

Appendix III:
National Sovereignty versus Internationalism:
The Importance of Repealability

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The Coming Assassination of National Sovereignty

Recent events have dramatised a new trend in the way mankind arranges its affairs. In 1999, for example, the NATO alliance waged something called a “humanitarian war” against Yugoslavia. As a result, the province of Kosovo was detached from Yugoslav (in effect Serbian) control and occupied by international agencies.

Back in 1945, when the United Nations was being established, the inviolability of national sovereignty had been accepted as a necessary condition of international cooperation. Without that guarantee, sovereign states would not even have begun to cooperate in adumbrating a world order. Even then, however, the institution of sovereignty, which is the abstract concept signifying the fact that nation states are independent of any superior legislative authority, had long been under attack. Critics regarded independence as the condition that made possible aggressive war and the violation of rights. By 1999, however, the higher media visibility of brutal oppression, combined with rapidly changing opinions about international law, had brought Western states to the point where violations of individual rights in Kosovo became a ground for military intervention.

The significance of this evolution is in no way diminished by the fact that the whole event has turned out to be far short of a resounding moral triumph. Political divisions prevented the war being waged under the rubric of the United Nations, which is why the inappropriate umbrella of NATO was used. Some umbrella there had to be, lest “humanitarian intervention” should seem indistinguishable from old fashioned imperialist aggression. The lack of popular enthusiasm for the project in the participating countries led to a military campaign being conducted by remote aerial warfare. None of these democracies wanted to risk their soldiers becoming casualties. And the arrival of U.N. agencies, once the war itself had ended, has turned out to be very far from initiating a reign of justice in Kosovo. It will take the long perspectives of history to understand this complex event, but there is no doubt that a new doctrine about the relation between sovereignty and human rights had at last been put into practice.

Kosovo was not, however, the only straw in the wind. The detention of General Pinochet in Great Britain, as lawyers from Spain, Belgium and Switzerland sought to extradite him to stand trial for alleged war crimes, was another case of the long arm of something a little like international legality flexing its muscles. And in Australia in early 2000, uproar followed the enacting of mandatory sentencing for crimes in Western Australia and the Northern Territory. Some Australians found this practice (as one columnist put it in *The Sydney Morning Herald* of 20 February, 2000) “barbaric”. Here, as in the earlier case of the Aboriginal “stolen children” issue, opponents and critics of the Australian federal government sought to institutionalise the question. Were human rights being violated? Was mandatory sentencing in conflict with the rule of law? Critics appealed over the head of the governments involved to the United Nations Commissioner for Human Rights, Mary Robinson.

I am not concerned with the substance of any of these issues. What I do want to bring out is the underlying issue, which I take to be the project of imposing a kind of revived *ius gentium* (with teeth, as it were) on the current practice of national sovereignty. This is an area in which a political theorist needs to tread carefully, since it involves issues of international law. On the

other hand, international law consists of a great variety of rules having very variable degrees of authority. Much of it, in fact, seems to be little else except political theory dressed in legal garb.

Hence I shall advance, for purposes of clarification, a bold and extreme thesis about what is going on: namely, that assassins are gathering around the very idea of national sovereignty. My argument can thus borrow the familiar structure of a mystery story, involving a murderer and a victim. The victim is the sovereign nation-state, the assassins group themselves together as a set of self-described humanitarians. Let us take each of these figures in turn.

What Makes the Sovereign State Unique ?

The victim is “sovereignty”, a term referring to the absolute power and authority disposed of by the rulers of a modern state as they regulate the public affairs of their peoples. The Netherlands, for example, is a civil association of individuals living on a determinate territory, an association which has generated a government that makes law and implements policies for the benefit of its subjects. In 1940, the German army marched into the Netherlands and controlled the country until the Germans were driven out in 1945, but the Dutch government retained legitimacy in exile in London. Sovereignty thus involves both power and authority. It expresses the independence of a set of people able to rule themselves, people who will not tolerate any superior exercising power over them without consent.¹

Sovereignty is to be conceived of as the single concentrated authority emanating from a Constitution. The contrast is with the arrangements of mediaeval Europe, in which authority was dispersed between monarchs, the Catholic Church, nobles, and sometimes also relatively independent towns. Historically, sovereignty emerged in the later Middle Ages when governments, mostly monarchies, extinguished their partners in government and concentrated all authority in their own hands.

