

# THE ATTACK ON THE STATE<sup>1</sup>

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That there is at present a radical criticism of the state that may properly be called an attack, needs no proof. Both from the side of practice and of theory the state is under fire: sometimes in the interests of lawlessness and sometimes in the name of law. But to all its defamers alike it represents a dangerous and irresponsible power needing to be brought low and rendered harmless by the exposure of its pretensions.

Distrust of the state is not a new thing, however; its rise is almost coincident with the rise of the state itself, witness the theories of the Sophists. But the earlier distrust was not so much distrust of the institution itself, as of the particular form it had actually assumed and of the special persons in whom its powers were lodged. In the seventeenth and eighteenth centuries it was the royal and aristocratic state that was feared by the members of the less fortunate classes and it was to effect a transfer of power from the top to at least nearer the bottom that the successive revolutions were undertaken. But so far as the nature and powers of the state were concerned, the revolutions were merely revolutions, rather than progressions, and the resultant democratic state was only an "inverted monarchy" with undiminished or even increased powers. It was only as the nineteenth century came to realize again, as the Greeks had learned long before, that democracy might mean only a change of masters rather than true liberty, that individualism began to question the beneficence of its new master and to plan defenses against its power in the interest of man *v.* the state.

But the present attack does not represent the old individualism with its atomic psychology and *laissez faire* economics and politics; it proceeds rather from the opposite camp as a modification of socialism, representing from the scientific side the new social psychology in its application to politics and law. Practically, the ultimate origin of the tendency is to be found in the emergence of groups in the industrial and social life of modern times and in the necessity of determining their relation to the state. The individual has in some cases lost his isolation and in other cases lost merely his unconsciousness of the absence of isolation and come to recognize himself as essentially a member, not of one group, but of many. Associational life, long discouraged in the interest of the unitary state, has grown to marvelous complexity; individual competition has everywhere given way to combination; and combinations have become self-conscious and able to assert their claims against the state in a way not possible for the uncombined individual. It is the emergence of these new self-conscious groups, offering new centers for individual life, forming independent units within society, able to treat with government upon apparently equal terms, that has raised in its most acute form the problem of the nature and value of the state.

In particular, it is the concept of sovereignty upon which the attacks have converged—its nature, its limits, its location—and it is the possession of this by the state, or at least, its exclusive and essential possession that the critics are concerned to deny.

To appreciate the value of these new theories it is necessary to remind ourselves of the difference in the points of view occupied by the pluralists and the absolutists. The pluralistic doctrines are explicitly and designedly analyses of the actual structure and function of states as these are presented in history and in the life of today. They refuse to recognize the validity of a political science which deduces the attributes and prerogatives of the state from its idea as determined from non-empirical sources. Their object is not “the real state of the perfect future” but “the real state of the past, the present and the imperfect future.”<sup>2</sup> If they admit with [Leonard Trelawney] Hobhouse, the legitimacy of a social philosophy which examines the meaning and ideal value of institutions, they yet insist that these questions of ideals must be clearly distinguished from those of facts. “The foundation, therefore, of true social method is to hold the ideal and the actual distinct and use our knowledge of the one as a means to realizing the other. We may pursue the two investigations, if we will, side by side . . . but every question that we ask and every statement that we make ought to be quite clearly a statement as to fact or an assertion of what ought to be, and never a hybrid of the two.”<sup>3</sup> And it is their general charge against idealism “that it starts with and never corrects the fundamental confusion of the ideal and the actual.”<sup>4</sup> Claims which might be valid for the ideal state are, by Hegel and followers, transferred without notice to the actual state of experience, and governments, far from perfect, are given the prestige and authority of agents of the absolute. It is to strip the actual state of this idealistic splendor and to show it in its realistic rags that the pluralists have undertaken their analysis.

For the sake of concreteness in the discussion, it will be convenient to centre attention upon the work of two men who may fairly be considered as representative of the movement, Léon Duguit<sup>5</sup> and Harold J. Laski.<sup>6</sup> Duguit represents the reaction from the doctrines of Rousseau as these found embodiment in the French constitutional law of the Revolution, for, as [Paul] Janet says, “*Il n’y a pas à proprement dire d’école de J. J. Rousseau, cette école, c’est la révolution entière.*”<sup>7</sup> It is especially against the idea of law as having its basis in the will of a sovereign state that he protests. The state is not such a collective person and, therefore, the law cannot rest upon its sovereign rights, but is objective and prior to the state.

