the phenomenon that there is not a single community of national importance in the modern sense that has not developed the peculiar idea of a spiritual mission entrusted to it, and to it alone, for the benefit of mankind. Anglo-Saxon puritanism and democratism is only one of the most rationalized and self-assertive among the different conceptions answering to this type of idea, probably because the range of its actual influence on the political organization of the universe has so far been the largest repetition of the career of precursors like the Roman Empire and the Roman Church. And I need hardly remind you of other missionary ideas that have perhaps been only the fuller of glowing enthusiasm because they were much less able to translate themselves into political reality. The conception of French classicism as

the center of all civilization will die out only with the last Frenchman. The Panslavist dream of saving the world through the Russian peasant and the Orthodox Church has been easily handed on by Czarism to Bolshevism. And it may be that it was chiefly the fact of being hemmed in by these two imposing and menacing rivals which made my country look out so convulsively for all sorts of artificial ideologies to fit its surprising economic expansion.

Who could deny that there is a strong admixture of imperialism, in its popular sense of political and economic conquest, in each of these great national ambitions? But who at the same time would venture to dismiss them for this reason as mere cant and deception of self or others? Try as hard as you can to sever national citizenship, as the plain symbol of national rights and duties, from the temptation of such dreams, and you will suddenly discover that you are by the very act of doing so emptying that citizenship itself of the deepest and noblest of its impulses. The most distrustful of individualists cannot, as a citizen, help his heart going out to the community he loves and finding that only service to it realizes his best self. Just so, as citizens of the world in the old genuine acceptance of the eighteenth century,

we shall always feel the community of the human race strongest when we help to realize the best self, to assert internationally the rights, as well as the duties, of the political whole we are directly responsible for. Thinking of things on the horizon of time and space may truly be much more than reverie. Remember how Nietzsche set up "the land of our children" as the noblest of human and superhuman aims. But the land of our children must, in the deepest sense, ever be the land of our fathers, and strenuous activity in the light of day will ever remain the best worship of ideals that reach beyond the day.