We may observe two things about this immensely complicated process. The first is that it responded in part to a growing sense of individualism among European peoples. Such individualism was most evident in the towns, which is why these events are sometimes understood as being a “bourgeois revolution”. The second point is that in England particularly (the case most relevant to Australia, of course) the absolute power of sovereignty could only be achieved in a process of national integration. In other European countries, sovereign power accrued above all to the monarch. It was the solution to the problem of internal dissension, for (as Hobbes remarked) it takes two to make a conflict. In England under the Tudors, this power belonged to the King-in-Parliament, and in the course of the next century it became clear that Parliament was the decisive element in this mix. Part of the reason for this was that, while other European states tended to be articulated into “estates” of the realm, the English could plausibly claim to constitute a single people. The House of Commons never represented any notional “third estate”. It was an assembly speaking for a much more complex society.

Sovereignty is the abstract essence of something called the “nation-state”, which is, in some ways, an absurd expression. Britain, for example, contains at least four clearly articulated nations: Welsh, Scots and Irish along with the English (and, some would add, the Cornish, and perhaps even other regionally distinct areas). Some of them periodically generate a “nationalism”, which is to say a political movement demanding that whatever recognises itself as a nation ought to have the sovereign prerogative of statehood.

The point about “nation states” (such as Britain or France, or Australia), however, is that they seldom or never consist just of one “nation”. They are all, in a technical sense, empires. But in times of crisis, they are capable of generating a passionate unity (overriding the attachments of the component parts) which resembles the unity of nations themselves. This is sometimes, misleadingly, called “nationalism”, but is actually what we generally recognise as patriotism. It is a common but serious mistake in politics to confuse patriotism with nationalism. It may well be this muddle which has given currency to the mistake of thinking that states have only recently

become “multicultural”. Such a mistake is popular as propaganda for the project of incorporating “minorities” as the units out of which states are built. It is a project for subjecting democratic civil societies to a tyranny of corporate privilege.

The European nation-state was a notable invention. It expressed the emergence of a new kind of human being altogether – an *individual*, which is to say, a human being accustomed to pursuing his own desires and inclinations in compliance with the abstract rules of law. Just as the classical Greeks developed the idea of the citizen, which is to say a city dweller who participated in collective self-rule, so modern Europe brought forth the individual, and sovereignty was its political correlate.

In such a state, fellow subjects might not be brothers, or comrades, but they were people who in some sense spoke the same language, and with whom each could co-operate with any other in freely chosen enterprises. Whereas in most other forms of social organisation, such as the tribe or the despotism, co-operation was only possible with those who shared one’s religion, clanhood or ethnicity, European individuals found it easy to co-operate with each other. In such societies, as Hegel rightly put it, “all were free”, and the resulting association of these individuals gave Europeans’ society a tensile strength which allowed them in time to spread technology and institutions that came to dominate the world.

Sovereign states were so successful, in fact, that by the 20th Century all the peoples of the world had mimicked the nation-state form of organisation. They all had Presidents, Parliaments, judges, elections, etc., or at least the appearance of these things. Often, in fact, these states were the merest caricatures of the constitutionally articulated and generally democratic states of the West. What immediately fascinated non-Western rulers was the sheer power that sovereign nationhood could confer upon rulers. What they seldom understood were the hidden practices of limitation and restraint on which this power depended. The tragic fact today would seem to be that many even in Western states are also losing this understanding.

Sovereignty and Repealability

Now what, if we may press the question, was the point of sovereignty ? The obvious answer was that it enabled rulers to make valid law binding on their subjects. This power is so conspicuous that it is quite common to identify sovereignty with that bit of a modern state’s Constitution which has the authority to make law. AV Dicey, for example, argued that in Britain the sovereign power resided in “the Queen in Parliament”. This formula certainly points to important realities in British politics, but it also makes it difficult to discover what sovereignty is in, for example, federal states. And that is why it is best to consider that sovereignty is the authority to make law found in the constitutionality of the state as a whole.

The significant point about the emergence of sovereignty, however, is less that it enables authority to make law, than that it allows them to *unmake* it. In the 16th Century, a generation of Europeans emerged who regarded the vast resources locked up in Church property as a barrier to their own ambitions. The thing called the “Reformation” was (like most other human movements) a remarkable mixture of spiritual enthusiasm and material aspirations. What these people sought was a form of authority that would facilitate their dismantling of an establishment which was found to be frustrating their ambitions. Sovereignty was the instrument they needed in going about this revolutionary business of dismantling an establishment.