Duguit is a thorough nominalist; the only real will is the individual will and the only real person is the individual person. The collective person of legal theory is a fiction and one not needed by the facts. Legal relations, the old argument runs, are based on subjective rights and, therefore, that there may be a public law there must be a public person as the subject of public rights. But this whole idea of law as based on rights and involving subjects of rights, Duguit rejects, and with it the idea that the state must be conceived as a public person or

a real will. The existence of a collective purpose is no evidence of the existence of a collective will, for it is always the individual who wills this purpose. "We can be sure that an individual thinks and acts; we can be sure of nothing else."<sup>8</sup> And not only is this idea of a collective person an unnecessary fiction, it is a dangerous fiction, for it perpetuates the opposition between the individual and the collective interest, giving rise to the idea of a dominant interest other than that of the collective individual interests.

The state, as Duguit sees it, is simply "a body of men dwelling on a determined territory, of whom the stronger impose their will on the weaker . . . this power of the stronger over the weaker is termed political sovereignty."<sup>9</sup> The strength at one time may be military, at another, economic, but in all cases the state is a group in which there is this distinction of rulers and subjects and in which both rulers and subjects are individuals with individual interests and individual wills. "The idea of a material power legitimate by reason of unanimity is a fiction,"<sup>10</sup> for if all wanted the same thing there would be no reason for commanding it.

But if the political power is not legitimate by virtue of its representing a general will, what is the condition of its legitimacy? Briefly, its conformity to law:

The state is material force, whatever be its origin; this force is and remains a simple fact, but it becomes legitimate if those who control it use it to accomplish the negative and positive obligations which the legal rule imposes on them—that is to say, use it in the realization of legal right. Law is not, following [Rudolf von] Jhering's expression, the policy of force, it is the limitation of force.<sup>11</sup>

These stronger men who always constitute the rulers and possess the sovereignty, are not to be conceived as above law or as themselves the authors of law, they "are men whose duty it is to employ their material force in perfecting social organization by protecting the individual and in protecting the individual by perfecting social organization."<sup>12</sup> This law in no sense is the product of a sovereign will, but is objective. Duguit's second thesis is "that there is a rule of law above the individual and the state, above the rulers and the ruled; a rule which is compulsory on one and on the other; and we hold that if there is such a thing as sovereignty of the state, it is juridically limited by this rule of law."<sup>13</sup> The state is nothing but force put at the service of law; it is a means and not an end.

In his conception of this sovereign law which sets the end and limit for the state, Duguit is largely influenced by the sociology of [Émile] Durkheim. The key term is "solidarity." Men form by nature a unitary group in which the interests of the individual are bound up with those of his fellows, he is *solidaire* with them. "Individuality grows in proportion to the growth of sociability, sociability develops with individuality. The opposition between the individual and the collective, so often brought forward, does not conform to the real nature of things."<sup>14</sup> The law which expresses this social unity is not a law of causation, but of social purpose; it appears, not as a relation, but as an imperative in human

consciousness. The rule of conduct founded upon this fact of social purpose, is, in brief, *co-operate in the realization of social solidarity*.<sup>15</sup> We have here a rule based, not on any metaphysical considerations, but solely on the facts of human psychology, and, as based on human interests, it is a rule valid for all men of whatever rank and power, holding for the strong equally with the weak, for the rulers as well as for the ruled. And since the state is only a collection of individuals, essentially the group of stronger individuals, this rule is binding on, and limitative of, the state. The social purpose, shared in by all individuals, is the determining principle of the state, and it is this purpose that can alone justify the actions of the governing group.

The rule of conduct based upon this purpose, Duguit prefers to call a rule of law rather than of morals, though he recognizes no real difference between the conceptions, but, as commonly understood, a moral rule is based upon intrinsic and absolute values, whereas, this rule of purpose is based solely upon social values. Co-operation is not a duty, but it has value since it conduces to the realization of the actual purposes of society. It is a hypothetical imperative based upon the fact of solidarity. Such co-operation is neither egoistic nor altruistic in principle since both these conceptions set the individual over against the other and imply a diversity of interests. The true conception is of the individual in his act realizing a good which is necessarily both individual and social at once. The egoistic acts are done because of ignorance of this true relation; hence, as the ancients saw, all vice is ignorance.

These rules may properly be called laws irrespective of their formulation and enforcement by the state since they have what is characteristic of laws, a sanction. This sanction exists either in the attitude of society toward the act or in the feeling of the individual himself toward it as reflecting that social attitude. When the state passes a law it does not create the rule, nor even the sanction of it; it only formulates the former and organizes the latter. The real basis of the law is not the political coercion but the public opinion, and Duguit agrees with [Frank] Jellinek that "the rules of law are not so much rules of coercion as guaranteed norms."<sup>16</sup>

The value of such an analysis of the nature of law consists primarily in the fact "that it makes it possible to limit positively and negatively the powers of the governing body or of the state."<sup>17</sup> Duguit believes that no theory of law based upon the subjective right of a sovereign state can explain, or afford ground for, any limitation of its power. The idea of the self-limitation of the sovereign he finds unmeaning. Only in the reign of objective law is there security against absolutism in the state.

