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**POLITICAL THEORIES— OLD AND NEW.**

# POLITICAL THEORIES— OLD AND NEW

*By*

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## PREFACE

I am bringing out this volume again in response to a very insistent demand by my numerous students—past and present—in the Punjab and in other provinces. My aim in the preparation of this work has been to provide a good, authentic, critical and a scientific text book for students of political science. But it will be found to cover a wider range of topics relating to the state, government and their problems as is generally dealt with in works of this kind ; hence the book will prove equally useful to the teacher, student, legislator, administrator and the general reader who is interested in the burning and thorny topics of the day such as liberty, citizenship, rights, socialism, democracy and its problems and dictatorship and its problems : and in the problems relating to government and its structure. Chapters on the nature, scope, methods of political science and relation of political science to other social sciences have been included. Keeping in view the scientific character of the book I have endeavoured to give an exhaustive and critical treatment to each topic or problem in the light of its modern background, and authentic scientific thought and practice and with special reference to India. However, I make no pretensions to completeness.

At the end of each chapter I have placed a list of select references in English on the topics treated in the chapter. These references make no pretence to scholarly completeness but are meant to encourage the reader to read as extensively as possible. I hope that essays given at the end of each chapter will stimulate thought as well as further interest and enquiry in the subject. I may say with some confidence that the reader will find some originality, richness of matter and some provocation of thought in the book ; but it is not for me to speak of the merits of the book, of this the reader alone is the judge.

In the preparation of this work I have many debts to acknowledge. I would like to emphasise how much I owe to the late Sir. C.Y. Chintamani and how much I learnt from his inspiring and thought-provoking discourses, comments and criticisms on a variety of political problems during a period of seven years (1932-1939) during which I had the good fortune of his guidance, encouragement and help. How much I owe to Professors Hocking, Laski, Finer, MacIver, Merriam, Joad and Barker will be apparent to any one who reads these pages ; their works have been and are not only an immense source of inspiration to me, but a store-house of knowledge as well. My old teacher, at the Lucknow University, Dr. E. Asirvatham, now the Head of the Department of Political Science and Public Administration at the Madras University, is the unconscious sponsor of this book, as it was suggested by his thought provoking, instructive and inspiring lectures when I joined the Lucknow University for his courses in political philosophy. It is not possible for me to find adequate words to express what I and the book owe to him, and his Political Theory. I have made suitable acknowledgements wherever I have made use of it, though I have disagreed with many of the conceptions upheld by him and which have become obsolete in view of the changing political thought. During a period of twelve years (1930-1943) I have enjoyed the privilege and the benefits of discussing with him most intimately the most thorny and intricate problems of political, social and moral philosophy. When I look back on certain inspiring discourses and discussions in the seminar class of the Honours School of Political Science of my days at the Lucknow University and re-read these pages in the light of those talks and discussions, how halting and incomplete they seem when compared to what was said and discussed there. If this book, which is only an humble expression of my gratitude to him, has any merit it is due to the efficient teaching of political philosophy

in the Department of Political Science of my time, of the Lucknow University.

I wish to thank Mr. Stanley Jones of America and Professor Pierre Ceresole of Switzerland, the President of the Association for International Social Service.

To Mr. Jones, I am grateful for many opportunities, in spite of his immense pre-occupations, allowed me at the Master's House, Inayat Bagh, Lucknow, to discuss with him problems of socialism, communism and religion, apart from his instructive and informative discourses on these problems delivered to select gatherings under the auspices of the Lucknow Christian College and the Lal Bagh Ashram. The book owes not a little to these discourses and talks.

To M. Pierre Ceresole, who came to India at the head of the International Labour Brigade to help in the Bihar reconstruction after the Bihar Earthquake, I owe thanks for affording me opportunity when he visited the Lucknow University to discuss with him some of the problems of socialist society. That I was privileged to benefit by these special opportunities is due to the courtesy and kindness of my teachers—Drs. V. S. Ram and E. Asirvatham.

My thanks are also due to the Librarians of the D.A.V. College, Lahore, the Punjab University Library, Lahore, the Political Science Seminar Library, Punjab University, and to Mr. Fazl Illahi, Librarian Lucknow University.

A few printing mistakes have crept in the book for which the indulgence of the reader is craved.

It only remains to say that if this book with all its defects, for which I am alone responsible, and merits creates a healthy interest among the students of political science and helps the general reader to understand problems of political philosophy I will consider my labours amply rewarded.

INDRA DATT SHARMA

Krishan Nagar, Lahore  
14th February 1943.



**I may disagree with what you say but I will fight to death for your right to say it.**

*Voltaire*

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# POLITICAL SCIENCE

## CHAPTER 1

### POLITICAL SCIENCE—NATURE AND SCOPE

The subject which deals with the state, government and their problems is called political science. It is a study of society from a special point of view. Man is not only a member of society, but he is a member of a particular society. This particular society is organised in a particular way and is called the state; political science deals with man as a citizen in his relation to the state. It were the ancient Greeks who developed the study of political science for which they found rich material in their city states. Therefore it will not be wrong to say that this science originated in the Greek city states. But it may be pointed out that even before the Greeks oriental writers had written and speculated on political science, state and government. Due to their outlook on life they were concerned more with the personal virtues and vices of the ruler than either with the nature of their government or with political problems. Consequently they failed to develop political science as a science. It is interesting to know that at that time there did not exist political science as such as religion, superstition, and mythology were all mixed up and one could not be separated from the other. Whatever social sciences there were they were considered to be a branch of theology.

The Greek thinkers were the first to extricate it from religion and mythology. They viewed man's social life more philosophically. Political speculation was not only suggested but invited as well by the variety of political constitutions found in the cities of ancient Greece, and above all by the brilliant political activity and resource found in Athens, the city of cities, where "in art, in letters,



and in civil life the power and beauty of Hellenic genius came to their full height". The active intercourse between these small city states, and the frequent changes experienced by each provided a stimulus to critical and comparative analysis of political practices and institutions. In the robust yet refined, cultural and political life of the ancient period of Greek history, great and learned Athenian philosophers elaborately explored, examined and discussed political questions that are even today considered fundamentally important and in terms that are widely accepted even to-day.

Thus the credit of first developing political science as an independent and a systematic science belongs to the Greeks.

Political science differs from natural sciences. The latter have precise and definite nomenclature ; but political science lacks precise and a generally accepted name and the first difficulty which one meets is with regard to the definite meaning of such terms as 'state,' 'government,' 'political science,' 'politics,' 'administration'. These and many other terms are used in different senses and mean quite different things to different persons. For example, the meaning of democracy is not the same in Russia and England. Often such terms have both a scientific and a popular meaning each differing from the other though used indiscriminately. This is distressing as it often leads to confusion and misunderstanding of political problems. One cannot go very far in discussing and understanding political problems and questions pertaining to the state and government, unless the meanings of such terms are made clear and properly understood.

Political Science in its modern form is comparatively a young and a new science. Consequently it does not yet possess to fuller extent a terminology of its own. There is no science which is so much in need of a good terminology as is political science. It is often noticed that some of the terms used have a double meaning and are capable of

favourable or unfavourable interpretation and as a consequence of which they are distorted by speakers and writers and are used for subserving a particular interest or for supporting a particular premise.

The study of this science was more advanced and developed in Germany and France than in England. In fact its study in the English universities is ascribed to Sir John Seeley's lectures on politics at Cambridge in the last quarter of the nineteenth century.

This term is employed by earlier writers to describe the whole science of the state. It is defined in text books and dictionaries as at once an art and a science and is employed by text writers in both senses. It is derived from the Greek terms *Polis* which means a city state or *Politeia* which means a constitution. According to the Greeks, everything that touched the life of the state could come under the term 'politics.' If used in original Greek sense the use of this term is not objectionable, but as modern usage has given it a new meaning it has become useless as a scientific term. The term as generally used to-day refers to :

1. "The art of controlling a party and securing the nomination and election or the appointment of particular persons to office."

2. Actual administration of public affairs.

When used in its broader sense, it is divided into practical and theoretical politics. Among other writers this division is adopted by Sir Frederic Pollock<sup>1</sup> according to whom practical politics includes :—

- (a) Actual forms of Government (The State).

- (b) The working of Governments (Government), and Public Administration.

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1. History of the Science of Politics (1925), pp. 99—100.

- (c) Law making and Laws.
- (d) International Relations, Peace, War and Diplomacy.

Theoretical politics embraces :—

- (a) Theory of the State.
- (b) Theory of the State as a legal person.
- (c) Theory of Government ; and
- (d) Theory of Law-making.

Practical politics deals with “the actual working of Government and the various institutions of political life”<sup>1</sup>. Theoretical politics “is concerned with the fundamental characteristics of the state, without particular reference to the activities of Government or the means by which the ends of the State are attained”.<sup>2</sup>

Though earlier writers (Jellinek, Holtzendorff, Treitschke, Waitz, and Sidgwick) preferred the term politics to political science, modern writers show a distinct aversion for the use of the term ‘politics.’ Discriminating and careful writers (specially the Germans) generally observe the distinction between politics and political science. For example, Bluntschli holds that “politics” is more an art than a science and has to do with the practical conduct or guidance of the state, whereas “political science” is concerned with the foundations of the state, its essential nature, its forms or manifestations, and its development.<sup>3</sup> This distinction is observed by English and American writers also. For example, John Seeley and James Bryce in England, Burgess and Willoughby in America, have used the term “political science” in preference to “politics” in their works dealing with the origin, organisation, nature and sphere of the state. The term “politics” since it lost its classical meaning has become ancient if not obsolete while ‘political science’ is more in vogue. The above distinction between the two terms is at once useful and convenient ; ‘political

1. Gilchrist, Principles of Political Science, page 2.

2. *Ibid*, page 2.

3. Bluntschli, Theory of the State, pages 1, 3.

science' being more scientific than 'politics', the former is preferable to the latter.

It is considered more comprehensive as well as more scientific than the term 'politics'. The **Political science.** theory of the state as well as the entire field of knowledge about the state fall within the province of this term. Thus it maybe said to cover the study of the state in theory as well as in practice. A sub-division of it dealing with theoretical politics—origin, nature, end and justification of the state, is called Political Philosophy as well as the Theory of the State, whereas when it deals with the organization, functions and forms of government and its institutions it is called Comparative Government as well as Constitutional Government.

According to Willoughby political science has to deal with three great topics—(1) state, (2) government and (3) law. The fundamental problems of political science are :—

1. An investigation of the nature and origin of the state as the highest political agency for the realization of the common ends of society and the formulation of fundamental principles of state life ;
2. An enquiry into the nature, history, and forms of political institutions ; and
3. A deduction therefrom, so far as possible, of the laws of political growth and development.

✓ The task of political science may be said to study the public powers in their fundamental relations, to examine the conditions in which they make themselves manifest, their end and their effect, and finally to investigate the state in its inner nature. Thus we may say that political science is the science of the state, of government and of their problems.

It is sometimes held that there is not one political science but many, therefore, the term "political sciences" is

**Political sciences** more appropriate than the term political science. According to this view it is said that the term "political science" does not correspond with facts, as there is no single science dealing with the state, but there are a group of related sciences, each dealing with particular aspects of the state. Thus, it is argued, that the modern state is a very complex organization presenting itself under different aspects and is capable of being studied from numerous and different view points. The huge mass of knowledge dealing with each aspect or phase of the state has developed its own dogma and history which is quite distinct from the rest. Each aspect in its turn having become complex needs a special treatment at the hands of the scholar. Thus there has been a tendency among writers to group them into separate categories and consider them as distinct sciences. For example Giddings says, "whenever phenomena belonging to a single class, and therefore, properly the subject matter of a single science, are so numerous and complicated that no investigator can hope to become acquainted with them all, they will be divided up among many particular sciences."<sup>1</sup> Gilchrist observes in this connection that the science with which we are here concerned (political science) has really developed into a number of independent sciences and that it is impossible to draw absolute lines of demarcation between them.<sup>2</sup>

Thus one may point out that the plural term "political sciences" corresponds more nearly with the facts and is employed by many writers, notably the French, who generally employ the term '*Sciences morales et politiques*'.

According to the above view a political science is one which deals not necessarily with the state in all its phases and aspects or relations, with any "particular phenomena of the state or any class of phenomena either as a whole or incidently, directly or indirectly."<sup>3</sup> Thus one may say that there are as many political sciences as there are conceivable forms or aspects of the state. In this

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1. Principles of Sociology, Chapter 2.

2. Principles of Political Science, p. 1.

3. Garner, J. W. Political Science and government, p. 7.

sense constitutional history, economics, diplomacy, public law, etc., may be called political sciences, as they all deal either incidently or fundamentally with some kind of phenomena belonging to the state. Professor Giddings goes to the extent of enumerating even philosophy as one of the "political sciences," and in some of the Scottish universities to-day the professor of political science is also the professor of philosophy.

But the advocates of the single term "political science" argue that really speaking the so called political sciences are co-ordinate social sciences and not independent political sciences. Thus Munroe Smith in support of this view says, "The various relations in which state may be conceived may be subdivided and treated separately, but their connection is too intimate and their purpose too similar to justify their erection into different sciences."

Without taking sides in the singular and plural term controversy we may say that either form may be justified by making a distinction between political science in its strict sense, which is that it deals exclusively with the phenomena of the state, and political science in its broader sense as covering all sciences which deal with particular aspects of state life—history, sociology, economics, etc. When employed in the former sense, the singular form should be preferred; when used in the latter sense the plural.

This term is not so commonly used by modern writers except in a narrow sense. It is as it should be. It deals with only the theoretical aspect of the state and therefore cannot be applied to cover what writers call applied or practical politics. Some writers hold that the term political philosophy is better than political science. But political science is more comprehensive and definite than the term political philosophy. Gilchrist points out that political philosophy is prior to political science, but has to use the material supplied by political science<sup>1</sup>.

1. p 3.

The theory of the state is only another name for political philosophy. Its subject matter is the same. Some writers consider the use of the term more appropriate than the term political philosophy. But it has the same defects as the term political philosophy has and hence the term 'political science' is preferred to both of these. It may be pointed out that theory of the state is not concerned with the study of any particular state but of the essentials of the state.

### Nature and Scope.

It is dangerous to define because all definitions are incomplete as they never go far enough and more often than not are contradicted by facts. This is more true in political science ; but to agree with Sidgwick it is equally true that "to obtain clear and precise definition of the leading terms is an important achievement in all developments of scientific inquiry."

Bluntschli, the famous Swiss scholar and writer, defines political science as "the science which is concerned with the state, which endeavours to understand and comprehend the state in its fundamental conditions, in its essential nature, its various forms of manifestation, its development."

Sir John Seeley holds that political science investigates the phenomena of the government as political economy deals with wealth, biology with life, algebra with numbers, and geometry with space and magnitude."

According to Professor Leacock, "political science deals with government".

Gareis a noted German publicist says that "political science considers the state, as an institution of power in the totality of its relations, its origin, its economic problems, its life conditions, its financial side, its end etc."<sup>1</sup>

Paul Janet, a celebrated French writer, offers a definition of political science when he says that

1. Garner, J. W. Political Science and Government (1935), P. 7.

it is "that part of social science which treats of the foundations of the state and the principles of government."<sup>1</sup>

Ancient political science was no more than the science of municipal government as is illustrated in Aristotle's 'politics', which is practically limited in its scope to the treatment of such polities only as were city states.

Modern political science, on the other hand, may be said to be the science of the nation state and is tending to become the science of the world state. Professor Burgess holds that modern requirements of territorial expansion, representative government and national unity, have made political science not only the science of liberty but also the science of sovereignty.

Political science is described by the late professor Garner as the science which deals with the phenomena of the state.

In conclusion we may point out that all these definitions are agreed upon one essential point, that "the phenomena of the state in all its varied aspects and relationships, as distinct from the family, the tribe, the nation, and from all private associations or groups though not unconnected with them constitute the subject of political science."<sup>2</sup>

In brief we may describe political science as the science of the state and of government and say that it begins and ends with the state.

### Scope of Political Science

Political science, it has been pointed out, is the science of the state and of government.

The state came into existence as a result of the gregarious nature of man, the economic advantages of co-operation and of the necessity for protection of life and property. "The state originated in the bare needs of

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1. Garner, J. W. Political Science and Government, p. 9.

2. Ibid, p. 27.



life," we are told by Aristotle, "and is continued in existence for the sake of good life." And as Burke points out in his 'Reflections on the French Revolution' that the state "is to be looked upon with reverence because it is not a partnership in things subservient only to the gross animal existence of a perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born." Therefore the field of political science is the study of what the state has been, what the state is and what it should be. The scope of political science may be briefly summed up as follows :—

1. It deals with the nature of the state, seeking to explain what the state really is.
2. It deals with the expressed will of the state—law.
3. It seeks to determine and apply correct principles of public administration.
4. It deals with the various organs of the government, legislative, executive and judicial, explaining their natural relations.

In a word it deals with all the various aspects of the state and begins and ends with it.

### Why call it a Science ?

It has been assumed so far that the study of the state and government may under proper conditions be treated as a science. But there is a school of **Negative view** thought which holds that political science should not be regarded as a science. Their arguments may be summed up as follows :—

1. Political phenomenon is dynamic and not static, therefore, the strict methods of scientific inquiry and investigation cannot be applied to it.

2. Being itself variable and of inexact character it cannot guide political conduct accurately. For example it is said that it cannot definitely tell how to deal with a difficult political situation.
3. It fails to supply materials out of which hypotheses may be constructed.
4. Political writers do not agree as to its methods, principles and conclusions.

And further it is said that on account of the magnitude and complexity of the subject matter dealing with the state as well as of its strictness and variability political science, from the beginning, has been embarrassed by the weight of its wealth.

**Positive  
view**

The views of those who assert that political science has every claim to be treated as a science may be summed up as follows :—

1. Political science is one of the social sciences. Social sciences are not, and cannot be, as exact and accurate as natural sciences. Therefore political science cannot be expected to be as exact as philosophy or chemistry or mathematics.

{ The phenomenon of political science is social-man and therefore dynamic } hence, a study which deals with variable phenomena cannot be definite and exact. This is one of the limitations of political science. It cannot claim to be an exact science because such laws which are applicable in the study of natural phenomena cannot be applied to the study of the science of the state. It is next to impossible to draw precise, clear cut and definite conclusions from social or political phenomena. We can only deduce general laws and principles which can help us to understand and solve many difficult problems of government.

2. It is quite easy to experiment with natural phenomena—chemical or physical. But it is impossible to experiment with social phenomena in the same manner in which a physicist

or a chemist can experiment. It is not possible to introduce at will socialism in one country and fascism in another in order to investigate the effects of these two forms of government. The two phenomena—political and natural—are quite different from one another. Still it may be pointed out that laws passed by states are experiments and a student of political science can make definite conclusions as a result of the study of the effects of any such law.

3. It is not the only science which is inexact. There are inexact natural sciences also *e. g.*, meteorology. Meteorological data at any given time are too completely unknown to allow any accurate prediction. The late Viscount Bryce in his address as President of the American Political Science Association (1900) maintained that political science is a science in the same sense as meteorology is. He said that it is a science in the sense that "there is a constancy and uniformity in the tendencies of human nature which enable us to regard the acts of men at one time as due to the same causes which have governed their acts at previous times. Acts can be grouped and connected, can be arranged and studied as being the results of the same generally operative tendencies."

In conclusion we may point out that political science has every right to be regarded as a science—of course an inexact one. The consensus of scientific opinion also favours this view. Aristotle described it as the master science and applied scientific methods in the study of Greek city states. German scholars have done more than any one else to give it the character of a science. The most eminent of them Holtzendorff defended its claim to be ranked as a science. "With the enormous growth of knowledge," he said, "it is impossible to deny that the sum total of all the experiences, phenomena and know-

ledge respecting the state may be brought together under the collective title of political science." Lord Bryce held that politics is not a deductive science but an experimental one. Though it cannot try experiments yet can study them and note their results. It is a progressive science because the experience of each year adds to our materials as well as to our comprehension of the laws that govern human society.<sup>1</sup> Sir Frederic Pollock is of the opinion that "there is a political science in the same sense that there is a science of morals."

"Whether there is a political science," says Huxley, "depends on whether any rational principles can be found to regulate the forms of constitutions, the determination of the sphere of the state, which make a complete and systematical branch of knowledge, clearly formulated and understood in their mutual relations." It may be pointed out that authorities are now agreed that the phenomena of the state present a certain connection or sequence which is the result of fixed laws, though more variable than those of the physical world.<sup>2</sup> These phenomena can form appropriate subjects for scientific investigation; and the principles and laws which may be deduced from this investigation can be applied to the solving of concrete and practical problems of state. All that is required is that the enquiry should be conducted according to a definite system with due regard to the relations of cause and effect, so far as they are ascertainable, and are in conformity with certain well recognized rules of scientific investigation.<sup>3</sup>

Therefore we must say in conclusion that the weight of authoritative opinion justifies that political science should be regarded as a true science. It serves a practical purpose by deducing sound principles as a basis of wise and right political action and by exposing the teachings of a false political theory. It cannot be denied that as a science it

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1. *American Political Science Review* (1900) Vol. III, pp. 1—3  
"The Relations of Political Science to History and Practice."
  2. Garner, J. W. *Political Science and Government*, p. 13.
  3. *Op.*, Cit. p. 13.

is yet imperfect in comparison to physical sciences which is due to the reason that the facts with which it deals are far more complex and the causes influencing the social or political phenomena are not easy to control and are subject to perpetual change. Even to-day it is probably the most undeveloped and incomplete of all the social sciences but the one which has the greatest future of all the rest because without any exaggeration we can say that it is both a science and an art with certain limitations.

#### QUESTIONS AND TOPICS.

1. Define "Political Science" and distinguish it from "Politics" and "Political Philosophy."
2. Is Political Science really a science? Give reasons for your answer.
3. Discuss briefly the nature and scope of Political Science.
4. Explain "the phenomena with which political science deals is of dynamic and not of static nature."

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## CHAPTER 2

### THE METHODS OF POLITICAL SCIENCE.

It has been pointed out in the previous chapter that political science, as a social science, is an inexact science. The methods which can be applied to the study of natural sciences cannot be applied to the study of this science. Still writers have endeavoured to determine methods and processes which may be applied to the study of political science. Political science is the science of the state and the state is the product of economic, social, cultural and political conditions. It undergoes a change with the change in environment. A student of political science has to understand and interpret correctly such changes. He has to study, observe, and analyse institutions and social and political tendencies and movements. He is concerned not only with what the state is or has been but also with what it should be. Thus his investigation is bound to be of a dynamic character. But such an investigation to be conducted successfully requires methods. Writers have differed as to the precise number and nature of methods. They have always endeavoured to find out methods by which they could collect and classify political phenomena to yield practical results. The generally accepted methods of political science are the following <sup>1</sup>:—

1. The experimental Method.
2. The Historical Method.
3. The Comparative Method.
4. The Philosophical Method.
5. The Method of observation.<sup>2</sup>

Before the discussion of each of the above methods is begun, it must be pointed out that there are many

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1. Glichrist, R. N. Principles of Political Science (1938), pp. 6—9.  
2. Garner p. 27,

difficulties and limitations under which scientific investigation of political phenomena is conducted. These limitations and difficulties are bound to be there. The reason **Some difficulties and limitations regarding methods of Political Science.** for their existence is simple. The material with which political scientist is concerned is quite different from the phenomena with which a chemist or physical scientist has to deal. The nature and character of the political phenomena are such as

not to allow the use of any artificial aids or instruments by a political scientist either to increase or guide his powers of observation, examination or for the recording of results. In the field of political science an investigator has to work without the help of these aids, instruments, and contrivances without which it is impossible for the physical scientist to work. The difficulties and limitations regarding political science may be summed up as follows :—

1. Political science deals with phenomena which do not follow one another according to the unchanging laws of sequence. They occur at 'indeterminable intervals' and constitute "indeterminable and perpetually varying series."
2. As a result of the above it is more complex and difficult than natural sciences. The numerous elements which are not defined and cannot be defined but which must exist in any science of man make the application of even the aforementioned methods difficult.
3. Political science is a social science and social facts never take place at regular periods as the manifestations of general forces. In fact they occur as results of the actions of certain individuals. It is possible to evaluate the facts of physical sciences ; they are subject to unvarying and uniform laws. Each particle of matter is indetical with every other particle of its own kind. This is not the case in political science. The units of the social or political organism may



quite differ from one another making observation and examination difficult.

4. Social or political phenomena is not governed by any general or invariable laws. No doubt ancient philosophers and modern sociologists have postulated certain laws but they are all vague and indefinite.

We may consider each of the afore mentioned methods. It has been pointed out that there is not much scope for deliberate and conscious experimentation in political science. The reasons, as pointed out by Sir George C. Lewis, are simple. “We cannot treat the body politic as a *corpus vile* and vary its circumstances at our pleasure for the sake of only ascertaining abstract truth. We can not do in politics what the experimenter does in chemistry. We cannot try how the substance is affected by change of temperature, by dissolution in liquids, by combination with other chemical agents, and the like. We cannot take a portion of the community in our hands as the king of Brobdignag took Gulliver, view it in different aspects and place it in different positions in order to solve social problems and satisfy our speculative curiosity.”<sup>1</sup> Political science deals with man and it is not possible to weigh and tabulate human values and human motives as one can weigh and tabulate chemical substance. One can conduct experiments in chemistry or physics over and over again till final or conclusive result is reached, but what is called experiment in political science can never be made twice because the same conditions can never be exactly reproduced. You cannot step twice in the same river. You can measure the force, the humidity and the temperature of the wind but can you measure in the same manner the passions of a mob? No, you cannot.

Thus it seems that there is no possibility of experimentation in political science in the sense in which it is applied in physics or chemistry or in other exact sciences.

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1. George C. Lewis. Methods of Observation and Reasoning in Politics, Vol., 1, pp, 164—65.

Still when a state passes a new law, enunciates a new policy, and establishes a new political system it may be said to be an experiment in government. If a student of political science studies such experiments he can reach positive conclusions. It is his business to observe keenly political happenings and experiments which are always occurring around him and make his deductions. Experiments are always being tried by governments on the community. The introduction and establishment of Socialism in Russia, of National Socialism in Germany, of Fascism in Italy, and the passing of successive Acts by the British Parliament for the Government of India are only experiments in government which are being tried on the peoples of each of the countries named above.

The present age may be said to be the scientific age (why not of scientific barbarism?). And to-day we do not rely much on experimentation which is conducted unconsciously. Thus in the field of politics also conscious political experiments are made in the light of past experiences and mistakes. Note, for example, the fate of the Simon Report or the passing of the Government of India Act 1935; or the grant of responsible self-government to Canada based on the Durham Report of 1839; or the passing of the Statute of Westminster 1931 as a result of the post war (1914—18) problems with regard to the relations between the Dominions and England; or again the prohibition and the new legislation in America.

This method is regarded by writers as a form of the comparative method. The facts and experiences of the past states have no value if they are not classified and compared with the existing political institutions. According to Sir Frederic Pollock it 'seeks an explanation of what institutions are and are tending to be, more in the knowledge of what they have been and how they came to be what they are, than in the analysis of them as they stand.' History provides the student of political science with knowledge and facts with regard to political institutions, from which he is able to formulate generalisations and morals. This method is

**Historical Method.**

valuable in that it helps to determine steps and policies which may be considered practisable to be applied in future circumstances. But it has its limitations as is pointed out by Gilchrist : “ The goodness or badness of political institutions which history shows us is determined on other grounds than historical, *i. e.*, ethical or philosophical.”<sup>1</sup> History cannot be made the only guide to determine a particular course, or to adopt a particular policy for the present and the future. History is apt to be employed to support one’s prejudices or notions which are preconceived; this is dangerous and should be avoided.

In conclusion we may agree with Sidgwick that the primary aim of political science is what ought to be so far as the constitution and government are concerned and that this end cannot be discovered by a historical study of the forms and functions of government, still the historical method has a place in the science of the state as by means of it, “we can ascertain the laws of political evolution and thus forecast, though dimly, the future.”<sup>2</sup>

This method is as old as Aristotle. The historical and comparative methods may be said to be interdependent and supplementary to each other. It has been effectively used by writers and thinkers of all ages. In ancient Greece it was employed by Aristotle, later it was used by Montesquieu, in more recent times De Tocqueville, Laboulaye, Bryce and others have used it.

The study of history to be useful enable one to make proper comparisons. This method consists in the collection of a definite body of material through the study of present politics or those of the past to enable the investigator to discover the ideal types and progressive forces of political history by a process of elimination, comparison and selection from the material so gathered. But it must be pointed out at the sametime that only those states which

1. Gilchrist, *op. cit.* p. 7.

2 Sidgwick, H. *Elements of Politics* (1919) pp., 7—14; also *Development of European Polity*, p. 5.

possess common historical, political, and social institutions and common historical basis may be usefully compared. According to a noted French writer the comparative method discovers the 'general current' which runs through the whole body of constitutions and which is approved by experience.

The proper application of this method requires that both resemblances and differences should be taken into consideration. Irrelevant comparisons as well as hurried conclusions should be avoided. In effect 'Comparisons should not be pushed too far and analysis must not be far fetched.'

Its chief exponents are Bluntschli, Jean Jacques Rousseau, John Stuart Mill, Henry Sidgwick and others. It starts from 'some abstract idea about human nature and draws deductions from that idea as to the nature of the state, its aims, its functions and its future. It then attempts to harmonise its theories with the actual facts of history.'<sup>1</sup> In other words it takes abstract ideas and concepts as a starting point and then tries to substantiate those abstract ideas or concepts in reference to the facts of history. It may be said that this method combines and relates ideas with facts. But the use of this method is open to many dangers. For example it may take such abstract ideas and concepts as a starting point which may have no reference or relation to actual facts of history and thus may become merely utopian, imaginative and visionary. The French Revolution (1789) and the Russian Revolution (1917) have shown clearly the dangers of this method when employed carelessly.

This method advocates the study of political institutions and governments by means of observing their working at close quarters. Before Bryce wrote *American Commonwealth* and

**The Philo-  
sophical  
Method.**

**The Method  
of Observa-  
tion<sup>2</sup>**

1. Gilchrist, R. N. *Principles of Political Science*. (1938) p. 9.

2. *Political Science and Government* (1935) pp. 27.

Modern democracies, he personally visited those countries and watched at close quarters the actual working of political institutions in those countries. He supplemented his observations by meeting and gaining information by personal conversation with men of affairs in those countries. Thus this method is based on personal information and direct observation and therefore may be said to be practical and concrete. It cannot be said to be merely theoretical and utopian as it is in living touch with realities. But at the same time it needs to be employed with caution. Bryce offered advice and warning to those who intended to use this method. One must have a trained eye and a mature judgment to reach sound conclusions because the facts are numerous and often conflicting. Superficial analogies and resemblances must always be avoided. An investigator must be critical of his sources of information. Personal or accidental causes must be disengaged from general causes. Generalizations not based on facts must be avoided. According to him the first desideratum is to get the fact, and then "make sure of it. Get it perfectly clear. Polish it till it sparkles and shines like a gem. Then connect it with other facts. Examine it in its relation to them, for in that lies its worth and its significance. It is of little use alone. So make it a diamond in the necklace, a stone, perhaps a corner stone, in your building." <sup>1</sup>

In conclusion it may be said that the best method in political science would be the combination of the historical and philosophical methods. They do not conflict with one another, on the other hand they are corrective and supplemental to one another. An intelligent and a careful student would correct and test his abstract principles by the actual facts of history and understand and interpret the facts of life in the light of abstract principles thus blending the philosophical with the historical. The two celebrated exponents of this method are Aristotle and Edmund Burke.

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1. Bryce, *Modern Democracies*, Vol. 1, p. 17.

It also needs to be pointed out that methods and points of view from which political science may be studied must not be confused. There is a school of writers chiefly German and French who make this mistake and speak of sociological, biological, psychological and juridical methods. These are points of view and not methods. The sociological point of view means the application of the theory of evolution to political phenomena ; the biological attempts to interpret and explain the state and its organization by comparing it to human organism ; the psychological applies psychological laws to political phenomena ; while the juridical considers political society merely as a subject of laws, rights and duties, to the exclusion of other social forces which influence man in his relations with his fellow men. To conclude with Gilchrist that political science as a science "is more difficult than the natural sciences. The difficulty in the application of the methods arises of the innumerable elements, undefined and undefinable, which occur in any science of man. Much patience in comparing details, much care in applying inductive methods, much mental balance in making judgments, all these are necessary in political science. It is a science which taxes the scientific mind to the utmost ; and its conclusions, no less than the discoveries of Chemistry, vitally affect the daily lives of the inhabitants of the globe." <sup>1</sup>

#### QUESTIONS AND TOPICS.

1. What is meant by the term Methods of Political Science ? Do you agree that methods which are applied in the study of natural sciences can be applied to political science also ? Give reasons for your answer.

2. Discuss briefly the Historical Methods. Do you consider it the best method in political science ? Give reasons for your answer.

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### CHAPTER 3.

## POLITICAL SCIENCE IN RELATION TO OTHER SCIENCES.

Political Science deals with man in organized society. But man is a social being and has numerous aspects of his total social life. Political science deals only with his political life, the other aspects of his total social life are dealt with by other social sciences. Thus political science is only one of the social sciences dealing with man and as such though autonomous is yet related to other sciences. Thus an eminent French writer on political science, Paul Janet quoted by Garner, says that political science is "closely connected with political economy or the science of wealth; with law, either natural or positive, which occupies itself principally with the relations of citizens one to another; with history, which furnishes the facts of which it has need; with philosophy, and especially with morals, which gives to it a part of its principles."

This conception of the relation of politics with other social sciences is not new nor is it ultra-modern. From the time of Aristotle, the great, onward there would be found writers who emphasised the social, economic and psychological background of political phenomena. Aristotle's analysis of the psychological and economic factors in political institutions; Nicolo Machiavelli's psychological study of leadership; Jean Bodin's crude attempt to work out the physical and psychic foundation of politics; Althusius' emphasis on the group as the basis of social and political life; Harrington's views on the importance of property and mental capacity in political activity and policies; Montesquieu's notion of political relativity; Ferguson's anticipation of Gumplowicz in tracing the historical origins of the state; the economic interpretation of politics brought forward by the Ricardian socialists;



Hamilton's contention that the raw material of politics was to be sought in the facts of human nature and not "in musty parchments;" the keen analysis of the part played by property in determining political alignment which is contained in the writing of John Adams, Madison, Webster and Calhoun.<sup>1</sup>

Orthodox and respectable political scientists have rarely conceded that sociology has any special relations to political science. In fact most political scientists in the past have refused to acknowledge sociology as a science. It has been either wholly ignored or looked upon as an insolent pretender. Only thirty years ago that a leading New York daily wrote about a distinguished American sociologist as "the fake professor of a pretended science". And about twenty years ago an ex-president of the American Political Science Association declared that sociology was essentially worthless and unscientific and that its entire scope has been already covered more adequately by the special social sciences.<sup>2</sup> According to one of the most progressive American political scientists sociology has done little more than "wander around in the dim vastness of classified emotions, touching neither the substantial borders of the state on the one hand nor the equally tangible structures of commerce and industry on the other."<sup>3</sup>

On the other hand Comte, who is regarded as the founder of sociology, was inclined to bring all of the social sciences under sociology.

And L. F. Ward goes a step further when he describes the lofty position of sociology as follows: "The special social sciences are the units of aggregation that organically combine to create sociology, but they lose their individuality as completely as do chemical units, and the resultant product is wholly unlike them and is of a higher order. Sociology, standing at the head of the entire

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1. Merriam, Barnes and others, A History of Political Theories, Recent Times, (1932) p. 399, 400.

2. Ibid p. 357.

3. Ibid, p. 358.

series of the complex sciences, is enriched by all the truths of nature and embraces all truth. It is the *scientia scientiarum*."<sup>1</sup>

But such a view of sociology could hardly be either flattering or acceptable to political scientists who were prepared to resist the swallowing of their subject. But as sociology developed it was found to be less of a cannibal than had been feared by political scientists. It came to be recognised though slowly that instead of swallowing political science, sociology supplied much useful material for political analysis and brought into bold relief many important hitherto obscure, political problems. To-day the newer political science appears in a sociological cast while "sociology has derived much information of great value from the descriptive data and the refined analysis of political behaviour, which political science has produced."<sup>2</sup> It has been aptly remarked that the political is embeded in the social, and if political science remains distinct from sociology it will be because the breadth of the field calls for the specialist and not because there are any well-defined boundaries marking it off from sociology.<sup>3</sup> Sociology is the basic social science. The field which it covers is very extensive and vast and therefore modern writers limit its application to aspects of life other than political.

The relation between sociology and political science may be briefly summed up as follows :

1. We may say, " sociology is the science of society ; political science is the science of the state, or political society. Sociology studies man as a social being, and as political organisation is a special kind of social organisation, Political Science is a more specialised science than sociology."<sup>4</sup>

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1. I. F.Ward, *Pure Sociology* ; p. 91.

2. *Op. cit.*, p. 359.

3. Ross. *Foundations of Sociology*, p. 22.

4. *Principles of Political Science*, p. 17.

2. *Sociology* is mainly concerned with the historical growth of the political community, but *Political Science* assumes such a community as existent.

3. *Sociology* deals with the development and working of all the organs of social control, where as *Political Science* deals only with the state and with its related problems.

4. *Sociology* takes the *individual* as the unit of study. It views the individual as a 'social creature'—a neighbour, a citizen, a fellow worker. But *Political Science* takes the *state* as the unit for investigation. It takes the state as a unit of study quite distinct from other organisations of similar kind—family, tribe, clan or the nation.

5. *Sociology* takes note of conscious as well as unconscious activities of man while *Political Science* is concerned only with his conscious political conduct.

In conclusion we may say that sociology must get from political science its knowledge of the details of political organisation and activities, while political science can only avoid becoming metaphysical by accepting as indispensable prolegomena the sociological generalizations with respect to the underlying social foundations of law and political institutions.<sup>1</sup>

Political science is very intimately related to history. The study of history is essential as a basis for a proper and an adequate understanding of political, social or legal institutions. A student of political science should study not only the nature of political institutions but also the history of their development. He should also know the extent to which they have fulfilled the purpose of their existence. History provides rich material to a political scientist for comparison and conclusion. The political scientist may have no use for all history, but political history has great value for him as it concerns itself with the origin, development and decline of states. It is true

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1. Merriam, Barnes and Others, *op cit.*, p. 360 -61.

that history provides much of the material for political science, but we can not agree with Professor Freeman who says that history is past politics and politics is present history. It is simple to understand. History of art, literature, military campaigns, industries and religion has little relation with political science and does not provide any material for political investigation. And not all Political science is history. Much of it is of a philosophic and speculative character and can not be called history. History and political science are supplementary and mutually contributory. According to Professor Seeley, 'history without political science is a study incomplete, truncated, as on the other hand political science without history is hollow and baseless'. Professor Burgess is of the opinion that if they are separated the one becomes a cripple if not a corpse, the other a will-of-the-wisp.<sup>1</sup>

The intimate nature of the relationship between History and Politics is expressed by Seeley in his classic remark that "History without political science has no fruit. Political science without history has no root."<sup>2</sup> He held that history and political science will ultimately become identical with one another. But this is not possible. No doubt both are complementary and interdependent, but both have some fundamental differences between them:

1. No doubt history provides much raw material for political science, but all history is not politics. For example history of art, literature, religion language, etc. has little, if any, relation to political science.
2. History and political science march together for all the length of their frontiers but they are separate and independent studies<sup>3</sup>. This is

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1. Garner, J. W. Political Science and Government, p. 32.

2. Seeley, J. R. Introduction To Political Science (1914), p. 4.

3. Barker, E., The Study of Political Science And Its Relation to cognate studies (1928) p. 13.

specially true of political theory which bears no relation with history as it is of speculative and philosophical character.

3. History is concerned with the narration and interpretation of events in the order in which they happen. But the function of political science is to explain political institutions and is concerned with history to the extent to which it throws light upon their character.

In conclusion we may say that though political science and history differ in their scope, method and end the study of history 'gives the third dimension to Political Science where as the study of history is bound to be incomplete unless political aspects of historical events are taken into consideration.

The relation between political science and economics is very intimate. They mutually influence one another. The economic aspect of man's life is that which is **Political Science and Economics** concerned with the creation of material well-being. But there is no agreement on the question of a boundary line between material and non-material well-being. We can not enter into discussion about this question here and may simply say that economics means that part of human behaviour which deals with the acquisition of income. Generally speaking it is a matter of money, but really it is a question of acquiring goods and services. Thus acquisition of income belongs to the field of economic inquiry, and the political scientist is concerned with observing and analysing the relationship between the way men organize themselves to acquire an income, and also the way in which they organise their social institutions to exercise influence and force over all others.

Again the intimate nature of the relationship between political science and economics is evident from the fact that as late as the eighteenth century economics (political economy) was regarded as a branch of statesmanship; and political economists dealt with government and not with

wealth. Senior was of the opinion that this science involves a "consideration of the whole theory of morals, of government, and of civil and criminal legislation."

It may be pointed out that the influence of economics upon political life was first effectively explored by Karl Marx. His predecessors in this inquiry were Aristotle, the Physiocrats, and Adam Smith. Aristotle could not neglect it, because the whole polity of the Greek city state was based upon slave labour. The Physiocrats and Adam Smith preached the freedom of economic enterprise from governmental control. They were economists first and political scientists afterwards. But the teaching of Marx was different from that of the classical economists because Marx was a sociologist.

The relation between political science and economics is further explained by the fact that production and distribution of wealth are affected by state control or state regulation. All economic activity depends upon and is carried on within the state according to the laws made by the state. The relation between political science and economics is very intimate.

- (a) They mutually influences one another.
- (b) On the other hand economic causes greatly influence political movements. Political ideas and institutions determine to a very large extent the economic life of a people. Many of the important present day problems are politico-economic problems—e. g., questions of state ownership, of means of production, labour legislation, socialism, capitalism and tariffs etc.
- (c) Solution of many economic problems must come through political action. The basic principles of state socialism are quite as much political in character as they are economic.

*Difference.* In spite of their close relation the two differ from each other, and their problems are not the same. It is clear to understand. In Economics, money is the standard of price, price is the objective symbol of

value; when we turn from economics to politics, we turn from *things* to *human beings*. Again Economics or its progress may have a technique; the application of fire and electricity or of the printing press—inventions revolutionising civilisation. Politics is not concerned with this machinery of civilisation on its technical side, but is concerned with the relation of man to man.

Ethics is the science which deals with conduct and its rightness or wrongness. The science of ethics has close connection with political science. **Political Science & Ethics.** Plato considered politics a branch of ethics. On the other hand ethics is considered a “branch of nothing else than state-craft.....and as a whole the subject ought rightly to be called, not Ethics, but Politics.” It will not be wrong to say that a study of Ethics is a ‘political inquiry.’ In this connection Aristotle points out that politics ‘comprehends and makes use of all the other practical sciences’ because its end is nothing less than ‘the true good of mankind. It is only within the state that he can reach his perfection. Since man must live in the state, therefore the question of human conduct, its rightness or wrongness, and the moral ideal are concerned with the state. It means that it is not possible to divorce political ideal from the ethical. There cannot be conceived a perfect state where wrong or perverted ethical ideals prevail. Thus the science of ethics is prior to political science.

It has been pointed out that the distinction between ethics and politics as worked out by Aristotle is not real, because to him the end of the state is the ‘good life’ of the people. We have noticed that he, too conceives a very close relation between politics and ethics. The first writer of any importance who is considered to have separated ethics and politics is Niccolo Machiavelli. He separated ethics from politics, ‘even to the point of paradox and scandal.’ He frankly subordinated ethical principles to political necessity. To him the success and preservation of the state were paramount considerations.

To-day the close relation between ethics and politics is not considered so important. It is pointed out that

principles of individual morality should not be confused with principles of public morality. It is further said that if ethics were made the only guide for political conduct it may hamper political progress. In the modern world ethics and law are closely related, but the law, in practice, in the modern world is the law of the class state. It is subservient to the interests of that class which makes it and for which it is made.

It is due to the above reasons that ethics and politics are not to be confused. They are to be distinguished, not because the study of ethics is not valuable to give taste and sanity to the ends which individuals seek through political means, or because the student of politics can do away with the study of facts of moral conduct, but because the maintenance of that close alliance between ethics and politics diminishes the value of each discipline by confusing the requirements and conclusions of the two<sup>1</sup>. It is essential not to confuse the study of politics with an irrelevant consideration of values.

The relation between political science and psychology has become quite marked, specially in recent years. But the value and significance of psychology for the study of political science was not at first fully realised; but in time political psychology began to be discussed and the terminology of psychology came to be employed in political enquiry. Psychology is a comparatively new and a young science. It is a science of mental and moral behaviour.

In politics, the psychological tendency was best represented by the thought of Graham Wallas. In his two best known works *Human Nature in Politics* and *The Great Society*, he endeavoured to explain political phenomenon in 'terms of psychological forces rather than in terms of form and structure.' E. Barker points out that the application of the psychological method to the riddles of universe is a fashion of the day. It may also be pointed out that fashions change and don't endure.

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I. Catlin, G.. *The Science and Method of Politics*, p. 346.



In its modern form psychology 'runs into the mould of natural science for example, like physics, it decomposes its phenomenon into atoms and electrons calling them instincts; and like biology, it explains the present by the primitive. It explains the behaviour of civilised man by the instincts developed in his rude beginnings.

Whatever the importance and value of the application of psychology to political science it needs to be pointed out that its application to political inquiry is open to many dangers. For example in explaining social behaviour by primitive instincts, it may overlook any standards of value and 'blend the high with the low.'

In conclusion we may point out that to-day psychology has contributed more to politics than anthropology; though it is a more dangerous contributor.

Many of the factors which economics contributes to politics or to the study of society are in their ultimate analysis psychological factors.

The limitations of psychological method in political science are clearly brought out by E. Barker<sup>1</sup> as follows<sup>1</sup> :

1. The social psychologist does not deal in terms of value. Values belong to the moralist. It simply means that the psychologist and the biologist stand on the same stool while looking at politics.

2. The disadvantage of the psychologist is that he explains civilised life in terms of savage instinct.

3. Social psychology explains the higher by the lower. It is not a correct method.

4. An eminent psychologist Mr. MacDougal, gives a full explanation of instincts, in his *social Psychology*, that act in society, but hardly shows how they issue into society.

Instincts, habit and behaviour to be properly understood must be studied in relation to intelligence and conscious behaviour.

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1. Barker, E., *Political Thought in England*, (1848—1914) pp. 150—57.

Geographical conditions and physical environments considerably influence national character and national life of peoples. Writers from Hipocrates and Aristotle to Buckle, Ratzel and Huntington have all emphasised the influence of geographical conditions on the political aspirations, institutions and character of the people.

In the modern period Jean Bodin was the first to bring out the influence of geography on politics. He was followed by Rousseau who worked out a close relation between the character of the climate and the nature of political institutions in a country. Montesquieu, in 1748, brought out at some length the influence of physical conditions upon social and political institutions, and worked out specially relation between phsysical environment and condition of liberty.

Buckle in his 'History of civilisation' (1849) quoted by Garner points out that the actions of men, and therefore of societies, are determined by reciprocal interaction between the mind and external phenomena. Specifically he maintained that it is not the free will of man which determines the actions of individuals and societies, but rather the influence of physical environment, particularly climate, food, soil and the general aspects of nature<sup>1</sup>. It is easy to exaggerate the influence of physical environment and geographical conditions upon individual character, political institutions, government policies and national accomplishments. But the relation of goegraphy with political science is not a problem of 'man versus nature, but of man, society and nature evolving together through reciprocal influence.'

In conclusion we may say that geographical conditions have considerably influenced the determination of national policy and to some extent the character of political institutions.<sup>2</sup> But to-day goegraphy has little influence on social and political institutions.

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1. Political Science and Government, (1932) p. 41.

2. Ibid, p. 42-43.

There are some writers who consider political science as a biological science also. They apply biological laws to the study of the phenomena of the structure and life of the state.

**Political Science and Biology.**

Herbert Spencer is one of the most prominent writers of those who have tried to explain the structure and life of the state in biological terms. They argue that the state is an organism and is subject to the natural laws of growth, functions and decay. Herbert Spencer held that the state bears a close analogy to biological organism and possesses organs which are possessed by animals. Thus he made an effort to bring political science into relation with biology. But he was not successful as no proper connection could be worked out between the two. In modern times political science and biology seem to be coming nearer to each other than before as modern research in social and political organisation is advancing.

**QUESTIONS AND TOPICS.**

1. Discuss the relation between Political Science and Economics or Political Science and Ethics.
2. Discuss 'History without political science has no fruit, political science without history has no root.'
3. How does psychology influence political science ?

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## CHAPTER 4

### THE NATURE OF THE STATE.

All of us live in the state. Be one a rich, a poor or a middling he is subject of a state, you can not escape the state; you may leave one state in disgust, but you will find yourself the subject of another state. However you may wish to get rid of the state, it is an impossibility which you can not accomplish unless you cease to be a human being. This is the reason why the state is called the most universal of all other social associations and institutions. We may point out that there are other universal associations also *e.g.*, the family. But the family and the state differ from one another. More of it here after.