The unintended consequence of this rapacious adventure was the creation of the modern state with which we are familiar. Modern legislatures are forums that make and unmake (more making than unmaking, it must be admitted) the rules under which we live. No modern society could operate without this sovereign power, which allows us to dispose of the past without actively violating it. Governments dissolve old institutions and create new ones, refashion the bonds of marriage, exercise the prerogative of pardon, respond to changing moral attitudes to such things as homosexuality or abortion, modify the Constitution under which they live, invoke compulsory

purchase to override property rights, and all the other things which, wisely or unwisely, we get up to.

Such is the institution which has created the modern world, and brought many good things in its train. But there is no doubt that such an immense power, even though constitutionally and democratically limited, offers many temptations to corrupt misuse. Further, the opportunities for economic enterprise only possible within a modern state have also created a highly unequal society, in which the fact that virtually everyone is, in historical terms, much better off has not diminished the discontent of the less successful. The result is that the politics of modern states is a constant preoccupation with one or other form of discontent, with democratic politics constantly called in to change the consequences of economic competition.

The fact is that the state has many enemies, and that they are already half-persuaded that sovereignty is bad because it does not always work to their advantage. It is not merely that liberals are suspicious of its propensity to oppress, but anarchists think that government is itself the main threat to freedom. Socialists love its marvellous managerial possibilities, but seek to transform it into something else. Communists want to destroy it and create a true community. Democrats believe that it needs to be transformed. In other words, the state has a very great number of enemies.

Here we have, then, the typical victim of a murder mystery: an entity with enough enemies to generate a great number of suspects. And what is perhaps most interesting about these enemies is that they all believe that the death of the state will lead to a once and for all perfecting of the way we live. All are hostile to sovereignty, which is to say, they do not believe that there will be any need for repeatability once their ideal has been achieved.

But this is far from the whole story. Many of the despotisms and tribalisms of the non-Western world adopted, in the course of the 20th Century, the external forms and usages of the nation state, and in the process learned how to be more efficiently oppressive to their subjects and neighbours than they had been before. They were often distinctly light on on the question of what Westerners called “human rights”. Civil wars and internal oppressions multiplied.

When to these considerations is added the way in which such states as Germany and Czarist Russia were taken over by universalist doctrines, leading to many evils, it becomes understandable that some people should have come to the conclusion that the sovereign independence of the rulers of states was at best the necessary condition of many evils, and at worst the actual cause of them. Sovereignty must, like Carthage, be destroyed. This is why in the 20th Century many thinkers came to espouse the idea that supranational authorities, embryonic world governments as it were, should be empowered to enforce decent moral standards, formulated in terms of rights and international law, on sovereign states.

The Murderous Ambitions of Humanitarianism

Such, in our abstract mystery, is the victim of this attempted coup. Let us now turn to the assassin. In the Kosovo case, the NATO allies decided (as they had in earlier stages of the disintegration of the Yugoslav federation) that they could not stand back and see Albanians suffering the violation of their human rights. Our assassin thus initially presents the appearance of a movement speaking for humanity itself. It is constituted by a self-appointed set of concerned humanitarians. But it hardly needs to be said that there is a large gap between the moral justifications of any political movement, and the actual calculations which determine how it acts. No less contestable is the theory of modern global development, which argues that interdependence has rendered the sovereignty of states obsolescent. In arguing that sovereignty has become an irrelevant, indeed obstructive, hangover from the past, humanitarians present themselves less as assassins, than as executioners of the verdict of history.

Such is the negative element in the humanitarian project. The positive project is nothing less than that of transforming the human situation. It aims to remove the oppressions of torture

and poverty so that each individual on the planet can be assured of what activists often call “a good quality of life”, and what philosophers refer to these days as “flourishing”. Each person must be given what one might call a “quality assured” life.

This is obviously a secular vision – religious concerns are merely lifestyle choices within it – and there is a sense in which one might well think it a highly desirable utopia. One could hardly say that it is a noble vision, however, because it treats the inhabitants of the globe as a set of victims who must be provided with these desirabilities. Humanity is to be the passive beneficiary of a perfection supplied by an élite of busy humanitarians.