In [Duguit's] recently translated book, *Les transformations du droit public*, this theory of limited sovereignty is illustrated in illuminating detail.<sup>18</sup> He there points out that the development of public law is all in the direction of recognizing the responsibility of the state, not only for the misdeeds of its agents, but also for its own acts when these inflict unequal damage upon individuals. Statutes may be declared unconstitutional, if not even annulled. So, too, the recognition of the rights of associations and of local self-government points to the same

end. The rules and statutes of these smaller groups do not originate in the state, yet are recognized by it as binding upon the members and enforceable by law. Everywhere there is implied the idea of the state as only the enforcing agent for the ends set by the social purpose. As he summarizes his theory: "Individual consciousness and individual wills [stand in] solidarity with one another; a rule based on this solidarity, which is a mandate for individual consciousness and wills; individuals stronger than others, who in consequence of this rule are under a duty to put their strength at the service of solidarity; a statement of this rule by the rulers and an organization of means of sanction—this is the state, objective law and positive formal law. The notions of the personality of the state, of sovereignty, of subjects of law, do not correspond to reality and should be definitely banished."<sup>19</sup>

It is perhaps not quite fair, nor wholly safe, to discuss the doctrine of Mr. Laski before it has received final expression in his promised work on political theory, and yet the main outlines of his position seem now clear enough to warrant comment. Agreeing in objective with Duguit, his point of departure and method are somewhat different, as is also to some extent his terminology. In the former, the theoretical motive appears dominant in the desire to find the concept that will explain and justify the newer developments of law; in the latter, while the legal interest is evidently strong, still stronger appears the practical interest of the social reformer, looking toward industrial and economic change. It is its interference with industrial and ecclesiastical rights that rouses Mr. Laski to his attack on the sovereign state.

The state, he defines as "a territorial society in which there is a distinction between government and subjects."<sup>20</sup> It is not identifiable with society as a whole because there are "social relationships which cannot be expressed through the state." It is, therefore, one organization among many. The authority of the government rests upon the idea that its acts are for the interests of its subjects, that it is actually a dividend-paying concern. Whether it is such or not is not to be determined by its professions or by its concept, but only by its results and the test of these is in the actual obedience of the people. A government act that gets accepted is, by virtue of its actual effect, the expression of a legitimate sovereignty. Sovereignty is actual ability to secure assent by ministering to the needs of the people. "The state as a whole may repudiate, as in 1688, the acts of its representatives for reasons that it deems good,"<sup>21</sup> and the government is thereby proved to be illegitimate because not actually effective. The *de jure* sovereign is the *de facto* sovereign since only the latter expresses the real will of the people.

The question of the sovereignty of the state, therefore, resolves itself into the problem of whether, and how far, it is able to secure assent to its acts. And here Mr. Laski develops a doctrine of natural rights as limitative of state sovereignty. The modern doctrine differs from the old as being not metaphysical, but social and historical. These natural rights are the fundamental opinions of any age as to what are the essentials of social welfare, and these vaguely formulated norms constitute rights which every government must respect if it is to maintain its authority over its subjects. Such rights are not fixed and definable once for all

as eternal possessions of abstract human nature, but vary with time and circumstance and social need. It is these principles of social welfare that get written into constitutions and bills of rights, but, whether politically formulated or not, they express a solid public opinion of which government must take account and thus constitute internal limitations upon the authority of the state. It is these natural rights that Duguit in his theory calls laws and regards as the basis of the state, imposing, as they do, upon the rulers the obligation to secure their recognition and enforcement as constitutive of social welfare. His denial that sovereignty rests upon rights is a denial that it rests upon the subjective right of a sovereign will and not a denial of the existence of historic rights in the social body.

In addition to this internal limitation of governmental authority, Mr. Laski recognizes an external check in the existence of delegated powers exercised by organizations within the state, such as industrial and religious bodies. The principle involved in this distribution of governmental functions is that power should be lodged where it can best be exercised and that this means usually that it should be lodged in the hands of those directly concerned with any particular activity. This gives us the principle of the functionally organized society, with its many coordinate groups, each expressive of a unifying interest, and autonomous within its own sphere. Of these, the state would be only one group and limited by its relation to its fellows, *primus*, perhaps, *inter pares*, but certainly only *inter pares*.