They say that the state is the most prominent of all other social institutions. Well, there is not much exaggeration in this claim. It is a fact, whatever the causes of its being most prominent, the fact of its being most prominent is un-challenged.

Again it is said that the state is natural, It is natural because it has grown out of the natural instincts of man. It is pointed out by Aristotle that by nature man is a political being; he is a social animal and this instinct of sociability caused the original family to develop into a village and when several villages developed there came into existence the state (which the Greeks called the city.)

It is again maintained that the state is necessary. It simply means that it may be possible for man to live without or outside other social institutions but it is not possible for him to live a normally healthy life without or outside the state. Aristotle explains at some length how the state is at once natural and necessary. To quote his words: "He who is unable to live in

society, or who has no need because he is sufficient for himself, must be either a beast or God: he is no part of a state." Thus modern writers ascribe the foundations or basis of the state in the natural impulses of the individual and due to this fact point out that the state is un-destructible. "The state grows, is permanent and reappears when destroyed."

The state having arisen out of the natural instincts of man can not be said to be artificial. But it may be pointed out that it is artificial in the sense that it is a man made institution; though it must be admitted that both conscious and unconscious factors have gone to make it. It is necessary as has been said before for the highest development of the personality of man as Dr. Asirvatham points out.

It is not possible for man to develop the highest in him or reach the highest of his perfection without or outside the state. Therefore the state is essential for man's growth and development. Thus Aristotle held that the state first came into being so that we might live but is continued so that we might live happily. To quote him, "the state comes into existence originating in the bare needs of life and continuing in existence for the sake of good life." In simple words the main reason for the first coming into being of the state is to be found in the satisfaction of economic wants. But the reason for its continuance lies in its being indispensable to good life which to the Greeks meant both a life of happiness and nobility. Plato, Aristotle's great master, found the necessity for the state in the simple fact that no man is self-sufficient, he says that the need of man for social co-operation and social endeavour, at a certain stage of development, expresses itself in the state.<sup>2</sup>

It has been said that the state is the most universal, most powerful and permanent of all social institutions. It is natural as well as necessary. But what is the state? The answer to this question becomes clear and simple if we first distinguish the state from various other organizations.

1. Coker, F. W., Readings in Political Philosophy (1938), p. 57.

2. Political Theory (1940), p. 25.

The state is an association of human beings. But there are also other associations of human beings which come into being to satisfy human needs and ideals. Within the territorial boundaries of every highly civilised state one finds an almost staggering number of associations other than the state such as trade unions, bar associations, churches, education societies, public service associations, political parties. It will not be an exaggeration to say that one of the notable fact of modern life is the tendency of individuals to organize themselves into groups or associations for the promotion of common, social, political, economic, religious, scientific and other interests. The result of this tendency is that to-day society is a great network of such associations. But the state is an association quite different from other associations. More of it hereafter.

We have pointed out that the state and society are not identical. But the early Greeks did not distinguish the one from the other. The nature of their city-state was such that it precluded any possibility of making a distinction between the society and the state. The size of the Greek city was small its population compact, its problems simple, its citizens were knit together by the ties of common interest; the intercourse between the citizens was regular and frequent. Naturally they could not regard the state as something different from society or society as something different from the state. They belonged to the state and the state belonged to them. In the happiness of the state they found their happiness, in its misery and calamity they found their misfortune. Thus no wonder that to the Greeks the state and society were identical.

But to-day we have no justification for the identification of the state with society. The reasons are simple. The state is a society politically organised. The term society is employed in a variety of meanings. It may be used equally to describe the whole humanity or a group of human beings. It is pointed out by one writer that

society "transcends the individual state and crosses state boundaries without regard to their existence," *e. g.*, the Theosophical Society, the Society for the Prevention of Cruelty to Animals or the Roman Catholic Brotherhood. Thus it is clear that society can be narrower as well as broader than the state.

The state and society are not one. If they are as is contended by the absolutists then the state also acquires the same authority and value as is attached to the intricate complex of institutions which make up man's social life. If they are not, then the state, as the pluralists hold, loses its place and prestige as the unique representative of society. In this case it becomes only one of its institutional members and stands in need, just as they stand in need, of regulation. But so far as the units which constitute the state and the society are concerned one may say that they are one. But this is only one aspect of the matter. Because to say that whatever society does is done by citizens, is not the same as saying that it is done by citizens as citizens, or by the state. The reasons are clear and simple :

1. An institution cannot be identical with individuals forming its membership.
2. It is so only when these organize themselves for pursuing a common purpose that they form that composite unit called an institution, and it is the action of this organized purpose that we can alone call the action of the institution.
3. Unless the purpose of this whole body of individuals in their organization of the state is the same as that of the special groups in their formation of the social institutions, it cannot be said that the state and society, in spite of the identity of the units composing them, are really one.<sup>1</sup>

To illustrate this point we may point out that although all its members are citizens, the action of a football

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1. Wilde, Norman : Ethical Basis of the state (1924), pp. 136—137.



club is not the action of the state, because the purpose for which it is formed is not one which is embodied in the political organization. It is not the state, but a special group of football players who fix the club subscription. It is not the football club which is responsible for the foreign policy of the country which is the concern of the national administration with which the football club as a club has nothing to do although its members as citizens have each their vote. It is only that which the citizens do as citizens, for the carrying out of their political purpose, that can properly be attributed to the state.<sup>1</sup>

The state is not a form but a part of society. It is a people organized for a definite political purpose, but this purpose is not their only one, but that its character is determined by the 'whole body of interests' which constitutes their social life. It is a non-voluntary association, bounded by territorial limits and exercising compulsion and control which are un-conditional and illimitable on its members; whereas society may be said to be more or less a voluntary association in a narrow sense which may or may not be bound by territorial limits and which cannot exercise either compulsion or control on its members. Whatever control or compulsion is exercised by society is exercised in a manner which is quite different from that of the state. Professor Barker points out the difference between the two when he says that "the area of society is voluntary co-operation, its energy that of good will, its method that of elasticity, while the area of the state is rather that of mechanical action, its energy force, its method rigidity."<sup>2</sup> To quote Professor MacIver "the state is a structure not co-eval and co-extensive with society but built within it as a determinate order for the attainment of specific ends."<sup>3</sup> Professor Barker brings out clearly the importance of the state to society when he says "society is held together by the state; and if it were not thus held together, it could not exist."<sup>4</sup>

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1. Wilde, *Op. cit.*

2. E. Barker, *Political Thought in England, from 1848 to 1914*, (1928) p. 67.

3. MacIver, *The Modern State*, p. 40. (1928)

3. Barker, pp. 118—119.

In conclusion we may say that the organization of society is imperfect, that the purposes of institutions often conflict, that the state sometimes trespasses on the rights of its included groups; but the state and society are one in membership, distinguishable in purpose, related in interests.<sup>1</sup>

These two terms are used as if they were identical.

**The State and Government.** But the state and the government are not the same and do not mean the same thing.

If they are used indiscriminately the result will be confusion and misunderstanding. In fact the state and the government represent widely different concepts and unless the distinction between them is recognised it is difficult to understand truly some of the most fundamental questions of political science.

The state is the body politic while the government is merely the aggregate of the agencies employed by the state to perform its functions. It is the agency through which the will of the state is expressed and realized. According to Rousseau the government is "a living tool." It is through the agency or instrumentality of the government that the purpose or the end of the state is realized or executed. The state has ~~no~~ existence without the government. The government is concrete but the state is mainly an abstraction. Governments are transitory, they come and go, but the state is permanent. The forms of government may change but this does not affect the continuity of the state.

There are certain circumstances or conditions in which a state may cease to exist. Some of these are :

1. Incorporation as a result of conquest, *e.g.*, the incorporation of Austria into Germany by Adolf Hitler.
2. A state may by voluntary choice merge itself in another state, *e.g.*, Union of states in the United States of America.
3. Destruction of the people or the territory of a state, *e.g.*, the threat of Stalin that he would

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1. Wilde, p. 138.

burn Russian villages and destroy the country rather than see it conquered by the Germans.

The state is sovereign while the government is not. The authority of the state is original whereas that of the government derivative. There are three main functions of any government, *viz.*, administration, making of laws and distribution of justice.

**The state, Nation and Nationality.** In political science these terms are often employed synonymously. But these terms mean different things and should be used with care.

Nationality is as 'inclusive as the state.' Like the state it makes no distinction between the prince and the peasant. It may be pointed out that citizenship which is often confused with nationality in its narrow legal meaning has been exclusive. Citizenship is a right or a privilege with which men are invested. For example you may be invested with the American citizenship but this does not change your nationality which is Indian. Nationality, Professor MacIver points out, belongs to men by nature regardless of status or class. 'It is a free uniformity, admitting endless difference and dependent on no sanction and no coercion.' It needs certain pre-conditions, which were being laid in the later middle ages. Some of these pre-conditions are geographical unity, community of language, religion, common race, etc., which make a people a nationality. It is not necessary that all of these pre-conditions must be present in order that a people may become a nationality. But at least some of them must be found in a people before they can claim to be a nationality.

Nationality has been defined variously. Most of its definitions beg the question; the most popular definition of nationality is by Renan. According to him ("what constitutes a nation is not speaking the same tongue or belonging to the same ethnic group, but having accomplished great things in common in the past and the wish to accomplish them in the future.")

On the other hand 'nation' has been defined by Spengler as "Nations are neither linguistic nor political nor biological, but spiritual unities" But may we ask what spiritual unities do all Americans or Englishmen possess, educated and un-educated, cockney and peasant, rich and poor as against or over all Negroes or Indians.

Gilchrist points out that a nation equals state plus nationality. According to him the term nation possesses a definite political meaning.

During the last century there has been a strong tendency towards the organization of states with boundaries coinciding generally with those of nations. The last World War (1914—1918) provided another opportunity to the development of this tendency. Whether or not political progress should be directed to this ideal is a question which we will discuss later.

We may sum up the distinction between nation and nationality as follows:—

1. "Nation is a population of one race and language, inhabiting the same territory and constituting the larger part of its population." "While a nationality is usually one of several distinct ethnic groups scattered over the state and constituting but a comparatively small part of its whole population. Thus the English population in the United Kingdom constitutes a nation, while the Celtic element constitutes a nationality."
2. According to Bryce nationality is a population holding together by such factors as common language, customs and traditions, and a nation is such nationality organized politically. Thus according to him when nationality is politically organized it becomes a nation.

It may be pointed out that the above distinction between the nation and nationality is not very scientific. Generally by a nationality is meant a distinct population group within a state hold-

ing together by social and racial ties and constituting a minority of the total population. To illustrate this we may say that the French in Canada, the Scotch in England and the Muslims in India form nationalities.

To-day the important question for students of Indian politics is to know whether Indians are a nation or not? At present it is considered a matter of controversy, though it should not be considered so. We may sum up the arguments for and against this question as follows :—

*Arguments against :*

1. India is more a sub-continent inhabited by a multitude of races and communities than a country inhabited by a nation.
2. India does not possess any common language.
3. There is no community of religion in India. It is not possible for the two largest communities, the Hindus and the Muslims to unite and form a nation.
4. There is no common political aspirations among the people of India. For example, the land lords, the Indian princes and the majority of the middle class people desire the continuation of the British rule. It is only a microscopic minority of nationalists who desire independence or swaraj.
5. We are a slave people and do not form a nation.

*Arguments for :*

1. It is true that India is a vast country. It is also true that Indian people have no common origin. But these are not the only essentials to make a people a nation. There are many nations who do not possess any racial purity. For example, the British people cannot claim to have a common origin and yet they constitute a nation.
2. Common religion is not the most essential factor for nationalism. The Hindus and the Muslims

have often united in the past and would unite in future. Their economic and political interests are common and these bind them together. The religious differences between the two communities have never been acute, only they have been exploited by interested parties for political purposes.

3. Common language also is not so essential an element of nationalism. In India Hindustani is gradually being adopted and before long India will have a common language.
4. To say that Indians do not have common political aspirations is to injure and insult the soul of India. The Indian people desire independence as much as any self-respecting and politically conscious people do. This desire for independence is daily growing stronger and deeper among the people of India. It is necessary to point out here that both the Indian National Congress and the Muslim League have passed resolutions affirming complete independence as their goal.
5. The mere fact that a people are ruled by a foreign power cannot and does not deprive them of their nationhood. What is required is that they should have common political aspiration to be regarded as a nation. And to-day who can honestly say that Indians do not have common political aspirations.
6. Indians have common memories both sweet and bad and a rich store of traditions, a common pride of past as well as present trial and successes which bind them together eternally.
7. All nationalist elements are united under the flag of the Indian National Congress, an All-India organisation which is obeyed all over the country and respected not only all over India but throughout the world.

8. India is a country with a geographic unity. From east to west and north to south, Indians feel that they are one people living in one country. Why local differences should be given so much importance in this country when such differences are found all over the world and are considered entirely un-important.

In conclusion we may say that Indian people have every right to be regarded as a nation. Nationalism is an enormous as well as an important force in Indian politics to-day and no one can shut his eyes to the part which it is playing in the shaping of the destiny of India. Even the Simon Commission could not help being affected by it and declared, "It would be a profound error to allow geographical dimensions or statistics of population or complexities of religion and caste and language to belittle the significance of what is called the "Indian Nationalist Movement."

**Elements of Nationality.** Common residence, community of race, Community of language, traditions and culture, community of religion, political union and community of interests are the elements of nationality.

Common residence on common territory is considered an essential element of nationality.

**1. Common residence.** But it is neither essential nor universal. Most writers set down continued residence on fixed territory as one of the first factors on which nationality is based; and it is essential to the growth of nationality, but it is not essential to the continuance of national feeling.<sup>1</sup> For example, a nomadic people cannot constitute a nationality so long as it is nomadic; but if it settles down on definite territory for quite a long period, it may develop into a nationality. But if this people again take to wandering, most probably it will preserve its nationality. If we look at the existing nationalities of the world we find the following factors :—

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1. Gilchrist, R. N. Principles of Political Science p. 28.

- (a) Most nationalities possess a definite territory, both territory and nationality giving their names to each other. For example, Ireland for the Irish, Scotland for the Scots, Italy for Italians, etc.
- (b) There are many nationalities which are quite distinct but which have failed to achieve this ideal of one nation, one country. For example, nationalities under Austria-Hungary before the war of 1914—1918.
- (c) Many nationalities are scattered all over the world. This illustrates the fact that nationality is not affected by migration and that common residence on common territory must not be considered a universal characteristic of nationality nor it should be regarded as its essential constituent. An Indian, a Japanese, a Chinese, an Irani, or an Englishman is Indian, Japanese, Chinese, Irani, or English from one end of the world to the other. The Jews are a good example of a people who have preserved their nationality in spite of their being scattered over the whole of the world.

Community of race is the universally recognised element of nationality. It is the characteristic of most of the nationalities. But it should be borne in mind that there is no people who can claim purity of race. Even ethnology—the science of races—does not advance any absolute theory of races. Almost every nation consists of more than one race, on the other hand sometimes one race is divided into a number of nations. For example, the French, the Spaniards, the Portuguese and the Italians all claim to have a Latin descent, yet they are four distinct nations. In conclusion it may be said that there does not exist any racial purity among the peoples of the world and Adolf Hitler's 'Aryan' exists only in imagination.

But at the same time it needs to be pointed out that the belief in the community of race is a potent factor in



nation-building. The strength of this belief is apparent in Germany to-day. It may also be remembered that race is more or less a physical phenomenon, while nation is a political phenomenon. A belief in common descent may strengthen and unify a nation, but this theory of common descent should be no more than a myth to enlightened people.

Language and race are like twin sisters and usually go together and are closely connected with one another. For example, the word Aryan is a linguistic term but it is used all over the world to designate the 'race' of people speaking Aryan languages.

**3. Community of language, traditions and culture.**

Much emphasis is laid on the necessity of common language by writers on nationality. Thus Fichte an ardent apostle of German nationality held that "nationality was a spiritual thing, a manifestation of the mind of God, its chief bond of union being language." The importance of common language is apparent from the fact that language being a medium of understanding it is not possible for people to have unity without it even if they had common ideals and interests. But it needs to be pointed out that a common language alone should not be taken as an essential element of nationality. Its absence does not present a serious difficulty in the constitution of a nationality. This is borne out by the United States of America and Switzerland. In the United States English is the language but Americans are Americans and not English. In Switzerland not one language but three—Italian, French and German are spoken, but the Swiss are Swiss and not Italians, French or German.

In India the movement for a common language is gathering strength and the Indian National Congress is making an effort to make Hindustani the common language for India. A common language at this stage of Indian nation-hood will help the country much.

Common religion has played an important part in the development of national feeling.

**4. Community of religion.**

Even to-day religion is an important factor in nation-building. It is often noticed

that if there are two equally powerful religions in a country national feeling grows slowly. National union is not likely to be strong and permanent where there are fundamental differences in faith. But it must also be remembered that community of religion, like the community of language, is not essential. To-day new ideals have come into being which form the basis of unity and patriotism.

Without exaggeration we may say that this factor is the only essential to make a group of people a nation. Thus Gilchrist points out, "A nationality lives either because it has been a nation with its own territory and state, or because it wishes to become a nation with its own territory and state." Almost all the vocal nationalities of to-day depend for their national strength on the fact that they aspire to be nations. The extreme expression of this tendency is "one nationality one state." If this aspiration were to be carried to its logical extreme it would at once be dangerous and harmful.

Community of interests is closely connected with the development of nationality. A people clearly marked off from the rest by particular interests—commercial, industrial, political, diplomatic, etc.—tends to develop a characteristic nationality. But common interests are rather aids in strengthening union than fundamental factors of union.

Thus in the preceding pages we have distinguished the state from various other terms such as society, nation, nationality and government. Though often used interchangeably, these terms connote quite different conceptions and should be clearly understood and distinguished. We may in conclusion point out the distinction between these several ideas and terms in the words of Willoughby: "An aggregate of men living together in a single community and united by mutual interests and relationships we term a Society. When there is created a supreme authority to which all the individuals of this society yield a general obedience, a

State is said to exist. The social body becomes, in other words, a Body Politic. The instrumentalities through which this superior authority formulates its will and secures its enforcement is termed a Government ; the commands it issues are designated Laws ; the persons that administer them, Public Officials, or collectively, a Magistracy ; the whole body of individuals, viewed as a political unit, is called a People ; and finally the aggregate of rules and maxims, whether written or un-written, that define the scope and fix the manner of exercise of the powers of the State, is known as the Constitution. The state itself then is neither the People, the Government, the Magistracy, nor the Constitution. Nor is it indeed the territory over which its authority extends. It is the given community of given individuals, viewed in a certain aspect, namely, as a political unity.”<sup>1</sup>

The most important of these distinctions is that between the state and government. The state is the body politic. The government is merely the agency or the aggregate of the instrumentalities employed by that body in performing its functions. To understand and appreciate the importance of this distinction and its bearing upon the problem of government it is necessary to have a clearer idea of the nature of the State.

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1. Willoughby, W. W. *The American Constitutional System*, American State Series, pp. 3—4.

## CHAPTER 5

### THE NATURE OF THE STATE (*concluded*).

Every man or woman in the modern world is the subject of a state. He or she must obey its order and a person's life is conditioned by the standards which the state imposes. These standards or criteria are the law, and the essence of the state is to be found in the power to enforce those laws. The state is not only universal but also permanent. It is not only the most prominent but also the most powerful of all associations. And yet there is no other term in political science which has led to a more confused thinking than the term state. It will not be an exaggeration to say that perhaps there are as many definitions of the state as there are writers on political science; and it will also be instructive to point out that there are hardly any two writers or thinkers who agree on what they think to be a satisfactory definition of the State. Many of these definitions either define too much or too little. The more important of them are considered below:

1. Professor MacIver defines the state as "the fundamental association for the maintenance and development of social order, and to this end its central institution is endowed with the united power of the community."

2. According to Professor Holland a state is "a numerous assemblage of human beings, generally occupying a certain territory, among whom the will of the majority or of an ascertainable class of persons is, by the strength of such a majority or class, made to prevail against any of their number who oppose it."<sup>1</sup> It needs to be pointed out that Holland's definition also has the same defects which MacIver's definition possesses.

3. Professor Hall holds that "The marks of an independent state are that the community constituting it is

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1. *Elements of Jurisprudence* (6th ed.), p. 40.

permanently established for a political end, that it possesses a defined territory, and that it is independent of external control.”<sup>2</sup> It may be pointed out that professor Hall’s view of the state is mainly that of an international lawyer. He is ignoring other aspects of the state.

4. Professor Willoughby defines the state as “a supreme authority exercising a control over the actions of individuals and groups of individuals, and itself subject to no such regulations.” We may point out that in his definition Professor Willoughby emphasises only the sovereignty of the state.

5. According to Burns the state is “that political organization which is not subordinated to any other and which generally unites men of the same race and language.” This definition will fit more the German state in the modern period because it calls attention to the racial aspect of the state.

6. According to Professor Burgess the state “is a particular portion of mankind viewed as an organized unit.” Bluntschli quoted by Garner also defines the state in almost the same terms as Professor Burgess. Thus to him, “The state is the politically organised people of a definite territory.” The Supreme Court of the United States of America in a recent case defined the state as a “political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution and established by the consent of the governed.” But the definition of Leon Duguit is unique, but perhaps more accurate when applied to the modern state. To him the state is “a human society in which there exists a political differentiation, that is, differentiation between the governed and the governors.”

7. Some writers speak of the state as a living thing, or an organism, or an organ. But the state is neither a living thing, nor an organism, nor even an organ ; it may be said to be in the nature of a machine, a mechanism if

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1. International Law (3rd ed.), p. 18.

you please ; it may be said to be a tool in the service of man to help him in his struggle against anarchy, disorder and external danger.

Men, individual men, live in the state. But this does not mean that it resembles men, it is simple to understand. The state does not consist of flesh and bones whereas men are flesh and bones. It does not possess will-power in the sense in which individuals have it. It does not have imagination in the same sense in which the individuals possess it. On the other hand the state consists of institutions and clauses. The relation of the state to man is not that of the plant to the flower, but that of the bed to the flower. It is not an organism.

8. To individualists the state is a necessary evil. Every action of the state is regarded by them as limiting the freedom of the individual. This is the reason for them to consider the state as an evil, though necessitated by the and consider the state an absolute evil or even a necessary evil. On the other hand it is also difficult to agree with the Idealists to whom the state is a positive good. We hold that the state is neither an absolute evil nor absolute good. There is no priori rightness or wrongness about it or its decisions. It should be judged and is judged, not by what it is in theory but by what it does in practice. Before the state is considered an evil or positive good or man's best friend or worst enemy it must be subject to a 'moral test of adequacy.' We may define the state with Professor Laski that the state is a 'fellowship of men aiming at enrichment of the common life.' If it be so, as it should be, its being positive good or necessary evil will depend upon the degree to which it achieves its purpose. It is considered man's best friend because it is said that the development of human personality is impossible without its instrumentality. But it may be pointed out that what lends it colour is 'the performance which it can demonstrate'.

9. The state is viewed by the mild anarchist who agrees with the individualist, as an evil. But whereas to the individualist it is a necessary evil, to the anarchist it is

unnecessary or at least a day will come when it will not be necessary. The outlook of the anarchist is that of the missionary. He relies unduly upon the hope of changing human nature, believing that as the moral development of man increases so the state will become less and less necessary and will 'wither away' eventually. The extreme anarchists particularly anarchistic communists consider the state an unmitigated evil and believe that sooner the people get rid of it the better it will be for the moral development of man and the world. A typical passage from Bakunin will serve to illustrate their argument for the abolition of the state and for its being unmitigated evil. "The state is not society, it is only an historical form of it, as brutal as it is abstract. It was born historically in all countries of the marriage of violence, rapine, pillage, in a word war and conquest, with the gods successively created by the theological fantasy of nations. It has been from its origin, and it remains still at present, the divine sanction of brutal force and triumphant in inequality.....The state is authority ; it is force ; it is the ostentation and infatuation of force : it does not insinuate itself ; it does not seek to convert.....Even when it commands what is good, it hinders and spoils it, just because it commands it... Liberty, mortality, and the human dignity of man consist precisely in this that he does good, not because it is commanded, but because he conceives it, wills it, and loves it".

It may be pointed out that there is something of anarchism in the lack of literary order in the above passage. It is not possible to agree with the anarchist that the state is the greatest or one of the greatest obstacles to human liberty. It may not be an exaggeration to say that extreme anarchism attracts to itself much that lies on the boundary lines of crime and insanity. We do not deny that there is much that is admirable in the anarchist position taken up by mild and moderate anarchists whose attitude is represented more by L. S. Bevington than by Bakunin ; yet it must be pointed out that the anarchist does not do adequate justice to the fact that the state

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1. Quoted from Bertrand Russell ; *Roads to Freedom*, pp. 63—64-

originated in the natural instincts of man. Before we agree with the anarchist that the state is an absolute evil he will have to persuade our instinct and convince our reason that it is so. We will try to meet at some length the arguments of the anarchist in a later chapter on anarchism and attempt to show that liberty and authority are not contradictory but complementary to one another.

10. The pluralists regard the state as one of the numerous 'corporations' or associations found in society. According to their view, the state must be levelled down to the position of other associations or permanent groups such as the family, the trade union, the church, the club and many others who cater to our immediate and varied interests. There is much that is commendable in this view. It is not possible to deny the important part played by the various permanent groups in the society. These permanent groups have a very definite and distinct place to fill in the life of man and cater to his immediate and even to some of his permanent needs and interests. These permanent groups should enjoy as much freedom as is compatible with general order. At the same time, it must be said that we cannot place the state on a level with other groups. The state is in a class by itself. Its supreme function is to adjust relationship or settle differences arising between the various permanent organizations within society. Thus even if permanent groups enjoy autonomy the state cannot be levelled down nor such groups can be levelled up. The state will retain its uniqueness and supremacy in as much as its unique function will be to act as an adjuster of relationships among the various groups.

11. The modern totalitarian view of the state is 'mystical and idealistic.' According to this view the whole life of the individual falls within the jurisdiction of the state. Totalitarianism demands of the individual unquestioned and active loyalty to the state (Nation-state) which is the highest form of political edifice. Thus to the totalitarian there is "Nothing without the state; nothing against the state; nothing beyond the state." Thus the



citizen's activities must all be directed towards the exaltation of the state. Consequently totalitarian view involves the ancient Greek concept of citizenship.

It needs to be pointed out that the totalitarian view of the state means regimentation of the individual's life ; for the Totalitarian State is not merely an administrative organisation, concerned with political or economic questions ; it is 'totalitarian,' and embraces all interests and activities, whether of groups or individuals and permeates the spiritual content of life<sup>1</sup>. Thus the individual is reduced to the position of a mere screw in the giant wheel of the state.

12. The idealist school is opposed to the individualist school. It regards the state as the embodiment of all good. They see and emphasise the positive value in the state. According to them it is their best friend. The idealist or the monist from the view point of a pluralist seems to be a confirmed absolutist. He seems to be glorifying in the authority of the state. The idealist school specially that represented by Bosanquet takes as its fundamental notion the idea of freedom. This freedom is possible only through rational self-control ; it is 'freedom in reason.' The goal of every man is the attainment of this freedom. This attainment or development is possible only in social life in which only the latent powers of the individual are revealed to him and in which only are provided the means to the individual to develop his personality. Thus a 'man is truly human in society.' But society is made possible only as it is organised in the state. To the idealist the true interests of the individual and the true interests of the state are the same—the fullest and freest development of the best in man. But it may be pointed out here that the idealist view of the state is purely abstract and intellectual and does not deal with realities. The conceptions which it places before us are quite removed from realities of life.

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<sup>1</sup> Buell, Dean and others ; *New Governments in Europe* (1934) p. 49.

Political philosophers have tried to distinguish the state as an idea from the state as a concept. According to the German philosophers the state as an 'idea' means an ideally perfect state, such as a universal state; while the state as a 'concept' means an imperfect state, the state as it is. Professor Bluntschli explains this when he says that "the concept of the state has to do with the natural and essential characteristics of actual states. The idea of the state presents a picture, in the splendour of imaginary perfection, of the state as not yet realized but to be striven for." Professor Burgess expresses the same view when he says: "The idea of the state is the state perfect and complete. The concept of the state is the state developing and approaching perfection." In conclusion we may point out the difference between the two saying that the concept of the state is a *state* as it exists or as it has been in history; the idea of the state is the abstract state, the state in general. The concept of the state is the outcome of concrete thinking, the idea of the state is the result of abstract reasoning and philosophical speculation. With the development of civilisation and the progress of mankind the two will tend to become identical and this is desirable in the interest of humanity.

The state can not promote morality directly. It can promote morality *only* indirectly, by the removal of obstacles—*i. e.*, by the guarantee of rights, and *rights are not morality but conditions of morality*. The state is incapable to take motives into consideration. It is simple to understand: motives are altogether of an inner character while the instruments at the disposal of the state are of external character—force. When the instruments at the disposal of the state are of such a character it cannot deal with motives but can concern itself only with intentions and outer aspects of conduct. Consequently the state is unable to enforce or promote morality directly.

The state can only maintain such conditions of life as enable the individual to earn his morality. Green is of the opinion that "the only acts which it (the state)

ought to enjoin or forbid are those of which the doing or not doing from whatever motive, is necessary to the moral end of society." It simply means that the state should undertake only those actions which are essential to the good life of the community and that in enforcing such actions there is always the possibility that there will be some people who may or may not perform them from mean and bad motives.

In conclusion we may say that the state as such can only promote morality *indirectly* by hindering hinderances to good life, or in other words, by the guarantee of rights, which *are not*, and cannot be, *morality, but the conditions of morality*. If this limitation of the state is forgotten, there is danger of so idealising the state that man may surrender the whole of life to its regulation. We must remember that whatever society and the state may give to our morality, we have to make what they give utterly and entirely our own, before it is moral.<sup>1</sup>

The organic theory is one of the oldest and commonest theories of the nature of the state. According to this theory society is 'analogous in structure to a biological organism, the relation of the individual to the whole mass being similar to that which exists between the cell and the organism of a living being.'

The antiquity of this theory is apparent from the fact that from Plato till recent times writers have tried to establish this analogy. Plato compared the state to a magnified human being and insisted that the best state was that whose structural organisation resembled in principle that of the individual.<sup>2</sup>

Cicero compared the head of the state to the spirit ruling the human body. Mediæval writers notably two of them—John of Salisbury and Marsilius of Padua—also personified the state. Althusius compared it to a biological organism. The eighteenth century writers attached an undue importance to this theory. The doctrines of

1. Earnest Barker. *Political Thought in England 1841—1914*. p. 68.

Garner, J. W. *Introduction to Political Science*, p. 57.

the French Revolution tended to reduce the importance of the organic theory; but again a reaction against the doctrines of the French Revolution set in towards the middle of the nineteenth century and the organic theory of the nature of the state began to be advocated by many writers. Its advocacy became so popular at one time that it was feared that political science may not be lost in and eaten by natural science<sup>1</sup>.

Professor Bluntschli is the most ardent and extreme supporter of the organic theory of the nature of the state. According to him (the state is the very image of the human organism.) He goes on to point that each has 'its member parts, its organs, its functions, its life processes' He maintained that there is a close parallel and a deep resemblance between human organism and the organs of the state. He goes so far in his analogy as to attribute qualities of sex to the state and says that it is masculine in character while the church is the opposite. His analogy at times and at certain points becomes almost amusing if not absurd. For example to him the state is 'no mere lifeless machine,' but a 'living spiritual organic being.'<sup>2</sup>)

The organic theory of the nature of the state holds that there is a striking resemblance and a close parallel between the origin, function and structure of the social body and the biological or animal organism. The advocates of the theory point out that the organism of the state like the animal organism consists of individuals who are not 'isolated and disconnected like the atoms of an inorganic body,' but are inter-related and inter-dependent upon one another and the whole society. In other words there is an inter-relation and inter-dependence of the parts on the whole and of the whole on the parts each giving meaning and life to the other.

It is further pointed out that both the animal organism and the state come into existence through natural process and not through any artificial contrivance, both the state

1. Garner, op. cit, p. 58.

2. Quoted by Garner, pp. 58—59.

and the biological possess organs the functions of which are identical in many respects. Further both the state and the biological organism changes and grows according to not mere chance but according to certain laws.

The most elaborate analogy between the organism of the state and the biological organism is worked out by Herbert Spencer. He holds that the animal as well as the social organism grow as a result of identical processes. The conception of his analogy between the state and an organism was based on the text '(an organism grows and is not made.)' He believed that the state was an organism and hence it should be allowed to grow of its own accord. But Spencer forgets that organism grows as well as is made. The state is a highly developed and cultivated organism and if it can be compared at all to an organism it can only be compared to a cultivated and evolved organism like a plant in the garden or a properly cared for domesticated animal.

Besides Spencer many continental writers have supported and advocated the biological analogy. For example Albert Schaffle, an Austrian writer, examines at great length 'the anatomical, physiological, biological, and psychological resemblances' between the state and the animal organism. A Russian sociologist Paul Lilienfeld in his 'Thoughts concerning the social science of the Future' published between 1878—1881 goes even beyond Spencer and Schaffle. But of all the writers in the modern period the French writer Rene Worms is the most eminent supporter and advocate of the theory. According to him 'the anatomy, physiology, and pathology of society possess striking similarities to the structure, function and pathology of living beings.'<sup>1</sup>

1. The state strictly speaking is not an organism.

**Criticism  
of the or-  
ganic theory. i**

The analogy between the body politic and an organism is striking indeed, both as to structure and manner of development. But identity between the two cannot be

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1. Garner, op. cit. pp. 62-63.

established. Though the will of the state is not identical with the wills of its constituent units yet it is one that is influenced and largely determined by such individual volitions which is not the case with the will of the natural organism.

2. The existence and activities of the constituent units of the state are not exhausted in the life and activity of the state. Not only is their organic life independent of the existence of the state, but their entire spiritual being is uncontrolled by it. As we have seen, this control, by necessity, is limited to the conduct of individuals only in so far as outward acts and material interests are concerned. Over motives—good or bad—the state has no control, though it may greatly influence the character of motives through the conditions or environment which it provides. It cannot obtain this result by a direct command. Again the body of the state is discrete and not concrete. The form of governmental organization of any state is in constant change, and sometimes undergoes radical change; its constituents move freely from place to place, and their members may be added or lessened arbitrarily. In contrast with these characteristics of the state the living being is an aggregate whose parts exist simply to support and continue the life of the whole. The individual units have no life of their own, no independent powers of will or action. Further while in the organism the tendency is for the influence and control of the whole over the action of its parts to increase not only in exactness but in scope. But this is not so in the case of new state. The control of the state though tending to become more and more perfect, at the same time secures to the individual a continually increasing sphere of free action which is not determined by the state.<sup>1</sup>

3. All natural organisms derive their life from pre-existing living beings, but the state cannot and does not derive its power and vitality from other institutions.

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<sup>1</sup>. Willoughby, W. W. *An Examination of the Nature of the State* (1922), pp. 35—36.

4. In an organism the laws of development, acting from within, are followed blindly and intuitively; while the development of the state though also from within, is, to some extent at least, consciously felt, and the form of its organization self-directed.<sup>1</sup> According to Professor Cairnes, "A time arrives in the progress of social development when societies of men become conscious of a corporate existence, and when the improvement becomes for them an object of conscious and deliberate effort. We cannot, by taking thought, add a cubit to our stature. The species, in undergoing the process of improvement, is wholly unconscious of the influence that are determining its career. It is not so with human evolution. Civilised mankind are aware of the changes taking place in their social condition, and do consciously and deliberately take measures for its improvement."

5. The state, strictly considered, is essentially psychic and not physical. It represents a will rather than a physical being and thus leaving aside the governmental machinery through which it acts, and the people organized under it, only psychological and not physical qualities are attributable to it.<sup>2</sup>

6. (It is also a mistake to speak of the state as a 'moral organism' as is done by many who do not like to speak of it as a 'natural organism.') It is clear from the above that it is an attempt to distinguish between physical or physiological or natural organism, and a moral organism. It may be pointed out that the term 'organism' is applicable only in a physiological sense, and therefore to speak of a 'moral organism' is a misuse of terms. It is simple to understand. Morality is an attribute of a person, and not of a thing. A man may be moral, but his physical (organic) frame is not.<sup>3</sup>

In conclusion we may say that the organic theory of the nature of state is at once 'not only fanciful and absurd, but even mischievous'. Some of the analogies drawn between the state and biological organism do deserve

1. Willoughby, op. cit. p. 37.

2. Ibid.

3. Ibid.

some notice as they are comparatively rational. But all of these comparisons are dangerous in that that if they are taken as a basis for the theory of the state it might result in sacrificing the individual to the state.

It may further be pointed out that the basis of the organic theory of the state is mere analogy and it is dangerous to base any fundamental conceptions regarding the state on merely analogies and parallelisms.

Again, to-day there is no need for such a theory to be advocated or advanced. No fruitful purpose is to be served at the present stage of political development in the world by identifying or comparing the state with an organism. The supremacy of the state over the individual is unquestioned to-day and does not stand in need of the organic theory.

**Essential  
Elements of  
the State.**

Writers on political science hold that a comprehensive definition of the state must include at least the following essential elements :

1. Population.
2. Territory.
3. Sovereignty.
4. Government.

Population is an essential element to constitute the state. Population includes both the governors and the governed. In the modern state, people possess a dual-character : citizens and subjects. When the people enjoy the privilege of sharing in the making of the policy of the state, they are citizens. But when the will, or the authority, of the state is exercised against them, they are subjects. In brief, when people make laws they are citizens ; when they obey these laws, they are subjects. However, some thinkers hold the view that all the members of a state need not possess this duality of character. For example, to Aristotle the slaves in the Greek city state were merely subjects and not citizens of the state. But now this view



is no longer tenable. Every individual is both a citizen and a subject. The test for the state, to-day, is the extent to which every individual contributes to the formulation of the will of the state.

The changes in the growth of population and racial development affect the state. Population is affected by the death and birth rates and migration. The question of the number of population within a state has always been of interest to ancient writers who tried to fix the number of people for a state. Plato limited the number of population to 5040 and Aristotle thought 100000 as too high. But it is not possible to limit the population of a state. Modern states vary widely in population as well as in size. For example, China has nearly one-fifth of the world population. The population of Russia is more than 192 millions. Nor can population be relative to territory as Rousseau thought. For example, in an agricultural country with vast territories, less population may be supported on the same standard than in a highly developed industrial country with a small territory. Again, the character, genius and intelligence of the people, the economic development of the country and the form of political organization may be responsible for such differentiation.

Territory is considered an essential element of the state. It is commonly believed that without territory there can be no state. No people can "become a state until they have acquired a territory." But writers like Hall and Duguit hold that territory is not an essential element of the state. For example, Duguit says that "territory is not an indispensable element in the formation of a state." However, modern state is a territorial state. Jews are a community and have their own rules and regulations but they do not constitute a state yet. To Prof. Elliott "*Territorial sovereignty or the superiority of the state over all within its boundaries and complete freedom from external control has been a fundamental principle of the modern state life.*" Writers, like Holland, Phillimore, MacIver, Wilson,

and Garner, hold territory as an essential element of the state.

Territory includes not only the land surface but also the rivers, lakes and mountains, etc. Further, it includes the subsoil and the air space above the earth's surface. It also includes the adjoining portion of the sea to the extent of 3 miles from the shore.

As in the case of population, so in the case of territory no fixed limit as to its extent can be laid down. However, ancient writers tried to prescribe the extent of the territory a state could possess. Plato was in favour of small states and Aristotle favoured moderate states. Rousseau also thought moderate states easy to govern. Other writers hold that there is a relation between the extent of the territory and the form and political organization within such territory. For example, Montesquieu held that republican form of government is best suited to small states, a monarchical form of government to moderate states and despotic form of government to vast states. According to De Tocqueville republican form of government was unsuited to vast states. But to-day no such limitation to the extent of the territory of a state or to the form of government a state of a particular area may possess can be laid down. States vary in size so widely that Andorra is a state with 191 sq. miles as its area and the U. S. S. R. is state with an area of 8,819,791 sq. miles.

Further, Germany with 225,528 sq. miles as its area has a dictatorial form of government while the U. S.A. with 30,26,789 sq. miles as its area has a democratic form of government. The fear of John Stuart Mill of the difficulty of governing states of vast area efficiently is disproved by the efficient administration of the British Empire.

✓The fixed territory of a state is so essential that no two states can exercise jurisdiction over the same area. It is held that in federal states it is not one but two "states" that exercise authority over the same territory. ✓But in fact there are no two states; the state is only one. The constituent states are not the state in the real sense of the term. They do not possess sovereignty.

The chief distinguishing feature of the state is its sovereignty. By sovereignty is meant an ultimate authority from which there is no appeal. The sovereignty of the state has two aspects : internal and external. In its internal aspect, the state is superior to all the individuals and groups of individuals within its territory. In the last resort they have to submit to the commands of the state. Its power is supreme. In its external aspect the state is free of any foreign control. The state is its own judge. It may or may not, obey the obligations imposed by international law at its own will. No foreign power can compel its obedience to such rules or regulations.

Writers like Hobbes, Bentham and Austin view the sovereignty of the state as supreme, absolute and ultimate power. This view has been well described by Paley. According to him the power of sovereignty may be termed " absolute, omnipotent, uncontrollable, arbitrary, despotic and is alike so in all countries." But to-day, writers like Laski, MacIver, Follett and a host of others do not agree with this view. They divest the sovereignty of the state of its absoluteness and omnipotence. MacIver defines state as merely an association, though unique in kind but still an association. We shall take up the discussion of these opposing conceptions of sovereignty in the chapter on the problem of sovereignty.

Government is an instrument through which the will of the state is formulated, expressed and executed. The government determines common policies, regulates common affairs and promotes common interests. Government may assume any form; a particular form is not essential. What is needed that there should be a well organised government capable of enforcing its commands and compelling respect to its authority, so that it may be able to perform among others its most fundamental duty of providing security from internal disturbance and external attack. Government is the outer manifestation of the state as Gilchrist calls it. In fact for practical purposes government and state are not

### III Sovereignty.

### IV. Government.

very different. Government includes legislative, executive and judicial organs of the state.

Numerous and a variety of definitions of the state have been given in the preceding pages. Most of them are one-sided and explain only partial aspects of the state. We shall now give only a few of the definitions, which are more satisfactory.

Among contemporary writers the definitions of the state given by Garner and MacIver seem to be more satisfactory specially that given by MacIver. To Garner, "The state as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent or nearly so, of external control and possessing an organised government to which the great body of inhabitants render habitual obedience."<sup>1</sup>

According to Professor MacIver the state is "an association which acting through law as promulgated by a government endowed to this end with coercive power; maintains within a community territorially demarcated the universal external conditions of social order."

Summing up our discussion on the state we may point out that its definition is the subtlest question the political philosopher has to face. We have noticed that some have considered it a mere abstraction, others an instrument of evil, while still others have made a demi-god of it. A new school of thought has come into existence led by Laski, MacIver, Follett and others who do not agree with the old conception of the state. They hold that the so-called definitions of the state are removed from reality. The idealists particularly deify the state. But the inherent defect of idealism is that it never enables us to come to grips with facts. It blurs them over. The state is not simply an abstraction. It is at once a reality and an abstraction. The idea of a unified state is now discredited in most quarters. Guild socialists, syndicalists, many Liberals in England, many advocates of occupational

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1. Garner, J. W. *Political Science and Government*, (1935) p. 52,

representation in America, and a growing school of writers—led by Laski, Follett and MacIver—who are called political pluralists, are proposing group organisation as the next step in political method. Professor Laski in his book 'Studies in the Problem of Sovereignty' does away with the fetish of the abstract state. He pleads to look at things as they are rather than as we imagine them to be. Sir Ernest Barker also seems to have gone over to political pluralism. He says, "Every state is something of a federal society and contains different national groups, different churches, different economic organisations, each exercising its measure of control over its members." Professor Laski is of the opinion that the state, for instance, to its members is essentially a great public service corporation; and it is to put it bluntly upon dividends that the mind of the public is concentrated. However important may be the knowledge of purpose, much more important is the knowledge of function. Contemporary political thought considers the state as "one of the many essential associations in society occupying the position of an adjuster of relationships"; but this fact of controlling their relations does not make them inferior to the state.<sup>1</sup> We may point out that to-day the entire conception of the state is undergoing a change from the sovereign state to the service state. MacIver's definition seems to be the best in many respects. It lays stress upon 'law,' 'government,' 'coercive power,' 'communal unity' and the universal external conditions of social order—all of which are elements which should enter into any sound conception of the state. Taking the purpose of the state into consideration we may define it with Professor Laski that the state is a fellowship of men aiming at the enrichment of common life.

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1. Laski, *Authority in the Modern State*, pp. 52—66.

## QUESTIONS AND TOPICS.

1. Distinguish between state and society and the state and government.
2. Discuss the elements of nationality ; which of these you consider most important. Give reasons for your answer.
3. Critically explain any two of the following :—
  - (a) 'The state is an organisation of one class dominating over the other classes '.
  - ✓(b) ' The state is force, nothing but force.'
  - (c) ' The state is a way of regulating human conduct.'
4. Critically examine the theory of the organic nature of the state and estimate its importance.
5. Describe the essential elements of the state and estimate the importance of each.

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## CHAPTER 6.

### THE ORIGIN OF THE STATE.

History does not afford any definite knowledge as to the origin of the State. The study of the origin of the state is an interesting one. The influence of religion, of communal ownership, and of the family on the development of the State has been much studied. The part played by endogamy and exogamy or ployandry and polygamy has been well discussed by numerous writers. The researches of sociology; anthropology, ethnology. and biology have thrown a flood of light on the subject. But inspite of all that the absolute origin of the state has not been historically determined with any accuracy. However, various theories of the origin of the state have been propounded by different writers, the most important of which are:—

1. The Force theory.
2. The Divine Origin theory.
3. The Contract theory.
4. The patriarchal and Matriarchal theories.
5. The Instinctive theory of the origin of the state.
6. The Economic or Utility theory.

**The Force Theory.** The force theory explains the origin of the state in human aggression. According to this theory, the state originated in the subjugation of the weak by the strong, in the enslavement of man by man and the enslavement or subjugation of the weak clans and tribes by the strong ones which ultimately led to the establishment of the state. Thus the basis of the state is coercion or force. This view was supported by the Church fathers and the Theologians of the middle ages to condemn the authority of the king and to establish the supremacy of the church which was claimed to be of a divine origin.



Among modern writers, Jenks holds that it is war that begets the state. To Herbert Spencer "Government is the offspring of evil, bearing about it the marks of its parentage." To Carver state is force and nothing but Force. Marx and other socialists also hold the same view. The difference between the earlier views and those of Marx and socialists is that to the latter state is more the outcome of economic exploitation of the poor by the strong rich than of physical aggression. To them existing Governments are coercive authorities.

Further, the theory is advanced not only as explaining the origin of the state but also as the justification of the state. It is held that since the state is outcome of force it should be obeyed, and obeyed absolutely. Jellinek says, "The individual must submit himself to it, since he perceives it to be an unavoidable force." Bluntschli supports this view.

This theory has emphasized only one aspect in the development of the state. Force is not the only factor which explains the origin of the state. It is a factor determining more of development than origin of the state. Even Kant holds that "population of devils would find it to their advantage to establish a coercive state by general consent." Hence the real basis of the state, to Kant, is "general consent" and not force.

Nor is force the basis of obedience to the state. There is no connection between might and right. The right of the strongest is no right at all. Might is right only when it is based upon right and not *vice versa*. As Rousseau says, "Strength is physical power; I do not see what moral force could result from its actions. To yield to force is an act of necessity, and not of will; it is at the most an act of prudence." Morality can result only from freedom of self-determination of action. So it is not coercive force alone but as T. H. Green says, coercive force exercised according to law, that makes the state.

During early and middle ages writers viewed the state as a direct divine creation. In the eastern empires the sanction behind the law was to be found in the

scriptures. The rulers were regarded as the agents or viceregents of God. The Semitic races maintained that not only the power and authority of the kings depend upon the divine delegation and sanction but also that God himself participates in and keeps oversight over affairs of the states. The Greeks also regarded the state as of indirectly divine origin. To them "the state existed in itself and of itself and as determined by the very nature of things. As such it had a divine origin, as did all things in the phenomenal world<sup>1</sup>."

Romans were the first who distinguished between divine and civil authority. To them state was a civil creation and hence had a legal character. It was only in the middle ages at the time of the controversy between the king and the pope that the theory of the divine origin of the state was revived.

In the early history of the development of church-organisation the state was held to be a civil institution, supreme in all temporal affairs. Obedience to the state and its laws was a part of the teachings of the church. The maxim "render unto Caesar that which is Caesar's" was commonly held. However, with the increase in the powers and influence of the church, it began to assume a position superior to that of the State. The temporal powers of the church increased so much that it itself became a civil organisation.

