

Louis B. Sohn: Recollections of a Co-conspirator

David Kennedy*

My deep sense of affection for Louis Sohn is hard to explain, since we never got to know one another well, either professionally or personally. I was his student in the late 1970s, in his last years at Harvard, and I worked as his research assistant on and off, most steadily while studying for the bar exam in the summer of 1980. He spent much of that summer in Geneva working on the Law of the Sea Treaty,¹ while his secretary and I held down the fort. Although I think I took all of his courses and spent many hours in his warren of offices on the second floor of the International Legal Studies building, I don't remember our ever discussing ideas in a way that would have allowed us to explore one another's point of view. I know that Louis read a number of articles I wrote about international law and institutions over the ensuing years—evaluating me for tenure, among other things—but I don't recall his sharing his reactions with me.

As a result, I have never succeeded in describing the bond that connects me to Louis to my satisfaction, and it may well elude me here. It may all be as simple as gratitude. He took me under his wing in law school and seemed to think it natural to be interested in all things foreign and to be quite disinterested in the details of the peculiar American constitutional arrangement. Legend has it that my appointment as an assistant professor began when Louis recommended to then-Dean Sacks that I take over his courses after he reached the then mandatory retirement age. I was still a third-year student, and Louis never mentioned this to me. When the Dean called me in during the summer after graduation, I worried there had been some mistake on my transcript. When Al Sacks told me, in his own roundabout way, that Louis had suggested I might be interested in an "appointment with the school," I assumed he meant some kind of alumni position, and graciously declined—I was on my way to Washington to practice.

I had my first serious conversation with Louis when he returned from Geneva and called me in to straighten things out. That afternoon may have been the first time I thought of Louis not as a teacher or legal scholar, but as a co-conspirator. It was a pretty oblique conversation, but I left it feeling that Louis

* Manley O. Hudson Professor of Law, Harvard Law School.

1. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

and I were part of the same secret society, working together in an unspoken common resistance to the parochial establishment—at Harvard, in the United States, across the world. He said he hoped I'd take over his courses on international and United Nations law and thought I'd be "fine at it." He didn't say why he thought so or offer any advice about how or what I should teach. He just thought I'd be "fine." He said I would probably need to write something—perhaps I could take a fellowship and do that. The whole thing took about five minutes, and then we turned back to work.

He told me about Geneva and negotiations over the dispute resolution sections of the Law of the Sea Treaty.² His story jump cuts texts and people. He'd offer textual suggestions and precedents to this or that diplomat, assess their response, be back to them the next day with something slightly different. Perhaps, he'd say, the way they approached the problem in this obscure maritime arbitration could be useful. The result of his labor in Geneva would be an elegant cornucopia of different dispute resolution mechanisms. It was the procedures that fascinated him—finding ways that people could feel comfortable coming together to resolve their differences, an endless evolving smorgasbord for states and diplomats with conflicts and tensions.

I knew that Louis had a reputation for being a dreamer, an idealist, a utopian. But when we spoke, he never put things in such general terms. We were always looking for a text that might offer a way out of this or that practical impasse. He would pull something out that he thought might be useful, and I'd look for precedents and alternative drafts, sorting our way through the deep piles that filled his three small rooms. It all seemed quite practical to me, if part of a world I knew nothing about. Louis was at home everywhere in the world of U.N. conferences and international administration, and he was always quite precise about the ways in which political interests had led people here or there into an administrative tangle. Somewhere in his pile of texts would be a practical way out.

In law school, I thought myself hard-boiled and realistic about things, and I'm sure I considered Louis's nineteen-fifties fantasy of *World Peace Through World Law* daft. But I never heard Louis mention his work with Grenville Clark. It was already long ago. He was working on this week's problems, on the upcoming negotiations about environmental law or human rights, or on the administrative procedures of the U.N. staff tribunals. Many years later, Nathaniel Berman and I took Louis out to dinner and asked him about his experiences in Cambridge during the Second World War. Having come to work briefly as a research assistant, he found himself alone in a foreign country through the war as knowledge of the Holocaust came to light. He responded to our interest by recounting the specific bits of the Harvard Research draft codifications of international law he was working on at the time with Manley Hudson, implying somehow that he was too busy to have thought

2. *Id.* Annex VII.

much about the war or his home front. Tragedy and dislocation had not marked him with sadness or earnestness. If anything, the opposite—the worst had been, and now we could take delight in the work of moving on.

Building a new world—it was slow, painstaking work, rooted in detail. Louis kept a parallel card catalog of every book purchased by the International Legal Studies library—books went straight from acquisitions to his office, where his secretary would type up the cards while he perused the new stock. By the time he returned from Geneva, quite a pile had accumulated and we looked through them together. He passed quickly over the academic studies and theories. He was most interested in reports of what had actually been accomplished in this or that organization and in the compilations of documents. But the academic volumes were always good for an impish chuckle, as he'd sum up the provincial preoccupations of this or that rival in a word or two.