Besides these two limitations upon its sovereignty, the internal, due to the existence of natural rights, and the external, due to the presence of functionally distinct, self-governing bodies, Mr. Laski also recognizes a moral limitation resting upon the state. Granted that a governmental act might in rare cases secure universal consent, this could at best merely justify it politically, not morally. The *vox populi* cannot be identified with the *vox dei*. Truth cannot be determined by counting votes. The general will is not necessarily good—this is the testimony of all history—hence the individual must “pass judgment upon its validity by examining its substance. That, it is clear enough, makes an end of the sovereignty of the state in its classical conception. It puts the state’s acts—practically, as I have pointed out, the acts of its primary organ, government—on a moral parity with the acts of any other association. It gives to the judgments of the state exactly the power they inherently possess by virtue of their moral content, and no other.”<sup>22</sup> Not only, therefore, does the state not always register the real will of the people, but even if it did, it could not on that account alone command the conscience of the individual.

The aim in both these attacks upon the state is to secure and to justify the rights of individuals, and of groups of individuals, as against the Great Leviathan. To this end, Duguit insists upon the state as only a means for the carrying out of social purpose and hence as responsible before the law, while Laski emphasizes the actual limitations of its power and urges administrative decentralization and the organization of a federal system. In both, the state is displaced from its traditional place as supreme and either subordinated to law or coordinated with other social groups.

With the practical motive involved in these theories no one who is intelligently interested in social progress can fail to sympathize. The liberation of personality and its education through self-government is the ideal of a democratic society, and in so far as the contemporary attempt to humanize and socialize political theory and law looks to this end it deserves nothing but praise. The state ought to realize social purpose, the rights of society ought to be taken into account, a larger number of locally autonomous administrative areas ought to be organized, industry and the church ought to be self-governing; and yet one may be forced to raise the question whether the fundamental notions in terms of which the theoretical interpretation of these political movements is being worked out are not to a certain extent confused and misleading.

Naturally, the basic notion is that of the state itself, and it is in their treatment of this conception that the pluralists exhibit that tendency to abstraction that forms the root of most of their difficulties. With their formal statements no one need quarrel; the state is "a territorial society in which there is a distinction between government and subjects"—it is society territorially grouped and organized for government. By this definition the state consists not merely of the ruling group, but of the ruled as well; it embraces all the members of the given society united in an organization for the attainment of certain ends. The action of the state would, therefore, be the action of this comprehensive body, and its power would be that lodged in this whole politically organized group. Having paid formal deference to this concrete conception, however, emphasis is laid forever after upon the fact that for all practical purposes the will and power of the state is only that of the effective and dominant class or group, usually the majority, but often enough only a strong minority. The state is thus only the group within the given territory able to impose its will upon its weaker fellows. And this will, if our political theory is to be realistic, so we are told, is always a will directed toward the interests of itself and not toward the good of the whole community—always a special, and not a true general, will. The real state is thus a class state, no matter how seriously our idealistic theories may strive to disguise the truth for us.

But, as Mr. Laski himself recognizes, though apparently ignoring its implications, one cannot separate a people into two sharply distinct bodies, the rulers and the ruled, and ascribe all power and responsibility to the former. The power of the so-called rulers rests ultimately upon the sufferance of the ruled so that every people gets virtually the government it deserves. No class state is purely a class state, and no majority, or strong minority, acts solely in its own interests or expresses unmodified its own will. Consciously or unconsciously, the wills of all affect the political result even though that political result be far from expressing the will of any taken in its isolation. Even in our newspaper-ridden democracies, public opinion is not merely the product of editorial specialists dictated to by interests, for the newspaper itself is in no small part the product of its creative readers.

That there is a relative division in every state between rulers and ruled, and that some get their wills more perfectly realized than others, is, of course, obvi-

ous enough. It is, in fact, implied in the very existence of the state, since if there were perfect community there would be no need for the political organization with its coercive powers. But because we are limited both in our understanding and our sympathy we are compelled to fall back upon some external bond of unity and invoke the police. The state is only a makeshift necessitated by our imperfect moral development. To make this inevitable fact of subjection *within* the state, however, a ground for the exclusion of the subject group from the notion of the state itself, is strangely to misread the facts. For the subject group of one age may be the ruling group of another and, indeed, endure the thwarting of their wills largely because they believe in the possibility of converting their minority into a majority. The state is this whole body of inter-related and interacting wills in which now one group is dominant and now another, but in which no one carries out its exclusive will in isolation from the others. There is a constant, though more or less effective, diffusion and interpenetration of social life, by virtue of which different elements at different times receive more adequate satisfaction and seem to be the center of the public life. Beneath all difference and variation, however, there remains the common life and the interest in a public good. As Hobbes, in his crudely vivid way, insists, men recognize that the evils of anarchy are worse than any of the evils of society, and, therefore, accept the state with all its implied restrictions.