During this period the divine origin theory was supported both by the emperors and the Popes. The emperors held that state was a divine creation, so it was equal to the church. The Popes held that since both state and church, were divine creations and since the church was responsible for the spiritual development of the people while the state was responsible only for material development, the church was superior to the state. Various writers during the middle ages took opposing sides. Dante, William of Ockam and Marsilius of Padua supported the claims of the emperor ; and Hincmar, Hildebrand,

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1. W. W. Willoughby: "An Examination Of The Nature Of The State" P. 43.

Thomas Aquinas and Giles of Rome supported the Pope. In this controversy, all were agreed on the point that the state had a divine origin.

During the Protestant Reformation the divine character of the state was emphasized by the reformation leaders like Luther, Melancthon, Zwingli and Calvin. The anti-reformation writers like Dominicans and Jesuits tried to prove the civil character of the state.

After the period of the reformation, the controversy took quite a new turn. Now it was no longer a controversy between the Pope and Emperor but between the ruler and the ruled. Now the theory was propounded not so much as explaining the origin of the state as explaining the seat of authority and the manner in which it was to be exercised. The rulers contended that they received their authority direct from God and that they were responsible to him alone. James I was an enthusiastic and ardent supporter of this theory. According to him the king is above the people; and above the law. He owes no obligation to the people; the people cannot question his authority. The ruler "is master over every person, having power over life and death." According to James the king is always good and wise and the people are always bad and ignorant. Even if the king is bad and ignorant, it is a punishment God has awarded to the people and therefore they must submit to him. To oppose the king or overthrow his power is unlawful. The chief features of this doctrine according to Gooch are; firstly, monarchy is divinely ordained; secondly, hereditary right is indefeasible; thirdly, kings are accountable to God alone; fourthly, resistance to a lawful king is sin.

The theory finds no supporters among political writers in the modern age. The rise of the contract theory with its emphasis on consent, the separation of church and state, and the rise of democracy have led to the decline of this theory.

The state is not a divine creation. If the state is created by God as the theist would like us to believe, so is created the individual. Hence, there can be no priority as regards

**Criticism.**

the state and its laws. Further, Divine laws are only partially revealed to us in scriptures ; the rest has to be regulated by the experience and customs of the people. Further, no divine authority is present in the state. Whatever the ultimate basis of the state, the fact is that the state has been and is working through human agencies. Even if we grant what the theory asks of us, namely, to believe that all power to the ruler is delegated by God and that the need and demand for the state is implanted by Him in the nature of man, but this does not explain our difficulty ; what we would like to know is by what authority and manner a particular individual or a group of individuals arrogate to themselves the right to rule. Granted that there is a natural instinct in man for political organisation, but this does not explain the usurpation or arrogating of power to themselves by rulers unless the supporter of the divine origin theory can explain that his position is sound. Further no test is provided by the theory to judge that the power is being exercised to fulfil the divine purpose and in a divine manner. What the theory teaches is " Whatever is, is Right."

In the modern age theory needs no refutation. To refute the theory to-day is to flag a dead horse. State is a historical growth. Its laws are man-made. They are enforced not by any divine power but by man. The rules of scriptures or the laws of morality apply only to intentions and not to outward actions. Political obligations and divine obligations are not only mutually exclusive but even contradictory.

Though the theory no longer holds water, yet it has some elements of value :

1. The doctrine of divine origin served a great purpose in exacting obedience to political authority when men were in a semi-civilized stage.

2. The doctrine of divine origin served as a bulwark against anarchy and disorder.

3. The doctrine emphasised the fact of moral responsibility of the rulers for the good of the governed.

4. The doctrine emphasised the moral basis of political order.

According to this theory the State is a deliberate and voluntary creation of man. The exponents of this theory assume that there was a state of nature prevalent before the political state came into being. This state of nature was not only pre-political but even pre-social. Only the law of nature was prevalent. Then they expound that there was a contract or covenant among the individuals as a result of which society was created. Some writers believe that both society and state were created together while others believe that they were created separately. The chief exponents of this theory are Hobbes, Locke and Rousseau. According to these writers man felt the need for creating the state because of the conditions prevalent in the state of nature. About the conditions in the state of nature these writers are not agreed. Each of them gives a different description of the state of nature which is discussed below.

These writers are not agreed as to the conditions prevalent in the state of nature. To Hobbes the state of nature was a state of constant warfare. The individual in the state of nature was rapacious, egoistic and cruel. The only law observed in the state of nature was, kill whom you can, take what you can. The individual found his life in the state of nature, "solitary, poor, nasty, brutish and short." Thus painting the state of nature in such gloomy colours Hobbes made it natural for individuals in the state of nature to crave for the creation of the state to escape the misery in which they found themselves in the state of nature.

Locke describes the state of nature as one of "peace, good-will, mutual assistance and preservation." The majority of the people in the state of nature are law abiding but there is a minority which is not law abiding and thus causes inconvenience to majority. According to Locke it is to avoid this inconvenience that individual constitutes civil state for the state of nature.

According to Rousseau the state of nature was too idyllic to live and too good to last. The rise of civilization and the increase in population destroyed the self-sufficiency and happiness of the state of nature, with the establishment of private property and with the coming into existence of the division of labour the necessity for the establishment of civil society (state) came to be felt.

The process of transition from the state of nature to the political state is by means of a contract on the nature of which again the contract writers differ. Let us now examine the view of each on the nature of the contract.

According to Hobbes and Rousseau there was only one contract *i.e.*, Social Contract.

**Contract.** According to Hobbes individuals combined together and made a contract among themselves and created the State. Rousseau has maintained only one contract. Rousseau's contract was between the individuals in their personal capacity as well as their corporate personality. Thus A, B, C, D, etc. surrendered their natural rights to the collective whole A, B, C, D, etc. Thus with the creation of the civil state, authority comes to be vested in A, B, C, and D in their collective capacity. Locke, however, maintained two contracts—Social and Governmental. By the first contract, the individuals created the body politic or Civil Society; and by the second contract the Government was created. The first contract was among the people themselves and the second contract among the people on the one hand and the Sovereign on the other. Thus all the three contract theorists are agreed that the state is the creation of a contract and hence an artificial creation.

The theory of social contract can be criticised from **Criticism**, the following three view points:—

- (1) Historical
- (2) Legal.
- (3) Philosophical.

1. There is no historical evidence of the contract.

I. **Histori- cal.** The assumption that primitive men gathered at some particular time and established a political society by means of a contract is incorrect. The idea of contract for the primitive man is too advanced. There is no example of a state coming into existence as the result of the deliberate and voluntary agreement between the individuals coming out of the state of nature.

(2) There have been political or governmental contracts. But such contracts have been among those who were already living in the civil state. Such contracts do not explain the origin of the state but merely define the rights and obligations of the rulers and the ruled.

(3) The theory assumes that in the state of nature the individual was too much of an individualist and that he enjoyed much freedom. But historical researches have proved that the early organization was not individualistic but communal. Family was the unit and property was owned in common. Customs were supreme keeping the individual at his proper place in society.

(1) Even if we grant the fact of the contract, we can not say that such a contract has any legal binding force. A contract is valid only if it has some force or sanction behind it which is the state. But the social contract precedes the state and does not follow it; therefore it cannot be said to have sanction of the state, the absence of which makes it illegal. According to T. H. Green, "the Covenant by which a civil power for the time is constituted cannot be a valid covenant. The men making are not in a position to make a valid covenant at all."<sup>1</sup> Because there is no power behind it which can enforce it.

(2) Since the original contract is not valid, all the subsequent contracts are invalid.

(3) The social contract should bind only those who were parties to it. Why should it be binding on the coming

1. T. H. Green : Principles of Political Obligation. Page 64.

generations? It may be said that the fact of residence of subsequent generations in the State is a tacit consent. But this is merely avoiding the difficulty.

The State is not an artificial creation. It is a natural growth. We are members of the state not of our own free will, we do not choose our state; but we are born in the state as we are born in the family. The membership in the state is not voluntary but compulsory, nor are the relations between the state and the individual contractual, because the literal consent of all is an impossibility. The contractualists get out of the difficulty by making unanimous agreement necessary only at the time of the original contract. But they do not adhere to this position throughout. They dispense with unanimous consent and want only active consent for subsequent contracts.

The entire conception of the state of nature and the laws of nature is false. History of mankind cannot be divided into two periods, *i. e.*, natural and artificial. Present age is as natural as the ancient ages were. Even if we accept existence of the state of nature and the laws of nature then the rise of the state would mean a backward and not a forward step. Green says, "a society governed by such a law as a Law of Nature, *i. e.*, with no imponent but man's consciousness, would have been one from which political society would have been a decline, one in which there could have been no motive to the establishment of Civil Government."<sup>1</sup>

Further the making of contract involves a consciousness of common good and common interests, the consciousness of common good and common interests is too advanced for the individual living in the state of nature.

Further, the contract theory assumes falsely a notion of natural rights. The theory implies that individuals possess natural rights in their own right and that such rights are inherent in them. In a word the contract theory assumes rights and duties on the part of the individual independently of society. But this assumption is false. A

1. T. H. Green : Principles of Political Obligation ; p. 72 (1913) edition.



right to be a right in any real sense must have the recognition of the society as essential for the development of the individual and which is compatible with the common interests of society. Such rights are natural not because they are inherent in man, but because they are recognized as necessary and essential for the development of the individual. Again there cannot be any rights in the state of nature, they are not rights but mere powers.

**The Patri-archal and Matriarchal Theories.** These two theories pretend to rest upon historical facts and try to explain the origin of the state in the family.

According to these theories the state is the family writ large. The difference between the two is to be found in the character of the early families. According to the patriarchal theory the father was supreme in the family and according to the matriarchal theory mother was predominant in the family. The expounder and chief advocate of the patriarchal theory is Sir Henry Maine. "The patriarchal theory of society", says he, "is the theory of its origin in separate families, held together by the authority and protection of the eldest valid male descendant." Further it is pointed out that among the Hebrews the eldest male parent was the supreme leader and exercised despotic powers over the other members of the family. The "families" and "brotherhoods" among Athenians and "patria potestas" among Romans made the leader of the family a despot. In India the eldest male member was the head of the family under joint family system.

The matriarchal theory is propounded by McClennan and Morgan. According to this theory the social life "may be traced from the horde, or a condition of absolute promiscuity in several relations from which, through various restrictions, the monogamous family and patriarchal state were subsequently reached."<sup>1</sup> The example of veemah marriage, according to which the husband is incorporated into his wife's family is cited in support of this theory.

1. Willoughby W.W. op. cit , pp. 19-20.

Further the matriarchal theorists suppose that marriage, in early stages, was more transient and polyandrous.

The two theories are quite opposed to each other. If the Patriarchal theory traces the relationship to the eldest male member, the matriarchal theory traces it to the mother. The link in the family in one case is the father and in the other the mother. If according to the former polygamy was prevalent, according to the other polyandry was the rule. If in one case, patriarch is the leader, in the other case, mother is the dominating factor exercising all authority. Again, in one case, property is owned by and descends to the male members, in the other, it is owned by and descends to the females only.

These theories are, first of all, contradictory. There is no definite evidence as to which of the two types preceded the other. In fact, **Criticism.** historical researches have shown that both were prevalent simultaneously. Further the process of development as outlined by Sir Henry Maine is contested and opposed by Jenks according to whom the process of expansion was from the family to clans and from the clans to the tribes.

However, both the theories are agreed on one point that the family is the basis of the state. But to suppose the state as merely 'family writ large' is an error. The two institutions, differ from each other in essence, organisation, aims and functions, as is shown by Professor Willoughby. He says, "In the family the location of authority is natural, (*i. e.*, in the father). In the state it is one of choice. Subordination is the principle of family; equality that of the state." The aims and purposes of the state and family are necessarily different and are often contradictory. The interests of the family are necessarily private and cannot be subject of public law.

Bentham does not agree with the idea that the almost perfect subjection of children to parents in a family for sometime can lead to an idea of political society. According to him to constitute a political society, "a greater number of members is required or, at least, a duration

capable of a longer continuance. Indeed, for this purpose nothing less, I take it, than an indefinite duration is required." Hence it is the lack of perpetuity of domination that prevents the family from becoming, as such, a State. Austin also refutes the theory of constituting the state from a single family, he does not find any basis for calling the family a "Society *political* and independent, the imperative father and chief a monarch or *sovereign*, or the obedient mother and children *subjects*." Clark does not find it probable that the patriarch may have formulated law or adhered to such rules. He would be, in his opinion, more likely to govern by means of occasional commands.

Further, the two theories bring historical data in support of their contention and thus explain the primitive and early conditions of human civilization but they do not go beyond the Aryan or the Greek history. "The most archaic human society which we can picture to ourselves even by plausible conjecture is removed from the actual origin of mankind by a lapse of time demanding geological rather than historical measurement and by a series of events of which we know nothing whatever."<sup>2</sup>

Lastly, the theories explain not the origin of the state but that of the family. The theories are merely speculations in the early origin of the family.

According to this theory the origin of the state is ascribed to the instinct of "natural sociability of man." Man by nature, it is held, is gregarious. There is a political instinct inherent in man which finds outward expression in political organisation. According to Von Treitschke "human species is made once for all with certain inborn gifts, among which the gifts of speech and state building instinct must certainly be counted." Bluntschli finds the common fundamental cause of the rise of states in "human nature which, besides its individual diversity, has in it the tendencies of community and unity..... Thus the universal impulse to society produces external organisation of communal life

**Instinctive  
theory of  
origin.**

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1. Bentham, Jeremy. Fragment on Government (1891), p. 140 n.
  2. Edinburgh Review, July 1893 ; Quoted by Willoughby.

in the form of the state." To Aristotle the state is the result of man's natural instinct, while to Grotius it is out of innate sociability of man that the state is born. However, according to Hobbes, the state is born in the natural instinct in man to dominate others.

We may point out that we cannot discover any specific state building instinct in man. **Criticism.** Further, if the state is based on instinct at all, it is not merely political instinct but it depends upon "innate tendencies such as sociability and speech, self-assertion and self-abasement." But even these tendencies do not explain the origin of the state in full for the following reasons :—

1. These impulses are not peculiar to the state alone. We can locate them, everywhere. Thus the instincts of sociability and speech which are present in every group or association, the instincts of self-assertion and self-abasement are also present in the family, religious groups, in working gangs and in sports, where we find leadership and its acceptance.

2. Writers like Ludwig Von Haller and Bluntschli have pointed out that these instincts are not always at work in state building. To Ludwig Von Haller, "nothing more than a marked difference of ability is needed to develop a primitive political relation among mature men, quite without the self-assertion of the abler ; since the less able spontaneously look to the abler for the guidance which the abler are equally spontaneously disposed to give."<sup>1</sup> Bluntschli thinks these two as passing phases of political consciousness.

3. Human instinct is not static. The instinct of self-assertion is not a fixed quantity. It may change according to the environment and institutions. For example the dictatorial powers exercised over a people for long, will change their temper and habits. Therefore we cannot explain the origin of the state and its institution in terms of instincts which are so changeable and unspecific. We cannot ascribe the origin of the state to the instincts

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1. Hocking W. E. *Man And The State* pp, 208-209.

whose behaviour is at all points determined by the social environment. In fact it is society that influences instincts more than instincts influence society. The instinct may so change that it may not require government at all.

4. Further, the instincts of self-assertion and self-abasement exist in human beings at the same time. Thus because of the existence of a variety of instincts we can get only indefinite results. There must be something else besides these instincts which leads to the dominance of one over the other *i. e.*, of self-assertion over self-abasement in some and of self-abasement over self-assertion in others.

5. The assertion that state, having originated in instinct, is natural does not solve our problem. This theory makes the state above question and above examination. But political power is exercised by and through human beings and through institutions created and directed by human beings. The will of the state is being formed, determined and expressed by human beings. Therefore, how can it arise or continue apart from human action? Again as a result of the above how can it be above criticism and examination. According to this theory political power is natural, but liberty is also natural.

How does the theory reconcile natural political power with natural liberty. Further, there are certain communities or aggregates of human beings, for example, Jews and Eskimos, in which no such political control is exercised. Hence the state does not seem to be a universal necessity. Further, even if we agree with Aristotle that man is by nature a political being, we cannot, without conscious human action, explain and determine the form in which this alleged instinct will manifest itself, nor can we explain in whose hands political authority will be vested.

6. Man is not always social. He is unsocial as well. Sociability is quantitative and has its laws of increase and diminution. As the circle of association goes on increasing, the members begin to desire some exclusiveness. Man likes to have a selected and small group near him. All typical working groups of human kind have been small groups, such as family, church, etc. Further, man requires

a certain level of presupposition in his associates. As all cannot possess the same level, they will necessarily require selective process. Hence, there is an instinct of anti-sociality in man as well.

Place of  
instinct in  
the forma-  
tion of the  
state.

However, it does not mean that instinct has no place in state-building. We cannot explain the state merely in terms of habit as Sir Henry Maine does. Habit or custom cannot inaugurate itself. It depends upon the individual as to what he should use from custom. And this is possible only through instinct. Instinct is the prime mover, habits and customs are the results. The *raison d'être* of institutions lies in some form of instinctive demand. However, the instincts in human beings are not a sum of unrelated threads. The aims of instincts in human beings begin to converge and organize themselves, within more or less grasped purpose. *No instinct needs to be satisfied by itself*, but only the unitary purpose which the individual has conceived. The satisfaction of this purpose implies the satisfaction of the vital impetus as a whole, of which the several instincts are merely aspects, distinguished by their names rather than in organic fact.<sup>1</sup> Hence it is not instinct but self that acts. And as no instinct can remain outside the conscious purpose of the owner, no instinct *per se* is a secure foundation for anything. The theory that ends in instinct alone ends in an opaque fact and is little better than a form of dogmatism.<sup>2</sup>

The econo-  
mic or utili-  
ty theory of  
the origin  
of the state.

According to this theory the origin of the state lies in the innate economic needs of man. There was a struggle between man and nature. The only course open for human beings was either to master nature or perish. The consequence was a co-operation among people for food-getting. This led to the working out of a system of production, distribution and exchange. The division of labour was highly developed and mutual interdependence became essential. As the system became

1. Hocking, W. E. *Man And The State*, p. 216.

2. *Ibid* p. 217.

intricate and complex, one's living became identical with the continuance of the system. This theory of economic interpretation is well described by Hocking in the following words. "Work out for yourself a joint economy, or return to savagery with a decimated population. Build and maintain a community which shall maintain within itself all your material requirements, call this self-sufficient group, if you will, the state. But see that men have held together from the beginning first *because they must*, then because it is profitable to do, and only finally for the sake of companionship and the fruits of culture."<sup>1</sup>

Historically, we find that the demand for the establishment of legal order or to maintain it has come from those who possess goods and property. History is full of the struggle of economically dominant classes to maintain their possession and defend the authority of the state. The state has been an agency not for the general good of all but to enable the propertied classes to live well. The state is robbery on a magnificent scale. The ultimate bond of society is an exploited economic necessity.

Man is not merely an economic being and we cannot explain his conduct merely in economic terms. Further, economic interests of individuals are opposed and antagonistic. **Criticism.** Simple economic interests are a divisive and not a uniting force. The individuals co-operate with each other in one sphere for example, production. But while co-operating in that sphere they forget their other interests. For example, the producers while acting as producers veil their interests as consumers. Thus an anti-individualistic economy is produced.

The different economic groups compete with each other. The group selfishness and antagonism is quite obvious in the modern world.

Further it is not the economy that makes the state but the state that makes the economy. In fact, economy

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1. Hocking, W. E. *Man And The State*, p. 216.

pre-supposes community. It is not tribe that is made by economy but it is tribe that makes the economy.

Nations are not collections of human beings united merely by economic motives. "A nation is a congeries of thousands of interlacing economic groups, it is in no sense a functional economic unity."<sup>1</sup>

However, the economic forces have played a decisive part in the development of the state. No state can be studied without its economic backbone. The economic forces in a country affect its political organization profoundly and determine the major part of their activities and their problems. But it cannot be said that utility or economic need is the only basis of the state.

The state does not originate in the instinct of sociability of man, nor does it originate in his economic needs. Even these two—the natural instinct of sociability and the economic forces—together cannot form the basis of the state; though apparently it seems so. There are certain traits both in sociability and economy which lead both to social integration and social disruption. But they are so adjusted that one counter-balances the disruptive tendencies of the other, and thus holds the society together. Sociability counter-balances the disruptive tendencies of economic forces and the need for economic co-operation tends to counter-act the selective process of sociability. Hocking believes that "the course of social evolution can be fairly interpreted as an alternate expansion of social and economic values, each advance in one factor being a condition for the next step in the other."<sup>2</sup> But both pre-suppose society as we have seen. Sociability can produce, if at all, only crowds with no leader, no organization and with no purpose. The economic forces are merely disruptive. If there is co-operation at all that is due to the fact that individuals are already living in society. Moreover, the disruptive traits in both outstep the unifying forces of both and this chasm goes on increasing with the increase in civi-

**The true  
origin,**

1. Ibid p. 297.

2. Ibid p. 301.



lization. But still society is there and the state remains a unified state.

The fact is that the origin of the state is not to be found in instinct or economic forces, but in the 'will to power', as Hocking calls it. It is another shape of will to living. "This quest of power is not merely in the interest of other needs, nor is it merely a search for independent satisfaction. Power is an *element on the good which all instincts seek*.....The quest of power in this wide sense we may take, then, as an instinct which is in all instincts, the fundamental instinct of the human kind. Power *per se* is not the sumum bonum: no one could be satisfied merely by swelling in power and using this abstraction without regard to what is achieved. But power is inseparable ingredient of human good, and so of whatever is desirable." Thus state exists for the satisfaction of the whole man; sociability and economic "forces are mere partial aspects of human nature, derivative of the will to power." While sociability can produce only headless crowd and the economic forces are incapable of forcing unity, the will to power 'contains the initiative and power of unification necessary to create a social whole and give it capacity for action.' This will to power of the individual overlaps him. "It is made to take care of men, not of one man alone. It is so balanced that except through assuming care for a group it cannot reach full competence to manage its own life. The individual is not mature, until he thinks the group, and thinks for it. Physically, the group contains its members, mentally each member contains the group."<sup>1</sup> In this over flow of the will lies the origin of the state.

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1. Ibid p. 336,

## QUESTIONS AND TOPICS

1. Briefly describe the various theories of the origin of the state.
2. 'Government is based on force', elucidate and comment.
3. Critically examine the contract theory as explaining the origin of the state.
4. Define the position of the family in primitive groups and its influence on state development.
5. Write a short note on the true origin of the state.

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## CHAPTER 7.

### THE SOCIAL CONTRACT THEORY.

The social contract theory has played a very important part in political Science. Thomas Hobbes, John Locke and Jean Jacques Rousseau are the chief writers on this theory and are so closely woven together with it that a clear understanding of their views on the theory is necessary to the proper understanding of the theory of social contract.

Hobbes was an Englishman. In England it was he who gave the social contract theory its final form. He was greatly influenced by the conditions around him and the political issues of the period disturbed him much. His book *Leviathan* (1651) is the first comprehensive work in political philosophy written by an Englishman. He was a supporter of the royalist cause in the Puritan Revolution and we are told that the time of the publication of the *Leviathan* was determined by the desire of its author to advocate a theory of civil government meeting the needs of political crisis through which England was passing. He lived in intimate touch with the Royalists and was much perturbed and distressed by the Puritan Revolution.

Hobbes' associations and experiences of life confirmed if not prepared him for the construction of a 'system, scientific in plan and conservative in its implications for political practice.' Passing out of Oxford he became in early life a tutor in the family of Earl of Devonshire and continued his connection with his family throughout his life with a few interruptions. In one of these intervals he was a mathematics tutor to the Prince of Wales who afterwards became Charles II.

Hobbes was faced with a profound dilemma. The new nation state had been inspired by four conflicting motives—the divine right of kings and the rights of conscience, reason and property. The problem facing Hobbes was how to reconcile them within a stable social order. He attempted the solution of this problem in his *Leviathan*. How far he succeeded or failed we shall presently see when we discuss his political philosophy as expounded by him in the *Leviathan*.

Hobbes could not support the theory of divine right, still he wished to justify a powerful and a strong state and an absolute government of reasonable basis. Accordingly he expounded the theory of natural law depicting the state of nature in gloomy terms and of social contract harnessing it into support of absolutism.

**The State of Nature and Natural Law.**

Hobbes believed that nature has endowed men with equal powers, none is so strong that he is above fear, and none so weak that 'he may not be dangerous.' He held that since there was competition among men, the state of nature was of violence and of anarchy, with every man's hand against his neighbour. Thus according to him, the life of man in the state of nature was "solitary, poor, nasty, brutish and short" and neither ideas of justice nor of right were known.

Thus in the state of nature every man is enemy to every other man and men stand in natural fear of one another; man seeks pleasure and to insure it wants power over others. In such a state of nature there were only laws of nature (natural laws). These were laws of expediency or prudence or convenience. There could not be any morality or consciousness of obligation. One's natural rights were one's natural powers. Hobbes made a distinction between natural right. According to him natural law was a *rule*, discovered by *reason*, forbidding everything

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1. Hobbes, Thomas. *Leviathan* (1904) Cambridge English Classics Series p. 84.

which was not favourable to self-preservation. Natural right was the liberty possessed by all men of doing what was necessary for the preservation of existence.<sup>1</sup>

Natural equality among men made the state of nature one of war. The desire for security led to the creation of political society by a social contract (an artificial method). To escape from the conditions in the state of nature and to guarantee peace, individuals who, by natural agreements, had formed a political society, were compelled to give up their natural rights to some "common power to keep them in awe and to direct their actions to common benefit." The person or body to whom this power was surrendered was the sovereign. But the sovereign was not a party to the contract. The agreement is only among the subjects to place or leave all power in his hand. The contract once made could not be broken, nor people could make a contract with any one else, not even with God.

The sovereign is no party to the contract the result of which is an agent with unlimited power and authority which cannot be taken from him. Thus with whomsoever this power (sovereignty) rests it must be indivisible and inalienable. Sovereign may be one or more, but his preference is for one. To him it is only by setting up a sovereign power that society is created at all. Hobbes calls this political society, 'commonwealth.' According to him sovereign is the supreme power on earth.

The sovereign, thus created, need not be a single ruler. He may be monarchical, aristocratic, or democratic. But the point is whatever the sovereign may be he has full powers. In the opinion of Hobbes the best type of government is monarchy. In monarchy, according to him, the private interests of the monarch will be identified with the general interests of the people. He points out the convenience of monarchy in that it can work much more efficiently and

1. Gettell, R. G. History of Political Thought, p. 219.

readily than any other type of government and it has an element of stability as it is liable to remain fixed in its ways. We may point out that the argument advanced by Hobbes cannot be absolutely true though it may have some force.

**Criticism.** The following points of criticism emerge from the political philosophy of Thomas Hobbes :

1. There is no other writer who takes a more extreme view than Hobbes of the absolute nature of sovereignty. The Leviathan is an un-English work because it deals with the deepest problems of the state. It is un-English also in that it finds a solution as ingenious as it is absurd. Determined to retain absolute sovereignty, Hobbes deprives it of that divine right which is its only justification. Determined to provide security to the individual (it is for this reason that a social contract is made), he takes away the right of revolution by which security can alone be secured. He bases his whole argument on a cool scientific reason, but he denies to reason that freedom which is vital to its life. He is bitterly critical of the pretensions of individual conscience, yet he finds, the justification of sovereignty in a contract whose binding force *conscience alone* can feel.<sup>1</sup> While Bodin limits sovereignty by natural law, divine law, and international law, Hobbes makes sovereignty un-limited as well as all powerful.
- K 2. While Machiavelli separates politics from religion and morals in practice, Thomas Hobbes places politics above religion and morals in political philosophy.<sup>2</sup>
3. The philosophy of Hobbes in the Leviathan is the first great justification of dictatorship, but its

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1. Mayer, Crossman and Others. Political Thought : The European Tradition (1939). p. 180.

2. Ibid p. 221.

doctrine cannot be accepted by any dictator. So no dictator will base his authority on contract. In brief his philosophy is the democratic argument for dictatorship and as such, though strictly logical, it is based on fundamental contradictions. It is simple to understand for Locke makes it clear when he says, "as if when men, quitting the state of Nature, entered into society, they agreed that all of them but one (sovereign) should be under the restraint of Laws; but that he should still retain all the liberty of the state of Nature, increased with power and made licentious by impunity. This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by pole cats or foxes, but are content, nay, think it safety, to be devoured by lions."<sup>1</sup>

Though the philosophy of Hobbes is full of defects as we have seen, it has some value also. **Appreciation.** Though his theory of sovereignty resulted in a degree of absolutism, it was based upon the doctrine of natural equality of men and upon a belief 'in the desirability of a large degree of individual freedom.' His attempt to support absolutism by a theory of social contract was a miserable failure, but on the whole his political philosophy is the most imposing produced in a period of Civil War in England.

Locke was born and brought up in a Puritan family. The son of an attorney he was educated at Oxford. He received his bachelor's in 1656, master's degree a year later and became a tutor in Christ Church in 1660. The academic methods at Oxford at that time were dogmatism, formalism and scholasticism, but somehow he soon came under more liberalising influences which were just then beginning to influence English political thought. He was the confidential secretary to Lord Shaftesbury, the great parliamentary

1. Ibid p. 131.

leader and the founder of the Whig Party. He used his connection with Shaftesbury to advantage and became an associate of many public men and scholars of repute both in England and Europe. He was opposed to the ecclesiastical and political methods in England during the later Stuart period. The theorist of the Revolution of 1688 he attacked both the divine right theory of the Anglicans and of Robert Filmer, and the absolutist theory of Thomas Hobbes as deduced from the social contract. But at the same time he had no sympathy with the extremist doctrines which the radical whigs professed and advocated.

The views of Locke on the state of nature and laws of nature are different from those of Hobbes. To him the state of nature is not the state of war ; it is that of liberty but not of licence. This state of nature was pre-political, but not pre-social. Gettell is of the opinion that Locke borrowed this distinction from Pufendorff.<sup>1</sup> The state of nature was not a lawless state since the majority obeyed the law of nature which according to him was a body of rules determined by reason ; this law of nature was a moral law. Under the laws of nature 'all men were equal and possessed equal natural rights which were those of life, liberty and property.'

In the state of nature, as we have pointed out, the majority obey the law of nature. There is a very small minority who is lawless and does not obey the law of nature, therefore peaceable people are compelled to take the law in their own hands. In the state of nature there is no recognized system of law and justice. It is a state of peace, of goodwill, but there is a want of a common judge with authority which is the only difference between the state of nature and the state of political society.

This lack of a common judge to settle disputes and the absence of any agreement as to what was the law of nature, as well as the inability of individuals to maintain their natural rights against injustice leads to uncertain conditions

1. Gettell, R. G. History of Political Thought, p. 225.



and thus life becomes intolerable in the state of nature. Accordingly individuals abandon the state of nature and form themselves into a civil society by means of a social contract. According to him there are two contracts—the social contract and the governmental contract. By the social contract civil society comes into existence, by the governmental contract people get a government. Locke regards the social contract as a natural historical fact. He believes that there was a time when people did meet and set up a government. With him it is a bargain as the power of the sovereign is limited by the terms of the contract. The power given up by men as a result of the contract is not vested in a single man or organ, but in a community as a whole. Even the political community or the state does not possess absolute sovereignty. In fact the word 'sovereign' does not appear in his treatise.

Locke followed Aristotle in classifying governments into monarchies, aristocracies, and democracies. According to **Govern-** him the fundamental test of classification was the **ment.** location of legislative authority. He held that the judiciary and the executive were dependent upon and subordinate to the legislature. But he did not develop the theory of separation of powers which seems to be implicit in his views and discussions. The best form of government, according to him, was a representative democracy controlled by popular elections. He was prepared to tolerate monarchy if the king did not possess the power of law making and if he was acknowledged as king by popular consent. He finally believed that government must be based upon consent.

Locke's theory of social contract added 'definiteness to the ideas of natural rights, popular control, and the right of resistance'.<sup>1</sup> While Hobbes made the **Estimate.** law of nature the direct opposite of real law; Locke made it 'a condition antecedent to real law.' To him as to Hobbes the fundamental right was the right of self-preservation. The theory of Locke is more purely political than most of the writers who wrote before him.

1. Gettell. op. cit., p. 227.

His theory, practical and moderate, lacks the clarity and logic which is the distinguishing mark of the theory of Hobbes ; but its great merit is that it stated more clearly the problems of the day.

Locke influenced much later writers. William Molyneux embodied his ideas in his demand for Irish freedom. Many of his doctrines were adopted by the Dutch and the French Huguenots. His separation of powers was taken up by Montesquieu as a main idea in his work the Spirit of Laws. His theories were developed by Jean Jacques Rousseau into a more robust and bolder form of social contract, and these were pushed to their logical conclusions in the French Revolution. The authors of the Declaration of Independence and the fathers of the American constitution drew largely upon his ideas.<sup>1</sup> He gave a more faithful account than any of his predecessors of the forces that were making for enlightenment in his time. His views are more plausible than real and seem to be more true than those of Hobbes, but it is not really so. According to Gettell Locke represented the modern spirit of independence, of criticism, of individualism, and of democracy which sought expression in the religious reformation and in the political revolution of the seventeenth century and which reached its high mark in the intellectual, political and economic revolutions of the eighteenth century.

Rousseau had a varied life and possessed a singular character. It is difficult if not impossible to summarize in a limited space his varied life or his character or his complex work. Born in Geneva of parents **Jean Jacques Rousseau** (1712 of French protestant stock he spent his boyhood —1778). in the city state of his birth and under a system which was quite different from that of France. He had no practical training of any sort and ran away from home at the age of sixteen, and thereafter for twenty years led a diversified and a colourful life trying his hands at different pursuits but without any success. He drew many of his ideas from Pufendorff, Locke and Montesquieu. His

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1. Ibid. pp. 227—228.

ideas reflected his personality. Vain, sensitive with a wild temperament he rebelled against all restraints and conventions. Contemptuous of all authority and civilization he urged the universal value of freedom. His chief work is *Social Contract*, other works being *Discourse on Inequality*; *Emile* and *Confessions* in addition to a prize essay which he wrote for the Academy of Dijon and the subject of which was "Has the restoration of the sciences contributed to purify or to corrupt manners."

Rousseau's social contract theory was based upon the conception of a pre-political state of nature. In this state of nature men were 'equal', 'self-sufficient,' and 'contented.' The conduct of men in the state of nature was based not on reason, as Hobbes would tell us, but on emotions of pity and self-interest. Evil was born with the progress of civilization. Arts arose and private property was established and the division of labour came into existence. All this necessitated the establishment of civil society.

Social contract was the process by which political society was created, because it was only by agreement and consent that authority could be justified and liberty retained and made secure. According to Rousseau each individual surrendered his natural rights to a community as a whole and thus was established a body politic 'with a life and will of its own, distinct from its members'.<sup>1</sup> Each individual in the state of nature had 'equal and inalienable portion of the sovereignty' of the whole community, by a social contract he received back, the rights he had surrendered. Rousseau's social contract was not governmental but social. Rousseau's theory of social contract is a theory of popular sovereignty, but this popular sovereignty was absolute. But there is an obvious fallacy in his thought. He believed that 'there could be no conflict between authority vested in the people as a whole and their liberty as individuals.'

1. Gettell. op. cit., p. 258.

Rousseau held that individual wills of those who surrendered their rights and liberty by a contract to the community were merged into a *general will*. The only manifestation of sovereignty is the general will which is vested in the body politic as a whole. It is only the acts of the general will that are properly laws. The general will is not the arithmetical sum of the particular wills of the individual citizens. By 'general will' Rousseau did not mean numerical majority, though at times he was dangerously near it. General will means majority of opinion plus common interest, as between these two common interest is more important. To Rousseau sovereignty was indivisible and inalienable.

Rousseau draws a clear distinction between state and government. To him the state is the entire body politic manifesting itself in the supreme general will. Government is established not by the social contract but by the act of the sovereign people. It is merely their agent and may be changed at their pleasure. He classified governments into monarchies, aristocracies, democracies and mixed types. He believed that sovereign people must act directly in making law; therefore to him representative assemblies were a sign of political degeneration and decay. He strongly favoured direct democracy of the Greek city state pattern. Rousseau's ideas and spirit influenced the governmental changes following his death. The doctrine of human equality, popular sovereignty and his cry of back to nature which he advocated became very popular. A number of his principles were applied in the political experiments in the French Revolution and were expressed in the Declaration of Rights of Man (1789). For example Article I of the Declaration declares boldly: "Men are born and remain free and equal in rights"; Article VI says: "The law is the expression of the general will." If the French people welcomed with zeal the American idea of the declaration of rights it was due to his insistence on liberty, equality and popular sovereignty.

His ideas did not influence only France and America but Germany also fell under their influence. His theory

that complete liberty was possible only in the absence of authority led to the idealistic philosophy of Kant, Fichte and Hegel.

**Comparison.** The social contract theories of Hobbes, Locke and Rousseau differ from one another in many important points, the more important of which are considered below.

1. To Hobbes natural man was essentially selfish. He was 'chronically envious, dejected and querulous,' and the state of nature a gloomy state, a state of constant warfare. But to Rousseau natural man was necessarily good and the state of nature a state of bliss and happiness ; while to Locke it was neither too good to last nor one of constant warfare. Thus he occupied a middle position on these points.
2. To Hobbes and Rousseau sovereignty is absolute. But with the difference that Rousseau considers its exercising possible only by the community as a whole, and that law is a formulation of the general will. But with Hobbes sovereign power can be placed in the hands of one, the few or all, but once this power has been surrendered it can not be taken by the people.
3. Hobbes does not distinguish between state and government. According to him both come into existence at the same time by the social contract. But Rousseau as well as Locke make a distinction between state and government.
4. To Hobbes a change in government meant the dissolution of the state and a return to the state of nature ; Locke believed that the people had the supreme right to choose their government and could change it if they found it unsatisfactory. To Rousseau the government was merely the agent or the tool to execute the popular will.
5. Locke and Rousseau agree in limiting the power of the government. Both of them place in the

hands of the people the power to determine in whose hand political rule should be placed. But Locke considered the sovereignty of the people as kept in reserve and exercised only on occasions when revolution was necessary. To him all acts of the government were legal if they did not violate the rights of the people. But Rousseau considered popular sovereignty as constantly active, and held that the formulation of all laws required the direct participation of the people. Thus he identifies political sovereignty and the general will.

#### QUESTIONS AND TOPICS

1. Compare and contrast the views of Hobbes, Locke and Rousseau on the state of nature, nature of the contract, sovereignty and government.
2. Critically discuss the theory of social contract.

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## THE PROBLEM OF SOVEREIGNTY

The concept of sovereignty is vital to political science. It has been variously discussed and analysed, understood and interpreted. It is a term about the significance of which there exists the greatest confusion and contradiction of thought. With the transformation of social, economic and intellectual forces, the concept of sovereignty has also been changing. In general, sovereignty denotes the highest power of the state ; and the person or the group of persons, who possesses or possess this power is or are sovereign. It is on the conception of the nature and functions of sovereignty that the whole theory of the state has revolved. The problem of obedience to the state is in other words a problem of the justification of its sovereignty. It has been justified differently by different writers. It is our purpose here to examine some of these justifications and interpretations.

Traditionally the necessity of some supreme source of law in an organized political society has been recognized and this supreme source of law has been termed **History of Sovereignty.** as sovereign. Being the source of law, the sovereign has been held above the law and unlimited and absolute in authority. Being the ultimate law-making power, there is only one sovereign in any single state. The laws, framed and promulgated by this authority, are valid because of their source alone. What the law contains is not to be justified in terms of social value. A law is a sound law if it comes from the sovereign. Thus the doctrine of sovereignty has been monistic and absolute. Such a conception of state and sovereignty begins to be framed only after the expiry of the middle ages. Before that the conception of sovereignty was never propounded in so clear and elaborate terms. To the Greeks, the state was all in all ; it embodied in itself



all the aspects of human life—social, economic, political, cultural and religious. There were no rival associations which might have necessitated to defend and maintain the authority of the state against an attack upon it by other associations, and out of which a definition of sovereignty might have emerged.

The Romans were not political speculators. They were administrators. Further, Rome, being the mistress of the world, had no fear of internal or external competition. It was in the formation of Roman law that we find the beginning of the concept of sovereignty. In Rome, under the Republic, the law-making authority was vested in the popular assembly. But under the Empire, the prince was made the sovereign, though the fiction was maintained that "the will of the Prince has force of law, since the people have transferred to him all their rights and power." This conception tended to "emphasize the primacy of absolute will."<sup>1</sup> The middle ages were essentially non-political and non-civic. The feudal state was scarcely more than a group of unrelated individuals having no common aims or common political organizations. There was no unity of purpose or unity in organization. In the words of Pollock it was not a system of states in our sense. Hence no conception of sovereignty or state was developed.

It is in the sixteenth century that Bodin gave a definite and comprehensive account of the modern theory of sovereignty. In his famous book *Republique*, Bodin defines the term, sovereignty, as the supreme power of the state over citizens and subjects unrestrained by law. Bodin's sovereign, free from external or internal control, is the supreme law framing authority. His power *i.e.*, sovereignty is absolute, indivisible, perpetual, inalienable and ultimate.

With the rise of the modern nation state, the absolute authority of the ruler was upheld and it was contended that the sovereign is not only absolute and ultimate but has also the right to rule inherent in his individual will

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1. Wilde, N. *The Ethical Basis of the State*. p. 156.

which is transmissible by him to his posterity. The development of democratic institutions left the monistic doctrine of sovereignty untouched. The 'Leviathan' of Hobbes, the general will of Rousseau and the determinate sovereignty of Austin, are all absolute and supreme law givers, above any legal superiors. The legality of law is determined solely by its source in these absolute wills. According to Laski sovereignty was identified with pre-eminence.

With this legal interpretation of sovereignty, an interest in the philosophic basis of sovereignty was also developed. Mere absoluteness and supremacy of the sovereign power does not justify the content of the law. Some other justification and authorization for its actions is needed. State was justified as an expression of the will of its constituent members. Hobbes found the unity of this political will in the legal fiction of a contract, while Rousseau found it in the general will. However, these interpretations left the state and its sovereignty absolute. For Hobbes it was so for the sake of preserving peace and order. He not only confused state and government, but in fact, identified the two. Rousseau's General Will is also absolute, as this will, being the deepest self of every individual, can not recognize any superior. The individual has no claims against it ; he is himself this will.

The moral and philosophical basis of sovereignty was further taken up by Kant and developed by Hegel and Fichte and interpreted by Bosanquet. The utilitarians, being interested in social and legal reform, found a useful instrument in the absolute sovereign of Hobbes. To Bentham, their most representative thinker, the problem was to reorganize society on the principle of "greatest happiness for the greatest number of its members." This could be possible only through an enlightened government endowed with power and authority. Hence, social expediency is made the ground for the exaltation of the state ; the utilitarians were not interested in the metaphysical basis of the state. To them the existence of a sovereign invested with supreme power was enough, its justification for them lay in its utility as the necessary means for the promotion of general happiness.

John Austin started on the utilitarian basis but established an absolute sovereign needing no justification. His doctrine can hardly be distinguished from absolutism. In his eagerness to oppose the idea of rational rights, he over-emphasizes the dependence of rights upon law. Although such was not his meaning it is easy to identify his determinate human superior with all determining power in the state, and to ascribe the absoluteness of this legal sovereign to the actually dominating power in society.<sup>1</sup> Thus his doctrine creates an arbitrary and absolute power. Austin defines the sovereign in the following words. "If a determinate human superior, not in a habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent." The bulk of the society render obedience to the sovereign because the latter possesses power "to put compulsion without limit on subject or fellow subjects." The commands of the sovereign are law. In Austin's own words, "law is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject." Thus the compelling competence of the sovereign is the determining factor in Austin's conception of sovereignty. Bosanquet comparing the position of Austin with that of the idealists remarks that Austinian sovereignty is based on the idea of force, while sovereignty in the idealist conception is based on the "will of the whole."

The Austinian view of sovereignty may be summed up under the following propositions :

1. The state is a legal order. In every state there is a "determinate" human superior who receives habitual obedience from the bulk of the society and who is ultimate.

2. The power of this superior is unlimited. Its actions cannot be questioned on moral or ethical basis. In legal theory the character of its actions is unimportant.

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1. Wilde, N. *op. cit.* p. 159.

3. Law is merely the command of this superior. Without this superior there is no law. Will is indivisible and inalienable. Such a conception of state and sovereignty is a legal conception. A lawyer is concerned with the formal aspect of law and its ability to be effective, which can be effective only if the state possesses unlimited power. But such a theory is useless as an explanation of the modern state for political purposes. We shall examine the above doctrine under three headings.

(1) Historical, (2) Legal, and (3) Political.

Sir Henry Maine has sufficiently shown that the Austinian doctrine is artificial to the point of absurdity.

1. **Historical.** He points out that Austinian sovereign has nowhere existed. He takes the example of

Eastern empires. To take one instance, Maharaja Ranjit Singh of the Punjab was a despot. Disobedience to his commands was punished by death or mutilation. Yet he was subject to community customs and "never issued a command which Austin would call law." Austin may contend here that whatever the sovereign permits, he commands. But we may say that the sovereign permits because he is incapable of doing otherwise. For example, the British parliament is sovereign and can make or unmake any law. But it will never touch common law unless English public opinion demands a change in it. It will never dare to disfranchise Roman Catholics or prohibit the trade unions. Even the sultan of Turkey in the climax of his powers could not exercise his authority in an arbitrary way. He was bound down by conventions and traditions. "He survived only by willing not to will those changes which might have proved him the sovereign of Austinian jurisprudence". In fact nowhere has any sovereign possessed unlimited power and the attempt "to exert it has always resulted in the establishment of safeguards".

Further, we cannot always locate the "determinate sovereign." For example, in America, there is no determinate sovereign body. In England we cannot locate the sovereign definitely. Austin himself was confused in its location. Gilchrist points out that Austin has variously said that :

- (1) Parliament is sovereign.
- (2) The king and peers and electors are sovereign.
- (3) The electorate is sovereign when parliament is dissolved.
- (4) That the commons have power.

Nor can we call Belgium a state in the Austinian sense. Every Belgian citizen is granted certain rights which cannot be infringed by the government. For example, his property cannot be taken away without due compensation. He has freedom of religion and freedom of assembly in so far as he is not armed and does not assemble in open. The Belgian Assembly can change these but such changes are to be ratified by a body created and elected by the electorate. Therefore either the Belgian State is not a sovereign state or if sovereignty resides in the electorate, it is not determinate in the Austinian sense as the electorate is an indeterminate body which is legally bound to act through organs and agents.

Law is not merely a command of the sovereign. To define law as merely a command of the sovereign is to "strain the definition to the verge of decency."

**2. Legal.** The mere uniformity of law is sufficient to push out the element of command. Law is the creation of the general social environment. It is the reflection of a social moral order as understood by the members of the state. Law is the reflection or the embodiment of the experience of the citizens. 'The experience of the citizens, in other words, is the true maker of the law. Law will appeal to the citizen as legal only in so far as it embodies his experience and further in so far as it caters to the needs of the citizens necessitated by their experience. Further, law is valid for the citizen not only in so far as it embodies his experience and caters to the needs felt as a consequence of such an experience but also in so far as the individual has contributed towards the formulation of law. The law is legal not on a *priori* grounds, but it is legal because the individual makes it legal. It is not the source of the law that makes it valid but its content. "The claim of authority (and therefore of law) upon myself is, firstly,

legitimate proportionately to the moral urgency of its appeal ; and it is, secondly, important to make its decision as closely woven from and into my experience in order that its claim may be at maximum." The law should reach the individual through the channels of his mind.

State or its sovereignty is not absolutely absolute. Nowhere has Austinian sovereign—unlimited and absolute, existed. In fact in Austin's own words, the sovereign receives only 'habitual obedience' and, hence, it is illogical to regard it as 'unlimited.' Wherever an attempt has been made to exert such a power, it has caused its own downfall. For example, the French Revolution and the Russian Revolution are the consequences of the exercise of autocratic powers by the monarchs in those countries. Further, even in the monarchies and dictatorships the sovereign will is not merely the personal will of the sovereign. To take an example of modern Italy and Russia or Germany, it is not merely the personal wishes of Mussolini or of Stalin or of Hitler that Italy issues an ultimatum to Greece, or Russia mobilizes her people or Germany captures Austria or Czechoslovakia. Though their personal wishes play an important and even dominating part, yet "these personal factors play within a network of forces which these men have not created, which extends far beyond their personal reach, and which prescribes what effect their decisions can have."<sup>1</sup> There are a thousand varying influences which affect the formulation of the sovereign will. "The real rulers of society are undiscoverable," says Chipman Gray.

Power is always conditioned. Its actions are justifiable only in so far as they conform to a certain conduct. There is no permanent right to power. Its actions should conform to certain fundamental principles of life and should be evaluated by certain moral ideals. It is a different thing that these ideals and principles change with the change of time and environment but the fact remains that for authority a way of life is prescribed. There may be no written code prescribed for it, but the government knows enough that

1. Hocking, W.E. *Man and the State*, p. 40.

there are certain things which it dare not do because public opinion will not stand them.