Still, given the horrors that take place in many parts of the world, humanitarianism is a very understandable aspiration. And as it operates in contemporary politics, it takes the form of internationalism, since its most evident character is the aspiration to transcend sovereign national independence and replace it with rights enforced by a benign world authority. Internationalism is a political movement, and its exponents are, as it were, the patriots of a *patria* which does not yet exist. Since most people seem instinctively to prefer their own values to those of foreigners, our next question must be to ask: who advances the project of internationalism?

The answer is that internationalism appeals to a self-consciously enlightened public opinion, an opinion whose doctrines descend, indeed, from the movement which actually called itself the Enlightenment. This is a public opinion prone to express its preferences in terms of abstractions such as rights, peace, negotiation, equality, rule of law, inclusion, etcetera. It is evidently a rationalist cast of mind, which treats every defect in the human condition as a problem for which lawyers and experts (lawyers especially) can always find a solution.

To say this is to say that internationalist activists have commonly been trained at universities in the social sciences, but have understood their training as having transcended the academic disciplines (which recognise that every logic of inquiry has its own specific limitations) in favour of a more general ideological orientation. This orientation rejects the current world order as radically imperfect, and aims at salvation by implementing whatever the favoured abstractions currently seem to intimate. Implementing such policies commonly collides, however, with the instincts and prejudices of most of the populations even of Western countries, and this is the reason I have on occasions referred to this area of public opinion as “Olympian”.²

The Olympians look upon the rest of humanity rather as the divinities of Mount Olympus looked upon the all too human Greeks. The Australian version of what in fact is an immemorial split in the human race pits the contempt of Sydney and Melbourne intellectuals against the supposedly prejudiced Territorians and Western Australians, whose frustrations led them to implement a policy of mandatory sentencing for any third criminal act. Olympians are political actors constituted by the self-ascribed rationality of the general opinions they hold, of whom one might say, with Coriolanus on the plebs, that rubbing the poor itch of their opinions has given them scabs.

Here, then, in the Olympians we have a new class, as they have been called, consisting of academics, journalists, lawyers, teachers, clergymen, politicians and administrators. They are not only prepared to take issue with their own governments, but positively take a pride in doing so. Such dissidence is thought to express a virtue above the mere parochialities of local patriotism. But as political actors seeking to transform the world, Olympians have several disadvantages. One of them is that they are not a very warlike set of people. They are crusaders of the pen rather than the sword. Today the levers of power in Western societies give Olympians access to a military power to which (except when they need it) they are essentially hostile. Their ultimate aim is to create a world that won't need soldiers – indeed, even now they are trying to turn warriors into a different kind of thing called a “peace keeper”.

There is another problem impeding their project of perfecting the world. Almost all of them are to be found in Western countries. They are all the products of Western liberalism. Their challenge lies in presenting an essentially Western middle class view of the world as if it expressed

the essence of humanity itself. On the other hand, in their doctrines of rights and their recourse to international law, they do at least have instruments capable of disrupting other societies. Their secret weapon against non-Western societies is women, who have a great deal to gain from Westernisation.

Acute readers may already have recognised a contradiction in my account of the Olympians who sustain the humanitarian movement. On the one hand they stand for humanity itself, and therefore espouse equality, but on the other hand they conceive of themselves as having a rather superior status. But we need not dwell greatly on this point, for it merely reveals that we are dealing with something entirely familiar: namely, a new version of the Marxist doctrine of the vanguard of the proletariat.

The Attack on the State

It is now time to draw some of these threads together. Our focus is on the sovereign state, which is under attack from two directions.

Internally, the modern state presents the picture of a high taxing authority much given to excessive control over the projects of its subjects. Indeed, its fatal temptation has always been to impose upon its unfortunate subjects some national ideal, and whether the ideal involves the conquest of other states, or the conquest of abstractions such as poverty, hardly matters if we judge it in terms of the threat to individual freedom. There is no doubt that the state is a bloodstained and oppressive monster not easily to be defended by a rational liberal. Olympians will always find plenty of support in assailing the state, and consequently in assailing sovereignty itself.

Externally, the state is under attack by internationalist humanitarians who want to subject it to the authority of global organisations acting to guarantee human rights, punish those who have committed genocide or war crimes, open up free trade, protect the environment from pollution, prevent mankind's cruelty to animals, and spread the benefits of modern medicine to the less fortunate of the world. This may be an ambitious, perhaps even an absurd programme, but there is no doubt that it has a powerful rational appeal.