No one has more clearly expressed the real meaning of the classic doctrine of the general will than Prof. [Robert Morrison] MacIver in his work on *Community*. He there distinguishes<sup>23</sup> between the will to organize and maintain the state and the will within the state determining its policy; the former is a general will, the latter always special, being the will of the dominant majority at any given time. The general will to have an association conditions absolutely its existence; the dominant will directing its policy gives it its specific character as this individual association. It is this policy-directing will that he thinks should be identified with the will of the state, and it is this that finds expression in its laws and administrative acts; but back of it, and underlying all the political antagonisms out of which issue the laws, is the prior will to have a state at all. No matter how violent may be these political conflicts, nor how oppressive may be the will of the dominant party, so long as there persists the general will to unity, the state endures. This will to have a state is thus a common real will in all citizens, understanding by "citizen" only those who are the real constituents of the state. As MacIver puts it, "it is those citizens who will the maintenance of the state who both make and *are* the state, the rest are merely its subjects."<sup>24</sup>

To identify the will of the state, however, only with the policy-directing will, as he does, is to separate too sharply between the joints and the marrow. The real fact is the territorial group of individual wills struggling to maintain a peaceful community life in various specific ways. Some of these individual wills, with their specific means for attaining the public good, become dominant, but to say that the only state will consists of these willings of specific means and that the underlying willings of the common end are not the state will is an unjust-

tifiable abstraction, since it is only as these specific wills are accepted and reinforced by the general will that they can form the will of the state. Without such reinforcement the political policy would be without effective power and constitute no will at all, being only the policy of a contending party. While the conception of the state as an organism is, in many respects misleading, it is none the less true that its existence and strength depends upon that harmony between rulers and ruled which Plato in the *Republic* identifies with temperance.

So much of truth, then. There seems to be in the doctrine of the general will, that there is underlying the various, and often opposing, purposes in a community a will to unity that finds expression in the state. To the extent that all individuals have an interest in an external order, their wills may be said to be realized in the will of the state—but, it may be, *only* to that extent. The external order may be so bad that it may be only a shade better than anarchy. Under such conditions it becomes unmeaning to speak of the will of the individual as finding its complete expression in the state as actually constituted, or to attribute to that body the ideal qualities it is assumed in the absolutist philosophy to possess. A state in which there is incipient or actual rebellion is far from the unity of the perfect community, in this fact lies the strength of the realistic contention. To exaggerate this discord, however, to the extent of identifying the state with the government and denying altogether the presence of a general will is to overshoot the mark. Even such a discord as revolution is not pure anarchy, for the will to have a state manifests itself inevitably in a new political organization—the overthrow of the government is not the complete destruction of the state. In Mr. Laski's words already quoted, "The state as a whole may repudiate, as in 1688, the acts of its representatives for reasons that it deems good."

Granted, then, that the state is this whole territorial group of individuals associating themselves together for the realization of a common good, though through policies only varyingly satisfactory to the constituent members but acquiesced in and supported as adequate enough to justify the association, what is to be said of the authority of this group? Is such an association rightly to be called sovereign over its members? And, if so, in what sense?

According to Duguit, the state is only a means to an end, that end being the social welfare or the realization of the social purpose. It is force in the service of law. This conception is asserted as implying the subordination of the state and its responsibility before the law. If we ask, however, what the real relation is between the state and its end, we shall find that this end is not external to the state taken in its concreteness, but is immanent in it, is, in fact, just the well-being of the state itself. It is only when we make the abstract division between the machinery of the state and its living unity, identifying the state with the former, that we can speak of it as a mere means. Then it is obviously true that the institutional forms and the persons chosen to administer them are merely means for the realization of the ends sought by those who in their association form the state; but those ends are by no means external to the association itself, for they constitute just its common good. The action of the state will be determined by the ends

sought by its citizens and, in so far as any particular measure is thought by them not to realize the goal sought, it is condemned and changed. But this change is not forced upon the state from outside; it is the result of the state's own changed mind and will. That this change of mind is not itself due to political action but may be the result of social and moral changes only remotely connected with political life, does not imply the externality of these ends to the state, or its subordination to them, any more than in the case of the individual the fact that his ideals may owe much of their character to the nature of his environment implies that the determination of his life by them is the subordination of himself as means to the uses of an external end. However he may get them, the organization of his life for their realization is at the same time a process of self-realization, and it is essentially the same in the life of the state. The fact that it organizes itself for the sake of ends does not prevent those ends from being its own ends, even though they may not be the creation of any system of legislation or political education, and its recognition of them does not reduce it to the position of a mere means.