The state or its power, therefore, is not irresponsible as Hobbes and Austin would make it. "The state, that is to say, is for him (individual) sovereign only where his conscience is not stirred against its performance.....He expects from the state the fulfilment of its purposes. He expects it to make possible for him the attainment of certain goods."<sup>1</sup> State is sovereign in so far as it maintains the political rights which are necessary at a given time in given environments for the fulfilment of the individual personality in harmony with the promotion of the common good.

Nor is sovereignty indivisible, or all comprehensive and omnipotent. In a federation, power is not vested in the federation alone. In their respective spheres, the unit states are no less sovereign, than the federation is in its own. Further, even in unitary states there is functional division of power. The internal difference in government itself prevents the unity of action. In the British Constitution there is not only a legislative sovereign but an executive sovereign and a judicial sovereign as well. These three ultimate authorities "are so far independent of each other that the executive sovereign alone continues without intermission, whilst the legislature may be dissolved temporarily and the supreme judiciary is not always in session." Austin here, may contend that the legislative body is habitually obeyed both by the executive and the judiciary. But what about the U. S. A.? There exists a dormant body (people) above and beyond the ordinary legislative body. And such a body does not receive the "habitual obedience" from the bulk of the society, except its own obedience through itself alone. It may be pointed out in defence of Austin that the will is one; only its expression and execution is divided. But we may reply that the will is not one of a determinate sovereign but emanates from sources which are not determinate and is formulated through various indeterminate processes and influenced by indefinite influences. The government is

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1. Laski, H. J. *Authority in the Modern State*, p. 43.

itself subject to law and can be sued and sues in its own courts. Further, the agents of the state *i.e.*, the officials, are human and therefore have limitations.

Nor is sovereignty all comprehensive. The main instrument of the state is law. Law can deal with external matters alone and this too only in general terms. Hence, law itself is a limitation on sovereignty. Further, state cannot cover the whole area of human life. There are associations and groups with as real personality as the state possesses. These associations have their aims and ends. They are no less sovereign in their sphere. They exist in their own right and are not mere creations of the state. They possess power as original and as complete as that of the state. Where the state may interfere with other groups "where the action of the group touches territory over which the state claims jurisdiction. There is no certainty that the state will be successful. There is even no certainty that it merits success.....The only ground for state-success is where the purpose of the state is morally superior to that of its opponent".<sup>1</sup> Hence the whole of the Austinian doctrine of sovereignty falls to the ground.

We have discussed above the classical theory of sovereignty, now let us examine the various meanings of sovereignty.

The term "titular sovereignty" is used to mean a king or monarch who was once a despot but with the lapse of time has lost almost all his powers. For example, the king of England once exercised despotic powers but to-day he is merely a figure-head. But is it not funny, if not a contradiction in terms, to call a person with no real powers at all a sovereign.

By legal sovereign is meant the supreme legislative body. Only its commands are law and only they are valid throughout the state. It can supersede the existing law and frame new laws. It can override prescriptions of the divine law, principles of morality, and dictates of public opinion. It is

1. Laski, H. J. A Grammar of Politics, p. 45.



the ultimate law-making body. In England King-in-Parliament is the legal sovereign. This is merely a lawyer's conception of sovereign. Merely a legislative body is not sovereign. For example, in America the Congress is the supreme law-making body, but it is not sovereign. In England herself, the parliament is, in theory, sovereign, but in actual practice, the law-making body is merely an agent.

It is not very easy to define some ultimate authority from which the legal sovereign derives its power. It is ultimate power from whose verdict there is no appeal and by whose verdict the legal sovereign should be bound. Dickey says "Behind the sovereign which the lawyer recognises there is another sovereign to whom the legal sovereign must bow". Again he says, "that body is politically sovereign, the will of which is ultimately obeyed by the citizens of the state."

We cannot define political sovereign in exact and definite terms. It is indefinite and vague, it can not be located. Political sovereignty has been variously identified with collective community, or with the mass of the people, or with the general will, or with public opinion or with the electorate. None of these view points is entirely sound though all of them contain some element of truth. All these influence the decisions of the legal sovereign.

It means that the ultimate authority rests with the people. It is held that this is a natural transition from political sovereignty. William of Ockam and Marsilius of Padua were the chief exponents of this doctrine in the middle ages. In the eighteenth century, this doctrine was applauded by Rousseau. According to Rousseau, the will of each individual tended to submerge, in the general will, yet remain free as before, ultimate absolute, unlimited, indivisible and inalienable. With the rise of nation states and democratic ideals, the doctrine of popular sovereignty was all the more applauded. However, it is difficult to give any precise definition of popular

sovereignty. If by popular sovereign we understand the people, the people cannot govern in the sense of acting continually as a unit. The business of the modern state is so complex and technical that it is beyond the comprehension of the mass of the people. If by popular sovereign is meant the paramountcy of public opinion, we may say that this is the most abstract definition. We do not know when the public opinion is public and when it is opinion. The eliciting of public opinion is the most delicate and uncertain task. If we try to embody it in a few fundamental rules as was attempted in the framework of American constitution, we enthrone the opinion of a certain number of judges of the supreme court. According to Laski if we make the nation the source of all powers which are to be exercised by the legislative body and the king as was the case in the French Constitution of 1791, we are reducing popular sovereignty to a metaphor. He goes on to say that "we should then encounter on the one hand the argument of Rousseau that to part with paramount power is to betray it, and, on the other, the view of Burke and Mill that a restricted mandate is fatal to the moral character of the representative". So what we may mean by popular sovereignty is merely the fact that the criterion of political good is the general interest. The interest which must prevail should be the general interest of the community and not the interests of a part of the community.

Distinction is made between *De jure* and *De facto* sovereignty at the times of revolutions and particularly at the time of the recognition of a new state by other states. It is held that the government in power is *de facto* sovereign. By *De facto* sovereign is meant that sovereign which is in the possession of power and can compel obedience. And by *De jure* sovereign is meant that sovereign which has a legal right to sovereignty. It is held that *De facto* sovereign becomes *De jure* with the lapse of time when the *De facto* sovereign is able to get the obedience of the bulk of the society. But this distinction between *De jure* and *De facto* sovereign is futile. Sovereign is that which possesses power of the

state and is able to exercise it. In fact *De facto* exercise of supreme power makes sovereignty *De jure*.

The concept of sovereignty has undergone a complete transformation during the twentieth century. The old classic and legal theories of sovereignty have been analysed and criticised and a new interpretation has been given to the concept of sovereignty.

**The conception of Sovereignty in the Twentieth century (Sociological Aspect).**

The sociological school of jurisprudence builds the concept of sovereignty upon a new jurisprudence on the basis of a more complete integration with the findings of sociology. This school considers law not *subjective* as is considered by the classical thinkers but *objective*. Starting with the objective conception of law this school denies the very necessity of the concept of sovereignty. It represents the challenging forces of social life. The old despotic state has been transformed into a public service association. Statism has been substituted by syndicalism and public service. This school further points out that the sovereign group is no longer arbitrary and despotic but is bound to the rule of law, to the rule of social solidarity. Thus this school gives primacy to "society," and not to the state.

Leon Duguit is the most renowned and outstanding representative of this newer attitude. He towers as the champion of the twentieth century school of thought which considers law as objective. He attacked the theory of sovereignty on psychological grounds. But it can not be said that the basis of his attack on the classic conception of sovereignty was purely a psychological one. The events of his lifetime and his environments had confirmed and influenced his views. The rise of federation and decentralization was the obvious indication for the attack on the unified and unconditional commanding authority. Syndicalism in France and internationalism in world politics reinforced his attitude towards the dogmatic conception of sovereignty. The world war also served its purpose. It helped him to combine jurisprudence and

patriotism, because antagonism to German absolutism helped him to translate that antagonism against absolutistic conception of sovereignty. Further Duguit found enough material in the public services organized by the French government during the war for the construction of his positive structure of sovereignty.<sup>1</sup>

Leon Duguit studies the problem of sovereignty and the subjective law in its historic retrospective. He finds no "oneness" or unity of the state in the present world. This Unity of State, according to Duguit, has been challenged by two important facts in the modern period *i.e.*, ~~decentralization and federalism~~. Duguit points out that sovereignty is no more indivisible and unified power. It may be pointed out that there is a difference between the exercise and possession of sovereignty. But Duguit retorts that this distinction is merely a quibbling with words. The fact is that so much of sovereignty which a person exercises is in his hands and not in the hands of its possessor. Taking federalism as an example, he points out, if the federation represents the nation, the units personify only part of the national personality, if the units personify the whole, the federation does not.

Further, Duguit points out that the justification of sovereignty lies in its functioning. The exercise of power to have any reality or meaning for the individual should be able to provide the satisfaction of needs felt necessary by the members of the state at a given time. Further certain limitations concerning certain things should be put on those who exercise power and again, the government must be under the obligation to do certain things. But the system of imperialistic public law cannot support or sanction these conditions and limitations and therefore it is incapable of providing protection to the individual against the arbitrariness of those in power. Moreover, to-day certain activities are demanded of the state which were never sanctioned by the old classical theory of the state. Modern life demands of the state certain economic, social and utilitarian activities apart from its traditional

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1. Cohen, H. E. *Recent Theories of Sovereignty* p. 54.

functions of defence, order and justice. And in the performing of these new activities the element of command is altogether absent. To quote Duguit : "In those great state activities which increase every day, education, the poor law, public works, lighting, the postal, telegraph and telephone systems, the rail-roads, the state intervenes in a manner that must be regulated by public law. But this can no longer be based on the theory of sovereignty. It is applied to acts where no trace of power to command is to be found.....Modern institutions, under the new and fruitful jurisprudence of the council of state take their origin not from the theory of sovereignty but from the notion of public service."<sup>1</sup> Thus the basis of law is no more the command of the sovereign but public service.

Public service is the basic idea in Duguit's doctrine of state sovereignty. It signifies the existence of limitations on the rulers in a state. They are under obligation to perform certain activities. These activities are such which are necessary for, rather indispensable to, the realization and development of social solidarity, and are of such a nature that these cannot be secured save by governmental intervention.<sup>2</sup> These activities are always changing. However, they always include defence, order and justice. The other activities demand an organization for their regular and uninterrupted function. The new basis of public law has become no longer command but organization.<sup>3</sup>

Law is no longer the command of the sovereign. It is an objective and psychological creation. It is the embodiment of material, intellectual, social, economic and moral needs of the people. Law is no longer the result of command but of collaboration. This conception of law has changed the conception of administration, it is no longer command or arbitrariness but organization and management. This new idea of public law leads to an increasing industrialization of public activity.<sup>4</sup> The state is made responsible, it is responsible not only for the acts which it

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1. Duguit, Leon, *Law in the Modern State*, p. 31.

2. *Ibid* p. 48.

3. Cohen, H. E. *op. cit.* p. 41.

4. Cohen *op. cit.* p. 42.

performs but also for the acts which it does not perform and which it ought to have performed. The law framed by the legislator is merely a reflection of the will of the individual whom the former represents. Every association frames its own law which adjusts its relationship with its members and facilitates its working. Even each governmental department has its own organic law and its own disciplinary rules. Each department is responsible for its acts. Sovereignty is no more vested in the administration as such. Its acts are judged by the purpose they embody and by the accomplishment of that purpose. "Certainly, there is no monism in these developments." Duguit views the state as a co-operation of public services. His motif is positivism, realism, science.<sup>1</sup> Duguit does not fail to see the gap between his theory and actual practice. He points out that the administrative responsibility in England or America is far from accomplished but he points out that with the lapse of time evolution will take place and the transformation of public law will be complete.

Pluralism denies the oneness or absoluteness of the state. Society is not one but federal. There exist groups and associations having as essential a function to perform in their sphere as the state and being as sovereign as the state. Thus the state is denied that pre-eminence—legal, moral and ethical—which had been accorded to it by the idealists or the classicists and lawyers.

The staunch supporter and expounder of this school is Harold J. Laski. Laski is a realist. He studies the conception of state and sovereignty from the practical point of view. The problem of sovereignty, he thinks, is vital to political science.

Laski starts with the conception that society is not monistic, but federal. State is merely one association in society, it does not exhaust the whole associative impulse in man. There are other groups and associations which have a purpose to serve and an interest to promote. These groups

1. Ibid p. 53.

have as real a personality as that of the state. "It (group) is a binding together of its individual parts to certain modes of behaviour deemed by them likely to promote the interests with which they are concerned. In that sense it possesses personality. It results in integrated behaviour."<sup>1</sup> However, these groups do not exhaust the allegiance of the individual. Individual is the centre from which radiate the outward lines of contact with groups. The groups seek his loyalty only through the living and spontaneous trust of the individual which they can command. Loyalty ~~must grow from the experience of the individual and must~~ not be imposed upon him merely through coercion. The variety of group-life is profound. A group which seeks to retain the loyalty of the individual must be able to adapt itself to the changing experience of the individual. And this adaptation can never be complete. We are conscious of our separateness. We satisfy ourselves in diversity and ~~not in unity.~~ The good life for one is never the same as good life for the other. Thus life is not monistic but pluralistic. There is no unity a *priori*. The groups do not grow into a monistic whole but lead an individual life. Thus what we meet is not universe but multiverse.

State, therefore, is one of these associations. It has to attract or win the loyalty of the individual; it cannot impose it. Its decisions have no prioriness, they are to be evaluated and judged by the individual. He refuses to see the state as something different from other associations, or as an all-absorbing body. In what it differs from other association is its possession of force. But that force is itself to be justified and its use is to be justified by the individual. The laws of the state have no particular superiority to the laws of other associations in their respective spheres. He does not regard the laws as merely commands of the sovereign. In fact, he denies the existence of Austinian sovereign. Laws are not justified by merely a reference to their source. Laws must embody the experience of the individual and must cater to the

1. Laski, H. J. : A Grammar of Politics. p. 256.

2. Ibid. p. 256.

needs necessitated by that experience of the individual. Further, the individual must have an opportunity to contribute the results of his experience in the formulation of law. Thus Law is to be justified by its content and the purpose it embodies and the extent of the accomplishment of its purpose. Law should reach the individual through the channels of mind. Law is made valid by the individual's experience of it, and not by the fact that it is represented to him as law. Law then appears as the evaluation of the interests by the interweaving of interests. Thus Laski argues that "law is, in truth, not the will of the state, but that from which the will of the state derives whatever moral authority it may possess". Further he says, "it sees society, not as a pyramid in which the state sits crowned upon the summit, but as a system of co-operating interests through which, and in which, the individual finds his scheme of values."<sup>1</sup>

The obedience to the state and its sovereignty is based not on force or coercive authority and subsequent fear. But it is based on the ability of the state to maintain rights. The commands of the state are valid in so far as they maintain rights. These rights are not a written code as embodied in American or French constitution, nor are they inherent in, or natural right of, man. But they are the conditions which are necessary for the development of human personality in consonance with the development of the common or social good. Validity comes from the individual judgments which the individuals make about state demands and endeavours. No special moral claims differentiate it from other associations in society. There is no innate validity in its acts simply because they are identified with the state. Thus Laski argues : "Power is thus in itself neutral, what gives it colour is the performance it can demonstrate. Our ultimate allegiance is always to the ideal; and to the legal powers that seek to bind us, our loyalty is conditioned by the purpose and substance we can discover in its effect".<sup>2</sup>

1. Laski, H. J. A Grammar of Politics. p. 286.

2. Ibid. p 27.



Laski believes that the individual has not only the right but the moral obligation to contribute what he can towards the enrichment of the social good. The individual should scrutinize and criticise the acts of the state. For this purpose the state should provide information and economic equality to the individuals. However this does not mean that each man, as in the Benthamite view, is to be the best judge of his own interests, but it does involve our willingness to recognise that each man's sense of his own interest is a fact we may not disregard.<sup>1</sup> His personality should be allowed free access to the organs that register ultimate decisions. The responsiveness of those organs to the will the individual seeks to express must be maximised.

Nor does the equality of the state with other associations mean the abolition of its essential function as a coordinating agency. This finality must be invested, according to Laski, in a unified body very similar in its composition to that already existent in the days of Austin. But he points out that the limitations upon this finality come from the sphere of ethical obligation and expediency and not from the fear or danger of any like force similar to itself.

Thus in conclusion we may say that according to Laskian conception, the sovereignty of the state is no longer unitary, absolutistic and independent. It is pluralistic, constitutional and responsible. The basis of the state is no longer the sovereign or the nation or the people but the individual.

A similar pluralistic tinge is also seen in the writings of MacIver. To him, state is merely *an* organ of society and not *the* organ of society. It is one of **MacIver's Position.** so many corporations existing in society. He holds that the state has "definite limits, definite powers and responsibilities". Further, the state is a subject of rights and obligations which belong to it as a unity. State does not exhaust the whole of man. The whole creative side of human thought and endeavour,

1. Ibid. p. 283.

2. Cohen, H. E. op. cit. p. 123.

including religion and morality in its proper sense is outside the sphere of the state. "We do not live within the state, but only by means of the State". Other associations are as natural as the state, they exist in their own right. State is not their creator. It performs the functions of a guardian and an agent. It stands for the common interests of the society but not for the whole of them. The state has to accept the status of one among others, no matter how essential its service. Beyond the state, beyond its power lies the will of the social man. Thence in the last resort does the state derive what power it is permitted to exercise. Quoting Lindsay, MacIver goes on to say that the power of the state over its members depends upon the will of the members themselves and on the fact that they allow the state to organize force which can indeed coerce individuals but cannot coerce the whole community. The state therefore can have control over the corporations within it only if and so far as, the citizens are prepared to give it. The state and its sovereignty depends upon, and derives its authority from, the will of the people of the state.<sup>1</sup>

International lawyers and lovers of world peace discredit the old conception of absolute sovereignty. They say that the states can not remain separate and self-dependent entities. The world is so much interdependent and mutually related that no state can be left alone to judge its own rights. Laski points out that "the notion of an independent sovereign state is, on the international side, fatal to the well-being of humanity. The way in which the state should live its life in relation to other states is clearly not a matter in which that state is entitled to be the sole judge.....The common life of the states is a matter for a common agreement between states....England ought not to settle what armaments she will erect, the immigrants she will permit to enter. These matters affect the common life and they imply a unified world organized to administer them....If men are to live in the great society, they must learn the habits of co-operative intercourse.....In a

**Internationalism and sovereignty.**

1. MacIver, R. M. Modern State pp. 473-480.

world state, however it be built, and whatever the measure of decentralization that obtains, there is no room for separate sovereignties. Those functions which influence the life of the great society must be subject to the common and concerted decision of men."<sup>1</sup>

Krabbe thinks that no state has a natural right to lead an independent life. He visualizes one supernational state and ascribes the place of provinces to the modern sovereign states. He believes that if the existence of the modern sovereign states does not further the interests of international community, the former have no right to exist. Krabbe further points out that the persons in international law are not the states but the individuals.

Kelsen conceives one "total legal order" and the states as only "partial legal orders". He does not accept the dualism between international law and municipal law. To Kelsen the legal order is concerned with legal relationships<sup>2</sup>. A state is simply one of these relationships in public law, it is no better and no more of a person, legally, than the body of norms which envelops the human individual.<sup>3</sup> International law obligates not only states but also its organs and people. The subjects of international law are not the states but individuals, as is also held by Krabbe. Kelsen, further, thinks that supremacy of international law will emerge out successful and the monistic concept of sovereignty will be altogether suppressed.

Kelsen denies the old conception of state as an "empiric casual, sociological unity". To him the state is the idea of a code of human conduct. As a sociological fact it does not exist<sup>4</sup>. It is simply a term describing the regulatory ideology of a collectivity<sup>5</sup>. This leads him to the conclusion that, when we really rid ourselves of the naive classical conception of the state we shall have a politics without a state. And a politics without a state will be

1. Laski H. J. *A Grammar of Politics*. pp. 65—66.

2. Quoted from Cohen op. cit. p. 70.

3. Ibid. p. 70.

4. Ibid. p. 77.

5. Ibid. p. 78.

a politics without state sovereignty, as that term is understood by traditional jurists.<sup>1</sup>

In conclusion we may say that the interests of humanity and the world peace demand that we discard the old conception of sovereignty and sovereign state and set up a common world organization in which the modern national states are merely parts and not independent entities.

The various theories and points of views criticising sovereignty have been discussed and examined. All of them agree on the necessity of the existence of the state. Even Kelsen would permit the state as an idea and as a province of the 'total legal order.' What has been objected to is not the existence of the state but its absolute and monistic character. The state is no more society, it is merely an organ or an association or a corporation existing in society. Its power is not valid merely by reference to its source but by the purpose it embodies and to the extent of its accomplishment. The state is not all absorptive. We may deny the state absolute, supreme and ultimate sovereignty. But we do require some sovereignty for it. What is the nature of this sovereignty?

First we shall consider with professor Hocking the negative aspect of sovereignty *i. e.*, what it does not mean. Sovereignty does not mean the monopolizing of authority.<sup>2</sup> The state need not possess all authority but mere supreme authority. Supreme authority and other authorities are not contradictory, for example, the authority of custom and law are not contradictory. On the other hand, they are complementary. "The whole gives interpretation to the parts as the parts give substance and colour to the whole". The society is federal and not unitary.

Secondly sovereignty is not above criticism and opposition, nor 'beyond good and evil, nor above questions of justice, nor absolved from obedience to the laws of its own making.' Hobbes admits that the state is incapable of

1. *Ibid.* p. 78.

2. Hocking, W. E. *op. cit.* p. 390.

committing injustice because it itself is the source of justice. Rousseau believes in the inerrancy of the state. To them the will of the state is absolute and unlimited.

But, Hobbes himself admits that though the sovereign could not commit an act of injustice, yet he may commit inequity. Further, every will has a purpose, and every purpose is limited and hence every will is limited. State has a will and will being limited, state is also limited.

Again every finite will is limited by moral obligation. For the realization of its purpose it cannot use each and every means. The will of the state, being an aspect of individual's will, is also subject to this law. Laski identifies the state and government for all practical purposes. And he makes it a moral obligation of individuals to scrutinize and criticise the acts of the state. Moral judgment of the individual should be given full opportunity to find expression. And "the retention of moral judgment by the individual upon the state implies its retention by the state",<sup>1</sup> because there can be moral judgment only on potentially moral subjects. "Thus moral criticism asserts moral capacity and where there is moral capacity, limitation by moral law is self-limitation." This may be interpreted to mean that sovereignty is limited by moral law which is not an external limitation, but a limitation from within.

Thirdly the state or sovereignty is neither above law nor above legal criticism. Law is the chief instrument of the state and every law is a self-criticism. "Its general principles are forever criticising its special enactments; its judgments in special cases are for ever requiring revision of our conceptions of general principles. Law is simply one aspect of reflective living which self-criticism always attends".<sup>2</sup> The state is prone to commit error as the individuals are. The state can remedy that errancy by organizing self-criticism. It ought to be a matter of pride for the state to appear in its courts and assert its 'capacity to be a *just* (Italics ours) judge in its own case'. "By so doing the state assumes the noblest aspect of the will, which

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1. Ibid. p. 395.

2. Ibid. p. 395.

is self-limiting and therefore free in limitation." Therefore, Hocking concludes, sovereignty does not mean all-inclusiveness of purpose, nor infallibility, nor absence of limitations.<sup>1</sup>

Now we shall consider the positive aspect of sovereignty *i.e.*, what it means.

What So-  
vereignty  
means.

Firstly it means the capacity for reaching a final decision.<sup>2</sup> This does not mean that it is beyond criticism or that there is no other limiting authority. It means that there is no other authority of *similar* nature the orders of which can take precedence.

Secondly the sovereignty of the state is unique in the sense that its decisions have a precedence over the decisions of other groups and individuals. This does not mean the superseding of other interests by the state. In order to stabilize the life of the society, some association is required to arbitrate. Man has various interests and is trying to achieve satisfaction through various channels and by getting various experiences. But to become a self, he needs integration of these interests and experiences. This integration is the function of the state and its sovereignty. In fact the justification of the state should be its possession of power. "The sovereignty of the state means the supremacy of a special sort of power, namely power through ideas. If there is no such supremacy, what we have left is a struggle of interests for possession of the instruments of coercion ; groups of various sorts, getting authority from the fractions of human nature which they satisfy, set up as so many wholes and seek public control not as ideas but as private I—wills."<sup>3</sup>

Therefore, what is required is not the weakening of the whole *i.e.* the state, but "an alternate strengthening of the whole and part". There should be freedom of social growth, but the groups and state must grow diverse but they must not grow apart. Thus we may say that the old monistic conception of sovereignty does not hold ground and is being discarded gradually.

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1. *Ibid.* p. 396.

2. *Ibid.* p. 396.

3. *Ibid.* p. 401-402.

## QUESTIONS AND TOPICS

1. What do you understand by sovereignty, how far can sovereignty properly be said to belong to the people ?
2. State and criticise the doctrine of popular sovereignty.
3. Critically examine the Austinian theory of sovereignty what are the views of Laski on sovereignty ?
4. Discuss briefly the recent changes in the conception of sovereignty.
5. Critically discuss the relation between sovereignty and internationalism.
6. What are the views of the pluralist on sovereignty.

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32. Willoughby, W. W. : *An Examination of the Nature of the State* (1922). Chapters IX, X, and XI.
33. Wilson, Woodrow : *The State* (1918).

## CHAPTER 9

### LIBERTY

To-day the world is engaged in a life and death struggle to preserve liberty. The right to liberty is not only considered the most essential and the primary right but the right which is even more important than the right to life. For of what use life is to a person who is allowed to live under conditions or restrictions which kill his imagination, stagnate his intellect, starve him to death, make him a social leper or an international outcast, deny him the means to know, in a word dwarf his physical, mental and moral, social, economic and political being. Liberty has been defined as 'the absence of restraint' upon the existence of those social conditions which in modern civilization, are the necessary guarantees of individual happiness. People in all ages have valued the ideal of liberty more than life. The goddess of liberty has been worshipped by man and beast alike; in its name have been performed great acts of valour and hateful crimes. Even to-day the ideal of liberty has a powerful hold over the minds of the people and there are very few ideals which can move men more deeply and readily than the ideal of liberty. But the meaning of liberty is not the same to all though it should be so. Liberty in the sense of freedom does not mean the same thing to the master and the slave. It does not mean the same thing to an Indian and the Britisher or the American or the Japanese. In a world which is pervaded by the sense of liberty one whether he be Indian, Negro or a Ceylonese, must be able to look his fellow men in the face. But this is not the case. Neither the Indian, nor the Negro nor the Ceylonese can look his fellow men—the Britisher, the American, the French in the face and if he does he may well get a blue eye. To enlarge the point is to flog a dead horse. You must make room in the train, in the hotels, on public ceremonies for the *sahib* for the simple reason that you belong to the coloured race

while the *sahab* belongs to the white (bleached, if you permit) race and in addition he carries the whiteman's burden, but which he forgets is golden; this pertains more to the problem of equality which we maintain is a condition of liberty. Again liberty or freedom does not mean one and the same thing to the employer and the employee. It is time that we pointed out that such terms as 'liberty,' 'freedom,' and 'free' are rich in meaning and are used in different senses. Let us enquire into some of the meanings of the term liberty and also acquaint ourselves with some of the varieties in which it is used.

Writers hold that liberty has two aspects—negative and positive. In the negative sense freedom is the mere absence of restraint. By making it merely the absence of restraint we are making it a purely negative condition. But by this it is not assumed that a man will be the happier the more

Liberty—  
Negative  
and Positive.

completely restraints are absent from the society in which he lives. Mere absence of restraint cannot be freedom. Freedom in its positive aspect has been defined as 'the opportunity or capacity of doing something.' Liberty or freedom is the positive opportunity for self-realization or if you like for the continuous expression of one's personality. According to Professor Laski it means two things, viz :

- (1) the power to expand, and
- (2) the choice by the individual of his own way of life without imposed prohibitions from without.

It is simple to understand. We cannot, as Rousseau held, force men into freedom. Men do not, as Hegel insisted, find their liberty in obedience to the law. Men are free when 'the rules under which they live leave them without a sense of frustration in realms they deem significant.'<sup>1</sup> Thus we may say that freedom in its positive aspect is the essential condition and guarantee for the development of the best and highest that is in us. In a word it is a synonym for self-determination of action.

1. Laski, H. J. Liberty in the Modern State (Pelican edition 1937), p. 49.

It has been pointed out that the term liberty is used in various senses ; this is an example of the lack of scientific or accurate terminology in political science. We now proceed to consider the different kinds of liberty, viz :—

Kinds of Liberty.

1. Natural Liberty.
2. Personal Liberty.
3. National Liberty.
4. Political Liberty.
5. Civil Liberty.
6. Economic Liberty.

The word 'nature' in political science means more than one thing. It is difficult to give any intelligent and consistent meaning to the term 'nature.'

1. Natural Liberty.

Therefore, the conception of natural liberty is also confused and undefined. It may, however, be defined as the right of each to do as he chooses without any interference from the society. The advocates of this conception hold that by nature man is free and his bondage in the modern society is the result of the modern civilisation. Rousseau is considered a great advocate of natural liberty because the opening words of his Social Contract, "Man is born free ; and everywhere he is in chains" are said to support the contention that man is free by nature. But perhaps Rousseau himself does not mean that which those who quote him ascribe to him. It is true that in his earlier work Discourse on Inequality, Rousseau tries to show that man was absolutely free and the advent of civilization brought his enslavement. But in the Social Contract he is only trying to impress upon us that man is not naturally subject to another man, therefore, political organization which must imply a certain amount or degree of subjection must rest on some agreement.

We are not much concerned here with what Rousseau precisely meant by his words, but with the fact that natural liberty might well be another name for the freedom of the jungle, and the freedom of the jungle is no

freedom at all. The state of man in the state of natural liberty is not enviable at all. In the state of natural liberty he is a slave of appetites and physical impulses; his conduct is regulated not by intelligence but by instinct. In the state of natural liberty he is more of a brute or beast than a human being. It is only in the civil state that he can become a subject of rights and duties and hence a rational creature; his conduct in the civil state is governed by laws of morality and justice. Even an ardent champion of natural liberty like Rousseau ultimately favours civil liberty to natural liberty; for to him, "what man loses by the social contract is his natural and an unlimited right to everything he tries to get and succeeds in getting, what he gains is civil liberty and the proprietorship of all he possesses."<sup>1</sup> Natural liberty is distinguished from civil liberty in that while the former is limited only by the natural strength of the individual the latter is limited by the general will. In the former there is only possession which is 'merely the effect of force or the right of the first occupier, but in the latter there is property, which can be founded on a positive title.'<sup>2</sup>

In conclusion we may say that natural liberty or absolute freedom is only another name for absolute anarchy or the freedom of the jungle. It is only as a member of a civilized community that man can have true freedom. Because it is only in a civilized community that he becomes the subject of rights and duties and is controlled in his conduct by intelligence and not instinct. In a word he does not remain merely an individual but becomes also a citizen.

All normal human beings desire personal freedom. A normal person wants that he be free to plan his life as he pleases. To him the right to exercise his personal talent and faculties and to determine the general conditions of his life is the most important and valuable right. He does not like un-necessary restrictions on his freedom to do his business the way he considers.

1. Rousseau, J. J. : Social Contract (1930) p. 19.

2. Ibid. p. 19.

best. Any interference with his tastes, way of life, and hobbies or vocations are specially resented by him when his likes and habits and what he does is not opposed to public morality or social order. For example take the question of censorship. Any one who looks through the prohibited list of publications will get a sense that 'the office of censorship is the avenue to folly.'<sup>1</sup> No one can claim to be wise enough or good enough to control the intellectual nourishment of the human mind. It is simple to understand. What tests are they to apply? Generally speaking publications are suppressed on the ground that they are dangerous or obscene. But no one has ever arrived at a working definition of obscenity even for legal purposes. Let us take for example two books proscribed by the English magistrates for obscenity in 1929. One Miss Hall's *Well of Loneliness*, seemed to men like Mr. Arnold Bennett and Mr. Bernard Shaw a work which treated of a theme of high importance to society in a sober and high-minded way. They could not see any reason to suppose that the treatment of its difficult subject could be regarded by any normal person as offensive. The Magistrate Sir Chartres Biron held a different view.<sup>2</sup> We are not prepared, on a priori grounds to believe that a lawyer, however well trained in the law, has a better sense of what is apt to produce moral depravity than Mr. Shaw or Mr. Bennett. Another book, —D. H. Lawrence's *Lady Chatterley's Lover* — was distributed secretly and privately. We are told by Professor Laski that he had definite knowledge that the public sale of the book would have been prohibited. Yet some of the most eminent literay Americans praised it as the finest example of a novel seeking the truth about the sex relations of men and women that an Englishman has published in the twentieth century. That may be—we are not competent to say—excessive praise.<sup>3</sup> The point is that in a choice, let us say between the average police magistrate and Professor Sir Radha Krishnan, we are not prepared to accept the

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1. Laski, H. J.: *Liberty in the Modern State*, p. 99.

2. *Ibid* pp. 99—100

3. For fuller discussion see Laski; *Liberty in the Modern State* chapter on the Freedom of the Mind.

former's opinion of what we may be safely left to read. In the U. S. A., the prohibition law was opposed and broken by many a law-abiding citizen, because it was considered to be an uncalled for interference with the personal freedom of Americans. The sense of personal liberty is so strong in England and Germany that every man regards his house as his castle ; it is inviolable against all outsiders. The officers of the state cannot trespass except as sanctioned by ordinary law. We cannot say the same thing about our country. No Indian, whatever his status or position can, say with confidence that his house is his castle inviolable against all outsiders. One's country is one's home, one likes to move about in one's home as one pleases, so in one's own country a person wants to travel about as he likes and does not want to submit to irritating, humiliating and harassing restrictions, unless he is a suspect or a criminal. Personal freedom is of such importance and value that even John Stuart Mill—an apostle of individual freedom as well as an advocate of freedom of contract—believed that no man had a right to contract himself into slavery.

To Mill the right of personal freedom was so dear and of so much value that he allows the individual complete freedom even to experiment with his life, if what he does does not directly and definitely affect other individuals. Such is the importance of personal freedom to Mill that he goes to the extent of allowing the individual to experiment in extravagance, viciousness, and even drunkenness, subject of course to consequences.

In our times Bertrand Russell is an ardent champion of personal freedom and regards it as the greatest of all political goods.

We may conclude our discussion of personal liberty with the striking words of Rousseau to whom, "to renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties.....Such a renunciation is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his acts."<sup>1</sup> Those who like Bertrand Russell consider

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1. Rousseau, J. J. : Social Contract, p. 10.

personal freedom the greatest of all political goods value their personal freedom more than any other freedom or any political rights they enjoy. They hold that the freedom of thought, freedom of speech, freedom to know, and freedom of expression are much more essential for the highest development of human personality than the right of voting or that of holding a public office. There is much that is admirable and valuable in this view of personal liberty, but man as a member of a civilized community can have no absolute personal freedom. Whatever personal freedom he has and should have must be in relation to the equal freedom of others.

National liberty is synonymous with political independence and autonomy of people. The love of his country is deep seated in man and it evokes in him feelings which cannot be easily evoked by any other ideal. In the name of nationalism or patriotism even in its narrow sense, man is prepared to sacrifice his all. He is prepared to surrender his freedom so that he may defend and save the freedom of his country. In the world history national freedom or independence has played a great part. Though the world is sick of war, yet wars of national independence are advocated and applauded by the mass of mankind. So long as internationalism remains a weak force in modern politics and so long as the idea of sovereign nation-state holds the imagination of the people, national liberty will continue to hold the ground in world politics and is essential to the conception of liberty in its complete and fullest sense. This is why we Indians desire and demand national liberty because its absence detracts something from our national self-respect and national personality when we face free citizens of England or America; because wherever we may go—England, America, or other European countries—we bear with us the shame of a people who are unfree, but who have a great country, a great past and a still greater future.

### 3. National Liberty.



Political liberty may be said to mean the share which the individual possesses in the management of the state, or in the determination of the manner in

**4. Political Liberty.**

which the powers of the state shall be exercised. Thus we may say that before the reaction against democracy began it used to mean democracy, popular or representative. In this sense it refers to the political rights which are conferred by the state on certain of its people. For example the right of voting and the right to stand for public offices. To Laski it stands for the right to be active in the affairs of the state. He holds that political liberty to be real requires two things : (1) education of the people, and (2) supply of honest and straightforward news. But we know that both these things are lacking in most of the countries of the world specially in India where the literary percentage is notoriously low and about the supply of honest and straightforward news the less said the better.

Civil liberty means the rights and privileges which are created and protected by the state for its citizens.

**5. Civil Liberty.**

Within the fourcorners of law, each has the liberty to do as he chooses. The concept of civil liberty may involve protection from interference by other citizens or organizations or by the government itself. Constitutional law may restrain particular organs of government from interfering with individuals, but the legal right of the sovereign to interfere in whatever way necessary is always present. It has been pointed out that civil liberty consists of rights and privileges created and enforced by the state. Some of these rights and privileges are :

- ✓ 1. freedom of person ;
2. equality before law ;
3. right to and protection of private property ;
4. freedom of opinion and its expression ;
5. religious freedom.

All liberty becomes a mere nothing if a person has no control over the economic conditions of life. In modern times much has been written and more has been said on the pitiable condition of the teeming and toiling millions. The uppermost thought in the minds of the mass of the people is not about political liberty or national liberty but about economic liberty or to be more precise economic justice. We must not confound liberty with certain other goods without which it has no meaning. There may be absence of restraint in the economic sphere—a person may be free to enter any vocation he may choose. But if he is deprived of security of employment he is eaten up by mental and physical servitude which is incompatible with the very essence of liberty. The corner stone of the present day economic and political order is private property, which places a tremendous and a killing strain upon one's nerves. No doubt it means individual striving, and hence may mean some economic liberty, but it also means individual endeavour more by foul than fair means.

Under this strain a person is drained of all his mental and moral resources. One does not need to labour much to understand the lot of the individual in the present economic order. One does not need to point out that under the present economic system more than half of one's life-time is spent in equipping oneself for work and securing employment and the remaining half is spent to keeping it secure for himself. Witness, for example, the normal life of the poor, its ever haunting fear of to-morrow, its killing sense of impending disaster, its pitiable search for a beauty which perpetually eludes. In our country for immense masses of people there is neither the joy of work nor opportunity for the expression of the creative faculty. In the minds of all with the exception of a miserably small minority the ghost of poverty, of insecurity and unemployment looms large. Normally a man in his middle age when he should be secure against all such anxieties and worries is harassed with such questions: How is it possible to give my children the best possible education? What will happen to me if illness overtakes me or any

member of my family? What will be my lot if I do not flatter or kowtow to the head of my office or very often to his wife, to the headmaster of my school, to the principal of my college or the foreman of my factory? What guarantee I have that old age or invalidity or incapacity for work will not find me stranded in the street crying and begging for my daily bread? All this goes to show that without economic security, liberty is not worth having. If you give me the liberty to starve what kind of liberty it is? Without economic security which is a necessary condition of liberty men may well be free and yet remain unable to realize the purposes of freedom.

Concluding we may say that the present economic system has failed to provide economic security, national security and freedom of self-expression which has necessarily resulted in the negation of liberty in all its aspects. The basis of the present economic system is selfishness and exploitation. It must, therefore, be replaced by some other system which can provide us with more bread, better brotherhood, justice and freedom. ✓Laski by economic liberty means security and the opportunity to find reasonable significance in the earning of one's daily bread; it implies democracy in industry. To Professor Tawney economic liberty implies not that all men shall initiate, plan, direct, manage, or administer, but the absence of such economic inequalities as can be used as a means of economic constraint.<sup>1</sup>

In the whole history of political philosophy there is nothing more complex and subtle than the relation between liberty and authority. What is called the Idealist theory of the State is mainly the argument that there is no antithesis between liberty and authority and that individual freedom means 'obedience to the law of the society to which I belong.' ✓From Plato to Rousseau it was always maintained that the individual's freedom was 'born of a limitation upon what his rulers may exact from him.' Since Rousseau and more especially since Hegel it may be said, it has been advocated that compulsory obedience to

1. Quoted by Astrvatham.

a code is the very essence of freedom. But this is a startling paradox which needs an explanation. ✓It is maintained that liberty is not merely the absence of restraint or a negative thing. On the other hand it is a positive self-determination of the will. This will in each individual seeks the fulfilment of a rational purpose. Men desire freedom so that they may be able to develop the best in them. This is their real will and the highest part of themselves. This will is the same in each individual member of society ; for at ' bottom the real will is the common will' finding its highest expression in the state. According to this view, therefore, the more intimately we identify our will with that of the state, the more completely are we free. In other words when I obey the state, I obey my best self. As Laski says : " The more fully I discover its purposes the more fully, also, there is revealed to me their identity with that at which, in the long view, I aim." Thus when the individual obeys the state he obeys himself ; in a real sense its commands are his own.

Thus according to this view we may say that our true liberty is a kind of permanent tutelage to the state, a "sacrifice of my limited purpose to its larger end upon the ground that, as this larger end is realized, so I, too am given realization. I may, in fact, be most fully free when I am most suffused with the sense of compulsion."<sup>1</sup>

The idealists hold the above position. To them liberty and authority are not at all mutually exclusive. But it is not possible to agree with the idea that the more one is under the tutelage of the state the more free he is. All the main facts of experience contradict it. It simply means a paralysis of will as well as the denial of the uniqueness of individuality ; it further destroys that consciousness that each of us is ultimately different from his fellows which is the ultimate fact of human experience. For Laski says : " For as I encounter the state, it is for me a body of men issuing orders. Most of them, I can obey either with active good will or, at

least, with indifference. But I may encounter some one order, a demand, for instance, for military service, a compulsion to abandon my religious faith which seems to me in direct contradiction to the whole scheme of values I have found in life.”<sup>1</sup> He points out that he fails to understand how can one be more free by ‘subordinating his judgment of right to one which directly changes that judgment to its opposite.’ But it should not be understood by the above that liberty and authority are *absolutely* contradictory to each other. Nor are they *absolutely* complementary and supplementary.

Experience tells us that liberty is not a mere absence of restraint, but that authority in some form or another is needed to preserve liberty. According to Willoughby freedom exists only because there is restraint. The absence of authority may lead the individual to the ‘state of nature.’ But we want to point out that the existence of authority may equally lead the individual to the ‘state of nature’ or even worse than that. It may lead him to a state of torpor, political stagnation and intellectual death if *it is not informed*. If authority desires to be complementary and supplementary to liberty it must be *informed*. Our argument is simple. After all the state exercises authority with some purpose and to us the most important purpose of the state is to maintain conditions of good life or happiness of the individual. If authority fails to maintain that it can not be said to be complementary and supplementary to liberty. It must not be forgotten that the judge of good life is the individual himself not the state. For we believe with Laski that “the individual is real to himself not by reason of the contacts he shares with others, but because he reaches those contacts through a channel which he alone can know. His true self is the self that is isolated from his fellows and contributes the fruit of isolated meditation to the common good which, collectively, they seek to bring into being.” The present relationship between liberty and authority is based on the assumption that there is a common

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1. Ibid p. 58.

will in society. We cannot believe in this myth. It is opposed to the facts of life. No one will can be said to be identical in every member of society. The most important fact in politics is the variety of human wills. There may be common objects of desire, but 'each will that wills these common objects is a different will in every sense'. We all will the freedom of India. But the unity these make is *not in the will* but in the effusion of *separate wills* to the attainment of a common end. It is not possible to compound all objects of wills into a higher unity in some mystic fashion. For example the will of a Communist aims at the overturn of capitalism ; how can it be said to be one with the will of a president of a chamber of commerce to whom all the purposes of the Communist are anathema. Both, undoubtedly will the good, but each wills it as he sees it, and each would regard the success of the others' purpose as the destruction of his own.

Further authority is justified on the plea that the state embodies a unified will. The state is a complex of rulers and ruled organised territorially and 'seeking, by the conference of power upon those rulers, effective co-ordination of social activities'. Our rulers undoubtedly, aim at the good as they see it. Yet what they see as good may not be so admissible to us, and may well create a consciousness or sense that life would not be worth living if what they think was to prevail. Thus the unity of the state is not inherently there. It is the result of civic acceptance of what its rulers propose. As Laski points out, 'It is not necessarily good because it is accepted ; it is not necessarily right because it is proposed. Obedience ought always to be a function of the substance contained in the rules made by government.'

Summing up our discussion we may say that liberty is the air of the spirit. If men, women and even children are not free to think as they like, they lose their title to humanity, for it is only the power of thinking which distinguishes the man from the brute. If people are not free to speak as they please, they become gramophone records, more than human beings,

to speak what others desire to say. If they are not free to act as they please, they become machines who perform the will of others.

If a person may be arrested at any time without a warrant, sent to prison without a trial and left to rot there at the pleasure of the government, he lives constantly under a dark shadow which takes away all the sweetness from his life. He feels insecure and hence miserable. The one essential background of good life is security, and there can be no security *if liberty depends upon the fiat of unlimited, unqualified and unchecked authority.*

It must be remembered that the exercise of authority is always surrounded by the penumbra of anarchy and if liberty and authority are to be mutually complementary and supplementary authority must reach the individual through his mind and not through his body as is the case at present. We agree with Professor Joad that to sacrifice freedom in the interests of efficiency, is to sacrifice what confers upon human beings their humanity. It is no doubt easy to govern a flock of sheep; but there is no credit in the governing, and, if the sheep were born as men, no virtue in the sheep<sup>1</sup>.

In the whole realm of political science there is no idea more difficult than the relation between liberty and equality. To men like De. Tocqueville and Lord Acton who were great champions of liberty the two concepts—liberty and equality—were antithetic. This is a summary conclusion and is based upon a misunderstood meaning of equality.

Only a naive will suppose that all men are equal, though some people have maintained that they are 'born free and equal'. Equality does not and cannot mean identity of treatment. It is simple to understand. It is impossible to have identity of treatment so long as men differ in their want, capacity and need. And they will be

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1. Guide to the Philosophy of Morals And Politics.

different in want, capacity and need till the millennium. Further equality does not imply identity of reward for effort. If equality does not mean all these things ; then what does it mean ?

Generally speaking equality is a coherence of ideas. It necessarily implies a certain levelling process which means that 'no man shall be so placed in society that he can overreach his neighbour' to an extent which may deny the rights of citizenship to the latter. Laski points out "that the meaning, ultimately, of equality surely lies in the fact that the very differences in the nature of men require mechanisms for the expression of their wills that give to each its due hearing. The power, in fact, of the ideal of equality lies in the historical evidence that so far in the record of the state the wills of men have been unequally answered. Their freedom, where it has been gained, has accordingly been built upon the unfreedom of others."<sup>1</sup> In a word inequality means the rule of the few because it secures freedom only to those who are secure of respect. They will rule the state using its power for their own end and make the accomplishment of their personal desires the measure of public good. Thus we may say that equality means :

1. That every man has an *equal right* to develop the best in him ; an *equal right* of access to the knowledge and culture which the community to which he belongs has inherited. It further means that every individual has an *equal right to training and equipment for life*, both as an individual and as a citizen. Every man has an *equal right* to be educated, and it is the *duty* of the state to see that this right is enjoyed. This needs a little clarification. A man's right to education does not entitle the state to stuff his head with 'hypotheses presented as truths and ideas inculcated as dogmas, turning out as a result a standard, manufactured mind,' guaranteed to think right, *i. e.*, as the

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1. Laski, H. J. : A Grammar of Politics. p. 158.



government thinks—on all matters. A man's right to education means that the society should provide him with the necessary minimum equipment *to enable* him to think for himself. In a word it means that it should teach him *not what to think*, but *how to think*.

Thus we may say that the provision of adequate opportunities is one of the basic conditions of equality. It must be clearly understood that *adequate opportunities do not mean*, and cannot mean, *equal opportunities* for all in the sense that 'implies identity of original chance.' Men are unequal in their natural endowments. Children brought up in an atmosphere where things of the mind are valued more will necessarily begin the race of life with advantages which no law can secure. Parental character is another factor which will influence the quality of the children. Therefore so long as the institution of family endures, and there is no reason to think that it will ever disappear, the changing environments which it will create make the idea of equal opportunities a fantastic idea. But that is not to say that the opportunities provided may be inadequate. In the modern world, and more especially in India, 'opportunity is a matter of parental circumstance.' This is a negation both of liberty as well as of equality.

2. Equality means the absence of special privilege. In the political sphere, according to Laski, it means, that "My will, as a factor in the counting of heads, is equal to the will of any other. It means that I can move forward to any office in the state for which men are prepared to choose me." It means that we are not to find that there are persons in the state whose authority is different qualitatively from our own. It means that, other things being equal, my good is of the same intrinsic worth as the good of any one else. The exclusion of any individual or a body of individuals from access to the portals

of power is a denial not of their liberty but of equality as well.