I don't know just how Louis differed, or felt he differed, from McDougal or Gross or Henkin or any of the other international law scholars of the time. He never said in so many words. As in all secret societies, much was unspoken. He would wink and nod and chuckle, and then we'd be back searching for a text. What did come through was his powerful ethical vision and sensibility. Louis stood, *sans peur et sans reproche*, for an ethics that measured merit, function, and value in ways altogether different from his American and international law colleagues. I would not have said that so clearly at the time—they were all humanists, liberals, cosmopolitan intellectuals of one or another kind. But their world was somehow smaller and older than Louis's, cramped by defeat and hemmed in by what passed as realism. Louis may have worked one document at a time, but he was no small-scale reformer, no moderate about how far we had yet to go.

When I was his student, Harvard Law School was intellectually preoccupied with big methodological battles. American political and legal liberalism was being put on the defensive. The prestige of courses in federal courts and the legal process was waning. Constitutional law was the new status course, displacing federal courts and procedure. The big ideas resided in liberal theory and law and economics and critical legal studies.

All this seemed to pass Louis by completely. In class and out, with his wry humor and puckish grin, Sohn gave the impression of someone who knew a secret, something terribly funny and a bit naughty. This was the secret: he was part of another world, where all this didn't matter a whit.

Louis was never a faculty baron at Harvard—the school seemed to look right through him. Louis seemed to take it all in stride, but I have often wondered what it was like to work for so many years in an institution whose priorities and methods and cultural sensibility were simply not his. That afternoon in his office, he admonished me not to take the place too seriously and to focus on the real work. Your significance for international affairs, he said, will increase exponentially with your distance from Harvard Square. The great work is elsewhere.

Louis easily hid his humanist conspiracy in plain sight. A short, bald man with a soft foreign accent, he spoke a bit too quietly to be a forceful presence, even in his own office. There was nothing flashy about him, except maybe his beret. Holed up in the International Legal Studies building, he seemed a stranger in a strange land—his intellectual and political engagements quite different from those of his colleagues. At the time, he taught the law of the sea, international law and various U.N. law courses, all to quite small groups in the International Legal Studies seminar room outside his offices. He was neither well-known nor much respected by my cohort of J.D. students. Louis was working on a vast imaginary project to build up international law's potential and institutional possibility to express his cosmopolitan hope for a better world. Huh? And he was doing it one document, one textual precedent, at a time, recording the institutional innovations of many dozen working organizations so that they could be remembered and repeated and revised. It is hard to think of a project less likely to connect with a generation of students preoccupied with dissecting the latest filigree on theories of adjudication that might ground the liberal predilections of the U.S. Supreme Court.

Many of the foreign students were part of his world, and he supervised dozens and dozens of L.L.M. and S.J.D. dissertations. I have repeatedly run into diplomats from one small country or another who remember coming to Cambridge to meet with Professor Sohn. They would have discussed new ideas for revising this or that procedure in the U.N. system, progress on the drafting or adoption of this or that human rights instrument, reporting their experiences in this or that sub-commission or administrative tribunal. Louis would always ask them for documents—did they have the text of the resolution, or a copy of the rules of procedures? And he would file them away.

He worked quietly and steadily, sorting his remarkable collection of public documents—rumor had it that he was a U.N. depository library all on his own, it was said because he had been “at San Francisco” when the Charter was drafted. He compiled casebooks and document collections. I know I thought him obsessed with documents. By the time I worked with him, they had really begun to stack up—dozens and dozens of piles seven or eight feet tall, lining the floor two piles deep in front of metal shelving jammed to the ceiling with still more, until three rooms were at capacity. And he knew where things were. If a student was working on a paper and some sub-commission had once issued a report on the same topic, he would burrow through the piles and he'd find it.

Looking back, I realize that these were not just documents. For Louis, they were a record of imagination, innovation, evidence of a project for a better world being born. Although his family had perished in the Holocaust, he was not stockpiling evidence of a crime. He was saving evidence of the new world he believed was being built. Did that make him a dreamer? It certainly made him an inspiration.

I never shared Louis's affection for the U.N., nor his passion for documents. But I did, and still do, share his dream of a just world made one. Louis was as whimsical as they come, but his ethical moorings ran deep, forged by experience and sunk in his heart. Yet he wore his ethics lightly, not at all a burden or a censor on his imagination and sense of fun. That afternoon, he reported his conversations with Dean Sacks in a conspiratorial whisper, his eyes twinkling. I got the sense he felt that retiring, slipping me onto the faculty, would be our little caper, good fun. Louis encouraged me to take a Sheldon Fellowship in Europe after graduation to write up my third-year paper as an article, and he arranged for me to be hosted at an international law institute in Germany. When I returned a year later to teach, he was gone. In the first years, he would return to campus every semester or so to meet with doctoral students he was still supervising, and we would have lunch. Eventually, his visits stopped.

I have wondered if he thought he made a mistake, entrusting an American Midwesterner with his Harvard courses. I have certainly taken a different intellectual path. But my thoughts have often turned to Louis in my office—most powerfully when I chuckle and wink with my own students and try to share the conspiratorial promise that we might indeed live in a very different world. All we have to do is wink and think it so.