What stands in the path of these utopian visions is the fact that reality is more specific than the abstractions in terms of which the doctrine is framed. The most serious evils in the contemporary world hardly ever involve sovereign states in the West; they almost invariably occur in political units which can hardly be described as states in the Western sense at all. Many African, and some Asian and Latin American states come into this class, along with strange perversions of European civility such as those of Nazi Germany and Communist Russia, in which universalist doctrines (themselves actually internationalist in character) entirely shattered constitutional restraint.

In established Western states, whose current defects are trivial by comparison with some other civilisations, the main internationalist attack is directed less at the state itself, which has often turned out to be (in these terms) "on message", than at the thing called "society", which basically signifies the attitudes of the peoples themselves. By contrast with the forms of political incorrectness found among the people, the legal processes and legislative agencies that have been set up in most Western countries exhibit all the virtuous rationalist managerialism an Olympian could desire. In other words, this form of salvation is being advanced both by the entrenchment of political correctness in Western law, and by the spread of human rights through accession to international treaty.

This is the clue to what is actually happening. What confronts us is a new order advanced through a new kind of politics practiced by a new class. And it is an order significantly hostile to democracy. One of the major current adventures of this new politics is the European Union, which is being created by a pan-European oligarchy that frankly recognises that there is a "democratic deficit" in its arrangements, but is certainly in no hurry to do anything about it.

An anti-democratic rationalism is the dominant mood of contemporary politics in the West. Its politics cannot be understood except in terms of such abstractions as environmentalism, rights, equality, multiculturalism and other policies whose creators are experts in what is thought to be the knowledge of arcane matters, and which are notionally for the people, but certainly not by the people. Thus, mandatory sentencing in some Australian states has democratic support, but encounters passionate Olympian opposition because it removes power and discretion from the members of the new class who are seeking to perfect the world.

In philosophical terms, the Olympian project seeks to move politics away from the concept of will, which emerged with the sovereign state, towards something a little like reason – morality, perhaps, or some ideal model to be copied. One might put the point more briskly. The Humanitarian project (like the Communist dream of the withering away of the state) seeks to abolish politics altogether, because politics is unpredictable, and the *demos* is never to be entirely trusted to have the right opinions. And this raises the question of how the humanitarian project manages to suppress politics and subject modern societies to a supposed pattern of perfection. The talk is all of democracy, the reality invariably that of moral authoritarianism.

Techniques for Stifling the Voice of the *Demos*

We may mention several ways in which popular opinion is being marginalised in order to transform the state into a different kind of association.

The first is in using the law as an instrument of the Humanitarian project by way of unscrupulous changes in the interpretation of words. Here we encounter one of the greater paradoxes of our time: that the law, which previously guaranteed our freedom, now tends to subvert it.

Law as the guarantor of freedom in the past depended on two things. One was a highly technical skill of interpretation by those who developed the English common law, and the other was a powerful sense of vocational limitation, which respected the separation of law from politics, and the subordination of law to the will of the legislature.

The salvationist project undermined this virtue by diffusing into every branch of jurisprudence the axiom that everything is politics. This was a marvellously relaxing principle. It led judges to indulge their moral and political convictions by imaginative feats of legal interpretation. Given the erosion of vocational commitment, words can carry almost any meaning at all, and this corruption can be indulged by judges in the happy belief that they are behaving in an “ethical” way. What the US Supreme Court has done with freedom of expression justifies the Internet joke that the Court has decided, by 8 to 1, that the American people are unfit to govern.

A second device for avoiding popular discontent with government is the passing of some moralistic Act whose implementation is confided to an independent agency set up to give the maximum discretion in the way it implements whatever the desirability may be. Affirmative action agencies and unfair dismissal tribunals are notable examples throughout the English-speaking world. In Britain, when Orange Order parades became a topic embarrassingly hot for a government to handle, a Parades Commission was set up with the power to decide which parades could go ahead without too much damage to public order. Those who criticised its decisions were attacked as rejecting the rule of law. But a decision on policy is not, of course, the same thing as a law.

The real arena of Olympian advance is in supranational organisations such as the European Union, whose techniques are exemplary. Here broad general policies can be agreed by officials on their abstract merits, and then imposed on member states, who often find that the small print of implementation contains unsuspected implications. Governments are then able to say, quite correctly, that their hands are tied. In many cases, rulers and their civil servants are happy conspiring in a process which removes power from the people. The complexity of law in any case

begets the despotism of the lawyer. Democracy perishes when local opposition gets overridden by a superior institution acting in the name of some higher moral ideal.