Thus equality means proportionality or impartiality—equality among equals and inequality among un-equals. The attainment of this end requires four conditions :—

1. There should be a complete absence of special privileges for any person or a body of persons;
2. Law should provide *equal* protection to *all* against the abuse of power ;
3. There shall be equal guarantee that power shall be used *for the general good and not for the satisfaction of personal desires*;
4. Adequate opportunities should be provided for all without distinction of caste, colour and creed.

In the modern society talent is allowed to perish for want of encouragement ; whereas everyone should get an opportunity to realise the implications of his personality and to discover himself. There may be inequalities when the urgent claims of all or the minimum needs of everyone have been met. Such inequalities must be rational and in the interests of general welfare of the community. If there are to be any differences in remuneration, status, etc., they should be based on and must arise out of functions. There is no valid reason to pay and treat two persons differently doing the same functions. We agree with Laski who rightly says, " Equality involves upto the margin of sufficiency identity of response to primary needs.....Some will not (should not) starve quietly if others have abundance."<sup>1</sup> Varying rates of payment for effort is not agreed but it is pointed out that "great inequalities of wealth make impossible the attainment of freedom."

This naturally implies the imposition of social control upon individual liberty and it is here that liberty and equality come into contact. It cannot be said that the

1. Laski. A Grammar of Politics. p. 160

2. Laski. Ibid. p. 161.

individual has the liberty to indulge without limit his craving or appetite for power or for material gain. A healthy and a sound conception of liberty necessarily calls for restraints upon it. This principle is already recognised to some extent in the political sphere. In the working of the present day democracy the Benthanite maxim 'each to count for one and no one for more than one is fairly widely recognised.' No distinction is made and recognised between the vote of a sweeper and that of a merchant prince. But what is true in the political sphere is not true in the economic field. The economic sphere is still pervaded by inequality. But experience has demonstrated that political equality or democracy is of no use and value without economic equality or democracy. Describing the evils of present day large scale industry, Prof. R. H. Tawney quotes Justice Brandeis according to whom "the main objection to the large corporation is that it makes possible—and in many cases makes inevitable—the exercise of individual absolutism."<sup>1</sup> There is only one solution of the problem of liberty and that is equality—political, legal, social and economic.

Summing up our discussion on liberty and equality we may say that the principle of equality entails a variety of conceptions the more important and the more pressing of which are :

1. political equality ;
2. equality before law ;
3. social equality and
4. economic equality.

And if equality—political, legal, social and economic—is to be maintained the liberty of the strong must be restrained for the sake of the weak, that of the rich for the poor, of the sharper for the simpler-minded. Every person should have only that much liberty and no more to do to others what he would like others to do to him. It is only on this common basis that morality, liberty and equality can rest.

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1. Tawney, R. H. Equality; pp 246-247.

It has been pointed out that there is a close relation between liberty and authority. The authority of the state is expressed through law. The existence of law is essential to the existence of liberty. The individual abstracted from society and regarded as entitled to liberty outside the conditions and environment of society has no meaning. None of us is either a beast or a god ; we are born to live our lives in Delhi, Lucknow, or Lahore, London or Berlin or New York, Paris or Rome. Our liberty has to be realized in a 'welter of competing and co-operating interests' which can only achieve any rational co-ordination through restraints upon the unbridled freedom of each of us. As Professor Laski points out that the need to give way to others, to accept, that is, restraint upon our right to unfettered activity is inherent in the nature of things<sup>1</sup>. But these restraints (law) should be applied to all equally, that is, without any partiality. It is the duty of those who are charged with the application of laws that while applying them they should not look either at the face (whether it is black or white) or at the pocket of an individual. Every one has a right to equality before law. Not only this we agree with Laski that law is not merely a command ; it is also an appeal. If it is to be so those to whom it is applied should be convinced of its being right and in the interests of the common good. If it be not so, liberty and authority will remain antithetic. So long as law represents the interests of the few, as is the case in the present structure of society, there will remain discontent and unhappiness, bursting at times in rebellion—violent or non-violent. If liberty and law, and liberty and authority, are to be reconciled law and authority should be reasonable and when we obey these it should be not by compulsion, but because of our conviction that they are rational and right. Man is free when he obeys the law in the making of which he had a share, he obeys it from the impulse of self-perfection because he knows that he has made it. /

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1. Liberty in the Modern State (Pelican edition) p. 55. ;

So far we have discussed liberty and equality as affecting only the individual within the territorial limits of a state. But the issues which these two conceptions raise go far beyond the territorial confines of a single state. World co-operation, competition if you will, has reached dimensions where it has become imperative that man must legislate not for England, France or America, Germany, Japan or Italy, Abyssinia, Australia, Iran or India, but for civilization as a whole. Liberty and equality are a fiction in the field of international politics. For example, how we can assure equality of treatment between the white and black in Africa, between the coloured and the bleached in India, between the Negro and the Yankee in America when the fact from which we start is one of unequal power. How are we to ensure that in a conference of world powers the interests of India will be considered equally with the interests of England, France or Russia. Every schoolboy now knows that the Atlantic Charter (whatever its worth !) is not to apply to India.

Until the peace of Versailles, the usual method in international law was to *assume* the equality of states. But it may be pointed out that even the most honest legal fictions can not make a small state equal to a great one. For example can England and Peru or United States and Mexico, in vital matters bargain on equal terms? No, they can not. Concepts like liberty and equality in the field of international relations are devoid of any meaning unless war is outlawed. So long as a state is free to force its solution upon its neighbour we can not say that there exists equal liberty for all states. The outlawry of war itself depends upon the building of international institutions capable of mobilising the authority of the world against any aggressor. Such institutions can not be discovered overnight and by counting each state as equal in voting power to every other state, equality in voting is a fiction which can not make any league of states effective. Professor Laski suggests that "the solution rather lies in choosing the subjects of international control

and finding a method of proportional representation for their governance.”<sup>1</sup> For example, the view should be acceptable that only Englishmen can choose the prime minister of England, but the size of the British Air Force or the British Navy is a matter to be decided by international determination. Once again England may decide whether Hindi or Hindustani is to be taught in her schools or not, but the character of her foreign loans should be settled by international consent. When such an international institution is built up each state,—small or great, black, white or yellow—will have a claim ‘to bargain, to criticise, to object’; but when decision is declared against her, she will be made to give way. Professor Laski points out that equality, then, means

- (1) that the method of discussion gives full weight to the facts each state puts forward,
- (2) that the use of force is ruled out from consideration.

And freedom will mean

- (1) that outside the field of international control each state can decide its own life,
- (2) that just as no individual can find freedom outside the common rules of his society, so, also, no state can find freedom save by accepting limitation of its sovereignty by the will formed by the common decision of a society of states.<sup>2</sup>

This habit of rational international settlement can not be cultivated overnight. It is bound to take a long time to grow. But what is pointed out is that the solution of the present day world anarchy, inequality and insecurity lies in conceiving of the world as a federal state, the unit members of which do not possess, equal voting power.<sup>3</sup> Thus freedom in the international field will

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1. Laski, H. J. *A Grammar of Politics*. p. 166.

2. *Ibid.* p. 166.

3. *Ibid.* p. 166.

come to mean self-determination only in those matters which are peculiar to a particular state. There are some writers who hold that there are some non-justiceable disputes which can not be the subject of international control. Such writers do scant service to civilisation. What they say and maintain in terms of historic conditions does not fit the facts of the world any longer. A nation is not humiliated if it is proved wrong. When they suggest that it is humiliated by being proved in error their suggestion is as wise as to suggest that the trial by battle is apt to result in justice. A state which uses its prestige complex to evade international jurisdiction may be taken to be decidedly wrong ; for, 'states, like men, never protest their honour loudly unless they have a bad case to argue.'

Concluding we may say that if liberty and equality are to have any meaning in international relations the states must give up their prestige complex and cooperate to evolve an effective international machinery for the settlement of matters which affect more than one state by international discussion and argument rather than by international war and force.

#### QUESTIONS AND TOPICS

1. Critically examine the relation between Liberty and Authority.
2. Criticise and comment: 'Liberty and Equality are antithetic.'
3. Write a short essay on Liberty.
4. Write a short note on Liberty and Equality in their international aspect.

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## CHAPTER 10

### RIGHTS

The theory of rights is the path which leads us to a creative outlook in politics ; it is therefore necessary to define and understand with some care their meaning. Their understanding is important from another point of view also. Every state is known by the rights it maintains. The only method of judging its character lies, above all, in the contribution that it makes to the substance of man's happiness.

There are certain questions with regard to rights which are apparently very simple, but are really very difficult and which interest equally deeply a serious student of political science as well as the man in the street. For example a peasant and a professor are equally interested to know what is meant by rights. How rights have come to exist ? How have we come to possess and claim them ? What is the sanction behind my right ? How am I to distinguish rights from wrongs ?

If we desire to have a sound view of the problem of rights in political science we must bear in mind three factors, viz :

1. Rights are correlative with functions.
  2. Every right requires social recognition.
  3. Right is not an empty or a selfish claim.
1. Rights can not be alienated from duties. Rights and duties are correlated conceptions and every right carries with it a corresponding duty. It can not exist as a right apart from a corresponding obligation. I have rights that I may be able to make my contribution to the social good. I have no right to receive without making an effort, at least, to give something in return for what I receive. Thus not only duty

but *function* as well is implicit in right. In this connection Professor Laski points out that in return for the conditions with which I am provided, I seek to make possible a contribution that enriches the common stock<sup>1</sup>. But this condition which is made to enrich the common stock must be *personal*, otherwise it can not be said to be a contribution. For example you do not contribute anything to enrich the common stock by simply being a child of your parents. You do not contribute by withdrawing from your fellow men. To make your contribution you must do something that is worth doing so that you may enjoy what is worth enjoying. To illustrate the point further I may pay my debt to the state by being a cobbler, or a mason, or an engineer, or a professor. Whatever the form of my payment it is *extremely* necessary that I should realise that the rights which I possess are given to me *because* I am performing certain duties. Thus rights depend upon duties, and 'it is only in a world of duties that rights have significance.'<sup>2</sup>

Concluding we may say that "he that will not perform functions can not enjoy rights any more than he who will not work ought to enjoy bread." Either one must recognise the civic equation (If I have rights against others, I have duties also towards others), of which one is a part, or forfeit one's privilege of citizenship.)

2. It follows from the above that every right needs a social recognition. Without social recognition rights remain only empty claims. Rights need the recognition of society. We have rights so that we may be able to express and protect our personality, be able to safeguard our singularity in a multitude of social pressures and forces. But this does not and can not mean that rights

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1. Laski, H. J.: *A Grammar of Politics*. p. 94.

2. *Ibid.* p. 95.

are independent of society. We have rights because we are members of the state. Rights are inherent in society, not independent of it. Rights are given to us for our as well as for the protection of society. This is simple to understand. To give me the conditions which enable me to be my best self is to oblige me, at the same time, to seek to be my best self. To afford me protection against attack by others implies that I myself will refrain from attacking others. To allow me the benefit of education implies that I will use the advantages which education bestows in such a manner as to add to the common good of the society. I do not exist solely for the state; but neither does the state exist solely for me. My claim comes from the fact that I share with others in the pursuit of a common end. My rights are powers conferred that I may, with others, strive for the attainment of that common end. My personality, so to speak, bounds and limits the law of the state. But that boundary and that limitation are imposed upon the condition that in seeking to be the best self of which I am capable I seek, in virtue of the common end I share with others, their well being in my own<sup>1</sup>.

- In conclusion we may say that all rights need social recognition which does not mean merely recognition by the state, though it often does mean so, but it should include that as well. Ultimately every right to be a right must be relative to a common good or a common end.
3. Right is not an empty or a selfish claim. Right is capable of universal application. A person has no right to do as he pleases. His right is always built upon the relation which his function has to the common good, the claims which he makes must be claims which are essential to the proper performance of his function in society. When a person asserts his right he is doing a

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1. *Ibid.* p. 94.

great public service, because by asserting his right he is conscious of his function in society which should enrich the common good. Any right which is based on individual caprice and can not be, in the last resort, relative to any common good, is not a right at all. To say that right is not an empty or a selfish claim, according to Bosanquet, is a matter 'one of fact and logic, not of fancies and wishes.'<sup>1</sup>

To-day it is natural for men to speak of their rights and demand their maintenance by the state, but earlier societies did not recognise rights to any appreciable extent. In them charities and petitions occupied an important place. In the modern world all civilised societies place a high premium on rights and consider them a matter of life and death. Some of the modern constitutions, *e.g.*, that of the Irish Free State and the Weimar Constitution guarantee certain fundamental rights to their respective citizens. Every school-boy knows that rights have a habit to grow. What is a privilege today may become a right in course of time. For example, if a friend gives you a present on Deepawali and continues to do so for a number of times, it is a privilege you enjoy, but you begin to resent when you do not receive it, and often you complain which is only another name for demanding it. (As conditions—political, social and economic—change new rights are born.) For example, the change in economic conditions has led to the birth of some new rights—the right to work, the right to strike, the right to retain one's job while on strike. Again with the growth of political consciousness the right to resist the state has also come into being.

Generally speaking there are fixed theories under which  
**Theories of all kinds of rights have been grouped and**  
**Rights :** which have been offered as explanations  
of rights from time to time. These theories are :

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1. Bosanquet, B. *The Philosophical Theory of the State*, p. 197.

1. the historical theory of rights ;
2. the theory of natural rights ;
3. the legal theory of rights ;
4. the idealistic theory of rights ;
5. the social welfare theory of rights.

There is a school of thought which holds that rights mean the grant of some historic conditions which human race possessed in its infancy, but which it has lost in the course of time. Briefly it means that 'history makes rights'; that long standing customs in course of time assume the form of rights. In this connection D. G. Ritchie points out that "those rights which people think they ought to have are just those rights which they have been accustomed to have, or which they have a tradition (whether true or false) of having once possessed. Custom is primitive law."<sup>1</sup> It is further held on behalf of the advocates of the theory that many of the rights known as natural rights are only the claims which have become valid because they have the sanction of a long unbroken custom, while rights which are known as conventional rights are claims which are only of recent origin and have not been yet widely adopted.

**The Historical Theory of Rights.**

**Criticism** It can not be denied that many of the rights which we enjoy have their origin in customs and can be traced to the dim past. But this does not mean, and should not mean, that each and every right can be traced back to old customs. The claim that ancient customs can make anything right is hollow. We can not accept or agree with it. The hollowness of the claim is obvious. What is the length or duration of a period which is needed to crystallize a custom into a right. Is it a hundred years or a thousand years or ten thousand years? There is a period of which history knows nothing; what about the customs of that period? The

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1. Ritchie, D. G. . *Natural Rights*. p. 82.

truth is that custom can not make anything right. Was *suttee* right? Was infanticide right? If custom can make anything right the politically subject people have no right to free themselves from foreign yoke. The greater the period of political domination the greater will be the claim of the foreigner to continue his rule, since custom, if it can make anything right, can make foreign rule also right. It will be the *right based on custom* of the subject people to hug the chains in which they are bound. Custom can not make slavery right. Even if slavery becomes customary not only in one country, but all over the world, it can never be right. Sometimes it is maintained that academically slavery was a relative right, which simply means that it was right at one time but is not so now. We may point out that we can not agree with this view. Our difficulty is simple to understand if right is always in relation to custom, any change for the better or any reform is ruled out of consideration. For example the claims of the Harijans for better treatment, for temple entry, for drawing water from public wells, are all violations of the long established customs of our country. But all enlightened people are unhesitatingly supporting such reforms. It is absurd if not foolish to maintain that custom is always right, custom must change with the change in conditions, political, economic and social. Old customs which do not fit changed conditions and can not be continued into a new age.

Concluding we may say that no theory has done greater harm to political philosophy, or more violence to facts than the historical theory of rights. It does not, and can not, provide any guidance to a sound conception of rights and whenever it provides any guidance it turns out to be a false guidance and hence useless. It is true that we can not ignore history, but it is still more true that we can not depend on history alone and can not make it the only guide. History can not give an absolute criteria.

This is the oldest theory of rights. According to this theory man has rights because they belong to him *by nature*. Rights do not require any explanation, elaboration or justification because they inhere in him and are

**The Theory of  
Natural rights**

self-evident truths. Natural rights being absolute are capable of being asserted anywhere and everywhere. It must be pointed out that there has always been a good deal of confusion as to the meaning and content of natural rights, but to be fair to the advocates of natural rights, it may be safely presumed that almost all of them have claimed that one or more 'of the following propositions are true.

Firstly, there are certain rights which are unconditional and inalienable.

Secondly, there exist certain rights which men possess independently of society.

Thirdly, there are certain rights which men *ought* to possess whether or not the society in which they live, or any majority of its members thinks that they should.<sup>1</sup>

The theory of natural rights has played an important part in political philosophy and in the development of constitutional government. John Locke and Thomas Paine (1737—1809) made much of this theory. Locke held that all men are born free and rational and that no one has any authority from God to compel another to obedience. And according to Paine :

“ 1. *Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.*

“ 2. *The end of all political associations is the preservation of the natural and imprescriptible rights of man ; and these rights are liberty, property, security, and resistance of oppression.*”

Social contract writers also support the theory of natural rights. They hold that man possessed certain natural rights to begin with, and when the contract was formed he surrendered some of these rights to the sovereign to safeguard the remaining rights. For example, Locke asserted that men living in the state of nature found it inconvenient, if not impossible, to coerce the recalcitrant

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1. Plamenatz, J.P. *Consent, Freedom and Political Obligation*, p. 84.

minority into obedience to the laws of nature and of reason, and so bound themselves together by contract to set up an authority over them to which they would give up certain of their *natural rights* (Italics ours) for the better securing of them.<sup>1</sup>

Hobbes refers to the rights which men possessed in the state of nature sometimes as "laws of nature," sometimes as 'rules of nature.' He holds that man has a natural right to enforce his will upon others—this in spite of his advocacy of social contract. To him one's natural rights are one's natural powers. It must be remembered that throughout these alleged historical contract dealings the guiding principle with Hobbes is one of expediency, not of morality.

Rousseau also derives the notion of natural rights from a state of nature ; but it tends to fall in the background. In his earlier work—Discourses on the Origin of Inequality—he depicts that state of nature as a state of bliss. In this state of nature (of bliss) men enjoyed (presumably of course) all rights conducive to their profit and pleasure. But in Rousseau's later thought natural rights are swallowed up in the general will. Thus the general will is the embodiment and synthesis of all the separate wills of the various individuals in a community, in so far as they are willing as they ought to will. Their wills for life, liberty, goods and so forth are, therefore, presumably synthesized in and transcended by the general will. It is to the general will then, that men must look for the fulfilment of their rights, and it is to the community as a whole, whose will is the general will, that they owe allegiance.

Thomas Paine was the last writer to uphold the theory of natural rights in its orthodox form. Subsequent writers criticised it, but vestiges of the Bentham and Spencer on Natural Rights. theory are still noticeable in their views. Jeremy Bentham, for instance, was a vehement critic of natural rights. According to him the

1. Ibid. pp. 88—89

2. Joad, C. E. M. Guide to the Philosophy of Morals and Politics. p. 541.



theory of natural rights was vague and unscientific and was based on presumptive and sentimental premises. He avoids using the language of natural rights, but his special pattern of utilitarianism is much influenced by the thoughts which he rejects. This is explained when it is pointed out the American Declaration of Independence under the influence of Thomas Paine, upheld the right to "the pursuit of happiness," as a basic natural right. Bentham accepted this right as axiomatic and in his own peculiar way wanted to find out by 'what kind of collective action can their (men's) happiness be promoted?' This in the language of natural rights simply means 'by what kind of collective action can their right to happiness be guaranteed.'

Spencer's political theory bears resemblance to the theory of social contract. According to him his study of the evolution of life (among men as well as animals) makes him believe that the one basic right of all individuals is the right to equal freedom. Thus to 'him every man is free to do that which he wills, provided he infringes not the equal freedom of others.' He insists on the right to the 'free energy of faculty', which is simply a right by the individual to the full and free development of his personality.

It has been pointed out that the theory of natural rights has played a very important part in political philosophy as well as in the practical affairs of the world. It was particularly influenced in the seventeenth and the eighteenth centuries. Even to-day it can not be said that it has spent its force or influence. In the modern world there are many rights which are being claimed dogmatically and bear the tinge of natural rights—the right to employment, the right to shelter, to food, to clothing, the right to hold public office, etc.

1. The greatest difficulty in the explanation of the theory of natural rights is the question what is natural?

Criticism. How are we to define the term 'natural.'

The term 'natural' has been used by writers on philosophy in a variety of meanings and numerous inter-

pretations have been given to its meanings. Professor Ritchie has written a whole book on natural rights. Our difficulty is in which of the various senses or meanings or interpretations are we to understand the term 'nature' when applied to natural rights ?

2. 'Natural' is often contrasted with what is conventional or artificial, and by natural rights it is also implied that they are the reflection of a natural order which is hidden in the shifting appearance of modern society. But it is difficult to justify the above position. There was a time when wearing clothes was considered artificial, but to-day wearing clothes is natural. If by 'natural' is meant the whole process of nature then the savage state is as much natural as the civil state. Further what is called natural order in modern society cannot be permanent in a world which science changes so rapidly. What was natural fifty years ago may not be natural today. Natural does not mean primitive.

3. It has been pointed out that the terms 'nature' and 'natural' are used without any precision of meaning. Due to this difficulty the advocates of natural right are not able to tell us as to what these rights are. There is no common list of natural rights on which the advocates of the theory are agreed. To some slavery is natural while to others it is not so, some believe that human beings are by nature good while others think that they are perverted. Some hold that men and women are by nature equal while others do not agree with it. Some consider private property as a natural right ; others reject it as un-natural.

In the sphere of relations between sexes monogamy, bigamy, polygamy, polyandry, free love, and contract marriages are all advocated and supported on the basis of nature and the example of lower animals is quoted in support. All this leads to confusion. If monogamy is natural, bigamy can not be; if bigamy is natural, monogamy can not be. In the light of the above we agree with Ritchie who says : "If you appeal to nature, we may not

be able to prove you wrong in your own court of appeal ; but neither can you prove yourself right."<sup>1</sup>

4. The critics of natural rights point out that the so called natural rights conflict with one another. For example it is pointed out that the French Revolution declared liberty, equality and fraternity to be the fundamental and absolute rights of man. But in any rational system of society there can not exist absolute liberty and absolute equality side by side. If we start with absolute liberty we soon end with inequality. And if we begin with absolute equality, liberty soon comes to an end. The theory of natural rights has no convincing way of reconciling liberty and equality inspite of its loud claim to maintain these two as fundamentally natural rights.

Turning to the question of property we find that according to the theory of natural rights property belongs to all. But what is implied or meant by this right. Do they mean private property by it? If yes, does this right include the right to do with one's property as one pleases, even to the extent of abusing it. May we ask, for example, if a dairyman has the right to pour cans of milk in the drain in order to maintain a high price of milk? Can a sugar vendor withhold his stock to accelerate the demand of sugar and charge a fancy price for it? Can a factory-boss close his factory without due notice to his employees? The theory of natural rights fails to answer these questions. In fact natural rights present us with too many absolutes and do not point to our limits.

5. To the social contract supporters of natural rights they represent 'the recovery of a lost inheritance.' They based their theory of rights on the conception that the state and social institutions are artificial and that they have deprived man of certain inherent rights which belonged to him in the state of nature. But this is almost absurd. We need not prove that there never existed a state of nature, and hence there could not exist any natural rights. Moreover state is not artificial in the

1. Ritchie. D. G. Natural Rights p. 105.

sense in which the social contract theorists would have us believe. It is natural. The theory of natural rights is of such an elastic nature that both the conservatives and anarchists can make use of it.

6. The real defect in the theory of natural rights is that it advocates that man can have rights and obligations independent of society. This is a mistaken view. A person entirely living apart from his fellows and not coming into contact with him cannot have any rights. We have rights because we are social beings. A man can not possess rights because there exist no powers which he is able to exercise and which the fellow beings with whom he comes into contact ought to secure to him<sup>1</sup>. Dogs and frogs, not being rational beings have no obligations and hence it is not possible to have rights against them. It is only those who have reached a certain level of moral and intellectual development when they are able to understand the meaning of moral obligations and capable of understanding duties against whom one can have rights.

There is another sense in which rights can not be held outside society. We will be making only a statement of fact if we point out that it is only within society that man can develop into a moral or rational being. If there exists no society there exist no beings who can understand the conception of duties and hence it is not possible to have rights against beings who have no understanding of moral obligations.

But we may point out that there is a sense of the term 'society' in which it may be possible to hold that rights can be held outside of it. If society is taken to be the same thing as the state, it can not be maintained that rights cannot be held outside it. It is simple to explain. It cannot be said that men could not be rational, intelligent and moral beings outside the state. The state is only one of the organizations amongst many, and it is not simply an association of minds. It is a 'co-operation of

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1. Plamenatz : Op. cit. p. 86.

minds with a view to the promotion of certain ends'. The difference between the state and other organizations consists in a difference in the nature of ends that it promotes and of the means to which it has recourse for their promotion.

Concluding we may say that rights are never held independently of society, but they may be held outside it, provided the term 'society,' is used to mean the state.

7. The idealists also criticise the theory of natural rights. They point out that the theory lays an undue emphasis on 'the nature of Nature' but ignores the nature of right. This is a fact the supporters of the theory of natural rights are much occupied with the elucidation of the meaning of nature, but are unconcerned with regard to the elucidation of 'right' which is equally, if not more, important.

Summing up our discussion of the theory of natural rights we may say that inspite of the many flaws and defects discussed above the theory is valuable to political philosophy and to practical affairs in the modern world. If by natural rights is meant the ideal rights which man ought to have in future in the light of the experience gained from the present political, economic and social conditions; the conception of natural rights is very important and valuable and may have far reaching influence on the new world order which might emerge after the present world anarchy subsides. For example, the right to employment may be said to be a natural right in the sense that in any properly balanced system of society—it is desirable that every one should have the opportunity to earn enough to satisfy the minimum needs of every day life—food, clothing and shelter. We may observe with Lord that natural rights are 'those conditions whether afforded by human agency or not, which are required for the development of individuality.' But natural rights have neither been defined nor understood in this sense. We are inclined to agree with Professor

Laski that rights are not historic conditions possessed in the childhood of the race, but since lost. It is doing violence to facts to maintain that they represent the recovery of a lost inheritance. There is no golden age to which we may seek or wish to return. The protection afforded to man by the modern civilized state (this is more true of the west than of the east) is at all points greater and more adequate than it has been at any previous time in history.<sup>1</sup> We may say that natural rights in the best sense are rights which are essential to the moral and rational development of a person as a person.

According to this theory rights are claims recognised by the state. They are creations of the state. It means what is given to me by law is my right. In other words my right is that claim which 'the force of the state will, upon order of its courts, be used to substantiate'. This theory does not believe that rights are absolute or that they inhere in man. On the other hand it says that rights are relative to the law of the land. They are artificial and are determined by the state. The advocates of this theory criticise the theory of natural rights and point out that the alleged natural laws either agree or disagree with the laws of the land. If they agree they are superfluous, if they do not they are futile and mischievous, they deserve to be ignored. Bentham is a strong advocate of this theory. He has no patience with the advocates of natural rights which he describes as 'nonsense upon stilts.'

Thomas Hobbes is another advocate of this theory. To him the basic right of every person is the right of self-preservation. In Hobbes's view the state can maintain this right better than any individual or a group of individuals. He tells that at the time of the contract men surrender unconditionally all their rights except the one of self-preservation to the sovereign, and whatever the sovereign allows them is their right. Wherever the law does not place any limitations, the individual retains

his natural right. But this neither means nor implies that the power of the sovereign over life and death of the subject is superseded. He can always interfere and limit the rights and liberty of the individual. Only where the law does not regulate the individual has rights.

1. It is an attractive theory of rights. The law courts enforce the will of the state as they discover it as a result of which we come to know what claims are entitled to immediate recognition. **Criticism.** But this is a purely legalistic view of rights and has no contribution to make to a sound political philosophy.

2. The legal theory of rights tells us only the character of the state ; it does not tell us, except when we express our judgment on a particular state, whether the rights recognised by the state are the rights which need recognition. For example when we say that a person can (has the right to do) do with his property what he likes is only a statement of fact ; but by saying this we do not determine whether a person ought to have that right. Again when we say that an imbecile or a person who is both dumb and deaf has the right to marry, we mean that in proper circumstances, no priest, pandit or maulana or registrar can refuse the performance of necessary ceremonial ; but by this we do not mean that we think that he ought to or should have the right to marry. The legal theory of rights is based on a 'system of presumptions each one of which requires a careful examination before it can be admitted as valid for politics.'

3. We are not prepared to accept that merely a governmental decree can make anything right. May we ask can law make gambling or theft a right ? Or, can law re-establish infanticide ? It is obvious from such questions which carry their own answer that 'law can operate only within limits'. The state does not and can not create rights. In a sense rights are prior to the state ; it exists to maintain rights. According to Norman Wilde, " the law does not create our rights, but only recognises them and protects them. The rights themselves exist whether they are thus legalised or not". The courts

of law enforce them because they are *rights*, they are not *rights* because they are enforced by the courts of law.

4. The state is not the only creator of rights. If we say that it is so we make it absolute. Technically the state is sovereign but in actuality its authority is circumscribed by certain practical limitations which national character of the people, customs, traditions, morality, history and many other forces impose upon it. Professor Laski is of the opinion that "the maintenance of right is much more a question of habit and tradition than of the formality of written enactment." It is mostly the customary custom of the community which determines law. Customary law is one of the most important and main sources of state law. In the light of the above it can not be maintained that the state is the *only* creator of rights or that all rights are derived from law.

It needs also to be remembered that the law of a country is constantly changing. Any system of rights derived purely from law cannot be permanent. Consequently any social or political order based on such rights cannot be permanent. This leads us to the logical conclusion that law cannot be the ultimate creator of rights. More important and higher than law is the individual's conception of right and wrong because "rights must have a foundation of *right* as against *wrong*." There is a difference between what the *law is* and what it *should be*.

Summing up our discussion of the legal theory of rights we may say that within certain limits the government is the creator of rights. In so far as it has certain functions to perform, it may, in order to perform them adequately, have to make certain rules and enforce obedience to those rules. Obviously, these rules will place numerous restraints upon the freedom of the individuals who must obey them. These rules will, to a very great extent modify their power and consequently their rights, in that it will be true of many of their powers that they should exercise them *only because* their rulers or governors



think that they *should*<sup>1</sup>. But it needs to be pointed out that the right to make rules must *first* belong to the government *before* its legislative or (and) administrative measures can modify, multiply, restrict or reduce the rights of individuals 'from their mere powers.' Further this right of the government to make rules (laws) is itself a limited right as was pointed out by John Locke more than two hundred years ago. As soon as the government begins to make laws outside *these limits*, its actions, though every court of law in country may endorse or respect, are not based on right and *any one who thinks that more good than harm will result from their opposition should oppose them.*

The idealistic theory of rights believes that rights are relative to morality rather than to law. According to the theory they are relative to morality in the sense "that they are the conditions of the attainment of the moral end." Such rights receive recognition by the 'moral consciousness because it knows that they are the necessary conditions of its own satisfaction. In simple words we may say that according to idealist theory rights are external conditions which have been found necessary by society for the inner development of man. Thus they may be said to be those conditions in the absence of which it is not possible for man to develop the best in him. In this connection Wilde points out: "A right is a reasonable claim to freedom in the exercise of certain activities."<sup>2</sup>

Thus when I assert my right to property, I mean that in using it as I will, no one can legitimately interfere with me. It simply means that every individual has the right as well as the duty to do his best for the development of his personality. He has no right which is not relative to this end. It is from this fundamental that the individual does not possess the right of suicide because no individual can be certain that he has attained the highest development of his personality at any time. If a person is found incapable of making a proper use of his right it is quite

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1. Plamenatz, op. cit, p, 108,

2 The Ethical Basis Of The State (1924) p, 115.

justifiable on the part of society to deprive him of his right. To T. H. Green rights are powers. He points out that these powers "are necessary to the fulfillment of man's vocation as a moral being, to an effectual self devotion to the work of developing the perfect character in himself and others."<sup>1</sup>

Thus the idealist theory of rights places rights on a high moral plane. I can claim rights from society only if they are relative to a moral end that is the development of the best in me in relation to the best development of the rest of the members of society. This implies that every right requires a social recognition. Thus it is pointed out by Green that a right is "a power of which the exercise by the individual or by some body of men is recognised by society, either as itself directly essential to a common good, or as conferred by an authority of which the maintenance is recognised as so essential."<sup>2</sup> Further according to this theory an individual has rights only as a member of society as pointed out by Wilde according to whom 'Rights have meaning, only within the sphere of social relations. The basis on which the weaker can demand his right of the stronger the 'recognition by men of their membership in a common order' as each has to do his part in virtue of the fact of his being a member of a community for its common good. Rights cannot be demanded of an absolutely independent beings or beasts. It is simple to understand. Both the absolutely independent being and the beast lack the consciousness of being members of a common social whole and do not recognise that as members of a common social whole they have to admit the rights of others also as to enable them to perform the duties of their station in life.

This theory of rights is abstract. How are we to reduce the conception of personality to practical terms? We may ask what is the criterion by which the state will judge the conditions needed by each individual for his highest development. The entire idea of personality is a subjective one. No one knows anything about the destinies of other people. No

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1, Principles of Political Obligation, p. 43.

2, Ibid. p. 113.

one knows even his own destiny. The advocates of the theory say that the idealistic theory of rights does not mean the provision to man of whatever will promote his good. It only recognises that elementary rights for all must be the same and that any differentiation that may arise should arise after these are secured. But this is far removed from realities. Elementary rights are not the same for all. The greatest defect in the idealistic theory of rights is that it ignores the plane of reality and is occupied with the plane of ideality.

According to this theory 'rights are conditions of social welfare.' In other words rights are powers which persons must have if they are to be able to promote or make a contribution to the stock of common good. Its advocates are of the opinion that the so-called natural rights, legal rights and rights which emanate from custom should give place to what is socially good or desirable.

**The social  
Welfare  
Theory of  
Rights.**

The Utilitarians—Bentham and Mill, support the social welfare theory on the basis of utility. Thus a right is desirable if it contributes to 'the greatest happiness of the greatest numbers.' If it does not contribute to the 'greatest happiness of the greatest numbers' it is not desirable and need not be recognised as a right.

Professor Laski also makes *utility* the test of rights. He says : " We are making the test of rights utility ; and that, it is clear, involves the question of those to whom the rights are to be useful. There is only one possible answer. In any state the demands of each citizen for the fulfilment of his best self must be taken as of equal worth ; and the utility of a right is therefore its value to all members of the state."<sup>1</sup> He holds that the claims which we must recognise "are those which, in the light of history, involve disaster when they are unfulfilled."<sup>2</sup> We have rights so that we make our contribution to the social end. Rights are always built upon the relation which an in-

1. Laski, H. J. A Grammar of Politics (1938) p. 92.

2. Ibid p. 93.

dividual's function has to the common social end. My demands upon society, in this view, are demands which ought to receive recognition because a recognisable public interest is involved in their recognition. We cannot have rights against the public welfare, for that, ultimately, is to give us rights against a welfare which is intimately and inseparably connected with our own.<sup>1</sup>

Thus in essence the theory means that no individual can have any rights unless his rulers or the majority of his fellow men are of the opinion that he should have them.

This theory has much to commend itself. Public welfare or common good is a good criterion of rights. But how to define what is common good or public welfare. There is no unanimity of opinion as to its nature.

2. The main defect in this theory is that it may encroach upon the rights of the individual and thus may sacrifice the needs and claims of his personality to social good. Any social system which fails consistently to recognise the claims of personality stands upon a sandy foundation. Sooner or later it is bound to provoke opposition by those whose nature or personality is frustrated by its policy or existence.

In conclusion we may say that whatever the demands of public urgency or necessity it can not make anything right, because it is no criterion for what is right or wrong. We agree with Professor Wilde when he says that "if rights are created by the grant of society, the individual is without appeal and helplessly dependent upon its arbitrary will."<sup>2</sup>

#### QUESTIONS AND TOPICS

1. Critically discuss two of the following theories :—
  - (a) The theory of natural rights.
  - (b) The legal theory of rights.
  - (c) The social welfare theory of rights.
2. Elucidate 'Rights are correlative with functions.'

1, Ibid. pp. 95—96

2, Wilde, N. The Ethical Basis of the State. p. 115 (1924).

## CHAPTER 11.

### PARTICULAR RIGHTS

In the previous chapter we have discussed theories of rights ; but the problem of the realization of rights is best understood by discussing particular rights. Because then from their sum we can build a system of limitations upon the powers of state. According to Professor Laski such a method has several advantages the more important of which are :

1. It indicates the position of the individual in the community.
2. It shows what he must possess if he is to contribute his share to the common welfare.
3. It explains the meanings of liberty and equality.
- and 4. To define in outline a particular right is to indicate, in general, the necessary character of political structure.

All civilised governments recognise certain rights as basic, and each tries, in its own particular way to give a practical expression to these fundamental rights. There is no common agreement either among modern governments or political theorists or thinkers regarding the extent of these rights, nor are they agreed with regard to the manner in which they should be enforced. Hence we shall consider not only some important existing rights but also those rights which we ought to have in a sane or a rationally constituted social order. We propose to deal with the following particular rights :

1. The right to free life. *or liberty*
2. The right to work.
3. The right to education.
4. The right to equality.

5. The right to political power.
6. The right to the freedom of speech.
7. The right of freedom of association and of public meeting.
8. The right to the protection of law.
9. The right to property.
10. The right of resistance to the state.

Rights are generally classified under four heads, *viz.*,  
 1 The Rights to Free Life personal rights, rights of property, rights in private relations and public rights. The right to free life belongs to the class of personal rights and combines in it the right to life as well as the right to liberty. Some writers consider these two rights separately. But it is more proper to deal with them as one. The reason is simple to understand. There can be no distinction between the right to life and the right to liberty. Right to mere life becomes meaningless without right to liberty. Without right to liberty, the right to life will be *merely* a right to *existence* and not a right to *life*. Beasts, creatures and worms *exist* while human beings *live*. With right to liberty, right to life becomes a curse, a plague if you please, for of what value and use the right to mere life is when a being is denied the right to use his life according to his own plan and free will. The two rights imply each other. Only a knave will refuse to see that to be a slave is to deny the rights of humanity and be an 'animated tool,' and tools have no life as such. Thus a slave cannot be said to enjoy the right to life because he does not possess the right to free life. But at the same time it may be pointed out that what entitles a being to the right of free life is the use which he makes of his right to life. Thus Green asks: "What is the foundation of this right? (right to free life). The answer is, the capacity on the part of the subject for membership of a society, for determination of will, and through it of the bodily organization, by the conception of a well-being as

common to self with others." In simple words this means that the capacity of the individual for membership in society is the moral basis of his right to free life.

Speaking from the moral point of view all rights are *personal*, but the right to free life is personal in special sense as pointed out by Green who says that the preservation of one's body from the violence of other men, and the using of it as the instrument only of one's own will is (if of another's, still through one's own) the condition of his exercising any other rights.<sup>1</sup>

The right to life carries with it certain implications which are summed up by Dr. Asirvatham as the duty to live, the duty not to commit murder, the right to self-defence, and the right to reproduce life together with the right to be born without undue handicaps.

It is argued with regard to the duty to live that neither the individual nor the society is the gainer if the individual is permitted to destroy his life. It is unfair to both and both are losers and it is on this count that all civilised states make suicide punishable by law. It is said that no one can claim to know at any time that he has reached his perfection. There are examples quite numerous to show that in many people the development of mental powers continues even after they become physical wrecks. In this connection Gilchrist points out that from 'the point of view of general welfare, every life is valuable, and to murder another or murder oneself means the elimination of an individuality which has duties as well as rights'.<sup>2</sup> It may be said that the right to suicide has a different implication in cases of incurable diseases ; with this possible exception modern political thought is definitely opposed to the right to suicide.

If one has no right to kill himself it clearly follows that he has no right to kill others. Murder is both a sin and heinous crime and hence punishable with death penalty under the laws of the most of the state. Lately

1. Green, T. H. Principles of Political Obligation. p. 155.

2. Gilchrist, R. N. : Principles of Political Science. p. 146.

a feeling against the death penalty is noticeable. The question is being raised that capital punishment is a violation and an infringement of the right to life of the murderer. Strictly speaking a person, who has taken the life of another person, can not be said to be in possession of his right to life. The reason is simple. He has forfeited his right to life by showing his incapacity to be a member of society and to consider his own intrinsic worth and the intrinsic worth of another member of society of the same value. He has forfeited his right to life by taking the life of another member of society which is a clear demonstration of his perverted will. The only basis on which we can consider his right is on the basis of 'reversionary right,' which is simply to restore him back to society as a normal person conscious of the opportunity and capable of making a *personal* contribution to the common social good. We have no hesitation in saying that a murderer forfeits his right to life the moment he takes the life of another member of society. Whether to punish him with death penalty or with any other penalty is a different question.

The right to self-defence is implied in the right to life. There is a consensus of opinion that the use of force even to the extent of killing others is justified in self-defence though such force should be used as a last resort or when there is an immediate and clear danger to life. It is left to the courts of law to determine whether the force employed by one in self-defence was justified or otherwise. We may say that what is justifiable is *self-defence* and not *aggression*. But it is a problem to define and determine accurately what is *self-defence* and what is *aggression*.

The above leads to a topical and interesting yet a difficult question. This question is with regard to war. If the individual has the right to the preservation of life is it justified on the part of the state to demand from the individual to give his life on the battlefield? Can we not say that this demand on the part of the state is not only an interference with but perhaps an infringement of the individual's right to life? For some thinkers, *e.g.*,



J. R. Lowell, war is an alias for murder and hence morally wrong. To Green war is an attribute of an imperfect state. He expresses himself clearly on the question when he says : "War can never be absolutely right, it can only be relatively right, in the sense, that it is a "cruel necessity" which has to be faced for the sake of undoing something wrong in the condition of the states engaged in war. War is not an essential attribute of the state as such, in its proper condition ; it is rather the attribute of a particular state, in its imperfect actuality. It may be relatively right, in the sense of being a wrong which has to be done in order to right a wrong ; but the wrong that is righted still remains wrong and those who committed that ancient wrong are in their dusty graves responsible for the new wrong which puts it right."<sup>1</sup> But Mahatma Gandhi is of the opinion that violent war does not right a wrong but perpetrates another wrong and that a state is wrong to resort to war to right an alleged or proved wrong, because by resorting to war it defeats its own purpose.

Dr. Asirvatham is of the opinion that 'war is not murder in the moral sense.'<sup>2</sup> It may or may not be murder. We are not concerned with it, what we are concerned with is, is it a moral wrong or not ? He says that it is a moral wrong. The reasons for this view are simple to understand. In war deaths are caused *deliberately* by human agency. Some people say that war brings out virtues of heroism, self-sacrifice and the like. It can equally be said that war also inculcates barbarity, rapacity, international exploitation and greed. War may be a necessary factor in the progress of humanity, many modern great thinkers do not agree with this view, *e.g.*, Wells, Bertrand Russell and Laski, but this does not change the fact that 'the destruction of human life in war is always wrong.' War is a moral wrong as it 'violates human rights.'

1. Barker, E : Political Thought in England 1848—1914 (1928), p. 45.

2. Asirvatham, E : Political Theory (1940) p. 187.

The sex instinct in man is on the same basis as the instinct of self-preservation in man. It may imply that the right to reproduce life is one of the 'natural rights.' But this right also like many others can not be claimed absolutely. The conditions in modern society are such that in its own interest as well as in the interest of the child to be born the right to reproduce life may not be allowed to certain people. Hereditary lepers, incurably insane, idiots, imbeciles, deaf-mutes, people suffering chronically from venereal diseases in which there is a danger that the disease will pass on to the child from the parents, should not be allowed to marry and propagate their kind.

A potential right which is intimately connected with the right to reproduce life, and which is not yet being claimed commonly, but which will have to be included in any sane social order in the near future is *the right to be born without un-necessary handicaps*. Every schoolboy knows that children do not choose their parents, and this fact places a great as well a grave responsibility upon the shoulders of the parents as well as on society. In these circumstances it is the *duty* of parents and society 'to see to it that no child comes into the world' which because of its birth is not able to occupy its proper place in the frame-work of the social whole.

It is only fair and just to say that all children have a right to have a start in life on fair terms and in fare conditions. This means, among other things, the discouragement of eugenically undesirable people to reproduce life and the encouragement of eugenically desirable people to breed fast and better. In Germany the state has adopted several means to encourage or restrict, according to the merit of the case, progeny. Sterilisation is commonly resorted to for those who are considered eugenically below the mark. Health certificates are required for the begetting of children. Some of the means which may achieve the end in view are state help for the education and training of such children, pension to mothers, fixing by the state of the age of marriage, grant

of marriage subsidies and allowances, subsidising honeymoon trips etc. In connection with these suggestions, Professor Losimer, quoted by Ritchie, says : " A man who can not bestow a human education on his children has no more natural right to marry than a man who can not beget them."

The citizen has a right to work. It is a corollary to his right to pure life. The individual is born into the world, in which, if it were organised rationally, he would live only on his labour.

2. **The Right to Work.** It is the duty of the society to provide him with the *opportunity* to perform his function. Society owes it to him. If society does not permit access to the means of existence it deprives him of that which alone makes the fullest development of personality impossible. Every person—man or woman—needs a certain amount of material goods of life to realise his personality and thus play his proper role in society. If man is to be saved from sinking to the level of the brute creation he must have such substance as will enable the development of his personality. The socialists strongly advocate the right to work. They say that the labourer has the right to work when he is without work, society has the duty to support him. How for is this claim justified !

No one has a right to starve. Society owes it to the individual to prevent his starving. The money, the skill, the energy, and the time which has been spent in scientific discoveries and inventions should enable society to banish starvation from amongst humanity. But the irony is that all what has been done has not been done to meet a demand of this kind. Present economic and industrial order, and one could almost say, social and political order, have been devised to satisfy the owner of capital. They are seeking to fulfil 'not the function of science,' but 'the function of acquisition.' Unless the industrial order in the world is organised *for use* and *not for profit*, it is not possible to know of what it is capable.

The right to work does not mean the right to a particular work as Laski points out : " A prime minister who

has been overthrown has not the right to be provided with labour of an identical character. Society can not afford each man the choice of the effort he will make. It can not, in any ultimate way, afford undue emphasis upon occupations which carry with them special dignity of recompense. It means a supply of goods and services to maintain life.”<sup>1</sup> The right to work means only the right to be ‘occupied in producing some share of those goods and services.’ If a man is deprived of this opportunity he is entitled for an equal reward or compensation. From this it is obviously clear that principle of unemployment insurance is one of the integral factors in the conception of the state. If a man is deprived of the opportunity to labour, the state must see that he is not deprived of the means to live. The manner in which such a system should be organised is more a question of detail than of principle. But we may point out that what is implied and advocated is not defence of parasitism, but a recognition of the principle that ‘the performance of service is implicit in the nature of social life.’

The right to work carries with it the right to an adequate wage for one’s labour. In the present-day world what the labourer is paid is merely a subsistence wage. The iron law of wages is the order of the day. The wage which is paid to the labourer is hardly sufficient to keep his body and soul together. The result is that his standard of living is far below the civic minimum. Unless he is able to secure for his work a return which can purchase a standard of living equal to the civic minimum creative citizenship is impossible for him. Crime has many social and economic causes and the condition of labour in the present world order is responsible in no mean measure for increasing crime. What is advocated here is not the fixing of any uniform amount. The wage earner needs *the* food which can keep him physically fit; he needs *the* clothing and shelter which can enable him to start life at *that* level when his energy and mind are not entirely occupied with purely physical needs. But what are the facts of life. In

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1. Laski: A Grammar of Politics p. 106.

our country at least a labourer does not get *the* food which may keep him physically fit. In fact it may be said without any exaggeration that he hardly gets any food. Then what does he eat? In many parts of the country for more than three months he and his family eat flour made by burning and grinding mango stone, for the major portion of the remaining six months he and his family eat raw grams and salt and a part of the period the labourer and his family just exist on *satua* (a flour made of barley and water).

About clothing and shelter which the *mazdoor* possesses the less said the better. The conditions in which a large majority of workers live in this country are shocking. Housing specially in industrial areas is deplorable. Rotting garbage, pools of sewage, and occasionally, but more often than not, a dead bird or dog, inadequate provision of latrines are all too common to require any description. Houses (more appropriately rooms) often have only one small room—unventilated of course—with a door so low that one has to bend too low to enter the room. Privacy is secured by putting up partitions of old kerosene tins or gunny bags (not available since the war began) which further restrict light and air and enhance general ugliness and unsightliness. To give only one example, Cecile Matheson in his *Indian Industry* describes a visit to a small room (in Bombay) in which five families lived, one in each corner and one on a table, which served as a second floor. We can not devote enough space here to describe the conditions of payment, food and shelter of the Indian labourer. If any one doubts let him see it for himself, we have no hesitation in agreeing with Lokanathan when he says: "The Indian Industrial worker is in receipt of wages which are insufficient to satisfy even the primary needs of civilised existence."