The reign of objective law, which is the central idea of Duguit's system, is thus not the reign of a sovereign over the state or of a fact external to it, but is the reign of the state itself according to the principles of its own purpose. That the laws of the state are not created in a vacuum, *ex nihilo*, as expressions of the arbitrary will of a sovereign power, unrelated to the social conditions of the time, is obvious. It is a commonplace that an effective law must have its origin and basis in public opinion, of which it is, virtually, only a formulation and enforcement. The function of the state is, therefore, according to the French jurist, only to give the sanction of organized force to laws which already exist as the recognized conditions for the realization of social purpose. But again it would seem that in spite of his nominalistic scorn of abstractions he has been misled by his abstract ideas of both law and state. These laws of social purpose are not objective existences independent of the individuals who cherish the purposes, nor are these individuals themselves outside the state, or the state independent of them. The laws express the common purposes of individuals who constitute the state and the fact that these same individuals have held these views before they decide to formulate and enforce them does not imply any external limitation upon the action of the state. It is the same group that approves these laws that afterwards enforces them, the same public mind that thinks them that later wills them. The public sentiment which limits the state is the public sentiment of the state itself. It is only as we identify the state with its own machinery or representatives that we can regard social purpose as a limitation upon it.

The same criticisms can be made on the historic interpretation of the doctrine of natural rights. That there is a consensus of opinion as to a body of necessary social rights and that no government can endure which disregards these rights, is evident enough. The action of the state must respect this public opinion, but it is a self-respect and not a constraint exercised upon it by a society other than its own members. If the state, to act freely and from its own nature, must act *without* a public sentiment, it must act without a mind and, indeed,

without a will. The content of the state mind cannot be other than that which we call public opinion and to set this over against the state as its limiting other is the height of confusing abstraction.

So, too, in the pluralistic doctrine of the place of associations within the state, the same tendency to abstraction is present. Each group is regarded as an independent unit with its own separate interests and the state as an additional unit external to the others. The fact that the members of all groups are citizens and that it is impossible to disentangle the special interest from the general interest, though it can scarcely be denied, seems virtually ignored. When the interests of the church seem affected by political action, the struggle is not between churchman and citizen but between the churchman citizen and the citizen of other interest, individuals as members of the state striving to influence its will in various directions. But the state has no other members than these specific, differently grouped members, and it has no separate interest apart from the complete individual interests, that is, apart from the interests of the individuals as members of the associated groups. We have no mere collection of groups acting upon the state from without, nor is the state constituted by its groups. As MacIver says, associations are "unities within, but they are not units of community."<sup>25</sup>

The suggested limitation of the state by public opinion, therefore, or by law, is not a real limitation since this public opinion is that which alone constitutes the mind and ultimately, the will of the state. But what public opinion itself approves, that it can enforce, which is but another way of saying that what the state wishes done it can do, since the organized power of the group is superior to that of its individual members or lesser groups. With public opinion back of the government, industrial associations are forced to submit. In normal times, we lose our sense of this compelling power, but in times of crisis the iron hand is revealed and the state shows itself that mortal god whom Hobbes worshipped. In such times the ordinary rights of citizens may be abrogated and constitutions disregarded in order that the supreme law, the safety of the people, may be realized. Political habits upon which men had learned to rely are then broken up and the state becomes a single, vitalized, flexible, unrestricted will.

But while under these conditions the state may attain that unity of will which constitutes its supreme power, under less perilous conditions it may exhibit all degrees of disintegration and corresponding powerlessness. Interests may conflict, opinion may be divided, and a determined minority may force its will upon the government in disregard of the wishes of a hesitant majority. In so far as this is done by constitutional means, however, and acquiesced in by the people, it is hard to see how the resultant action can be considered other than that of the state, or the situation one in which a body other than the state is sovereign, since it is not merely the particular group that is involved, but the latent power of the whole acquiescing people gives it backing. Its strength is the strength of the whole. Where opposition of interests goes so far that reconciliation is impossible, the community bond is broken and the state is dissolved into its elements. Sovereignty and the state disappear together, for we have a state only where we have a

common will to hold together in spite of differences and, when we have this, we have also an effective control over the whole group, or sovereignty—the loss of the unity is the loss of the power. It becomes then a somewhat verbal matter whether we should speak of a state's losing its sovereignty or of its ceasing to exist, but the latter is more nearly expressive of the truth of the case.