The ultimate arena for Olympian striving is to be found in the treaties in which international organisations define a set of ideals to which states may voluntarily sign up. The devilish power of this device lies in the fact that the government signing up earns the applause of the articulate, and is confident it will have passed from office by the time the embarrassments begin to appear. The talk is about rights, and especially equal rights, which are engines used to break down the actual preferences of the individuals in civil society. Those preferences may well in some cases be deplorable: they may often express racial or religious animosities. Using the authority of law and the power of government to override these preferences is a “quick fix”, which can achieve something like instant inclusiveness, but is very far from being costless to the texture of civil society. A homogenised society can only be created at the expense of the more vigorous virtues of individuality.

One marker of this development is the revival of the term “governance” as a soothing alternative to “government”. As the state has moved into every sphere of life, its subjects have become hopelessly entangled in a web of regulation, guidelines, codifications and rights, the source of all of which becomes increasingly obscure. Bureaucratic complexity easily defeated accountability. We find ourselves living inside a kind of power blubber called “governance”. We toss and turn, and hurl ourselves at what constricts us, but we never seem able to get at the accountable source of what imprisons us. We can no longer ask (as we could with government), “Who did it?”

The End of Repealability

It is characteristic of this attempt to imprison us within a framework of rules whose provenance is obscure, that it prefers international treaty to national legislation, and constitutional provision to mere enactment. The reason is that the Olympians are moral enthusiasts who have persuaded themselves that their moral preferences are the pinnacle of human moral progress, and are therefore suitable to be entrenched beyond any possibility that some later popular backlash might weaken or destroy them. This is the sense in which the humanitarian movement is profoundly hostile, not only to popular opinion, but to democracy itself. And Olympian rhetoric makes any repeal of any of these rules and codes almost unthinkable. It does so by formulating its principle in terms of rights. A right is always presented as a gift from authority to the people, and who would want to take away any good thing that has been given? It would be an invitation to uproar.

Does it make any sense to ask if one may be liberated from a right? Contemporary legislation seems positively addicted to solving all problems by throwing rights at them. But every right imposes duties on other people, and these duties may well become onerous. Economic and social rights often impose heavy financial costs on the taxpayer. Equal rights abolishing discrimination can impose intolerable burdens on clubs, industrial enterprises, the media, and virtually any form of public enterprise. A universal right to higher education, for example, is destructive to universities, which require unusual talents in the students they take in.

But my argument that a power of repeal is becoming increasingly essential can best be illustrated from the way in which governments have tied their hands by signing up to high-toned international treaties. The British government, for example, has recently been agonising over asylum seekers who turned up in a plane hijacked in Afghanistan. The problem results in part from the 1951 *U.N. Convention on Refugees*, which was created in response to a world in which refugees were quite small in numbers. Today they are part of a mass movement of peoples. The British government acceded to this Convention by treaty. Must it now repudiate the treaty? Or must it seek to persuade other countries to agree in modifying it? Or must it try to persuade international lawyers to reinterpret its provisions so as to be more suitable to British policy? One embarrassment is that under the Convention, no criminal conviction, including one for hijacking,

counts as a reason for denying asylum. The only exclusion is for crimes against humanity or against international peace.

Again, the British Government (by contrast with the French) has failed to exercise its option to exclude the military from the *Strasbourg Declaration of Human Rights* which it is enacting into domestic law. The number of lawyers in the army has doubled in the last decade (partly because of implementing the rights of women) and the numbers will double again before long. This causes no serious problems in quiet times, but a future government might well find that this commitment directly damages the *salus populi*. Or, for an account of the problems likely to arise from the *U.N. Convention on the Rights of the Child*, see Barry Mailey's *Importing Wooden Horses*.³

There is little doubt that the embarrassments caused by international agreements are beginning to multiply – especially in areas such as minerals and the environment, where regulation takes for granted scientific judgments many of which will certainly be revised as time goes by.

History is thus, in a sense, repeating itself. In the Middle Ages, a large and obstructive ecclesiastical establishment was an incubus restricting the aspirations and energies of the English, and the problem was solved by the development of the practice of sovereignty. We are now in the presence of a new establishment, which increasingly ties our hands, and which can boast only the most rudimentary equipment for responding to the needs of a changing world.