The reason for an adequate wage is simple. The worker needs those small comforts which make life a thing of some interest and make it a little better than a 'mean satisfaction of ugly wants.'

It must be remembered that in the right to adequate wage, the right to equality of income is not implied.

But according to Laski, it does imply that 'there must be a sufficiency for all before there is a superfluity for some.' It needs hardly to be pointed out that it can not be said with any accuracy that the modern state distributes its rewards on any *recognisably organised* basis. On the whole they can not be seriously or properly recognised to be a return either to ability, intelligence, service or character. Laski rightly points out that "the contrast in the modern world between men and women who have never known a decent house, a decent meal, and clothing that barely protects them against the elements, and those who have never known what it is to have unsatiated a want that the possession of property can supply, is an intolerable one."<sup>1</sup>

If this right is to be realised the present economic, industrial and political orders must be thoroughly re-organised on a better and a more scientific basis. There is something of a chaos in our present day social structure. Any one who studies the facts of any industry in India will understand what we have said. To give a general example, any one who observes even a little the haphazard and the casual manner as well as character of our modern businessman will at once be able to see the extent of his competence for the adequate performance of his duties and work. It is amusing, interesting, instructive but tragic as well to point out that whereas a *proof* of competence is demanded from the professor, pleader or doctor, *nothing* is demanded from the businessman except the ownership of property or the power to get credit. A professor is not allowed to hand over his profession to his son ; a lawyer, or a doctor can not pass on his practice to his son unless the son is properly qualified ; *but* 'the son of a businessman may succeed to his fathers enterprise without any regard to the quality of his mind or his knowledge of its processes'. The trouble is that the flow of capital is not being directed to channels which are

1. Laski ; A. Grammar of Politics, p. 107.

socially productive. The interest of those who are engaged in manual work is not enlisted for production. This creates a wide gulf between those who live by the results of production and those who produce.

In conclusion we may say that the character and constitution of industry must be such as to make it possible for those who live by its results the realisation of adequate standard of life. We agree with Professor Laski that either the state must control industrial power in the interest of its citizens, or industrial power will control it in the interest of its possessors<sup>1</sup>.

Further it needs to be pointed out that the right to an adequate wage also implies the right to reasonable hours of work. Need we say that what makes a man *citizen is thought*. The worker, therefore, should be able so to distribute the period of labour as to have *leisure* for creative things. We all know that there is a physiological limit to the energy which a man can afford to spend. But what is often forgotten is that 'there is a civic limit to the amount the state can, for its own sake, permit him to expend'. This obligation is not for the state alone, but for private institutions and organizations as well. Aristotle, long ago, pointed out that those who attend upon machines become, in course of time, disqualified for any nobler things of life, unless they get enough leisure to be other than mere attendants on machines. Need we say that the right to reasonable hours of work is the right 'to discover the land of the mind', and as Laski says, it is the key to the intellectual heritage of the race.

But there is no finality or fixity about the term 'reasonable', in connection with the right to reasonable hours of work. Laski points out that its content will depend upon the technique of production at any given time. Writing about the conditions in England and European countries he says: "Certainly in a world so complex as this, the eight-hour day has become the maximum a man dare work at manual labour and still hope to understand the life about him"<sup>2</sup>.

1. *Ibid.* p. 109.

2. *Ibid.* p. 101.

Conditions in this country are worse, one might say shocking when compared to those obtained in European countries and in England, specially when it is remembered that the climate of this country is warmer than the climate in most of the European countries.

Broadly speaking, the hours of work in perennial factories is limited to *ten* hours daily and *fifty four* per week ; and in seasonal factories, *eleven* hours daily and *sixty* weekly. The textile mills generally work a *nine* hour day. In the mines the daily work underground is *nine* hours for a six day week. On the Railways the Rules of 1931 provide for a *sixty* hour week for continual work and an *eighty four* hour week for intermittent work. *No legal restriction exists (1939) on the hours of work of the dock labour.* (Italics ours)

Men and women have come from their daily work incapable of thought and even of feeling. Under such circumstances what contribution can they make towards the stock of common good or to creative citizenship. Their life is a life of toil, tears and timidity. The necessity for the assertion of the right to reasonable hours of labour in this country as elsewhere is urgently called for and the initiative must come from the government in its own benefit and for its own sake.

Citizenship means the contribution of a man's instructed judgment to social good. This contribution can not be made unless there are means for the judgment to become instructed. Education is one of the most important means by which a man's judgment can become enlightened and instructed. Hence it obviously follows that the citizen has the right to education which will train and fit him for the rights and duties of citizenship. He can demand it of the society to provide him with means and instruments which can enable him to understand life. He should be so equipped as to be able to give expression to his wants, and meanings to the experience which he has gained in life. "There is no more fundamental division in the modern

### 3. The Right to Education.

1. Ibid. p. 111.

2. Schiff, Leonard M : *The Present Condition of India (1939)* pp. 49—50.



State than that between those who have the control of knowledge and those who lack such control.”<sup>1</sup> Ultimately power belongs to those who can make and understand ideas. Napoleon Bonaparte used to say that imagination rules the world. Even if we grant that such a faculty is uncommon among men, there is yet a minimum standard of education below which no one with average intelligence should be allowed to sink. The reason is simple. Without education I remain ignorant as a consequence of which I do not understand and follow the processes of politics which affect and influence my life every minute of the time I live and I am unable to contribute anything towards the common stock of social good. Hence the right to education is one of the most important and even basic rights in the modern state. The Greek philosopher Antiphon the Sophist says, “First of all things, I place education.”<sup>2</sup> We can say without doubt and without any hesitation that any individual who lacks education is bound to be a slave to others in the present-day world. He will lack the quality to convince his fellow men. He will be a prey to appetites since due to the lack of education he will be lacking the will to control and direct his will into those channels in which it is best suited to run. He will remain a dwarf in personality. More a brute than a human being he will spend his life controlled by impulses and who will never know the beauty of a life controlled by reason and directed into creative experiments in life.

There is a word of warning with regard to the right to education. It does not and cannot mean the right to the same or identical intellectual equipment for all. In connection with this Laski rightly says : “It involves the discovery of capacity and the fitting of the discipline conferred to the type of capacity made known. It is as it should be, because it will be a sheer and a senseless waste to give an identical training to a person who can not grasp even the manner in which education must be got and a person who is eager to get it and prepared to make

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1. Laski, H J.: A Grammar of Politics, p. 114.

2. Quoted by Laski in A Grammar of Politics, p. 114.

an honest effort to educate himself. Surely a half-wit and a first class mind have no claims to an identical intellectual training. It is common to find a father trying to keep a balance between his two sons. He sends both of them for the same course at the university. One boy gets ahead, the other lags behind. The outraged father cannot understand the reason for the slackness of one of his boys. He fails to see that the capacity of the two minds is different and hence the two need a different and not an identical intellectual training.

But it is not advocated here that there are some who should be deprived of education. We have pointed out that below a certain level of education no citizen should be permitted to sink if he is to fruitfully use the opportunities (whatever they are?) and amenities of life offered by the modern civilisation; and if he is to play a useful part in the affairs of society and make a useful contribution, based on his personal experience and judgment, to the stock of common social good. The citizen must be trained to weigh evidence and make judgments. He must be so equipped as to be able to decide for himself between two different problems, programmes and situations. Need we say that the modern state has miserably failed to realise for the citizen the right to education. The standards attained by the modern state in this field as in many others are inadequate in the extreme. In India the situation is simply deplorable and shocking. The literacy percentage in this country is less than ten per cent. Only ninety-five out of every thousand of the population being literate. As to the adequacy of the education imparted the less said the better. This is what an Englishman (Leonard M. Schiff), who cannot be accused of pro-Indian and anti-British attitude and outlook on matters Indian has to say about the adequacy of education in this country: "The worst result of the Anglicising of Indian education has been the production of a large number of half-educated clerks to whom education has been merely a means to a Government job. Indian universities have been divorced from their real function of research and culture and made into

forcing-houses and machines. It is true that such universities as Calcutta and Allahabad (Lucknow)—to mention but two—are producing men of great talent, but the great mass of educational establishments tend to be philistine and not even up-to-date. I have been told of many lecturers who have never revised the notes which they drove out to generations of bored students.”<sup>1</sup> Large classes & overworked, underpaid, tired, and bored teachers have done their trick. Majority of students—the citizens of to-morrow—lack proper critical faculty and seen adolescent and half-baked. But the things are changing fast, and the time is not far off when an Indian young man will get the education which will equip him for the tasks of creative citizenship and he will be able to apply his instructed judgment in the formulation of the social will.

**4. The Right to Equality.** The right to equality has already been discussed in the chapters on Liberty.<sup>2</sup>

The right to political power stands for the right of the individual to have a share in the management of affairs of the state, or, at least in the formulation of the will of the community and in the direction of the manner in which that will shall be exercised.

The basis of the right to political power is simple to understand. A democracy, as popularly understood, is a system of government which enables the will of the common man to have direct access to the sources of authority, it is as a consequence of this that there is a right to political power—specially in democratic countries.

The first step in the realization of the right to political power is the right to franchise. No matter how it is organised the right to franchise means that every adult—man or woman—has the right to indicate the persons he considers desirable for undertaking the work of government. Franchise may be based on territorial or vocational considerations ; citizens may even be grouped together voluntarily, as Hare advocated ; what is fundamental is the

1. *Op. cit.* p. 78.

2. See Chapter 9.

recognition of the existence of this universal claim to franchise.

Considerations of sex, property, race, creed and colour should not stand in the way of the citizen to actively participate in the selection of his rulers. If it is said that his choice is often wrong because he does not possess the necessary qualifications to make a correct judgment, we may reply that 'democracy lives by trial and terror.' If it is said that he lacks the knowledge to make a proper choice, an answer to let the state provide for him the means of access to such knowledge. If the number of voters is restricted, the welfare realised will not embody the interests of the excluded persons. If franchise is enjoyed by a caste or a creed, it means special privilege for that caste or creed. Laski rightly points out that no test has been devised which enables us to limit the franchise in such fashion as to equate civic virtue with its possession. He is further of the opinion that even Mill's test of education, beyond simple literacy, is unrelated to qualifications we require.<sup>1</sup> It is simple to understand as pointed out by Hankin in his 'The Mental Limitations of the Expert.' An historian, for example, whose expertness in the dissection of our early charter may be exquisite, may lack completely a sense of evidence when it is a question of deciding the merits of tariff reform. A scientist whose discoveries make possible the development of oceanic telegraphy may be utterly useless when it comes to the practical expression of his ideas.<sup>2</sup> But in view of the present means of access to knowledge we cannot recommend limitations of any general kind.

In conclusion we may say that every citizen has a right to political power irrespective of his station, caste, creed or colour. And as all rights are related to functions, so is the right to political power.

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1. Laski. *A Grammar of Politics* p. 115.

2. Quoted from Laski.

Any political system to be sound must be based on the right to freedom of speech and all that can make this right effective. The right to freedom of speech

6. The Right to Freedom of Speech :

does not merely mean the protection of a person for what he says because with the thought action is also closely allied. Further, Laski points out that it cannot merely mean either the protection of the individual, for much of what he says that is most urgent comes from his speech in concert with others.<sup>1</sup> Since every right is related to some function ; the right to the freedom of speech requires a clear definition in terms of the purpose it seeks to serve. It has been pointed out that citizenship is no more than the contribution by the citizen of his instructed judgment to the common good. If a penalty is attached to what he says, then how can he make any contribution. In the whole course of history of the world the clearest issue has been the case against persecution for the expression of opinion considered wrong at some given time. Its explanation is easy to understand. Men will always be prevented from being original by rigid customs and conventions unless they possess extraordinary qualities of character and determination. If you allow a person the freedom to say what he wants to say, and what he thinks, you give his personality the only means of full self-expression and his citizenship 'the only means of moral adequacy.' If you do not, you favour the supporters of the *status quo*. This leads men to make their activities underground and to say and do in secret what they would have said and done in the open. This is a dangerous situation for any state. It cuts at the very root of a sound political system. It simply means the suppression of the experience of some men which is equally entitled for public interpretation of its meaning as the experience of other men.

Generally speaking, the right to freedom of speech has been accepted, more or less in non-political sphere in

1. Ibid, p. 118.

England and in many European countries. There has grown a sense of toleration specially in religious matters. A person may be an atheist or agnostic or a vortocist without any fear of suffering at the hands of the law. But it is in the field of politics that there exists the real difficulty and conflict in the recognition of the right to the freedom of speech. The modern state does not want to tolerate opinion which it considers strikes at the roots of the existing order. It considers them illegal and worthy of being suppressed. Different reasons are given for this suppression. Sometimes the expression of a particular opinion is punished because the opinion is considered bad or subversive in itself; sometimes its expression is punished because it is said to threaten the present government, sometimes it is punished because it is said to preach or encourage breach of order and peace.

We may say that freedom of thought and speech is the sacred possession of man. To think what I think and not to be able to speak and act accordingly is the meanest slavery. We may disagree with what a person says but he has the right to say it. It was Voltaire who rightly said : 'I may disagree with what you say, but I will fight to death for your right to say it.' If I am not allowed to express in speech and action what I think, it 'becomes a torture which eats away the soul.'

The history of the world abounds with examples of men who gladly sacrificed their lives rather than to be denied the right to the freedom of expression. Socrates preferred a cup of poison to restrictions on the expression of his opinion. He held that the existing order needs to be threatened, to some extent, by new ideas. According to Milton the corollary of the freedom of thought is freedom of speech and the corollary of the freedom of speech is freedom of writing.

The case for the freedom of thought, its expression in speech and writing, is crystal clear ,

1. Criticism of whatever kind of social institutions is a matter of degree. If we start by preventing Rahima from advocating revolution, we

may end in prohibiting him from saying or even suggesting that the existing social order is not ordained by God and is the creation of certain powerful influences in their own interest. Thus there is not enough certainty or exactitude in social matters and it is not meant for any government to denounce it on behalf of the state.

2. If men are prevented from thinking what they have learnt from their experience of life will automatically cease to think at all and if they cease to think they cease to be citizens in any real sense. The purpose of the state is to make the citizen creative and not stagnant. It can not make him creative by preventing him from thinking and expressing what his experience has taught him. It is stunning his mind and en-chaining him to its own dead wheels to drag him along any path it deems fit.

It may be argued on behalf of the state that it is the crowning of disorder. But this is a mistaken view. If views which preach rebellion—open or secret, violent or non-violent—have a sufficient strength to perturb the mind of the state and disturb its foundations, there is, surely, something wrong in the habits and ways of that state. It is a psychologically admitted fact that the mass of the people are obstinately wedded to their accustomed ways of life and when they depart from their common rut which is implied in violence is certainly a proof of a deeply rooted disease. It is not difficult to understand. The common man does not favour disorder, he has no interest in it, it injures his interests most, on the other hand he hates it. But when and where he welcomes it, (Revolutionary Russia) or when he is indifferent to its happening, (Sin Fein Ireland) it is due to the fact that the government of the state has lost its grips on his loyalty and affection, and it is only from a *moral cause* that a government can lose the affection or loyalty of its citizens. In fact Professor Laski is of the opinion that : “the degree, in fact, to which

a state permits criticism of its authority is the surest index to its hold upon the allegiance of the community."<sup>1</sup> It can be said without hesitation that a government, as the individual, can learn from its critics *more* than from the praises which its supporters sing in and out of season. If it kills that criticism, it embarks on a road which will ultimately lead it to its doom.

**Its Scope.** It has been pointed out that every right is related to function, hence no right is absolute. The right to freedom of thought, discussion, and its expression is not an exception to this rule. It has certain limitations. These limits are fixed by society through public opinion, and through laws by the state. The broad principle adopted for limitation on the right to freedom of speech is that the expression of what one thinks in relation to individuals must be within the limits of decency and must not offend public morality or the established social order. To make these limitations effective states make laws relating to libel, slander, defamation, sedition, blasphemy, etc.

The right to freedom of speech does not mean the right to scandal mongering or making libellous or defamatory statements about individuals. It does not and can not mean any right to say that Doola murdered his wife and sold his mother-in-law, or that Ghafoora, if justice were done, would be tried for misappropriation of funds. It is recognised by all that reputation of a person is his valuable and sacred possession which largely exists in the minds of other people. Therefore when one person makes a wrong accusation against another, whether that accusation or statement may be serious or slight, or in any way slights his character is punishable under the laws of the state relating to slander.

It is not enough to prove that the statement made against a person is correct or true. Not only must the statement made be true and correct, but the charge should

1. Ibid. p. 121.



be made clearly and in definite terms in public interest. It is extremely important for the simple reason that a person can be persecuted equally with a wrong as well as with a true statement. 'Every person has a right to protect his personality in privacy'. Thus the right to freedom of speech means freedom to express one's views on general subjects only ; in the case of personal matters it means the expression of those views only the public import of which is direct and immediate. The only pain which an individual has the right to inflict on another is a pain which is demanded by public welfare.

The modern world is so organised that it is possible for no individual to express his views except by acting and associating with his fellow man. One of the notable features in the modern state is that there are found in it numerous and various kinds of associations. There are political, economic, social, commercial, industrial, educational, philosophical, literary, scientific associations having different aims and objects. These associations can not legitimately use force against their own members or other individuals. In a great majority of cases the individual is left free to exercise his right to association. But difficulty arises in the case of those associations the aim and object of which is to overthrow the state by violent means, the communist party.

To-day neither the right to free association nor that of public meeting is secure. This is true all over the world. In England and the European countries this change for the worse is due to the exigencies of the present international situation. In India the right to associations and public meeting has always been limited and qualified. Recent political events are too fresh to necessitate any description here.

It needs to be pointed out that if the state prohibits a meeting on the *ground* that the peace may be disturbed, it simply 'enthrones intimidation in the seat of authority.' But we must point out that it is different in the case of

such associations which aim at, and propose, to overthrow the state. Professor Laski points out that the problems raised by this issue belong more to the art than to the theory of political science. We agree with him when he says : "Every government must assume that its continued orderly existence is, within the ambit of such a system of rights as that here outlined a desirable thing, every government is entitled to take steps to protect itself. It is, therefore, entitled to destroy any group which seeks definitely and presently to usurp its authority. But no government ought, in its purely executive aspect, to be the sole judge of whether its action is right."<sup>1</sup> In such cases the executive should be able to prove its case in the law courts.

Concluding we may say that like other rights the right to association and public meeting is also subject to limitations and is related to a function which must seem the common good. Every state reserves certain powers of declaring an assembly unlawful, arrest of its members, prohibition of meetings, suspending associations etc. The position of the state is that it does so in the interest of public good.

It is vital that the citizen should be provided with full judicial safeguards. The judicial process should be so organised that if a person is accused he should have the opportunity to be tried in a manner that if he is not guilty his innocence may have the full chance to establish itself. A citizen can not and should not be imprisoned without trial. It is due to this right—the right to the protection of law—that the Habeas Corpus Act is considered the essence of rights. Justice, which a state dispenses, is the index to its quality. The justice which the state dispenses must be a justice without discrimination. It should term mental disease in a resident of the Mall what it calls theft in a resident of Mori Gate. No citizen should be deprived of or left without the means of his defence. It is the business of the state to organise

8. **The Right to the Protection of Law.**

1. *Ibid.* p. 123.

defence for those accused of crime. It has no right to exempt its officials from the application of laws which it seeks to apply to common people. It *must* be answerable in its own courts for its acts of omission or commission. The sovereignty of the state must never mean that it is not amenable to law. In a word the rule of law is imperative and fundamental and the rule of law means that no person, whatever his status, and no officer, however exalted, be exceptions to the rule of law.

The above conception has two sides—the independence of the judiciary and the separation of the judiciary and the executive. The independence of judiciary means that in the process of making and applying law they should be responsible only to their consciences. They must not be required to kow tow or to bow to the behests or orders of the executive which should not be able to touch them even if it dislike what they pronounce. Nor the judges should be removable or changeable simply because what they have said has offended the popular public opinion. Judiciary is the one organ whose business and duty it is to safeguard the rights of citizens, and if it is to perform its function honestly and without fear or favour it must have safeguards for itself.

Secondly unless the judiciary and the executive are not separated the right of the individual—specially the right to the protection of law—are not safe. Every individual needs badly the largest protection for the danger that the agency (administrator) who applies the law will be the agency to interpret its meaning as well. The vesting of the judicial and the executive power in the same agency has always brought tyranny in its wake. Without going into details of this question here<sup>1</sup> we may say that the separation of powers and the supremacy of the judiciary is inherent in the problem of the maintenance of rights.

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1. This topic is fully discussed in the chapter on the separation of powers.

The right to property is considered by many even more important than the right to life and liberty. Man, often if not always, defends his property with his life. Many of the present-day laws relating to property are more precise, definite, fuller and stringent than those relating to life and liberty. The conception of property is to be found at the root of our economic social and political structure. But the fundamental question which we must ask is, is there a right to private property ?

It has been pointed out that every right is related to some function and the right to private property is no exception to the rule. If the possession of property helps a man to develop the best in him the existence of the right to property can not be denied. But it needs to be made clear that such a right is subject to strict limitations. Rights are related to functions, what an individual owns, he has the right to own, if it is related to some common good as a condition of its maintenance. It is unjust in the extreme that an individual should own directly as a result of the labour of others. If what the individual owns gives him power and control over the rights and therefore the personality of other individuals the consequence of his ownership will be that these individuals will cease to have any personality and will become mere creatures of the will of one individual. In such a background it can not be said that a person has a right to own property beyond a certain point which gives a reasonable satisfaction to his impulse.

Beyond that point, it may be pointed out, what he contributes to the community is not *his personality*, but the *personality of his property*. It is not *his interests* that direct and guide him, but the *interests of his property*. There are honourable exceptions—Rockefeller, G. D. Birla etc.—but these exceptions prove the rule.

Concluding we may say that there is no unqualified right to private property. It exists only in relation to a function which must contribute to the common social

good and must not act as a source of power to enable its owner to dwarf the personality of other individuals.

This right ensues from the right of conscience. A very comprehensive, rational and instructive treatment of this difficult and controversial (specially at the present time) is found in Section 100, and in Professor Laski's "A Grammar of Politics" in the chapter on Rights.

**10 The Right to Resist the State.**

The sole judge of a given law whether it is for the common good or not is the individual. Green is of the opinion that even if the individual considers a law bad, *i.e.*, opposed to the common good, he should obey it as a general rule. It may be different in countries where there is no national popular government. The individual ought to obey even bad laws if there exist legal and constitutional provisions to remedy its evil effects or the injury which it may inflict or cause. But in the absence of such provisions as well as in the absence of a genuine and concrete will of the rulers to provide such machinery, or where the law habitually gives preference to the interests of the few in comparison to those of the many the individual has the duty to resist the state. Green holds that in such cases it is a *painful duty* while Laski believes that in such cases it becomes a *right* to resist the state.

Not joining the controversy whether resistance to the state in certain circumstances is a *right* or a *painful duty* we may say that the performance of a duty is also a right and the assertion of a right is *duty* and the individual has no right to allow to suffer his rights and duties.

#### QUESTIONS AND TOPICS.

1. Critically examine the right to life and liberty.
2. Write a short note on right to work.

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## CHAPTER 12.

### CITIZENSHIP

Citizenship is a term which is very loosely used and wrongly understood by the average man. Usually, by citizenship is understood the status of a citizen of a state possessing rights against and owing duties to the state, as distinguished from that of an alien or a subject living within the state. By alien is understood a person who lives within one state but is a citizen of another state. An alien has no political rights or duties, though he enjoys civic protection and pays rates and taxes. An alien can become a citizen through naturalization. Naturalization involves the renunciation of the allegiance to his original country, residence for a certain period in the country of adoption, giving allegiance to its constitution and laws, and in some cases the possessing of certain literary qualifications, etc. By subject is meant a member of a community or race which has been subjected by another community or race to its domination and rule. For example an Indian belongs to a subject people because Indians are subject to the rule of the British ; or, it may be used for the citizens of a state, when the authority of the state is exercised against them.

However, 'Citizenship' is not analogous to 'citizen'. Citizenship is not merely a conception of the status of a citizen possessing rights against and owing duties to the state. This is merely legal conception of citizenship. There was a time when the relation of the citizen and the state was based merely on the possession of rights by the citizen, and the conception of citizenship involved merely the exercise of these rights ; or, when the basis of that relationship was understood to be merely owing duties to the state and the performance of these duties by the citizen. But now the basis of this relationship is the individual as "an activity of society". "Citizenship

is not a right nor a privilege nor a duty, but an activity to be exercised every moment of the time."<sup>1</sup> Citizenship is in the words of Aristotle the capacity to rule and to be ruled. To Greeks the civic education was an important and essential part of the individual's education. To Pericles, the city as a whole was an education. To them to be a good citizen was to be a good man.

The modern conception of citizenship is concerned with democracies. The failure or success of a democratic government, as of any other government, depends upon the mind and character of its people. The conception of the state that the individuals have no other function except to receive and obey the commands of the state loyally is no longer true. The state is nothing but the people themselves. The state is what they make it. The commands of the state are valid only in so far as they embody the experience of the individuals and in so far as they are in consonance, with the desires and wants felt as a consequence of that experience. Further, and what is more important, they are valid in so far as the individuals have contributed towards the formulation of these commands and the will of the state. This process demands an intelligent, trained and informed mind on the part of the individual. We are not something beyond the state or outside the state or apart from it; "we are one with the state by actualizing the latent state at every instant of our lives."<sup>2</sup> This realization is citizenship. Thus citizenship is not merely obeying the laws but being an integral part of the state in an active sense.

Citizenship does not merely mean exercising of rights or performing of obligations but it demands a passion and a joy. Life is not merely to be lived well and comfortably but lived in fullness. Citizenship is a constructive as well as a robust faith in men and the fulfilling of that faith by these men. State is a moral power; it is a moral leader.

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1. Follett, M. P. The New State; p. 335.
  2. Follett, M. P. The New State; pp. 334—35



for the enrichment of common life. The function of the state is to adjust the relation of man to man. The process of living this relationship and adjustment is citizenship.

✓Citizenship is at once a science and an art. To Professor E. Barker, civics (education for citizenship) is a sort of practical drill in political philosophy and a part of practical drill involved in education for goodness. Civics, to him, if properly understood, runs into, or comes out of, ethics. He quotes in his support Kant who said that a theory of politics must begin by doing homage to ethics.<sup>1</sup> Thus citizenship like morals is both a science and an art. It is to be taught and learned like other sciences ; and it is also to be practised in actual life. We may, therefore, define citizenship with Dr. Asirvatham as "character in action" ; it is simply another name for social living. Mere education and knowledge of political philosophy and political institutions is not citizenship. It calls for the actual effort both of mind and will. The state accumulates moral power only through the spiritual activity of the citizens. There is no state except through me there is no citizenship except through me<sup>2</sup>.

State is not merely a collection of individuals as separate units. Hence citizenship does not mean living a fraction of the state life by the individual in proportion to his strength as compared to the whole. The individual is bound with the whole like the key of a piano ; the value of which is not in its being 1/56th of all the notes, but in its infinite relations to all the other notes. ✓Citizenship means the living of the whole social life. Further, individual is not lost in the whole. He contributes to and makes the whole. Therefore, citizenship means the living of social life within a state.

However, citizenship is not mere patriotism for one's state. Patriotism has been variously defined, particularly, as a sentiment associated with some form of

1. Barker, E. *The Citizen's Choice* ; pp. 153—54.

2. Follett. *op. cit.* p 384.]

noble, exalted and exceptional service rendered to one's country at a critical time in its history. Patriotism may justify his acts which otherwise are condemnable, for example murder, sabotage and revolt. Patriotism has led the nationals of one country to subjugate the nationals of another country or race. Citizenship is not that. Citizenship demands a particular way of living at every moment of one's life. It demands "a steady, continuous, devoted, intelligent, and often unnoticed and unrecognized service in both small things and big, to one's immediate neighbour, one's country, and eventually to humanity itself." The spirit of citizenship should be present in man's relation with his family, neighbour, community, nation and the world. True citizenship should not find any national barriers. Loyalty of a citizen to his own country and that to the humanity should not clash, but should, in fact, be supplementary to each other. While patriotism may often prove a divisive force, true citizenship may be a unifying force. It keeps together man and man, community and community, nation and nation in an all-embracing unity. 'True citizenship means a right ordering of these loyalties.' Citizenship is not merely a sentiment or the repetition of platitudes. 'It is a steady and devoted service in every aspect of man's life.' Patriotism leads to multiverse but citizenship to universe.

To provide education in citizenship is an essential duty of the modern state. After the 1870s the French state has nationalized education and has made the teaching of patriotism a compulsory teaching. The Government of the U. S. A. has Americanized the country's education. Training in citizenship is one of the essential part of education in America. The governments of Italy, Germany and Japan have been imparting national education to their youth. In India, however, no emphasis has been laid on this aspect of education. Our education has emphasized the literary aspect more than the civic and the cultural. The consequence is the production of quill-drivers.

**Education  
for Citi-  
zenship.**

The problem of imparting civic education is very intricate. Should political philosophy be taught in the schools? Further, question arises as to which philosophy be taught? Should the young mind be taught only those doctrines on which the government of the country is based? Should the aim of civic education be the fulfilment of the needs of the government as the latter expresses? Or, is the teacher free to teach what he thinks are the needs of the government?

Political science and political philosophy cannot be taught in the schools because of the following reasons :

Firstly, the premise and conclusions of political science and political philosophy are so uncertain that the school boy ready for hot certainties cannot be satisfied. Secondly, they demand a mature mind and a practical grappling with political problems as a background to understand them properly. However, we can teach civics in our schools. The curriculum of civics is not to be what the government would like it to be. This would lead to the killing of initiative and originality in the young mind as is the case at present in our country as elsewhere also. Even in England much is being said against the old system of civic education. This education should be not to suit the needs of the government; but it needs to be an education of the individual to be the government himself. It need not teach us to obey the commands of the government but also to be the framers of those commands. Barker has rightly remarked that "education for citizenship is really a process of self-education for the proper performance of the right and duty, which belongs to us all, of helping to make, inspire and control the government of our country."<sup>1</sup> Civic education should be training in not 'what to think' but in 'how to think.' Citizenship, being a science as well as an art, men should educate themselves not only in the school but also in their practical life. In fact, to Prof. Barker, "men educate themselves for citizenship by

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1. Barker, E. *op. cit.* p. 158.

what they do to educate themselves when they have ceased to be educated by others." The membership of a club, an association, trade union, municipality or district board, a political party and church teach the individual and prepare him for the higher life of the state. Further, these clubs and societies and associations originate, formulate, express and control public opinion which inspires and controls a democratic state. And the formulation of this public opinion is true citizenship. Citizenship does not end at going to political meetings or exercising the right to vote and the right to be elected to a local or national assembly. Citizenship is how far you correctly work them and what you say : citizenship is, in the words of Prof. Barker, 'saying good and considered words into the middle, in any group and on any occasion where it is possible.'

Civic education is not the whole education which is to be taught in the schools, it is merely a part of the whole. Education needs to be civicizing but before that it needs to be humanizing. Therefore civic education should be only a part of the education for the whole of the man. Citizenship does not exhaust the whole of man and the individual needs to be taught to be a whole man.

Professor Barker considers the detailed contents of the curriculum of civic education to be taught in the schools and prescribes them to be as follows<sup>1</sup> :

1. The teacher can give civic incentive and this civic incentive can be best given in a quiet and unobstrusive way, 'silently' and 'invisibly,' as suggested by Blake.

2. The teacher can give not only incentive to civic action, but the necessary stuff of civic knowledge which is needed for wise civic action. This does not mean either giving merely a description of political institutions or civic factors ; nor does it mean giving a training in their fundamentals. It simply means the clear understanding of the use and abuse of political terms—justice, authority, liberty,

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1. Barker, E. *op. cit.*, pp. 158-166.

equality, and sovereignty etc. This can be imparted through the teachings of English, History and Geography.

3. The third thing is the understanding of social and political institutions *i. e.*, what they have been and what they ought to be.

4. Education should provide the knowledge of and information about current affairs.

Education in citizenship will lead firstly, to the proper understanding and reverence of human personality.

**Fruits of Civic Education** In India the artificial barriers of caste, creed, colour and communalism have been a great hindrance to the proper development of true citizenship. Every individual, without any distinction, should be given opportunity to develop his personality and be at his best. Not only opportunity and encouragement should be given but the personality of the individual should also be respected. This demands economic, political and social equality. However, equality does not mean identity of treatment. The principle of equality needs to be reconciled with the fact of natural inequality *i. e.*, equality among equals and inequality among unequals. In India, this ideal is far from realized. The shackles of caste, creed, rank and community are a great hindrance in the way of realizing political, economic and social equality. The principle of "careers open to talent" is merely a sacred principle in India.

Secondly, it will lead to social cohesion and social harmony. True citizenship means the precedence of communal interests over individual or group interests, of national interests over communal interests and of world interests over national interests. A good citizen is not only a good national but also a better internationalist. This will lead to a harmonious adjustment of the relations between the individual and society. The result will be happiness, harmony, prosperity and progress.

Thirdly, it will lead to the proper understanding of the meaning of the state. State is not something outside or

beyond or apart from the individuals. It is what they make it to be. The individuals themselves are the real rulers. The interests of the state are not apart from those of the individual. The relation between the individual and the state is not that of a servant and a master. Rightly interpreted, the state is merely an organ of the society devised and worked by the individuals for the furtherance of their interests and happiness and for creating conditions necessary for the fulfilment of their personality. State is, thus, the true friend of man. If state fails to perform its function, the individual has a right, and even a duty, to resist the state through criticism, persuasion, argument and reason. If these fail, he has a right to revolt against the state and overthrow it.

However, if the state is performing its functions well, the true citizenship demands the adherence to its commands. The individual will understand that the police officer, the judge and jury, the income-tax officer and other functionaries of the state are his true friends.

Fourthly, it will lead to harmonising of relationship between rights and duties. Rights and duties are not two antagonistic things, they are of one thing looked at from different points of view. The individual has a right to exercise his "rights." The rights should be exercised intelligently and conscientiously. Rights are conditions essential for the realization of his personality by the individual. And the individual can develop his personality only in consonance with the interests of the society. So he has duties towards the society and the other members. Thus the rights and duties are complementary and supplementary to each other.

Lastly, the training in citizenship will lead to training in character. Citizenship is nothing but "character in action." True citizenship will train young minds to acquire healthy habits, to form proper dispositions and to take scientific attitude towards day-to-day problems. Education in true citizenship will mean education in morals.

Citizens, in every state, enjoy certain rights, though the extent of these rights varies in different states. In the democratic states the extent of these rights is the highest. Certain fundamental rights are essential for the development of an individual's personality. Every state should guarantee these rights to its citizens. The most important of these rights are :

1. The right to free life.
2. The right to marriage.
3. The right to work.
4. The right to education.
5. The right to equality.
6. The right to franchise.
7. The right to political power.
8. The right to freedom of speech.
9. The right to freedom of press.
10. The right to freedom of association.
11. The right to freedom of public meeting.
12. The right to property.
13. The right to public health.
14. The right to resist the state.

This is the most fundamental right and is the basis of all other rights. The moral basis of this right is the capacity of the individual for membership in society. With regard to the duty to live, it is argued that neither the individual nor the society are the gainer if the former is permitted to destroy his life. Both are losers in that case. It is on this basis that suicide is made illegal.

It follows that if the individual has no right to destroy his own life, he has no right to destroy the life of others. The state should provide protection to the life of an individual against any danger from other individuals. And this implies the right of self-defence. To define self-defence is not easy. To limit the extent of self-defence may be left to the good judgement of the judicial authorities of a state. One thing is clear that self-defence does not mean aggression.

The right to life implies the right to liberty. Without right to liberty right to life will be merely a right to existence. Life without liberty is useless and even a curse. Life is of no value to the individual if he can not live his life according to his own plan and free will. The two rights imply each other.

From right to life follows the right to procreate. Hence, the right to marriage. But this right **Right to marriage** can not be claimed absolutely. The conditions in modern society are such that in the interests of the child to be born, the right to reproduce life may not be allowed to certain people. Hereditary lepers, incurably insane, idiots, imbeciles, deaf-mutes, people suffering chronically from venereal diseases should not be allowed to marry and propagate their kind.

Every individual has a right to work. Opportunity should be provided to the individual to **Right to work.** support himself by his own labour. Society owes it to him. If society does not permit access to the means of existence it deprives him of that which makes the development of his personality possible.

The individual needs a certain amount of material goods to continue his life and continue it properly. Society owes it to him that he does not starve.

This right to work does not mean right to a particular work which suits the fancy of the individual. It does not mean that if the individual takes a fancy to do the work of a prime minister, he should be given prime-minister-ship. The right to work merely means an opportunity to be occupied in producing some share of those goods and services which are necessary for the fullest development of his personality. He should not be allowed to starve because of the lack of opportunity to work. Hence in case of absence of such an opportunity he is entitled to an equal reward or compensation. Hobhouse has well emphasized the importance of right to work when he says that the right to work "is an integral condition of good social order". A society in which a



single honest man of normal capacity is definitely unable to find means of maintaining himself by useful work is to that extent suffering from malorganization.”<sup>1</sup>

The right to work means right to work which enables the individual to earn decent remuneration within a reasonable period of work. Unless he is able to secure for his work a return which can purchase a standard of living equal to the civic minimum creative citizenship is impossible, further the individual should be able to have leisure for creative work. For proper development of individual's personality leisure is necessary because it is only in leisure that a person can develop his thinking and creative faculties.

In India the right to work is not recognized. The government has no responsibility to provide work to the people. Nor do they provide unemployment compensation. There are no unemployment insurance schemes. The result is unemployment and starvation. Most of the people are under-fed and under-clothed. Talent and energy of the individual and hence of the society, are being wasted with a deteriorating effect on the morale of the present generation and a permanent deterioration in the physical and mental capacities of coming generations.

Citizenship means the contribution of a man's instructed judgment to the social good. This contribution cannot be made unless there are means for the judgement to become instructed. Education is one of the most important means by which a man's judgement can become instructed and enlightened. Hence it is obvious that the citizen has the right to education which will train and fit him for the rights and duties of citizenship. He can demand it of society to provide him with means and instruments which can enable him to understand life. He should be so equipped as to be able to give expression to his wants and meaning to the experience which he has gained in life. Without education one remains ignorant and is unable to

1. Hobhouse, L. T. Liberalism, p. 159.

understand politics which concerns his life at every moment. And he becomes unable to contribute towards the common stock of social good. Today the problems of society and state demand a theoretic and intellectual discipline of mind to understand and solve them. The democratic system of government is no more an automatism ; it can produce something only if the individual puts his heart and mind into it. You can not put your mind into it unless it is informed of in what it is being put and unless you have trained, experienced, informed, instructed and properly prepared mind. The individual should be prepared not only for life but also for the life political. This needs the giving of a basic minimum knowledge of the forces and factors of that life and of its institutions. He should be familiarized with its problems and their possible alternative solutions and institutions so as he may be able to grapple with them in his practical life.

Equality is essential to good citizenship. It implies a certain levelling process which means that **Right to equality.** 'no man shall be so placed in society' that he can over-reach his neighbour to an extent which may deny the rights of citizenship to the latter equality does not mean identity of treatment.

The right to equality implies three rights : right to legal equality, right to political equality and right to social equality. Legal equality implies the application of the same law by the same courts to all the citizens and officials within a state without any discrimination. Prime minister and a chaprasi should appear in the same courts. No special privilege should be given to those in high position or to rich and well-placed persons. Justice should be available to all rich and poor, on the same footing. A controversy is often raised as to the disability of the system of rule of law as prevailing in the English speaking countries or that of 'the administrative courts' as prevailing in some of the European countries and particularly in France. We are not concerned here with this controversy. With what we are concerned with is the recognition of the

fundamental fact of equality of justice to each and every citizen of the state. No citizen should suffer injustice due to unjust discriminatory standards.

Political equality is discussed under the heading Franchise and right to political power.

Social equality is a right which the state cannot provide directly. It depends upon social customs, habits and traditions of the people that can remove social inequality indirectly by removing social barriers as a hindrance in the dealings between the citizen and the state. Public schools, public libraries, public buildings, public roads should be opened to all without any recognition of social ability or disability. The state can do much to promote social equality by recognizing the status of opposite sexes as equal. This has been done in many European countries. Further it can promote social equality by refusing to grant preferential treatment to followers of any particular religion.

In India even to-day, one has to say with regret there is no social equality among the people. There are barriers of caste and creed which separate man from man. There is a large number of people who are dubbed as depressed or un-touchables and who live their daily lives under many social disabilities and restrictions. Some attempt has been made by different organizations and personalities to remove their barriers and restrictions. Mahatma Gandhi has done a pioneer work in this field. Travancore State has done a valuable service by opening the public temples to the untouchables and this has given a definite lead to other governments. The Government of India also recognizes the principle of social equality. But its communal policy in matters constitutional and political is not conducive to the promotion of social harmony; in fact it is leading directly to the social as well as political disharmony.

The individual has a right to a share in the management of the affairs of the state, or, at least in the formulation of the will of the community and in the direction of the manner in which that will shall be exercised.

**Right of franchise and right to political power**

The first step in the realization of this right is the right of franchise. No matter how it is organized the right of franchise means that every adult—man and woman—has the right to indicate the persons he considers desirable for undertaking the work of government. Considerations of sex, property, race, creed and colour, should not stand in the way of the citizen to acquire this right. There should be no property or educational qualifications. It is pointed out by the upholders of the capitalistic economic system that the average man has no power of making correct judgement and hence the franchise should be limited. But we may reply that, 'democracy lives by error and trial.' Further it is the duty of the state to provide knowledge and information to the people. Moreover, we have no thermometer to measure the mental abilities and capacities of individuals as to know whether a certain person is capable or not of making a correct judgement. However, aliens, insane persons, minors and criminals are not granted this right.

Besides the right of franchise the citizen has a right to be elected to office. Every citizen who possesses a vote should be legible to be elected to the legislative organ of the country. Further every citizen should be capable of holding any public office, if he is capable of performing the responsibilities of that office properly and efficiently. Considerations other than ability and efficiency should not be a hindrance to holding a public office.

In India, these rights are not fully recognized. Franchise is restricted. Suffrage is limited by property, educational and vocational qualifications. Men and women are treated on different basis. Muslims, Sikhs, Europeans, Anglo-Indians and Christians are given separate electorates. Interests like commerce, trade, labour, and landlords, etc. are given separate representation. In fact there is no Indian suffrage as such. Indian system of suffrage has been a great obstacle in the way of the development of Indian citizenship.

Similar is the case with the right to public office. The recruitment to public offices is mostly carried on communal basis. Thus the claims of race and caste are given priority to those of ability and efficiency. The result is a deterioration in the standard of administration.

If the individual has to contribute to the social good it is essential that he should have the freedom of speech. It is only when you allow a person the freedom to say what he wants to say and what he thinks that you give his personality the only means of self-expression, 'the only means of moral adequacy.' We may say that freedom of thought and speech is the sacred possession of man. To think what I think and not to be able to speak and act accordingly is the meanest slavery. We may disagree with what a person has to say but he has the right to say it.

The right to free speech is limited in so far as it leads to libel or defamation against a person or persons. It does not mean scandle mongering or making libellous or defamatory statements about individuals. Further it is pointed out that opinions leading to violence and rebellion against the state are to be suppressed. But such opinions should be suppressed not by the prohibition of their expression but by more reasoned opinions. Wrong opinion can be counter-balanced only by a better and a truer opinion and not by suppression.

Allied to this right of speech is the right to free press. Press is an instrument, particularly in the democratic countries, which creates, directs and enlightens public opinion. It is through the instrument of the press that the general public is informed of the actions of the government and it is through press that the lay man can express his opinion whether government is right or wrong. Hence the right of free press is as essential as the right of free speech ; they imply each other.

In India, the right of free speech is very often qualified and limited. Section 124-A of the Indian Penal Code reads

“Whoever by words, either spoken or written, or by signs, or by visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excites, or attempts to excite disaffection towards Her Majesty or the Government as established by law in British India, shall be punished with transportation for life, or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with no fine.”<sup>1</sup> The law of sedition is exercised much more freely in India. Similarly, the Indian press is not free. The Indian Press Act can not be considered a liberal measure, since it imposes so many restrictions on the freedom of the press, but the position has become worse by the many restrictions imposed on the press under the Defence of India Rules. The press has become, particularly during the present period, an instrument of government propaganda. Almost all the important news concerning international situation and the Indian internal political conditions are to be submitted to the censor department of the government central or provincial. It will not be far from truth to say that at the present moment in India right to free press does not exist.

The best way of expressing well-balanced and right opinion is that of expressing opinion through associations. In the modern world we find numerous associations existing within a state. There are political, social, commercial, industrial, educational, philosophical, economic, literary and scientific associations having different aims and objects.

The right of public meeting is also an allied right to that of freedom of association. The difference between the two is that while an association is permanent in character a meeting is temporary. This right is also limited to a very great extent in India. Section 141 of the India Penal Code, sections 127—132 of the Code of Criminal

1. Quoted by Dr. Asirvatham in Political Theory and Modern Government (1935), p. 551.

Procedure, the Seditious Meetings Act X of 19/11, and various Ordinances and Defence of India Rules, are some of the limitations on the right of freedom of association and public meeting.

**Right to property.** The citizen has a right to property in so far as it is necessary for the development of his personality. The possession of property should not give power and control to its possessor over the rights and therefore personality of other individuals so that the latter may not cease to have their individuality and personality. Right to property implies a right only to that property which one acquires as a result of one's own efforts.

Thus the right to property is not an absolute right. It exists only in relation to a function which must contribute to the common social good and must not act as a source of power to enable its owner to dwarf the personality of other individuals.

**Right to public health** Health is an indispensable element for the fullest development of one's personality. Therefore, the citizen has a right to demand from the state conditions which are necessary for the maintenance of proper public health. "Modern states spend large sums of money over sanitation, medical facilities and lighting. They take care to provide disinfected water to prevent epidemics ; to draw and enforce plans ; to build airy and healthy houses. In India conditions are deplorable. In big cities some care is taken to ensure conditions necessary for public health. But in towns and villages the conditions are extremely bad. Dirt and filth are seen lying nearly in front of every door. Housing conditions are very poor, pure water supply is scanty. Very often, in the villages, certain classes drink water from tanks, bunds and nullahs. The root cause of all this is ignorance, illiteracy and poverty.

**Right to resist the state.** The right to resist the state is a fundamental and an inherent right of the individual. The individual is the sole judge of the laws and commands of the state. If the individual feels that a particular law is not conducive to his wants and

is harmful to the social good, he should oppose that law. Green points out that this opposition should be expressed through the constitutional and legal means and instruments existing for that purpose. If there are no such instruments or if his opposition fails to achieve its purpose, the individual has a right to oppose and resist the state.

Rights and duties are co-relative terms. They imply each other. Every right implies a corresponding duty. In return for the rights and services which the individual enjoys from the state, he owes certain services and obligations to the state. If he does not perform his part, he injures not only the state but injures himself also as the interests of the state and the individual are not different. We may divide these duties into legal and moral duties. Legal duties are enforced by the state directly, but moral duties are enjoined by public opinion. But very often a duty is both moral and legal. Some of the most important duties of citizenship are admirably summed up by Dr. Asirvatham as follows :—

*Legal :*

- (i) Respect for law.
- (ii) Help to maintain law and order.
- (iii) Service in war.
- (iv) Service on jury.
- (v) Payment of taxes, rates and cesses.
- (vi) Exercise of the vote.
- (vii) Education of the children.
- (viii) Maintenance of public health and sanitation.
- (ix) Earn his own living.

*Moral :*

- (x) Study of citizenship.
- (xi) Cultivation of public spirit.
- (xii) Proper exercise of the vote.



- (xiii) Acquisition of political etiquette.
- (xiv) Self reliance.
- (xv) Education.
- (xvi) Care of the health.
- (xvii) Help of the weak.

**Respect for law.** Respect for laws is the first duty of the citizen. No state can perform its functions adequately unless people obey its laws and carry out its commands. The obedience to the laws of the state should be taught both in the school and the home because it is the first requisite of true citizenship. Citizens should make themselves familiar with laws and the state should provide means and instruments necessary to that end. Ignorance of law is no excuse for its violation. The basis of this duty is that law is not something extraneous to the citizen ; it is, as one writer puts it, his own will purged and purified of selfishness. In a democratic state law embodies the experience of the individual and caters to the needs and wants felt as a consequence of that experience.

However, this duty is not absolute. If the individual finds that a particular law is not in the interests of the development of his personality and in the interests of the common social good, he has not only a right but even a duty to disobey that law through all constitutional and legal means or even through open rebellion if the former method has failed to achieve the desired result. The citizen in certain circumstances has a duty to rebel.