Taking the term "sovereignty" in the sense of actual power, then, it seems impossible to admit that the state is subordinate to any power external to itself. The pluralists are justified, however, in so far as they mean merely to point out that not every state, at all times, has the inner coherence and unity necessary to constitute an effective will and that, in consequence, a government representing no real will often meets resistance and suffers defeat. Sovereignty as fact thus admits of degree, from the complete power of the unified state to the point where anarchy replaces the cohesive community. It characterizes the state in proportion to its ideality. It is not that the state can't control its members—as in the self-control of the individual, it could if it would, but it won't.

Turning from the positive to the ideal aspect of sovereignty, we have the question whether sovereignty ought to characterize the state. And in the discussion of this problem there is perhaps a more strident note in the pluralistic voice than is strictly necessary, at least in academic circles, for, apart from difference of emphasis, there is more essential agreement than the contestants would have us believe. In principle both parties would admit that so far as the state is the expression of the ideal community it is rightly authoritative. It is only in terms of ideal community that rights and duties have significance. And that the actual state is not identical with this ideal society and is, therefore, not possessed of absolute authority is also admitted, though with more or less reluctance by the idealist. But the fact that states are many, that their sphere is limited to external action, that they employ force, that their actions rest on decisions by a majority—all these obvious considerations compel the recognition of the distinction between the state and the world of absolute obligation. It is sometimes difficult to separate the concepts of the ideal and the actual as used by the idealists, but there can be no question that both Hegel and Bosanquet admit the existence of bad states, though they refuse to recognize them as strictly real or *wirklich* [actual]. "A bad state," says Hegel, "is one that merely exists."<sup>26</sup> And Bosanquet, both in his earlier and his latest writings, claims for the state, not moral absoluteness, but only absoluteness as having "the distinctive function of dictating the final adjustment in matters of external action,"<sup>27</sup> and even as to this, he asserts a duty of rebellion under certain conditions. But differences of opinion are largely differences of interest and emphasis, according as stress is placed upon the fact that it is the will of the state, or that it is the will of an imperfect state, that makes the demand. The individualist, seeing in the state a doubtful and dangerous necessity, has small compunction about resisting its will, while to the idealist with his eyes fixed upon the perfect type, it is a more serious matter, and the burden of proof is upon the individual.

While there is this implicit agreement, however, in regard to sovereignty considered intensively, looked at from the point of view of its extent, the difference is greater. The pluralists hold, not merely that the state is actually limited by the associations within it, but that it ought to be so limited, that it is essentially a co-ordinate group. Their ideal is that of a loose association of autonomous groups, functionally distinct, in which the state is sovereign only with respect to special aspects of life, such as education, police power, and external defense. Each interest of society is to have its organization, but no organization is to represent the will of society as a whole. In denying, or minimizing, the desirability of such an organization of organizations, however, the pluralists seem to display an optimism which is somewhat at variance with their usual realistic temper, for it implies a very hopeful disposition indeed to look forward to a time when a need for dictating the final adjustment in disputes between associations shall have passed. The interests of social life are distinguishable, but not separable, and so long as an external sphere exists at all, so long will there be need for some such organization as the inclusive state to say the final word.

Turning from the consideration of these special aspects of pluralism and looking at the movement as a whole, I am impressed by a vague sense of misdirected energy. The aim is to safeguard the rights of the individual and of groups as against the state; the means suggested is the reduction of the state to the level of other institutions. In effect, this seems to mean reliance upon new forms of political organization, specifically, upon decentralization. Refuse to organize at all, says the anarchist, and trust to the sound instincts of human nature. Organize loosely, counsels the pluralist, so shall your liberties be conserved. But if the government gets its power for good or evil solely from the people, no mere constitutional changes can give real relief from the potential tyranny of the people. It is like relying for temperance reform upon taking the pledge, or for peace, upon scraps of paper. It is not the pledge, but the will back of it, that gives security; not the contract, but the will to keep it, that lies at the basis of the state.

The problem of liberty in the state, as in the individual, is ultimately a moral problem arising from the opposition of interests and of values. So far as community is imperfect, so far as there exist insistent antagonisms, the individual and the group are at the mercy of the dominant antagonizing power. No matter what the paper pledges, there will be no more liberty for the citizens than there is justice and sympathy in their characters. It is as true of a democracy as of an autocracy that the character of the government depends upon that of the rulers. The vital problem is, therefore, not one of machinery or external organization, but of the unification of personal interests and public opinion, of the realization of a true community life. A transfer of power from one group or association to another is only a superficial remedy so long as the clash of interests remains. A local group can as effectively limit the individual as can the state, and it is, indeed, as a protection against group tyranny that the state finds much of its justification. It is in this emphasis upon the need for a real unification of social life that Miss [Mary Parker] Follett's work is so important. It presents communi-

ty, not as an actual fact, but as a task to be accomplished, and accomplished not by compromise, but by a real transformation and integration of wills. This integration, however, is but an ideal and as long as it remains so there will always be compromise and partial frustration whatever may be the political organization adopted. It is, indeed, the absence of this perfect integration that gives rise to the state and justifies its existence—it is the evidence of our imperfect nature. The very essence of the state is force. If, then, the state is necessary, it is surely not the part of wisdom to attempt to destroy or dilute its essence and thus render it incapable of performing its function. It is not force that is dangerous but the will embodied in it. The problem, therefore, is not that of limiting sovereignty, but of educating the sovereign.