The Danger of the Emerging World Order

We began with something like a mystery: who is trying to kill sovereignty and the nation state? We have discovered that there are many suspects both within and without the state, but that the real situation is that sovereignty is to be killed in order to turn the state into something that will subserve the Olympian ambition to create a world guaranteeing a good quality of life to every individual on the planet.

Given the crooked timber of humanity, there is something slightly mad about this ambition, but that does not prevent it being used to acquire power in the service of transforming the order of human life. The present multiplicity of sovereign states, in some degree capable of co-operating for their common benefit, is being replaced by a comprehensive legal order adumbrating a single basic form of life. This framework is to be locked onto our complex human world. And it is basically happening because the benign self-limitation of the articulate professions has been lost in their hubristic ambition to create a perfect world.

Lawyers, bureaucrats, clergymen, journalists and even scientists have often lost specific skills along with their vocational sense, but compensate by espousing a kind of moralised politics. Judicial review now invades substance instead of guarding the form that secures our freedom. Most of those corrupted have not yet recognised that they do not agree on what perfection is, and that few things are more ruthless than the conflicts of perfectionists. While we may think it justified by the evil conduct of some non-Western states, it bears most heavily upon those states that need it least. This is the vicious circle in which we are involved: that Western regulation will only work properly in Western circumstances.

There is, however, a wider significance to the emerging world order. In attacking the state, expect, for example, some vicious mayhem as humanitarians tangle with the *sharia*, another image of perfection.

There is no doubt, of course, that the world needs a balance between law and politics. Pure democracy, for example, with its bias towards majorities, might well be suspected of lacking restraint in dealing with a minority Aboriginal problem. Yet the legal system in the Northern Territory of Australia had so enraged the leader of that Territory that, in an incautious moment, he described it as “corrupt”. This dogfight represents in miniature a conflict that is building up throughout the Western world. And it arises from the collapse of self discipline in the liberal vocations. The basic corruption is in politics trying to pass itself off as legality, religion, or truth.

It is but one of the ironies of this emerging situation that the humanitarian is above all concerned to destroy the individual who has so long sustained the state. The populations of European states in the past were self-governing in two ways. They enjoyed democratic citizenship, but they had also largely internalised the skill of living in terms of the rule of law. They enjoyed religions to guide them and projects of their own to animate them. The religions are today being marginalised, and replaced by a civil religion of humanitarianism and tolerance, a religion being energetically promoted in the schools. The individual projects which once gave vitality to Western society are being broken on the wheel of government control.

Governments want to help us. They want to be our partners. They want to subsidise us, and to regulate us, and eventually to control us. And in this endeavour they respond far less to what we want, than to their alliance with the internationalist movement that seeks to homogenise the world. We live, less and less, in a world suitable for individualists (they are regularly accused of greed and selfishness), and our situation can only get worse unless, as a beginning, sovereignty revives the possibility of repeal.

Australians above all remember the guns of Singapore, which faced the wrong way to meet the actual challenge. In the 20th Century, we mistrusted the state for its oppressions, and looked to the law as our guarantor against arbitrariness and despotism. New movements have created new threats to freedom which are adept at disguising their real character. What we must in this new century recognise are the residual virtues of the state (largely found in its democratic and responsive character) and the fatal corruption of the law by politics.

Sydney, 25 February, 2000.

Endnotes:

1. The Netherlands is now, of course, part of the European Union, and has thus delegated large areas of its sovereign authority to an outside body. The mechanism of this delegation has been the *Treaty of Rome*. Quite to what extent the members of the Union have given up their sovereignty is a difficult question. In the case of Britain, I think it might still be possible for Parliament to repeal the *European Communities Act* of 1972 and repudiate the *Treaty of Rome* and its successors, but whether Britain has given up its sovereignty is uncertain. What is certainly false is the common idea that Britain has “pooled” its sovereignty with others. Sovereignty can be delegated, or transferred, but it cannot be pooled.
2. Kenneth R Minogue, *Olympianism and the Denigration of Nationality*, in Claudio Veliz (ed.), *The Worth of Nations*, The University Professors: Boston University, 1993.
3. Barry Mailey, *Importing Wooden Horses in Upholding the Australian Constitution*, Proceedings of The Samuel Griffith Society, Volume 10 (1998), pp.201-220.