**Help to maintain law and order.** The next duty of a citizen is to help the government in the enforcement of its laws and in their proper execution. The extent of this duty varies according to the needs of time and place. In normal times the government has its own agencies sufficient to cope with violation of its laws. But in case of emergencies the government may demand from the people to help it in suppressing

violence, lawlessness and disorder. Section 17 of the Indian Police Act demands special duty of the citizens in an emergency. It reads : " In any disturbed area, if it appears to the magistrate that the regular police is not sufficient for the maintenance of order, he might require some citizens to enrol themselves as special police officers and then they come under the discipline of the regular police force".<sup>1</sup>

**Service in war.** Defence of one's country is the supreme duty of the citizen. In cases of emergency, it becomes his duty to defend his country even at the sacrifice of his own life. The state has a right to resort to conscription during war. Nearly every citizen of military age (between 18—45) can be conscripted and listed for military service. Many states provide compulsory military training to every citizen so that they may be utilized for the purposes of defence during war. In normal times, the state depends upon its regular army to defend its territory.

**Service on Jury.** Every citizen has a duty to serve on jury or other public bodies when required to do so. In India this duty is generally recognized. In India it is the high courts that choose the jurors and decide upon the manner in which they are to serve on the jury.

This is obviously an important duty. Without money the state cannot maintain its numerous services ; therefore it has to find sources from which it can get money. Its finances are derived from a number of sources the most important of which are taxes. Taxes are collected by the central and provincial governments and the rates by corporations, municipalities and other local government institutions. In democratically governed countries citizens themselves through their representatives consider what taxes are to be levied and what classes of persons are to be taxed so that there may be a proportionate distribution of the burden of taxation. They also decide how much money the government should spend and on what. By paying these taxes

1. Quoted by Dr. Asirvatham, op. cit., p. 562.

citizens do not lose anything but in fact they gain much. The income-tax collector or a municipal officer is the real friend of the citizen. In India, however, the conditions are different. Major part of the Indian budget is non-votable, and in the case of votable expenditure the Governor-General has authority to increase, decrease or delete a particular grant. The government, not being responsible, more often than not may impose taxes and duties arbitrarily.

To make a proper use of his vote is the sacred duty of every citizen. Certain states provide penalties for non-voting due to other than reasonable causes, while others do not.

**Exercise of the vote.** It is the duty of every citizen that in the exercise of his vote he should not be influenced by any personal or selfish considerations. Democracy can be successful only when the citizens exercise their vote in a genuine, honest and a disinterested manner. Mr. V. S. Sastri rightly remarks : "he who refuses or neglects to use his vote..... thereby proclaims to the world that he is not yet fit to become a member of a democratic polity."<sup>1</sup>

Every citizen has a duty to educate his children. No child should remain illiterate due to the slackness of the parents. It is necessary that every child should be equipped for earning his own living as well as for the performance of his duties and the proper enjoyment of his rights as a citizen. This is necessary for the fullest development of his personality. Diogenes has rightly said : "The foundation of every state is the education of its youth".

**Health and sanitation.** It is the supreme duty of the state to improve conditions of public health and sanitation. But the individual has a still greater duty to promote the same and help the state in its endeavour to improve general health and sanitation. The individual should not be a cause of nuisance to other people. In India, the citizens are most irresponsible in this respect ; scant attention is paid to the

1. V. S. Sastri ; ' The Rights And Duties Of Indian Citizenship' (1926), page 93.

cleanliness of surroundings, streets ; public places, roads and other open places are generally kept filthy. Litter is thrown on the streets, public thorough-fares and even in play-grounds; drainage water is emptied on public roads and open places. In the absence of public latrines, urinals and refuge pits in most of the towns and cities of India people can be seen making use of public roads, parks and pavements for the above mentioned services. It is almost criminal on the part of any government to neglect such vital aids to public health and sanitation. The government and the people both seem apathetic to the cause of public health. No wonder that the rate of mortality in India is staggering. The government should not forget what Ruskin said : 'the health of a nation is the wealth of its people'. Something is being done, but much more remains to be done in this field in India. Public health and sanitation can be improved by the removal of illiteracy, by educating public opinion in favour of cleanliness and by adopting means for the eradication of poverty. Above all, the most essential thing is to cultivate and promote civic sense in the people.

Every individual has a duty to earn for his living through his own efforts. No person has a right to the labour or earnings of another person. Parasitism is anti-civic and anti-social. The citizen should be scrupulous in the methods of earning his livelihood. Improper means such as robbing or cheating should not be employed by a citizen to earn his living. Competence, thoroughness and excellence should characterise every bit of work undertaken by the citizen.<sup>1</sup> Jacks says : "Citizenship includes trusteeship on the moral side, competent technique on the scientific side and skill on the practical side."<sup>2</sup>

Illiteracy and ignorance are a great curse which can befall a nation. The foundation of every state should be education in citizenship as Turgot remarks : "The study of the duty of citizenship ought to be the foundation of all other

1. Asirvatham ; A New Social Order., p. 364.

2. *ibid* ; p. 664.

studies". The citizen should know the responsibilities which he owes to his family, school, neighbour, community, nation and the world, and he should also know the proper manner in which these are to be performed. He should be acquainted with the rights of citizenship so that he may be able to develop his personality fully.

Acquisition of public spirit is the most important duty of the citizen. According to Dr. **Cultivation of public spirit.** Asirvatham such virtues as consideration for others, regard for public property, keeping one's surroundings tidy and clean, mutual helpfulness, co-operation, balanced judgment, readiness to stand up for the rights of others, and willingness to serve on public bodies even at some personal inconvenience are a great help in the cultivation of a healthy public spirit.

In India, a high degree of public-spiritedness is lacking woefully. The Indian citizen is mostly concerned with his personal or sectarian or commercial interests. Indian politics are very much obsessed with particular interests of one's community, sect or race. We so often pass the suffering persons unconcerned. Nor are we very often patriotic enough to sacrifice our energy, time, money or convenience for the sake of common good. We are not ignoring the sacrifices and philanthropic services rendered by so many patriotics, nationalists and social reformers. What we deplore is that it is not widespread. Public-spiritedness should begin at home, with one's neighbour, in activities other than political as social and religious etc. We will do well to remember the words of Pericles: "A citizen who plays no part in the public affairs is not 'quiet' but 'useless.'"

The citizen should know political etiquette besides **Acquisition of political etiquette.** political principles. Parties should be based on principles, policies and methods. Argument should be met by argument; slinging mud upon one's opponents is not an argument. Different view-points should be understood, balanced and

judged, and only then any judgment pronounced upon them. Hooliganism and rowdyism are against political etiquette.

It is an important quality in every citizen.

**Self-reliance.** Every citizen should have self-confidence to stand on his own feet. The parasitic or pauper mentality should not be allowed to cultivate. Citizen should not remain idle but should know how best to use his time. All should do such work which is beneficial both to them and to the community. Children should be so educated as to develop skill of some sort—artisan, literary, industrial, technical or mechanical.

To help the needy, the poor and the weak is one of the basic duties which nature has imposed upon man. Voluntary efforts of individuals and groups of individuals should be organized to help the poor and the needy. No citizen has a right to comfort and luxury when his neighbour is suffering and is poor. A good citizen should have a 'passion for improvement and a keenness for social service'. Effort to remove poverty and suffering is the natural and moral duty of every citizen.

There are in almost every state a number of people who are not good citizens. Good citizenship is possible only when the citizens possess intelligence, self-control, civic sense and conscience. There are certain factors which stand in the way of proper discharge of civic duties by individuals. Some of these are discussed here.

**Hindrances to good citizenship.**

Many citizens are illiterate and ignorant. They do not understand the meaning or purpose of the state; nor do they understand their own interests properly. Therefore, it is essential that the citizens should be educated and informed.

**Lack of education.**

Selfish interests are a great enemy of good citizenship.

**Self-interest.** The citizens do not very often hesitate to sacrifice interests of social good for the promotion of their own interests. The citizens cannot control

themselves when unscrupulous candidates offer a decent price for their votes.

Party spirit is another hindrance to good citizenship. It is true that democracy cannot be successful without political parties. But selfish leaders and political cliques misguide and mislead the people very often. Further party zeal makes the judgment of the members of one party blind to the view point of other parties. Parties play upon high sounding phrases and programmes and exploit the sentiments of average man. They very often misrepresent the view points of other parties and leaders. Party loyalty, whip system and other party organizational measures prevent its members from having a balanced judgment.

Indolence is another hindrance to good citizenship. Many citizens do not care to know their duties as citizens and when they know they do not perform them conscientiously. They are indifferent to matters civic, political and legal. Nor do they take the trouble to study public questions and try to find out their solutions. Indolence goes so far as to make the citizens indifferent to the use of their vote. Considerations of personal self interest tend to increase indolence.

Communalism is another hindrance to good citizenship in India. People think in terms of not national but communal and sectarian interests. Smaller loyalties are encouraged to grow at the expense of and even in opposition to the greater or larger loyalties. Other hindrances to good citizenship in India are social barriers, caste divisions and hereditary claims to political authority, the illiteracy and ignorance of the masses, and lack of general education in citizenship and the rights and duties of citizenship.

These hindrances to good citizenship can be removed through the reshuffling of social, political, constitutional and legal systems of the country. Laws, institutions and methods of government should be so changed as to be conducive to the promotion of good citizenship. People

should be educated and a good training in local self-government should be given. Administration should be decentralized. Further, in India, communalism and provincialism should be discouraged and the spirit of nationalism and internationalism encouraged. The Government of India should be so overhauled and constituted as to make an Indian feel that it is his own government. So long as the Indian citizen feels that the government is an alien government the best civic virtues cannot be developed in him. Economic prosperity and equal or proportional distribution of wealth are other prerequisites to the development of good Indian citizenship. Social injustice, communal discrimination, political favouritism and inequality should be banished from Indian society.

Bryce has suggested another remedy and he calls it "ethical" remedy. By ethical remedy, he means the training of the citizen in the home, school and the club so as to improve his character and develop in him public spiritedness. Great care should be taken during childhood, because it is here that dispositions are formed and attitudes are developed. Parents should perform their duty well and train their children in good habits, better dispositions and habit of forming scientific attitudes. Bosanquet described family as "the great discipline through which each generation learns anew the lesson of citizenship". The teacher also has great duty towards the child in imparting to him proper education and a proper training in citizenship. Education should emphasise besides literary aspect the cultural sense as well in the child. Education should develop character, instil national spirit and national pride. Besides teaching three R's, education should provide the citizen with proper information about social and political ideals and principles, laws and institutions.

Again the groups, associations, clubs, political parties and the press are very effective instruments in promoting the spirit of good citizenship. They should emphasise the value of peace and order, teach meanings of



freedom, justice and independence, show the benefits of co-operation and unity and inform people about political questions and their solutions.

Citizenship is thus personality in action. It includes the social, political and moral aspect of man's life. A good citizen should be a good man in every sphere of his life. White prescribes three tests of good citizenship : commonsense, knowledge, and devotion. Good citizenship demands intelligence, self-control and conscience on the part of the citizen.

The citizen should be intelligent enough to understand the affairs of the state, he should be enlightened enough to give instructed and balanced judgment on every problem. He should further, possess self-control in the face of the opposition of the majority. He should obey the majority in so far as he is not able to convert the majority to his view point through persuasive and peaceful constitutional means. Lastly, his conscience should always lead him to the right path and ask him to sacrifice his own interests for the sake of social welfare. Good citizenship demands of the citizen, honesty, sincerity and responsibility.

#### QUESTIONS AND TOPICS.

1. Write a critical note on "citizenship."
2. Explain carefully the rights and duties of citizenship.
3. Write a short note on "education for citizenship."
4. What do you mean by citizen? In what ways is the position of a citizen superior to that of an alien or a subject?

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## CHAPTER 14.

### THE STRUCTURE OF GOVERNMENT.

The state is an association of human beings aiming at the promotion of and the enrichment of their common life. It is different from other similar associations in the fact that the relationship between the constituents of the state exhibits a power relationship. This power relationship of the constituents as embodied in the various political institutions finds expression in a "constitution".

"Constitution" has been variously defined. McIntosh defines a constitution as "the body of these written or unwritten fundamental laws which regulate the most important rights of the higher magistrates and the most essential privileges of the subjects." Judge Cook defines a constitution as "the fundamental law of the state, containing the privileges upon which government is founded, regulating the division of the sovereign powers and directing to what persons each of these powers is to be confided and the manner in which it is to be exercised." To James Bryce "The constitution of a state or a nation consists of those of its rules or laws which determine the form of its government and the respective rights and duties of it toward its citizens and of citizens toward the government". The briefest but the most accurate definition of "constitution" is given by Dr. Herman Finer.<sup>1</sup> He says: "The *system of fundamental* political institutions is the constitution". (Italics ours). Dr. Finer finds a vital relation between the fundamental institutions themselves on the one hand and between the fundamental institutions and the nature of the society on the other. In fact, no institution has a separate significance. Every institution has a relation with and the bearing upon every other in-

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1. Finer, Herman., "The Theory and Practice of Modern Government" Vol. I (1932) pp. 181-3.

stitution. To understand the meaning of one institution one has to study and understand the other institutions and its relation with them. Further, institutions, their significance and functions change with the needs of times. "The fundamental political institutions are, also, a system in relation to their social environment."<sup>1</sup> An institution may retain its original form but, in substance, it responds to the needs of the times which may be, and often are very different from what they were at the time of its inception.

Dr. Finer does not definitely say which institutions are 'fundamental' and which are not. It is pointed out that 'there is no definite point where fundamentality begins or ends'. Such institutions differ from state to state and from time to time. However, in every state and in every time, the most fundamental institutions are those of legislature, executive and judicial. Further fundamental institutions include the fundamental rights of citizens.

We may define a constitution as a body of fundamental rules and principles according to which the powers of Government, the rights of the governed, the relation between the two and the relations and powers of the different parts of the government are adjusted.<sup>2</sup>

A constitution may be one written document or a series of documents enacted at a given time by a sovereign power capable of being amended or altered as time and growth demands, or again it may be the more or less definite result of a series of ordinances, legislative acts, precedents, judicial decisions, and customs of diverse origin and of unequal importance and value.

But whatever its form, a true constitution will have the following clearly marked features :—

(1) How the various governmental organs are organized.

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1. Finer., *op. cit.*, p. 182.

2. Sharma L.D., 'Select Constitutions at Work' (1941), p. 1.

- (2) What power is entrusted to such agencies.
- (3) The manner in which power is to be exercised by these agencies.
- (4) What is the relation between the governmental organs and the people.

Thus we can say that a constitution attempts to determine the exact position of the sovereign power.

Constitutions have been classified on various grounds. The Greeks classified constitutions on numerical or quantitative basis. A constitution, to them, was monarchical if the sovereign power was vested in one person ; it was aristocracy if the sovereign power was vested in a few ; and it was polity if the sovereign power was vested in the many. Aristotle made a further distinction on ethical grounds. If the monarch exercised his powers for his own ends it was tyranny ; if the few exercised their power for the promotion of only their interests, it was oligarchy—a degenerated form of aristocracy ; if the many exercised their power to promote their class interests it was democracy—a degenerated form of polity.

The middle ages made no substantial contribution to this classification of constitutions. Writers in the middle ages, with the exception of Hobbes adopted the Aristotelian classification.

In the modern period, the old Aristotelian classification does not hold good. It is now an accepted fact, at least, in the democratic countries that sovereign power vests in the hands of the people. Therefore the basis of classification is no more the possession of political power but the form of the system in which the expression of that political power takes place. To-day constitutions are classified as :—

- (1) Federal or unitary.
- (2) Presidential or parliamentary.
- (3) Dictatorial or democratic.

**Federal or Unitary.** A federal state is a union of different states, which retain independence in the administration of their local matters and combine for the administration of matters of national importance or common interest. The best example of a federal state is the U. S. A. The constitutions of Switzerland, Germany, Australia and Canada, are also federal in form. A unitary state is that in which there is only one sovereign body supreme in all internal and external matters or in matters both of local and national importance. Great Britain is a unitary state.

**Parliamentary and Presidential.** The basis of difference between these two forms is the relation of the executive with the legislature. If the executive is chosen from the legislative body and is responsible to that body, it is a parliamentary form of government. If the executive is not a part of the legislative body and has an existence independent of that body except that a correlation between the two may exist, it is a presidential form of government. The U. S. A. possesses a presidential form of government and Great Britain possesses a parliamentary form of government.

**Dictatorial and Democratic.** This classification is based on the mode in which the power of government is exercised in actual practice. A democratic constitution is one in which the government is answerable and responsible to the people through their chosen representatives for its acts of commission and omission and remains in power only for the time it enjoys the confidence of the legislature. The dictatorial government is "the government of one man, who has not *primarily* obtained his position by inheritance, but either by force or consent and normally by a combination of both. He must possess absolute sovereignty, that is all power must ultimately emanate from his will, and it must be unlimited in scope. It must be exercised, more or less frequently, in an arbitrary manner, by decree rather than by law. And, finally, it must not be limited in duration to any given term of office ; nor must the dictator be responsible

to any other authority, for such restrictions would be incompatible with absolute rule."<sup>1</sup> The highest authority which is vested generally in a leader or, the party, is the final authority. They are not responsible to the people, instead, they demand an unflinching loyalty or allegiance of the people. Germany, Italy and Russia possess dictatorial form of constitution.

There are three most important characteristics of a constitution :—

**Characteristics of a constitution.**

(1) Whether a constitution is a written or an unwritten one ;

(2) Whether it is rigid or flexible ;

and

(3) the supremacy of the constitution.

**Written or unwritten.** The distinction between a written and an unwritten constitution is not based on any scientific principle. A written constitution is one document or a series of documents which are framed by a constituent assembly as in France (1875) or by a convention as in the U. S. A., at a particular date, embodying the fundamental rules and principles governing the system of fundamental political institutions in a state. The best examples of written constitutions are those of the U. S. A. and France. The U. S. A. constitution is one single document. But the French constitution consists of three documents passed at three different dates. Further, a written constitution may be granted by a king or a prince. Napoleon granted constitutions to all the countries that came under his rule, the princes of Germany granted constitutions to their different principalities during the period 1815 to 1849. Similarly, Charles Albert granted a constitution to his Sardinian subjects and that became the fundamental law of Italy when it became a kingdom. Garner has defined a written constitution as "an instrument of special sanctity, distinct in entity from all other laws, proceeding from a different source, having

1. Cobban, Alfred., *Dictatorship : Its History and Theory* (1939), p. 36.

a higher legal authority, and alterable by a procedure different from that required in amending an ordinary statute."<sup>1</sup>

An unwritten constitution is one in which not all the fundamental rules or principles are set in a single document or a series of documents at one particular time by one particular assembly. An unwritten constitution is a result of historical growth. It consists of generally, parliamentary statutes and decrees, royal grants and concessions and privileges, judicial decisions, customs, common law and conventions, etc. The best example of an unwritten constitution is that of Great Britain, 'the mother of written constitutions'. The British constitution includes as its important part conventions which are not formulated at any single time or are written on paper. Further, it includes certain fundamental institutions, such as trade unions, political parties, free public education, religious liberty, which are not written on paper. Further, in England, there has never been a constituent assembly and a convention to frame fundamental laws. Thus the following, among others are the more important characteristics of an unwritten constitution.

(1) In an unwritten constitution all is not reduced to writing which otherwise might have been. For example, conventions.

(2) It is not a result of deliberation by any particular assembly.

(3) In an unwritten constitution, there is no external sanctity attached to the constitutional law as distinguished from an ordinary law. Both can be amended or altered in the same way by one and the same body.

The distinction between written and unwritten constitutions is one of "degree and not of kind." No constitution is wholly written or unwritten. A written constitution can embody only general and broad principles. Further, with the lapse of

<sup>1</sup> Garner, J. W., *An Introduction to Political Science*, p. 380.



time, new conventions come to be established in the working of the constitution and changing conditions call for new rules. The clauses of the constitution acquire new meaning and in this way the constitution develops. Lord Bryce remarks that constitutions are "developed by interpretation, fringed with decisions and enlarged by custom so that after a time the letter of their texts no longer conveys their full effect". It is only through the interpretation and conventions that a constitution constructed or framed under certain circumstances can be adopted to the changed conditions and demands of the present time. The official edition of the original American constitution consists of merely 31 pages, but we may need to-day 3100 pages to write the chief clauses and the cases which involved them and were fought on their basis and the interpretations which were given to them by the courts. The unwritten element in a written constitution, may take any of the following forms. It may consist in the judicial interpretations of the original clauses, it may consist in statutory enactments made essential by the rise of new problems, it may consist in the conventions which rise mostly to facilitate the harmonious working of the governmental system. Written constitutions can, therefore, embody only general principles and "they are, as a rule, so general, that they are contradicted by the statutes defining them or the behaviour of political institutions apparently acting in virtue of them..... No written constitution, not the French, nor the German, nor the American, nor the Australian, nor any, can stand by itself. It needs completion : for the virtue of the law resides in its details. And the laws which give it completion are not appreciably different from the laws passed in a country with an unwritten constitution."<sup>1</sup>

An unwritten constitution on the other hand contains an appreciable part of written element. Most part of the British constitution is written either in acts or statutes,

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1. Finer. Herman, op. cit., p. 193.

bills or declarations, judicial decisions or political writings. Conventions are recorded in the speeches and correspondence of the statesmen, and in the writings and books of political thinkers such as Dicey, Anson, May and Bagehot.

Further, written constitutions are no more permanent or conservative than unwritten ones. All constitutions have a conservative effect.<sup>1</sup> Nor are the written constitutions more certain than unwritten ones are. Nor they have more certain and definite meanings that are not embodied in the unwritten constitutions. Even if we take into account the parliamentary enactments and judicial decisions along with the written clauses of a constitution it does not convey comprehensiveness and complete certainty of its meaning. There is as much controversy over different clauses of the constitution in France, Germany or the United States of America as there is in England. Merely writing a constitution does not make it rigid or certain.

Thus we may conclude with Garner that the distinction between written and unwritten constitutions is unscientific and confusing.

Lord Bryce has classified constitutions as flexible and rigid. This distinction is based on the relation which the constitution bears with ordinary laws and the ordinary legislative authority which enacts ordinary laws. Constitutions which emanate from a source different from which ordinary laws issue, the clauses of which have a higher legal, constitutional or political importance than those of the ordinary laws and which are amended or repealed by different and more complex methods, are known as rigid constitutions. Flexible constitutions are those which have no higher legal authority and which can be amended or repealed, apparently and formally, by the ordinary law-making authority and in the ordinary process of law-making. The most extreme example of the first form is

**Rigid and flexible.**

1. *Finer, H.*, op. cit., 191.

the constitution of the U. S. A. and that of the latter is the constitution of Great Britain.

A rigid constitution does not mean a written constitution, nor does a flexible constitution mean an unwritten constitution. It is not the fact of recording the constitutional clauses on paper that makes a constitution rigid but it is the process of amendment of a constitution that makes it rigid or flexible. The constitution of France is a written one but it is not so rigid as that of the U. S. A. In France an amendment can be initiated both by the President and by the Parliament. The amendment so initiated is proposed by an absolute majority of votes in both the chambers voting separately. If the proposal is carried, both the chambers meet in a national assembly at Versailles, and vote on the proposal. If the proposal is carried by an absolute majority of the members composing the national assembly the amendment becomes valid.

In the U. S. A. the method of amendment is very difficult. An amendment to the constitution can be proposed in one of the following ways :—

(1) The Congress may itself propose amendments to the constitution provided two-thirds majority of both the houses voting separately deem it necessary.

(2) The legislatures of the two-thirds of the states may apply to the Congress, when the Congress shall call a convention for proposing the amendments.

The second stage is that of ratification. Ratification can also be effected by one of the two methods :

(1) The proposed amendment may be ratified by the legislatures of three-fourths of the states, or

(2) it may be ratified by conventions called for the purpose in three-fourths of the states. The Congress can propose whatever mode of ratification it deems fit. An amendment thus ratified is deemed valid to all intents and purposes as a part of the constitution.

The constitution of Great Britain is much more flexible than the constitution of any other country. There

the House of Commons with a bare majority with the ordinary co-operation of the House of Lords can 'alter to the extent of abolishing' any law fundamental or ordinary. But it is not so simple as it seems. Parliament has to take many factors into consideration before making an alteration or amending a fundamental law. For example before the Parliament Act 1911 was passed two general elections were held on the question, again on the question of granting protection in 1923, Stanley Baldwin, the Premier, ordered a general election to know the verdict of the electorate on the issue. Further, before an important change is made, the interests concerned are consulted and the problem thoroughly studied before introducing the proposal in the parliament. For example, the Local Government Act of 1929 was introduced only after all the interests affected by the act were consulted and provided with an opportunity to make amendments to the proposal. Before any important measures are passed royal commissions and committees are appointed to go fully into the question and make recommendations. Thus, "all in all, by its practice the British Constitution has gone far towards providing extra deliberation in matters of fundamental importance".

Thus, the English constitution which is unwritten is not so easy of amendment or alteration. Nor is the French constitution which is written so difficult to amend. The American constitution is an exceptional example of a most rigid constitution, but that is due to factors other than the fact of its being written.

It is urged that rigidity in a constitution provides an element of permanency in the constitution. A rigid constitution is safe from the rashness of popular passion in emergent times. It gives protection and guarantee to the rights and privileges of the subjects on the one hand and the necessities of the government on the other. The defect of a rigid constitution is that it makes a needed change very difficult with the consequence of either keeping the state backward in social, religious, political and

**Political effects of rigid and flexible constitutions.**

cultural sphere or reaching a point where the constitution may break. America is very backward in social legislation due to the rigidity of its constitution. Special efforts, exertions and extremely powerful means of propaganda are needed to overcome obstacles to amendment.

A flexible constitution on the other hand provides elasticity and adaptability. It can be adapted to new circumstance and conditions by facilitating necessary changes without any great difficulty. It provides the conditions necessary for a state to be progressive. It is a prevention against revolution by meeting the demands of the people halfway. However, it is said that it lacks in permanence. It cannot be relied upon as a guarantee and protection of the rights of the people in the same degree as a written constitution. It may become a plaything in the hands of the judicial tribunals. A flexible constitution is a fluid constitution.

This distinction between the two types is unbalanced as is proved by experience. The flexible constitution of Great Britain is no worse than the rigid constitution of the U. S. A. Rights and liberties of the people are no more or in no way better guaranteed and protected in the U. S. A. than in England. The same is true of France. Laski observes that the rigid constitution implies a written constitution. It is not very necessary. Rigidity can be secured by other means as well; for example, a keen sense of political responsibility in the political parties and a developed political, social and economic consciousness in the people can secure the necessary element of permanence which ensues from the rigidity of a constitution.

Constitution is always the fundamental and the  
 supreme law of the land. In every  
 country a distinction is made always  
 between constitutional law and ordinary  
 law. Constitutional law and hence the constitution have  
 a higher legal authority than the ordinary laws. For  
 example, Article VI, section 1 of the American Constitu-  
 tion provides, "This constitution and the laws of the

**Supremacy of  
 the constitution.**

United States shall be made in pursuance thereof and all treaties made or which shall be made, under the authority of the United States, *shall be* the supreme law of the land and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding”.

Supremacy of the constitution is generally, procured by the following three methods :—

1. By writing the constitution.
2. By making amendment difficult ; and
3. by providing for the interpretation of the constitution by the judicial courts.

The first method is not very effective to ensure the supremacy of the constitution since all the details of the constitution cannot be embodied in the one document nor its scope can be precisely defined. The second method of making the constitutional amendment a difficult process is the chief device to ensure the supremacy of the constitution. Even in England, where the process of amendment is not different from that of ordinary law, amendment is becoming more difficult through the necessity of a general election, or the appointment of royal commissions. However, a very difficult method of amendment is not conducive to good government and defeats its purpose; otherwise in the words of Finer : “The amending clause is so fundamental to a constitution that I am tempted to call it the constitution itself.”

The third method is the power of interpretation of the constitution vested in a particular organ of the government. In most of the countries, this power is vested in the judiciary. For example, the American constitution empowers the supreme court, the highest judicial organ of the U. S. A. with the power of reviewing the acts of the legislature so as to ensure the supremacy of the constitution. The Supreme Court can declare any law passed by the Congress *ultra vires* if in its opinion that law is against or antagonistic to the provisions of the constitution. In Australia and Canada, also, the high courts have the

powers to review the acts of the legislature. In Germany, under the Weimar Constitution, the courts claimed such a power. The Reich Judicial Court in its decision of November 19, 1925, declared: ".....since the constitution itself contains no provisions which takes away from the courts judgment of the constitutionality of laws or transfers it to another determinate authority, the right and the duty of the judge to examine the constitutionality of the statutes must be recognised."<sup>1</sup> In England, however, the speaker of the House of Commons is empowered to say whether an act of the British Parliament is opposed or not to the spirit of the constitution. This does not mean that the act is either a breach of law or void since parliament is the sovereign law-making body.

A good constitution for its development and efficient working requires two essential elements: stability and flexibility. A constitution should be fairly stable and not very easy of change so as to avoid it from falling a prey to the passions and selfish interests of political parties. Further, stability is essential for guaranteeing the rights and privileges of the governed and the wants and necessities of the government ; it is also desirable as a safeguard against the uncertainties of the future.

On the other hand, flexibility though quite opposite but not contradictory to stability is necessary to adapt the constitution to the necessities of the times subsequent to that of its framing and to bring it into line with the political ideals and aspirations of the people. Flexibility provides means for adjusting the constitution to new conditions without breaking it, or without making any structural change.

These two qualities are secured in a constitution through many devices. Stability is provided by making the amendment or revision of the constitution difficult. The process of amendment is generally made different

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1. "Quoted by Finner, *op. cit.*, p. 228.

from and more difficult than that of ordinary law-making, and thus a distinction between constitutional law and ordinary law is created. Further, certain clauses are provided in the constitution which cannot be changed or amended. For example, a constitution may provide as the American constitution does, that no amendment can be made which may abrogate the constitution itself. Then there are rights of individuals inserted in the constitution as something sacred. Stability can further be guaranteed by embodying in the constitution only the fundamental and essential principles of the political life of the people. The details should be left to be worked out by the government.

Stability is further, provided by the degree of flexibility in the constitution. As long as a constitution can be adapted to new conditions and new political ideals and aspirations without breaking it, it will be so long stable. Therefore flexibility is itself, an essential and the most important guarantee of the stability of a constitution. Flexibility in a constitution can be provided through the following devices :—

- (1) By making the process of amendment simple.
- (2) By adopting political and constitutional conventions ; and
- (3) by providing for judicial review.

The most common as well as the most important source of constitutional expansion is provision for its amendment. Every written constitution, *e.g.*, the French or American or Australian or African, provides for amendment. According to John Stuart Mill no constitution can expect to be permanent unless it guarantees permanence and order. Permanence and order can be secured and stagnation retrogression and revolution can be avoided only if the constitution can be adapted to the new political, economic and social conditions of the country. This can be done very easily through the amendment of the con-



stitution. Mulford calls an unamendable constitution "a worst tyranny of time or rather the very tyranny of time".

Generally the method of amendment provided for its amendment in a constitution is not difficult. A very difficult method of amendment defeats its purpose. The American method of amending the federal constitution is a fairly difficult as well as a complex one with the result that during the last 150 years only 21 amendments have been effected and these also with great difficulty. The natural consequence of this has been that to-day America is far backward in social legislation, and methods other than constitutional had to be depended upon for the proper adjustment of the constitution to the present needs.

Every constitution develops and expands through usages and customs. Changes are effected in a constitution as a result of informal conventions, usages and practices which develop and are adopted in its actual working. All the details of the governmental organisation cannot be embodied or laid down in the constitutional document; therefore for the convenient working of the constitution new devices, quite unknown or even unthought of by the framers of the constitution are created; for example, it is an accepted principle that the House of Lords in England should generally yield to the wishes of the House of Commons. But at what stage it should yield will be determined by the convention or the particular circumstances of the problem. Further, the American constitution had provided an indirect method of the election of the President, but, in practice the election has come to be direct although all the old forms of the election are preserved. Further, the Cabinet of the President is nowhere provided by the constitution but it has grown as a result of the need felt by the successive presidents to seek the collective advice of the chief administrative officers of the government. Parties, to-day, are an essential part of any constitution, but they are nowhere provided in any constitution formally. Political parties play a tremendous part in not only the political life of a country but also in its

administrative affairs. It is due to the rise of parties that the executive and the legislative branches of government in America have been harmonised, and that the President has come to be the 'chief legislator'.

This is the most important factor in the maintenance, development and the growth of any constitution and particularly in those of the federal type. The highest judicial organ is made the protector and guardian of the constitution. It is its duty to see that no organ of the government goes beyond its powers and violates the constitution and its authority. The Supreme Court in America pronounces those acts of the Congress, which in its opinion are outside the purview of the latter, to be *ultra vires* and thus keeps it in check from making laws overriding the constitution.

The sphere of governmental activity is generally divided under three heads: legislative, executive and judicial. Broadly speaking legislative activities consist in expressing and formulating the will of the state, that is framing the laws. The executive activities consist in executing and enforcing such laws and judicial activities in interpretation, and punishing the violation of, these laws. But this is too simple a classification to suit the modern activities of the state.

However, there was a time when writers divided the governmental activities into two divisions only viz., legislative and executive. Du Crocq's mind could perceive of only two powers—executive and legislative. To writers like him, judiciary is but a branch of the executive. According to Duguit: ✓“It necessarily follows that the judicial order is not a distinct power, but simply a dependency of the executive power, under whose surveillance it ought to be placed.....It is a mere agent of executive, subordinate to the executive power”. The supporters of this Duality Theory, therefore, would like to separate the executive and legislative functions only.

Aristotle divided governmental activities into three classes : deliberative, magisterial and the judicial. He separated these three but in actual practice in Greece they were blended together.

Polybius and Cicero, the Roman thinker favoured a government of checks and balances so that an 'equilibrium of powers' may be secured. In the Rome of those times, the consul, the senate and the popular assembly exercised check upon each other and blended the monarchical, aristocratic and the democratic elements in the government.

Bodin was the first writer to point out the danger of allowing the ruler to exercise both executive and judicial powers. In this he saw a danger of indiscriminate mixture of justice and mercy. Further he favoured the separation of the legislative function from the judicial.

In England, Cromwell separated the executive from the legislative powers but he did not establish an independent judiciary. John Locke, divided the governmental activities into legislative, executive and federative. But he makes only a passing reference to the theory of the separation of powers and the classification of governmental powers.

Montesquieu is the first political thinker who gave a scientific statement of the theory of the separation of powers in his well-known book, "L Esprit des Lois", published in 1748. Starting with the maxim that "liberty" is the highest good Montesquieu expounded the theory of separation of powers to achieve that end. Liberty can be achieved, according to him, only in moderate governments. Further he points out that power should not be vested in one organ because power has an inherent tendency to abuse itself. "Political liberty is to be found only in moderate governments. Yet it is not always found in these. It is there only when there is no abuse of power". To avoid this abuse, Montesquieu holds that power should be a check to power. There should be no concentration of power in any one organ of the government.

Thus according to him "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws and execute them in tyrannical manner. Again, there is no liberty if the judiciary power be not separated from the legislative and the executive, were it joined with the legislative the life and liberty of the subject will be exposed to arbitrary control; for the judge would be then, the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles, or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals." Hence the separation of powers is needed to avoid these evils in a government and to safeguard the liberties of the people. He emphasises not only the separation of legislative and executive and judiciary powers but also the division of legislative powers into two chambers, each exercising a check upon the other.

Blackstone, in England, expounded the same theory in identical words. According to him in joining the executive and legislative powers in one hand there is a danger that the legislator may enact tyrannical laws and enforce them tyrannically. If judiciary is not separated life, liberty and the people will be in the hands of arbitrary judges. Both Montesquieu and Blackstone were influenced by their reading of the English constitution that its stability depended upon its adherence to theory of separation of powers. However, both were wrong. Even though the Cabinet System was not fully developed in the England of their time, yet there was no separation of powers in the sense in which they understood it. They were attracted to the principle of the English constitution and overlooked its actual practice.

The theory of the separation of powers had a powerful and decisive influence on the framers of the American

constitution. The fathers of the American constitution were afraid of executive despotism. Further, they wanted to defend property and liberty. They found an easy device in the theory of the separation of powers. The result was that the three organs of government, legislative, executive and judiciary were separated from each other.

Legislative power is vested in the Congress and executive in the President. The Congress and the President have no apparent connection. President is elected by an electoral college, independent of the Congress. He is not a member of the Congress, nor can he be removed from his office by the Congress. He occupies his office for his full term unless he is removed by death or impeachment. Judicial power is vested in the Supreme Court which is independent both of the Congress and the President. The three governmental organs are organised independently of each other. They are not only separated from each other, but they provide checks upon each other. The senate shares the power of appointment with the President. War and peace is declared by the Congress and treaties are ratified by the senate. The judges and judiciary are appointed by the President but their organisation is determined by the Congress. On the other hand the judiciary exercises a restraining influence upon them by reviewing their acts. The President can send messages to the Congress and possesses a veto power over the acts of the latter. Thus, the American Constitution is as *Finer* remarks, 'an essay in the separation of powers.'

The theory, in principle, is generally admitted as valid, but the defect of the theory is that it is not practicable. No rigid separation of powers is possible. A rigid separation will lead to inarticulation, and deadlocks. *Montesquieu*, himself, says, "these three powers (here he means the two parts of the legislative plus the executive) should bring about a state of repose or inaction. But, since, by the necessary movement of things, they are obliged to move, they will be forced to move in concert". But he does not define that necessary movement. And if there is some such move-

ment, the experience in America shows that it has moved the governmental machinery towards articulation and concentration rather than separation.

Nor does Montesquieu explain how harmony among different organs of government is to be secured. ✓ A complete separation of powers would lead to deadlocks since "each department acting in defence of its own powers would never lend its aid to the others ; and the consequent loss of efficiency would outweigh all the possible advantages arising from the independence".<sup>1</sup> ✓ Esmein also observes that attributes of sovereignty cannot be exercised separately any more than the different powers of human beings<sup>2</sup>. Experience has shown that the different organs become jealous of each other and compete with each other to show of their superiority. It was so obviously manifested when the American senate refused to ratify the peace treaty (1919) concluded by Woodrow Wilson on behalf of the U. S. A. The consequence is that the separation of powers throws the "government into alternating conditions of coma and convulsions". ✓

Separation of power destroys "the concert of leadership in the government." It separates the executive and the legislature and thus the legislature cannot utilize the executive experience and knowledge. The two houses of legislature contest with each other. "There is no co-ordination of political energy or responsibility, but each branch has its own derivation and its own morsel of responsibility".<sup>3</sup> Responsibility cannot be fixed at one place. The spectacle of the separation of power according to Laski is "a confusion of power".

In the modern conditions, the three fold division of governmental activities into water-tight compartments is not possible. The legislative frames not only laws but, also, passes certain rules and regulations concerning departmental organizations and thus undertakes functions which belong to the sphere of the executive. On the

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1. Mill, J. S., *Representative Government.*, p. 82
  2. Garner, J. W., *op. cit.*, p. 422.
  3. Finer, *op. cit.*, p. 165.

other hand, the legislature leaves many details in its laws to be filled up by the executive. Further, the administrative departments are granted judicial powers by the statutes from which there is no appeal to the courts of law. Similarly the judicial courts add to or take away from the statutory law, or from executive power, by their judgments. Further the powers of the legislature can not be defined because who can define legislation. Further, legislature acquires control over executive and administrative officials through the powers of purse. Laski is of the opinion that "in practice, moreover, it is impossible to maintain any rigorous separation. Legislatures could not properly fulfil their task unless they were able both to interfere in the execution of law, and also on occasions to overrule by statute the decisions by judges the results of which are widely felt to be unsatisfactory. An executive is bound, in applying the law, to clothe general principle in the garment of detail, and, in the modern state, this function covers so wide an ambit that it is often difficult to distinguish from the work of the legislature. The judiciary, finally, which settles either the competence of the executive (in which case it determines the substance of the legislative will) or a dispute between two citizens (in which case it extends the legal imperatives of a state to cover new ground or denies that the ground involved comes within the ambit of these imperatives) is in fact performing a function which is legislative in character."<sup>1</sup>

The problem of to-day is not one of securing liberty by separating the different sorts of powers of the government but the problem is one of "co-ordination and articulation of these powers. Each organ is to work in harmony with the others. Finer divides the governmental functions into resolving powers and executive powers. The former includes electorate, the political parties, the parliament, the cabinet and the chief of the state. The latter include the cabinet, the executive branch, the chief of the state, the civil service and the courts. There are the main centres of political

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1. Laski, H. J., *An Introduction to Politics* (1938), p. 63.

activity in a state. They are not separate from each other but are inter-related and inter-connected. They exercise powerful and decisive influence over each other. Their co-operation is essential to produce a complete act of government. In *Finer's* words they are "inter-locking and essential to each other". The safe-guard of liberty lies not in the complete and unbalanced separation, but in the rational co-operation and co-ordination of governmental organs.

The legislature is the deliberative branch of the government. It manifests the will of the sovereign and embodies it into laws and commands. "It enacts the general rules of society. It lays down the principle by which the members of society must set their course."

In democratic countries sovereignty is believed to reside in the people at large. However, the people, because of their large numbers and vast territorial areas of the modern states, because of the previous occupation of the average man with his private profession and lack of leisure, because of their ignorance and incapacity to judge legislation and because of taking the advantage of the division of labour, cannot legislate themselves directly. The solution has been found out in the method of representative bodies. The legislatures in democratic countries, therefore, represent the people. This method of legislating by the representatives of the people is known as the representative democracy. Representative democracy raises many problems. Who is entitled to elect the representatives? Who is entitled to be elected as a representative? What is the proper mode of election? What should be the relation between the electorate and the representatives after their election?

Who is entitled to vote? In democracy now it is generally agreed that there is no alternative to universal adult suffrage. There was a time, and it is so in some constitutions even now, when certain qualifications were



required for being registered as a voter. These were in general :

1. Age.
2. Property.
3. Education.
4. Sex.

1. Generally, every adult is granted a vote in all countries. In Britain, the U. S. A., France, Belgium, Canada, Italy, Czechoslovakia, the age qualification is twenty one years ; in Germany, Switzerland and Austria it is twenty for unmarried and twenty one for married. In Russia, Turkey, Argentine and Mexico, it is eighteen years ; in Spain, Japan, Denmark and Holland it is twenty five years ; in Norway and Finland it is twenty three and twenty four respectively.

In Russia and Turkey, where the age limit is lower than twenty one, it is urged that the youth should be given an opportunity as early as possible to play a part in the politics of the country. In Russia, the lower age limit is justified on the ground of "economic productivity" as the basis for granting of vote. On the other hand in Germany and Japan, where the age limit is higher, it is pointed out that the mind of the youth is not mature enough to pronounce judgment on such intricate and complex problems as political and economic. Further, the lower age limit is opposed on the ground of defending conservatism. It is held that youth is more radical in outlook and if allowed a free hand, the legislation passed will be very radical with disquieting effects on the social fabric of the country. However, we may agree with Dr. Finer that we should suffer the radicalism and immaturity of the mind of youth "in the hope that the extra period of voting experience will give a compensatory poise in later life." An additional merit of the lower age limit is that the legislature will be in touch with the latest contemporary political thought and latest economic and social dogmas and solutions.

2. During the nineteenth century, the main qualification for electors was possession of property or payment of

a certain amount of tax. The property qualification was defended on two grounds. Firstly, it was insisted that the possession of property will mean greater opportunities of education and hence greater intelligence among the propertied classes. Secondly, it was defended on the ground that if non-propertied classes were allowed a hand in politics, this would lead to the abolition of property. Therefore, to defend property, possession of property was made a qualification necessary for electors. But both of these arguments are baseless. Possession of property is no index to the ability of its possessor. Moreover, in the modern age, education is not so difficult for poor people to get. Almost all the democratic states have found instruments to provide national education. Secondly, property can be defended only if its existence is in consonance with the common interests. And if it is in consonance with the common interests, it need not fear those who do not possess property. If it is not in consonance with the common interests it needs to be abolished. The property qualification, in actual practice, has shown a tendency to make the legislature a stronghold of vested interests, and make it an instrument of defence of those vested interests. The poor he or she has as much right to let his wishes know and prevail as the rich he or she. The right to develop his personality belongs as much to the poor as it belongs to the rich. Therefore property qualification for a voter is no longer justifiable.

3. When the property qualification was attacked and when it actually ceased to be a qualification for voters in many of the countries literacy was suggested as a qualification for the voter by some thinkers. Many of the American states accepted education or literacy as an essential qualification for the voters. In some states mere ability to read is a qualification ; in others merely ability to read the constitution and write the voter's name is the qualification. The basis of this qualification is suggested to be that the average voter should be instructed enough to pronounce judgment over the political, social, or economic problems and their alternative solutions. A thorough

knowledge of social affairs is fundamental to any real enfranchisement and sound decision.<sup>1</sup> Education provides both knowledge and wisdom.

\* However, the difficulty arises as to the test of education ; upto what standard education is necessary. If mere ability to read and write is required it is of no practical value. It leads merely to exclude certain classes as was done in many American states. On the pretext of educational qualifications, the negroes were disfranchised in the southern states. Competence and ability are very elastic terms ; they are un-definable. Further, literacy is not an assurance of moral excellence of the voter or the representative. Again it is not the intellectual choice, alone, but the wishes and wants of all—educated, ignorant rich and poor, that have to be given a manifestation in a democracy and that without any distinction. “Thus, it is a fallacy to believe that the poor, the most ignorant, ought not to vote, because they will not know what to vote for they know very well, even too well”. No test is available which will enable us to make educational qualifications synonymous with political fitness.

4. Before the last Great War, (1914-1918) the female sex was almost universally excluded from the vote, various arguments against woman suffrage were advanced. The more important of these arguments were : (1) Women have their place in the home and are well represented by their husbands in politics ; (2) Women are very religious and their enfranchisement would give predominance to the clergy which will result in the predominance of religion over politics. This is one of the most important reasons why in France women suffrage bill has been rejected, so many times (3) Women belong to a fair sex and the wholesale participation of women in politics will introduce complications because of their contact with the opposite sex. This argument is supported on the experience in co-educational institutions and that of co-operation in industries.

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1. *Finer, H., op. cit., p. 415.*

Favouritism and humility would take the place of justice and discipline.

But theories of natural rights and the pioneer work of reformers and thinkers like John Stuart Mill and Bradlaugh gave an opportunity to women to find their way into the political life. During the last Great War valuable and efficient services and help of the women gave further impetus to the woman suffrage movement. The consequence was the grant of franchise to women, above 30 in England and above 21 in the U. S. A. In 1928, in England, the age limit was lowered to twenty one and thus both the sexes were put on an equal status for voting purposes. Women suffrage was accepted by many other countries notably by Canada, Germany, Spain and Russia. Though the hope of the supporters of woman suffrage that woman suffrage would introduce "purity and social justice and humanitarianism" in politics has not been realized, yet experience has shown that the grant of vote to women has led to many social and political advantages. The general level of political life in many countries has become higher. The women clubs and associations have done much work in social reform. Women members in parliaments and their associations outside have taken a very keen interest in the problems of social reforms such as housing, health, education, economic equality and international peace. In India women associations have done a great deal in the matter of social reform and particularly in the field of removal of purdah and other social disabilities of women. Therefore, all the fears of granting vote to women have proved unfounded and now in all progressive countries women suffrage is admitted as a fact though certain states like France and Italy still refuse it.

To-day there is no reason not to adopt universal franchise as the basis of representation. Every member of the state has a right to attain his fullest personality ; he has a right to express through his vote the result of his experience. Generally the following classes of persons are not allowed to vote :

(1) Generally aliens unless they become naturalized citizens are not granted the right to vote ;

(2) Criminals are not allowed to vote ;

(3) Bankrupts and paupers are also excluded ;

(4) Lunatics, infirms and insanes are also not allowed to vote.

(5) In some countries,—Germany, France and the U. S. A.,—armed forces are not allowed to vote. But in Great Britain they have a vote. In certain states, the exercise of vote is compulsory. For example in Mexico, a voter is disqualified for the next election ; if he fails to vote without adequate reasons. But compulsion of this sort defeats its own purpose. The proper remedy is to educate the people and create in them a civic sense and sense of responsibility. This can be well performed by political parties, press, civic associations and groups. Different tests and qualifications are required for the candidates than those for the electors. In most of the countries the age qualification for the candidates is higher than it is in the case of the electors. For example, in Turkey and Argentine, it is thirty and twenty five respectively while for the electors it is only eighteen ; in Germany and Italy (in old Austria and Czechoslovakia as well) it is twenty five for electors and thirty for the candidates; and in the U.S.A. also it is twenty five for the candidates while for the electors it is only twenty one. In Great Britain, Canada, and Poland it is twenty one for the electors as well for the candidates. In Russia and Spain the age limit is the same for the electors as well for the candidates ; in Russia it is eighteen while in Spain it is twenty five. An argument which is advanced in favour of higher age qualification for candidates is, that with the maturity of age the mind also becomes more mature to pronounce judgment on complicated questions of legislation. It provides a bulwark against the rashness and immaturity of the mind of the youth. To us there seems to be no justification for a higher age qualification for representative. The experience in Britain, Canada and Russia disprove the case for higher age qualification for candidates.