And this conception of the political problem as ultimately one of education, suggests the final comment on the pluralistic tendency as at present formulated. It has the defects of its virtues. With its eyes fixed upon the discords of historic states, it denies the reality of a general will and warns against the danger to liberty of confusing the ideal with the actual and endowing the imperfect state with a prestige and authority not warranted by its character. It is this resolute realism that constitutes its strength. But it is one thing to emphasize the particular in life and another thing to deny the presence of the universal. Reality is always a process of the realization of form in matter, and materialism and absolutism are equally inadequate to the facts. But political reality tends to be conceived by the pluralists as a mass of particulars in purely external relations to one another. It is true that these particulars are now conceived of as groups rather than as individuals, but this change in the unit marks no advance toward concreteness so long as the group represents an abstract aspect of life and the individual's relation to it remains mechanical. There are the functional groups, appealing to the particular interests and representing the partial man, but nowhere do we find the including group appealing to the concrete interest and representing the whole man. The abstract and imperfect personality of the group with its limited interests is substituted for the real personality of the individual, whose interest in the universal, in community, finds no institutional expression. While, therefore, we can be grateful to the pluralists for their insistence that political theory must be realistic, we must also insist that it be adequately realistic, recognizing in social life not merely the failures of universality but the equally significant fact of the interest in universality and the need for its organization in the state.

### Notes

1. Presidential Address delivered 16 April 1920 before the twentieth annual meeting of the Western Philosophical Association, at the University of Wisconsin, Madison, Wisconsin.
2. [John W.] Burgess, *Pol. Science and Comparative Const. Law*, vol. 1 [(Boston Ginn, 1893)], p. 50.
3. [Leonard Trelawney] Hobhouse, [*The*]Meta[physical] *Theory of the State* [(London: Allen and Unwin, 1918)], p. 17.

4. Ibid., p. 23.
5. [Léon Duguit], *L'État: Le droit objectif et la loi positive* ([Paris: A. Fontemoing,]1901; *Les transformations du droit public* ([Paris: A. Colin,]1913, trans. [Frida and Harold Joseph] Laski under the title of *Law in the Modern State* ([New York: B. W. Huebsch,]1919); and "Law and State," *Harvard Law Review* 31.
6. [Harold Joseph Laski, *Studies in the Problem of Sovereignty* ([New Haven, CT: Yale University Press,] 1917; *Authority in the Modern State* ([New Haven, CT: Yale University Press,] 1919; "[The Personality of Associations]," *Harvard Law Review*, 29[(1915/1916)]; and "The Pluralistic State," *Phil. Rev.* 28 [(1919): 562].
7. [Paul Janet,] *Histoire de la science politique* ([Paris: Librairie Philosophique de Ladrange, 1872)]. Tome 2: [It is not proper to say the school of J. J. Rousseau, this school, it is the whole revolution.]
8. [Duguit,] *L'état*, §177.
9. Ibid., §178.
10. Ibid., §180.
11. Ibid., §178.
12. Ibid.
13. Ibid.
14. Ibid., §186.
15. Ibid., §187.
16. Ibid., §191.
17. Ibid.
18. [Duguit, *Law in the Modern State* (New York: H. Fertig, 1919).]
19. [Duguit, *L'état*,] §199.
20. [Laski,] *Authority in the Modern State*, p. 26.
21. Ibid., p. 31.
22. [Laski, "The Pluralistic State,"] pp. 571–572.
23. [Robert Morrison MacIver, *Community* (London: MacMillan and Co., 1917)], p. 137. (The original manuscript misspelled MacIver's name as McIver, and has been corrected throughout the address.)
24. Ibid., p. 135.
25. Ibid., p. 138.
26. [Georg Wilhelm Friedrich Hegel, *Grundlinien der Phil[osophie] d[es] Rechts*[(Berlin, Germany: Nicolaischen Buchhandlung, 1821)], p. 339.
27. [Bernard Bosanquet,] *Social and International Ideals*[: *Being Studies in Patriotism* (Freeport, NY: Books for Libraries Press, 1917)], p. 273.