Property and educational qualifications are required for the candidates as well, the property qualification lead to the control of the legislature and hence of the state by class interests. Therefore, it is unjustifiable. However, something is to be said in support of educational qualifications for representatives. Since they have to make laws, it is necessary that they should know reading and writing. Otherwise they will be useless. However, the difficulty arises as to the standard of education which is sufficient for making a representative politically fit and useful. However general education and a knowledge of political philosophy and political institutions is necessary. This can be taught in the schools through the curriculum of civics (as we have prescribed in our chapter on citizenship). Further, a practical test of service on local bodies can be made a pre-requisite. This will give a person an insight into the question of public importance and would train the mind to grasp political, social and economic problems easily. Beyond this no particular qualification may be fixed for membership of a legislature, since every individual has a right to take part in law-framing and contributing to the general welfare what his experience has taught him.

The most satisfactory basis of representation seems to be territorial representation based on single district plan. According to this plan a people is conceived as one nation—a unit—and the individuals as its sovereign atoms—sovereign and independent. Every individual has a right to only one vote, none less, none more. That right is independent of capacity and class, and is the direct issue of the humanity of man. The districts are chalked out only for the sake of convenience. One representative from one district seems to be the most convenient method.

Various other basis of representation have been suggested. Of these we shall consider two: functional representation and proportional representation. Functional representation is considered in the discussion on second chambers. Proportional representation

is proposed to alleviate the defects of the majority rule and remove the inequalities caused by the system of single member constituency system; and to afford representation to minorities. It is supported on the following grounds: The single member constituency system does not represent the electorate fully; for example, in England, in the general election held in November, 1935, the government won 433 seats. Out of these 433 seats, 26 candidates were returned unopposed and thus 407 candidates secured 11,810,552 votes in the contested elections. Thus the government won 407 seats for 11,810,552 votes only. Again, the labour party won 154 seats in all. Out of these 154 seats 13 members were returned unopposed and in the contested elections they secured 8,332,723 votes. Thus the labour party got 141 seats for 8,332,723 votes. The disparity between the proportion of seats and the number of votes secured by the parties is great. With merely an increase of 1.4 times the government party won 2.8 times the number of the votes won by the labour party. Therefore, it is urged that under single member constituency system the votes are not given full weight. Further all those votes which are given to the candidates who lose the election are wasted.

2. It is further, urged that the single member constituency system does not provide an opportunity to minorities to be represented whereas proportional representation does. In fact, proportional representation, in simple words, means minority representation.

3. Single member constituency system, further, does not provide an opportunity to independent members to be elected. But proportional system facilitates the election of independent members as well. Again the proportional representation system provides a variety of public opinion as well as its better representation in the legislature. Proportional representation further provides greater range of choice among candidates. There will be a choice even among the candidates of the same party. Local opinion will be able to make it felt in an

increased measure. It has its educative value in so far as it invests voting with a new interest.

Proportional representation has taken many shapes ; cumulative vote system, limited vote system, single transferable vote system. Under the cumulative vote system the voter has as many votes as the number of candidates to be chosen from his constituency. He can accumulate all his votes on one candidate or can distribute them among different candidates according to his choice. Under the limited vote system minority is assured a certain number of seats beforehand. For example, if a constituency has to elect four candidates the voters are allowed to elect three and the minority can be well assured of the fourth seat. But this method can be employed only under a system of multiple member constituency where more than 2 candidates are to be elected from the constituency. In Germany, however, another form of proportional representation was employed under the Weimar Constitution. There the whole of the country is divided into a few large constituencies, 35 in number. In these constituencies various parties nominate a list of candidates : each party wins the seats in proportion to the votes cast for it. The order of preference on the party list is determined by the party and cannot be changed either by the candidates or by the voters. The voters can vote only for the party and its list and not for the individual candidates. But the most important of these systems is that of single transferable vote.

This system implies large and multiple member constituencies, and long lists of candidates. Further, it implies that every voter possesses one vote and that vote may not be wasted which means, further, the transference of the vote in certain contingencies. Irrespective of the number of candidates to be elected from a constituency, the voter has only one vote and that one vote can be exercised for the election of one representative only. When a vote is transferred, it is transferred according to the preference of choice expressed by the voter. Under



this system, every candidate to be declared successful needs to secure a certain quota of valid votes.

The quota is a minimum number of votes which for a certainty will secure the election of a candidate. The quota is determined by dividing the valid votes by the number of seats plus one and adding one to the result. For example if the number of valid votes is 116 and the number of seats is 4 the quota will be  $\frac{116}{5} + 1 = 24$ . The

minimum is 24. In a total poll of 116 five candidates can obtain as many as 23 votes, but only four can obtain as many as 24. There are four members to be elected; any candidate who secures 24 votes must for a certainty be elected. We may say that the formula for the ascertainment of the quota is :

$$\text{Quota} = \frac{\text{Number of valid votes}}{\text{Number of seats} + 1} + 1$$

On the ballot paper the names of all the candidates are mentioned. The voters indicate on this paper their preference of choice by marking 1, 2, 3, 4, etc., against the names of the candidates. All the first preferences are counted and those who get equal to or more than the quota are declared elected. Since no vote is to be wasted, the surplus votes (*i.e.* votes more than the quota) which the above candidates have secured are transferred to the other candidates in proportion to their preference by the voters who voted for the successful candidates. Further, the votes cast in favour of those who have no chance of election *i.e.* who have secured a few votes only, are transferred to the candidates with better prospects. Those votes which indicate only one choice are rejected if the candidate for whom they were given is not elected. This is known as "plumping". Plumping should be avoided at all costs, because neither it benefits the candidate much nor the voter.

To understand the system more clearly we shall take an example. Suppose 5 candidates have to be elected from a constituency. It is assumed that nine candidates have been nominated. Their names will be set forth on the ballot paper as shown below :

## Ballot Paper. .

Candidates.	Indicate the preference and choice in the column below.
1. Rt. Hon. Sir Tej Bahadur Sapru.	
2. Mrs. Pandit.	
3. Shri G. B. Panth.	
4. Mr. Asaf Ali.	
5. Mr. R. A. Kidwai.	
6. Mr. C. R. Rajagopalachariar.	
7. Mr. M. A. Jinnah. .	
8. Pandit R. S. Shukla.	
9. Dr. Khan Sahib.	

On the ballot paper, certain primary instructions may also be fixed.

After voting is finished, the returning officer counts the votes. The process of counting is shown in the chart on the opposite page.

It is assumed that 294 valid votes are cast. The **Explanation of the election returns in the chart.** quota, therefore, according to the formula stated above, comes to be 50.

*First count.*—The returning officer indicates in this column the votes which every candidate has received as 'first choice.' No candidate except Mr. Rajagopalachariar gets equal to or more than the quota. He gets 80 and is, therefore, declared elected.

*Second count.*—Mr. Rajagopalachariar gets 30 votes more than the quota and this excess of votes is to be transferred to other candidates so as no injustice may be done to any candidate. All the 80 papers of Mr. Rajagopalachariar are re-sorted according to the names marked as second choice. This sorting gives the following figures :

Mrs. Pandit :	16	} 80 papers
Mr. G. B. Panth :	8	
Mr. Asaf Ali	56	

Mr. Rajagopalachariar can spare only 30 votes out of those 80 *i.e.*, he can spare one vote out of  $\frac{8}{3}$  votes. Each candidate is, therefore, awarded  $\frac{3}{8}$  of the papers on which the candidate is marked 2. Therefore the share of the surplus votes of Mr. Rajagopalachariar goes as follows :

Mrs. Pandit	...	6
Mr. G. B. Panth	...	3
Mr. Asaf Ali	...	21

These votes are transferred accordingly.

*Third count.*—After all these surplus votes have been counted and transferred, the returning officer declares

No. Valid Vote: 294 No. Sea 5. Quota =  $\frac{29}{5} + 50$

Names.	2nd Count.		3rd Count.		4th Count.		5th Count.		Candidates declared successful with their order of priority.
	Transfer of Gopalachariar's Votes.	Result.	Transfer of Pandit Shukla's Votes.	Result.	Transfer of R. A. Kidwai's Votes.	Result.	Transfer of Dr. Khan's Votes.	Result.	
1. Sir Sapru.	..	29	+7	36	..	36	+14	50	Sir Sapru. (4) Mrs. Pandit. (3) Mr. Asaf Ali. (5) Raja Gopalachariar. (1) Mr. Jinnah. (2)
2. Mrs. Pandit.	+6	40	..	46	..	46	+4	50	
3. Shri G. B. Panth.	+3	31	..	34	..	34	..	34	
4. Mr. Asaf Ali.	+21	28	..	49	..	49	..	49	
5. Mr. R. A. Kidwai.	..	17	..	17	-17	-	..	-	
6. Mr. Gopalachariar.	-30	80	..	50	..	50	..	50	
7. Mr. Jinnah.	..	36	..	36	+12	48	+2	50	
8. Pandit Shukla.	..	14	-14	-	..	-	..	-	
9. Dr. Khan Sahib.	..	19	+2	21	+2	23	-23	-	
Non-transferable Votes.	..	-	+5	5	+3	8	+3	11	
<b>Total</b>	..	294	..	294	..	294	..	294	

those candidates who polled the least number of votes, as defeated. In this case, Pandit Shukla gets the lowest number of votes *i. e.* only 14. These votes are transferred to other candidates according to the indication of "second choice" on his papers. Seven voters have shown Sir Sapru as second choice and two candidates have shown Dr. Khan Sahib as their second choice. The votes are accordingly transferred. Five candidates have shown no 2nd and 3rd choice at all. Their votes are, therefore, non-transferable and are thus wasted.

*Fourth count.*—Mr. Kidwai is now at the lowest margin. His papers, when re-sorted, indicate that 12 of his supporters have voted for Mr. Jinnah as their second choice and two for Dr. Khan Sahib. These are also accordingly transferred. Three votes have plumped for Mr. Kidwai and so these votes are non-transferable.

*Fifth count.*—Dr. Khan Sahib is now at the bottom. Fourteen of his supporters have indicated Sir Sapru as their second choice, four have indicated Mrs. Pandit as second choice and two have indicated Mr. Jinnah as their second choice. Three supporters have 'plumped' for Dr. Khan Sahib.

Mr. Jinnah, Mrs. Pandit and Sir Sapru get the required quota of votes and are declared elected. The priority in election belongs to Mr. Jinnah and then to Mrs. Pandit and Sir Sapru gets the last place since the votes at the previous count were in that order. Now there remains one seat to be filled. Mr. Asaf Ali whose total is greater than that of Shri G. B. Panth is declared elected.

The system and working of the proportional representation has been well described by John H. Humphreys in the following words: The elector when voting is understood to say, "I have one vote, Mr. Returning Officer and I give it to the candidate against whose name I have put the figure 1. Please credit it to him accordingly. But should you find that my first choice has too many votes, or should you find that he is at the bottom of the poll, hopelessly out of the running, do not waste my

and is a safeguard against the despotism of the lower chamber. It also provides a check on the rashness of the popularly elected assembly. Second chambers were provided to exercise a break on the 'radical advance' of democracy. John Stuart Mill supported the creation of second chambers as a safeguard against the "despotic" and "overweening" tendency of the lower house and as a check against "the corrupting influence of undivided power". Sir Henry Maine would support any second chamber because in his view a second chamber provided not "a rival infallibility but an additional security". The existence of a second chamber it is contended, provides an opportunity to appeal from Philip drunk to Philip sober.

It is, further, contended that second chamber provides an instrument to give adequate representation to minorities, permanent interests in the state and professions. Persons who have distinguished themselves in life can be represented or nominated to the second chamber and thus the second chamber becomes a forum of national intellect and wisdom.

In federal states the bicameral system is supported with greater enthusiasm on the ground of providing equality to the federating units as well as providing protection to the units against the usurpation of power by the federal government.

The historical evidence also supports the creation of second chambers. Nearly all the countries have adopted bicameral system. However, in different countries second chambers or upper houses, as they are generally called, have been differently organized. In England, the House of Lords is based on hereditary principle. In France the Senate is based on indirect election ; in the U. S. A. it is based on direct election (since 1913) and is constituted to give equality to the states and to provide protection to them against the usurpation of power by the federal government. In Canada, the Senate is based on nomination for life on party basis. In Norway, the upper house is elected by the lower house and is composed of member-

ship proportionate to that of the lower house. It is changed with a change in the lower house and hence with a change in the government.

The first difficulty which arises in regard to the constitution of a second chamber is the **Criticism** method of its composition: Various methods of composition have been suggested and adopted: Hereditary principle; nomination by the executive; indirect election; direct election and election on vocational basis.

Hereditary principle is against the first principle of state purpose, viz., equality of citizenship. A second chamber based on hereditary principle would create a privileged class giving it an undue and a special control over policy framing of the state. The House of Lords in England—based on hereditary principle—in its present form ensures that one party and one section of the community shall govern. It has opposed progressive legislation sponsored by a labour government which has resulted in thwarting social and political progress of the country.

Under the method of nomination by the executive members of the house may be nominated for life or for a limited period with or without re-eligibility; vacancies may also be filled by the executive. This basis is a negation of democracy. Such a chamber by the mere fact of the character of its composition will not have the authority possessed by the popularly elected chamber. The chamber would become a big bribery fund in the hands of the executive and a retiring place for old and distinguished statesmen, administrators and even journalists. The Canadian Senate is constituted on the basis of nomination for life. It has no effective powers; it exercises no control over law-making. The proceedings in the Canadian Senate are not even reported in the newspapers. It has become merely a place for retirement for the old members of the lower house or distinguished statesmen, administrators and journalists who might have

ceased to be useful to the state. The French Senate also proves it. The Senate being representative of rural masses, departmental councils, arrondissements and communes, is very conservative in outlook. Much of social and economic legislation initiated by the lower chamber has been unceremoniously killed by the Senate. It has become a bulwark of conservatism against popularism and radicalism. Its opposition to the government would lead to the dissolution of the lower house and a general election which would be in defiance of current public opinion.

The composition of a second chamber is also proposed by means of an indirect method of election. The French Senate is constituted on this basis ; the American Senate also, before 1913, was elected indirectly. But such a method is of no practical value. Indirect method of election is the cheapest means to maximise corruption. The American experience before 1913 amply proved that nearly every candidate in the senate was a nominee of some big interest with the consequence that the senate was controlled by big business.

There are other supporters of second chambers who would like to set up second chambers directly elected by people at the time of the election of the 1st chamber or at some intermediary period. This method also has no particular merit. If the second chamber is elected simultaneously with the lower and on the same basis it is superfluous and if it is elected at some intermediary stage, it may prove destructive and obnoxious to the government. Further to elect the chambers simultaneously on the same basis will be duplicating membership at a very high cost with little benefit. If the powers of the two chambers are equal it will result in deadlocks and compromises and hence in weak government. If the powers of the one are inferior to those of the other, the upper house can act as merely a postponing chamber.

There is another scheme that the second chamber may be elected by interests, industrial units and professions. But the difficulty arises as to providing proportionate



weightage and representation to the various interests and elements to be represented. Further, how can an engineer be competent to pronounce judgment on tariff questions; and if he is, it is not because of his profession.

The most satisfactory method of composing a second chamber is one followed by Norway. There the upper chamber is elected by the lower in proportion to its own strength ( $\frac{1}{3}$ rd of the lower house). This facilitates the will of the government to have its full effect without any fear of contest between the government or the lower house and the upper house. Hence such a chamber provides check and revision without having the power to destroy. But such a chamber is merely a 'pale ghost' of the lower house and serves no effective and useful purpose.

Therefore no satisfactory method of composition of a upper house has been found so far.

The contention of the advocates of a second chamber that it provides equality to unit states and protects their rights and powers against the central government in a federation is falsified by the experience of the working of upper houses in America and Australia. The rise of political parties has obviated the necessity of providing equality to the states. The parties in the two houses vote on identical basis; the liberal party in the Australian Senate votes on the same lines as the liberal party votes in the lower house. The division in the two houses is mostly on economic basis; nor has the Australian or American Senate protected the rights and powers of units against the federal government. With facilities in the means of communication there arises a sense of nationalism in a federation and the problems are looked at more from the national than from the local view point.

The argument that it will act as a brake upon the rashness of the lower house ignores the complexity of the conditions of modern state. Law-making is not a simple process. Laws are not made by the legislature during the period in which it takes formally to law framing. Nearly all the important matters are in public mind for

generations before they are put on the statute book. The Irish Home Rule Bill was passed after 30 years' discussion; the Government of India Act 1935, was passed after nearly a decade's deliberations—public, private or parliamentary. The agrarian measures passed by legislatures are not the innovations of their members but are discussed thoroughly in public, on the platform and in the universities and their alternative solutions are considered and weighed. The back-clement is provided by the slowness and care with which the parties accept the principles and the solutions of different problems. While it was contended that it is an appeal from Philip drunk to Philip sober, it is not proved whether the lower house is Philip drunk and that the upper house is Philip sober. The existence of second chambers has resulted in an appeal from democratic and progressive forces to the forces of conservatism. It is the necessity of curbing the rising tide of Indian nationalism and retarding the progress of democracy in India that second chambers have been provided in six out of eleven provinces in India. The upper provincial chambers have been constituted to represent landlords, capitalists and other vested interests. Further, we may contend that even if the lower houses are rash let them suffer. It is the people who know where the shoe pinches. Let the guardianship of vested interests over the masses be removed and let them suffer from their misdeeds so that they may become independent and self-confident and the general standard of popular intelligence be elevated.

The supporters of the upper houses point out that the existence of the upper chambers will lead to a well-considered legislation. Every law will be considered better. Bluntschli pointed out that four eyes are always better than two and every law will be considered from different view points. But this argument does not seem weighty enough. Time will be uselessly wasted in useless debates. Nearly all the arguments given in support or against a measure will be repeated in the upper house. No new sources of information and knowledge will be

tapped because a second chamber would be inherently incompetent for that. If the French experience be kept in view as regards the utility of the revision of the laws passed by the lower house, it is better that there were no second chambers. To take one example the woman-suffrage bill has been passed so many times by the Chamber of Deputies but it still remains to be recorded in the statute book.

The power of postponing legislation becomes the power of rejecting changes regarded essential by the party in power and declared as its election pledges. It is admitted that the party in power may make mistakes but it is not understandable how a second chamber can better gauge the electoral will. The necessary safeguards are present in "the inertia of the masses" and the public opinion which the government or party in power has to face. Laski considers the power of revising as either a pure matter of drafting, in which case it is best transferred to an office, meant for that purpose, or else, it is a matter of substance in which case it can easily be done in one chamber as easily as in two<sup>1</sup>.

Further no satisfactory method of composition is possible. The Norwegian method seems to be the most democratic. But a second chamber constituted on that basis is a 'pale ghost' of the other house and serves no effective and useful purpose.

It follows from the above that second chambers are not necessary. 'If they agree,' in the words of Abbey Sieyes, 'they are superfluous ; if they disagree they are obnoxious and mischievous.' The conditions of modern state demand a single chamber legislature. It is there that responsibility can be located and it is here that the people can realise the full weight of their possession of sovereignty. The method of single-chamber legislatures will provide strong and stable governments responsible to the electorate. The necessary checks can be provided in a better way through instru-

1. Laski H.J., A Grammar of Politics, p. 332.

mentalities other than that of the second chamber. They are provided through (a) the party organizations and their pronouncement of national and local programmes and its scrutiny by the electorate; (b) the fear in the mind of the government that it has to go to the electorate for scrutiny and its knowledge that the electorate knows whom to blame and whom to praise; (c) the press; the political meetings and the voluntary associations; (d) the committee system and the legislature; (e) the enquiry committees and investigating commissions etc. The most important remedy lies in the previous consultation of groups affected by a certain measure. This involves the association of voluntary bodies representing different interests and professions with the government. In federations, protection can be guaranteed to the federating units through the original distribution of powers and making amendment of this division very difficult and in the last resort by making it dependent upon the bare majority or 2/3rds majority of the federating units. Further, the parties have obviated the effect of equal representation of the units.

Liberty cannot be achieved through merely mechanical reforms of an institution. The real remedy "lies in the spirit of citizen body." It lies in the reform of economic and social organization; it lies in the elevation of general intelligence and sense of citizenship of the popular masses.

The question of the size of a legislature is more of **Size and Tenure.** practical than of theoretical nature. The size of the legislature will depend upon the population of a country and hence will vary from country to country. However two things should be kept in view : (1) the constituencies should not be so large as to make a personal contact between the members and their constituencies difficult ; (2) the legislatures should not be so large as to make deliberation and debate in the legislature impossible.

In determining the tenure also two considerations should be kept in view : the term must be short enough

to keep representation close to the people and long enough to enable the representative to fulfil his election pledges and gain sufficient parliamentary experience. Very short term, say of one or two years, is not very conducive to any constructive policy to be followed by the government. As soon as the election is over, members have to plan for the next election which they may or may not win. A long term, say of 7 or 8 years, will make the legislature out of touch with public opinion. Therefore, four or five years seems to be the most satisfactory period for the tenure of a legislature. However, the life of a legislature can be shortened by the exercise of the right of earlier dissolution by the government. The members should be eligible for re-election.

Most of the governments pay salaries to the members of the legislature. In Great Britain, the members of the House of Commons get £600 per annum ; in the U.S.A. the representatives and senators receive an annual salary of \$10,000. In France also the members of the two houses are paid 15,000 francs per year. The members of Indian Provincial Legislatures get a salary of Rs. 75 per month. Opinion is divided on the question of the payment of members of legislature. Those who are against the payment of the legislators point out that if members are paid, the members look more to their pay than to service. This gives an opportunity to the parties to reward their supporters by getting them elected to the legislatures even if they are not capable of performing their duties as legislators. Further it leads to the creation of a professional class of politicians. On the other hand, it is pointed out that if legislators are not paid, many intelligent but poor people are denied the opportunity to serve their country. This will mean keeping out labourites and communists. Further, if the legislators are not paid, they will not be able to devote their full attention to parliamentary work as they will be engaged in their private remunerative professions. Moreover when every other service in the state is paid, there is no reason why

the legislators should remain unpaid. The only safeguards against making it an office of benefit can be that the pay may not be very high.

Members of legislature enjoy certain privileges. The most important of these privileges are freedom of speech in the house and freedom from arrest for civil cases. This privilege of freedom of speech does not mean the use of unparliamentary language, nor does it mean speaking unendingly. Both of these factors are regulated by the speaker of the house. The members are immune from arrest for civil cases generally 40 days before and 40 days after as well as during the session of the legislature. Members enjoy certain other privileges in certain legislatures ; for example the members of the Congress in America enjoy postal and travelling privileges.

1. The main function of the legislature is to give **Powers and Functions.** expression to the sovereign will and embody it in concrete commands ; the real function is, therefore, law-making. The legislature is thus a deliberative body providing an opportunity for discussion and deliberation. The function of law-making is increasing day by day as there is greater need to adopt legislation to changing conditions and to have a larger degree of statutory legislation.

2. The next important function of a legislature is to amend the constitution according to the method provided in the constitution.

3. The legislature controls the finances of the state. It raises funds, levies taxes and provides supplies.

4. Its another function is to exercise a degree of control over foreign relations. It may be exercised directly as in the House of Commons in England or through other devices like ratification of treaties, declaring war and peace, as in America.

5. The legislatures, in some countries, control executives. In England and France they exercise a direct control over the executives of their respective countries.

6. A legislature exercises various miscellaneous powers also, such as impeachment of high officials, appointment of certain officers, creation of commissions and enquiry committees, creation or abolition of certain executive and administrative offices, deciding of contested elections, framing of their rules of procedure, etc.

In almost all countries, the rules of procedure are **Legislative procedure** framed by the legislatures themselves. The problem of procedure has assumed greater importance in modern times due to the complexity as well as the extensive nature of matters requiring legislation, shortness of time as compared to overwhelming burden of work to be done by the legislatures and the practical usurpation of the time of the legislatures by the government.

A sound system of procedure should provide : firstly, proper information and knowledge on the subject to the members concerned and should make a provision for previous consultation between the government and the various interests affected by a measure. Secondly, an opportunity should be given to all important views and ideas to be expressed in the legislature. Private members should be given as much opportunity to speak as possible. Thirdly, government should take other parties also into confidence and provide for their consultation in the framing of laws. This can be done through the committee system. Committees are of many sorts—standing committees, select and conference committees, committees of the whole house, committees on ways and means, committees on appropriations, etc. Different legislatures employ different committees. A committee minutely examines the whole problem considering all its pros and cons. This saves the time of the legislature and facilitates a full and frank deliberation. A committee compels necessary evidence before it which the house because of its size can not. Committees can consult interests affected by the measure. In fact modern law-making system demands that every committee should be allied with a professional advisory body consisting of the members of

professions or interests concerned with the subject for which the committee is instituted.

Fourthly, the next point to be kept in view is the saving of time, no time should be wasted on useless debates. The most striking example of wasting time in useless and irrelevant debate is that of "fillibustering" in the American senate. To avoid this wasting of time different legislatures have adopted different methods. To take two examples, the American senate has adopted a method of closure. A debate can be closed if two-thirds of the senators vote for closing the debate. The House of Commons in England has adopted 'simple closure', 'guillotine' and 'Kangaroo closure.'

Fifthly, another problem of legislative procedure is that of recording the vote and the manner in which these votes are to be cast. Many steps have been taken to improve 'voting' by making use of such devices as voting machines, and electrical voting devices, such as the telautograph. However, no general mechanization of legislative routine has been achieved as yet.

Constitutions, sometimes provide rules for summoning and adjourning parliaments. But conventions arise and the right of adjourning or summoning is vested nearly in all countries in the executive subject to such limits as the constitution may provide. The executive can call special sessions. Further, the legislature, itself, regulates its time of recess; and normally, it itself determines the date of adjournment *sine die*. In England, however, the executive may order a dissolution following a ministerial crisis.

There is no unanimity of opinion among writers as

**Relationship  
between the  
electorate and  
the representa-  
tive.**

to the relation of the representative with his constituents. The most contested points are two; (1) Does the representative represent the constituency only; (2) should he be allowed a freedom of judgment or be bound by the instructions of the electorate, or, is he a delegate or agent of the electorate or an indepen-



dent member with freedom to exercise his own option. The representative, it is now universally admitted, is not a representative of the constituency only. He represents the nation as a whole as well. The view that he is the representative of his locality only will lead to the subordination of national interests to local interests and would make the legislature a house divided against itself. Persons with undivided outlook and with national sentiments and greater knowledge will not enter legislature, and thereby, lower the level of the character of the legislature. Edmund Burke has well explained the position of the representative in his famous Bristol speech of 1780. Addressing his constituents he declared: "The parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates. But parliament is a deliberative assembly of one nation, with one interest, that of the whole where not local purposes, not local prejudices, ought to guide, but the general good resulting from the general reason of the whole. You choose a member, indeed, but when you have chosen him, he is not a member of Bristol, but he is a member of parliament". Thus a sort of mysticism of Rousseau's "general will" attaches to the representative of a modern parliament. According to Bluntschli, the modern representative represents the state and not the locality and he owes a duty to no association, group or corporation other than the state. In Lord Brougham's words a representative "represents the people of the whole country".

The second point to be considered is whether the representative is bound by the instructions of his constituents. Some thinkers and writers hold that the representative is the mouthpiece, or a delegate, or an agent, of the electorate in his constituency. His duty is merely to represent the views of his constituents; his function is simply to register their will. Further, this view is supported on the ground that if the representative is allowed to exercise his free will and independent judgment above and beyond the people how can we say that the people have democracy.

However, this view ignores the complexity of conditions of modern political systems. A rigid adoption of the above view will make the work of legislation very difficult. People in mass are incapable of expressing their views properly on all matters for the following reasons: (a) The representative cannot express all his views at the election time because of the shortness of time and complexity of issues; (b) New issues are bound to arise during the term of the legislature and there is no proper method by which a representative can elicit the views and judgment of his constituents. If it were attempted, it would result in the waste of the most of the time of the legislature; (c) Most of the issues are technical in character; (d) Mass of the people do not understand the details of most of the laws. (e) There are certain measures relating to foreign policy or military policy which require secrecy and consistency of policy. (f) Masses are ignorant or at least their knowledge and information is very much deficient.

Therefore, the representative should be given freedom of judgment and independence of action. If the representative is bound down by instructions and is not allowed to exercise his judgment, he will cease to possess 'morals or personality'. The representative should be given freedom of judgment because he is considered wiser than his constituents and is supposed to possess more knowledge of the problems of government. What the constituents can demand of the representative is the fullest explanation of the representative's general attitude; they may demand information on the subjects of the day and the views of the representative on them; any elector may ask for personal explanation from the representative for the latter's political actions. What the representative further owes to the constituents is that he should try his best to be in close touch with his constituents; know their sentiments and views and try to ascertain to the best of his ability the public opinion and try to give effect to it. Further, the representative should remain fairly consistent in his views. In this connection Laski

points out that it would be a violent breach of election pledge if he (the representative) votes for the protectionist tariff while he was elected as a free trader. The constituents, therefore, can expect their representative to be consistent in his views and diligent in the performance of his duties and nothing more.

However, it is urged that there should be some device in the hands of the people for making their views felt and expressed by the representative. Laski proposes a limited recall. He gives to the people the right of recalling their representative. A petition for bye-election may be made if half of the electorate sign the petition, after which the representative may be recalled if two-thirds majority demands it. This method, in Laski's view, will have three benefits : (a) It would call the attention of the state as a whole to the problem ; (b) It would not affect the member who was performing his duties honestly and diligently, and would show the trend of opinion ; (c) It is not a distrust in representative government but a warning to the legislature that it needs to make itself trusted.<sup>1</sup>

Legislature is the representative organ of the electorate and the people. It is, as remarked above, charged with the function of law-framing. But there are some writers who in their zeal for popular government, like the people to frame laws directly. They find such a process possible through the electoral mechanism of *referendum* and *initiative*. Referendum may be defined as the principle that bills after they have been passed by the legislature should be referred to the electorate for approval or disapproval. Thus it may be well described as 'peoples votes.' By initiative is meant that people initiate certain measures and ask the legislature to pass such measures or even pass them directly themselves. Both these devices have been fairly tried in Switzerland and the United States.

The working of both *referendum* and *initiative* in Switzerland, United States and Germany has not proved

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1. Laski, H. J., A Grammar of Politics ; p. 320-321.

very encouraging. No widespread changes have been effected by the people directly; nor have they been successful to rouse the interest of the people in matters of legislation. Experience in Switzerland and the United States shows an average of a little over 50 percent of the electorate taking part in these processes. It has gone at the most to 80 percent in cases where the moral convictions or "property instinct" of the people have been stirred up. In technical cases, otherwise of great importance, percentage of voting has fallen to 20 percent. Further, the people have not acted spontaneously but have most often been whipped up by some interested party. Such measures, very often, bear the mark of some unpractical enthusiast who has got a rebuff from the legislature. Nor has it resulted in any greater elevation of the general popular intelligence of the masses. The states which have referendum and initiative are no better, even they are worse than those without them.

The fundamental assumption of direct legislation is that administration is very simple. But that is a mistaken and prejudicial view. Law-making in the modern world involves such technical niceties that the masses do not and cannot understand them. There are certain matters which require detailed examination which the mass of the people cannot undertake. The most they can do is to agree on broad principles of policy. The British masses may agree to give independence to India but surely they cannot frame the details of the act granting freedom. Direct legislation means a distrust in the legislature and this would consequently lead to irresponsibility on the part of the legislature. Very few matters can be decided by mere voting "yes" or "no".

If direct legislation is futile, certain other remedies may be suggested for maintaining contact between the people and the legislature during the latter's tenure.

These are: (a) The voters can organize different private and public associations and propagate their views

on particular issues so as to enlighten and influence the legislature.

(b) Professional associations may be allied with the administration. This will facilitate the previous consultation between the government and the interests affected.

(c) Consumers can unite into associations to safeguard their interests. They can supervise the services which serve them and can make suggestions to improve them and make them more efficient.

(d) Provision may be made to give political education and education in citizenship to people. Further, masses should be provided with information and knowledge on current social, political and economic problems. Agencies and associations outside the legislature should be given enough time to study problems before the legislature and the opportunity to formulate, explain and express their views on them. In a word people should be stimulated to think and act.

Executive is that organ of the government which executes the will of the state. It applies the laws passed by the legislature. The executive in the modern state bears two aspects—political and administrative. In its political aspect the function of the executive is to decide upon the final policy and submit it to the deliberative organ of the state and if accepted, to execute that policy; its second function is to co-ordinate and correlate the activities of different departments. The final responsibility of government lies in this body. In its administrative capacity its main function is to apply the policy in detail. For the present we shall concern ourselves with the political aspect of the executive.

In its political aspect the executive authority is vested either in one person as in the President in America or in a small body as in the cabinet in England. In the modern states a distinction is generally made between the real executive and the nominal executive. For example, in England the King is a nominal or titular

executive while the cabinet is the real executive. In France the President is nominal executive but the cabinet is the real executive. Similarly in Italy, the King is the nominal executive while real power belongs to the Duce. In the United States the position is different. The President of the United States performs both real and nominal functions. Nominal or Titular executive is merely symbolising of the unity of the executive and administration is carried on by other agencies in his name. For example, King in England summons prorogues and dissolves the parliament. But these functions are performed in essence by the cabinet or the prime minister. The appointment of nominal executive is supported on many grounds. It is alleged in its favour that it provides stability, continuity and permanence to the administration, while political executive is always changing. Secondly, it is a symbol of state personality. The state is better represented in its international relations. This argument does not carry much weight since America is no less represented in its international relations than any other country with a distinct nominal head, for example, France or England. Thirdly, it is argued that nominal executive being above party politics and having longer experience than the political executive can exercise a moderating influence upon ministries and ministers and can guide them better in the light of his experience. Further, it is pointed out that the nominal head by performing ceremonial functions saves the time of the political heads and on the other hand, exercises a great cultural and social influence over society. The problem of maintaining or abolishing nominal executive has accumulated to itself a great diversity of opinion. However, its existence may be justified on the ground that it provides a sort of uniformity in the process of administration.

The chief considerations in the organization of executive are concentration of responsibility, promptness of decision, coherency and coordination of work, efficiency in the supervision of the execution of laws. The executive should

**Principles of organization.**

be able to give leadership. "Leadership" in the words of Finer, "means active initiative in the creation of policy, together with the winning, the energizing and guidance of both followers and the actual executants of policy". This can be possible when the responsibility is concentrated at one place; it can be possible only if the knowledge of different departments is co-ordinated and their time and energy is saved from going waste. Further leadership is possible only if there is 'promptness of decision' and 'singleness of purpose'. If the executive can not decide upon matters of grave importance promptly and give the lead to the country it will fail in its purpose. This can be further possible only if the executive includes in it men of ability and capacity. It can be possible if the executive is in the reach of full knowledge of facts and necessary information; it can be possible only if the executive commands respect and confidence of the people and the electorate. In the executive, besides efficiency and energy confidence of the people is also an essential factor. Executive must be in constant touch with public opinion.

There are two kinds of executives—single and plural.

**Single or a Plural Executive.** Single executives are those in which executive responsibility is vested in a single body or person, while plural executives are those in which executive responsibility is divided between more than one body or person. The only example of plural executive in the modern period is that of Switzerland when the executive authority is vested in a council of seven councillors. According to the theory of the constitution "all important executive decisions shall be made by the council as a body and the council shall assume corporate responsibility for them." But in actual practice many important executive decisions are made by the councillors. By law, moreover, many activities, hitherto, performed by the council as a body have been passed on to specific councillors which means that the councillors perform many of the important executive duties severally which further means that the executive responsibility as well as authority are divided. The plural executive is

supported mostly on two grounds : it provides greater ability and knowledge than is possible when executive authority is vested in single person or body ; it will be a safeguard against executive tyranny as each department will be a check upon the other ; thus it will be more difficult for the executive to usurp the functions of the legislature or to impair the freedom and liberty of individuals. But the defects of the plural executive are lack of energy, loss of efficiency, absence of concentration of responsibility, lack of uniformity of principle, incoherency and incoordination in administration. These defects over-balance the benefits of plural executive.

The executive is chosen in different modes in different countries. The most important of these **Methods of Choice.** modes are : hereditary, nomination, popular election, indirect election, election by the legislature.

It is applied in monarchical states. The chief executive enjoys the title to his office not only for his life but it passes down to his progeny. In the modern world, the idea of an **Hereditary Principle.** hereditary executive is futile if not absurd. Hereditary executives, wherever they exist, are vestiges of historical evolution. They are tolerated because they have no real powers; only a certain degree of social pomp and personal dignity hovers round them which provides an hallucination of perfection and magnificence in the minds of the people. However, writers like Bagehot and Todd justified the existence of monarchy on the ground that it provides a link between the people and administration, it creates a reverence for the executive and secures loyalty and obedience of the people to its commands. But to-day monarchy does not possess that usefulness. In fact, experience points to the reverse ; monarchies in their heydays were hated everywhere. Moreover, if reverence of masses for the executive or governmental actions is to be secured, it should be secured not through artificial devices but through bringing about a continuous direct contact between the people and the government.



This is another method of appointing the chief executive. In dependencies or in semi-sovereign states chief executives are generally nominated. For example, the Viceroy of India is nominated or appointed by the Crown. So are the Governors-General of dominions appointed by the Crown on the advice of the dominion cabinets. The Viceroy of India possesses real and effective powers while the Governors-General of the dominions are the constitutional representatives of the Dominion Crown and therefore, possess nominal powers. No independent state possesses nominated executive.

It is a method of election of the chief executive by the direct vote of the people. The Governors of the states in the United States and the Presidents of Bolivia, Chile, Mexico, Brazil and Peru, are elected directly by the people. The advantages of this method are : it provides opportunity to the people to elect the chief executive and thus is in accord with the notions of popular government ; it provides a means of providing political education to the masses and thus creates a popular interest in the public affairs and governmental problems ; it ensures the confidence of the people in the chief executive and thus makes for their obedience and loyalty to the government.

On the other hand the following main objections to this method are pointed out : the masses are incompetent and incapable of judging the capabilities and qualities of the candidate; the candidate may not be personally known to the whole people ; the demagogues will get the upper hand in deceiving and misleading masses ; there will be a demoralization and political excitement in public life ; there will be canvassing throughout the term of the executive. Madison called the direct popular election of the chief executive as a choice of colours by a blind man. In Hamilton's view it would only create ' convulsion ' in the country. Mill opposed direct election on the ground that it would lead to 'the mischief of intermittent electioneering.' The chief executive will not be able to perform his duties honestly and impartially because he would be constantly

looking for the forth-coming election. The parties would present every issue not in its true colours but with reference to its bearing on the coming election. The public, instead of being enlightened and educated, will be misguided and duped. Professor Henry J. Ford, remarking over the virtual direct election of the American President says : " Instead of being a means of popular enlightenment upon political issues the effect of the presidential election is systematically to darken understanding of them. The statement of party aims which accompany party nominations are long, insincere rigmaroles, full of braggart generalities without commitment on particulars."<sup>1</sup> It gives the parties upper hand and provides them an opportunity to excel in lying, accusing the opponent and making impossible promises.

**Indirect election.** Indirect election was adopted by the framers of the American constitution ; in Spain in 1931; and in Finland under the constitution of 1919. The people or the electorate, generally, elect a small body of representatives, who, in their turn, elect the chief executive. The advantages claimed for this method are that it ensures the election of capable men since the members of this elected body will be more intelligent and better informed than the people in mass ; it avoids "convulsions" and "tumults" in public life. The defect of this system is that it involves a great manoeuvring, more often than not a candidate is the representative of one or the other big interest. Further, with the rise of parties, the indirect election in actual practice becomes a direct election. Though in form the president of the U. S. A., is still elected indirectly but in reality, he is chosen by a popular vote.

**Election by Legislature.** In certain countries the chief executive is elected by the legislature. For example, the French President is elected by both the chambers of the French parliament sitting in a "national assembly". The chief executive in Switzerland is

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1. Quoted by Garner in Political Science and Government; p. 961.

also elected by the legislature. The election of the chief executive by legislature is opposed on the following grounds : (1) it is against the principle of the separation of powers and would make the executive a creature of the legislature ; (2) the legislature will not be able to perform its functions well since the election will make tumults and convulsions in the legislative body ; (3) it would lead to bargains, intrigues and cavals between the executive and the legislature ; (4) the executive would not be a choice of the whole nation but that of the party in power in the legislature and hence of a small fraction of the nation.

On the other hand, it is insisted that the legislature would be able to elect a better and more capable person for the high office ; it would ensure confidence in the executive ; it would remove tyranny of the executive since the legislatures would be a check upon it, there would be a greater co-ordination and coherence between the legislature and the executive leading to general efficiency and energy in administration. Experience has proved favourable to the election of the chief executive by the legislature.

This is another complex question allied with the organization of the executive. Most of the states have fixed terms of office for their titular executive. It differs from two years to seven years. In France it is seven years ; in many of the North American states, the term is two years ; in the U.S.A., the President holds office for four years. In some states the executive may be elected for innumerable number of times, in others, he is re-eligible for one term only ; in others, he may not be re-eligible at all ; in others, he may be re-eligible only if some intervening period has passed between his first election and the second election. For example under the constitution of 1857, President Diaz of Mexico was re-elected for six successive terms. The American constitution provides for re-eligibility of election of the president and there is no constitutional limit as to the number of times for this eligibility. But convention has been established as to the re-eligibility for one term only. But this convention has been

broken by the election of President Roosevelt for the third term, and American public opinion will not be surprised if the President seeks re-election for the fourth term. In Brazil the President becomes re-eligible for election only after an intervening term.

The question of the tenure of the executive is a controversial one. Some are in favour of a long term for the chief executive while others favour a short term.

The long term of office is supported mainly on the following grounds: it ensures executive independence; it makes for stability and consistent policy; it provides for the gaining of experience by the executive; it avoids frequent elections with their disturbing influence over public life. On the other hand, main objections to long term of office are; there is a tendency to develop too powerful an executive; it removes the government from close contact with the people; it leads to the lack of sympathy towards public aspirations on the part of the executive and results in executive tyranny. The best term of office seems to be so long as the executive retains the confidence of the people. But this can be possible only in cases of parliamentary governments and that also in the cabinet form only. In presidential form of government and the republican form of government, the term should be not long enough as to make the executive out of touch with public opinion and not too short enough as to make him incapable of doing anything. A term of four or five years for the chief executive seems to be the best.

A distinction is made between different forms of political executive on the basis of its relation to the legislature. There are two main forms: cabinet and presidential. By cabinet executive is meant that executive authority is vested virtually in a small body elected from amongst the members of the legislature, for example, the British Cabinet and the French Cabinet. Countries with cabinet form of executive possess a nominal executive as well; in England the king is the nominal executive and in France the president is the nominal executive.

**Presidential and Cabinet forms of executive.**

All executive authority is exercised by the cabinet in the name of the nominal executive. The cabinet has been variously defined. In simple words it is a committee of the legislature, with the exception that the process of selection is not express choice by the legislature, while the articles of delegation of power are at once vague and elastic. It includes the leaders of the majority party or parties which can command majority in the legislature, particularly, in the popular branch of the legislature. It initiates, explains and urges policy in the legislature and gives it leadership. The members of the cabinet are the heads of different departments and direct and control their day-to-day working. A function allied to it is that of bringing coherency and co-ordination in the various government departments. It is responsible for its policy and its execution collectively or severally or both to both of the houses of legislature or to the more popular of the two. They are blamed or praised accordingly as their policy or administration receives approval or disapproval of the legislature. They hold office as long as they retain the confidence of the legislature. Further the cabinet acts as a link between the electorate and parties, the legislature and the civil service. "The whole apparatus of government", says Dr. Finer, "every factor in the creation and execution of political decisions, revolves round them, concentrates upon them, radiates from them, though often not with frictionless celerity or to the universal satisfaction, and normally, with much grinding and clanking"<sup>1</sup>

By the Presidential form of executive is meant that the chief executive authority, both nominal and political, is vested in a President. The most notable example of such a type of executive is that of the U. S. A. Under this form it is an organ quite separate from and independent of the legislature. It may be elected by the people directly or indirectly for a fixed term of years. It does not go out of office on the motion of no confidence of

1. Finer, H. *op. cit.*, page, 952.

the legislature as the cabinet goes out. Nor does the president come to the legislature and explain his policies and account for his activities. Nor does he initiate, explain or urge his policy in the legislature personally. He is not responsible to the legislature. He appoints all the personnel of the government departments either alone or in collaboration with one branch of the legislature, for example, the senate in the U. S. A. The President is not responsible to the legislature. But it may be pointed out that the existence of a president does not make the executive one of "presidential" form. For example, in France there is the President but real power is exercised by the cabinet. Thus the French executive is that of the cabinet form. In the presidential form, the president possesses both nominal and real powers. He chooses his own cabinet, which is responsible to him alone and which is his creature.

Both the types have many advantages and disadvantages. According to Bryce the presidential executive has the following advantages:

1. It makes for safety rather than speed.
2. The executive does not appear before the legislature for giving explanations for its actions and it is a gain for the administration.
3. There is security of tenure and hence, the executive can follow a promising policy without the fear of its policy being upset by a sudden change of government.
4. Legislatures are less dominated by party politics than under the cabinet form and, therefore, they can work more seriously and scientifically.
5. There is a great sense of stability. Stability is made possible by two factors: the shifting of political balance can take place only at the election times fixed by law and the legislature by withholding appropriations of money may check the executive in any project thought to be risky.

Disadvantages of the presidential form of government are many. Few of them are **Disadvantages.** given below :

1. It makes law-making very difficult, partly, because the legislatures are not organized on any coherent plan and partly, because there is no authority which is responsible for the initiative of legislation. There is no leadership within the legislature.

2. Laws are framed by those who are not responsible for their application with the result that the legislators largely legislate "in a vacuum".

3. The executive on the other hand cannot be sure that its needs will receive a favourable consideration at the hands of the legislature.

4. Finance is not controlled by the legislature and the result is that there is no coherency in measures involving expenditure sponsored by different members of the legislature. A large part of the budget may be authorized to be spent on subjects which are of no immediate or particular importance to the state purpose.

5. The legislature cannot very effectively influence the executive or the temper of a department.

6. Lack of proper relationship between the executive and the legislature will result in deadlocks. It may happen that hostile parties may be able to capture both the executive and the legislature. In such circumstances, the carrying on of governmental business would be most difficult.

7. The presidential form of executive is irresponsible.

8. The incoherency and inco-ordination between the executive and the legislature means lack of energy and efficiency.

9. It may turn autocratic and tyrannical.

10. The competition between the executive and the legislature to magnify themselves at the cost of each other is bound to result in the waste of time and deadlocks, and this is another grave defect of this system.

The essence of the presidential executive is “the almost complete evasion of responsibility.”

The cabinet form of executive has the following advantages :

**Advantages of the Cabinet Government.**

1. It ensures harmony and coherency between the executive and the legislature. In this form emphasis is more on the concentration of powers, than on the separation of powers. The executive is a select body of the legislature and has the right to appear before it. The cabinet has the exclusive right of preparing and introducing the budget. This ensures a full co-operation between the fund-granting and law-making authority on one side, and the money-spending and law-enforcing authority on the other. There is a definite relationship between finance and legislation.

2. It ensures responsibility. It makes responsibility immediate, direct and decisive. The cabinet either resigns or dissolves the parliament when its policies fail to command majority in the legislature. This means a control of the executive by the electorate. The cabinet crisis of 1935 in England is an obvious example. The general public criticism of the foreign policy of the day led to the resignation of Sir Samuel Hoare and a consequent change in the foreign policy of the government. The French cabinet lacks the power of dissolution and that is one reason of the instability of the French cabinets. However, there are other devices like the interpellation and commissions through which the cabinets are controlled and their responsibility tested.

3. It ensures flexibility. In times of national emergency and crisis it is possible to choose a leader for the occasion. The number of cabinet offices may be increased or decreased at the convenience of the government of the day.

Demerits of the cabinet form of executive are as follows :

**Disadvantages.**



1. It violates the principle of separation of powers.
2. It over-emphasizes party government. The result is that debates in the legislature become unreal; the whip of the party is always on the head of the members. The party discipline does away with the independence of views and their expression by individual members of the party. Issues are not discussed in their scientific aspect but are looked upon in the light of party bearing.
3. It leads to over-concentration of power in the hands of the cabinet. The time of the legislature is so scheduled by the government that private members get scarce opportunity to initiate any measure or even to offer constructive suggestions. In this connection professor Laski points out that the initiative of a private member may be so restricted as to reduce him to a nullity.
4. It may lead to the tyranny of the executive. The executive may make any question, howsoever trivial it may be, a question of confidence. The result would be complete loyalty to the cabinet because of the fear of dissolution and consequences of the general election. In this way it may reduce the legislature to a mere organ of registration for decisions arrived at by the cabinet and make it impotent either to criticise or to alter those decisions.

In comparing the two forms of executives, experience is favourable to the cabinet form of executive. The defects of the cabinet form of government can be easily overcome. The doctrine of the separation of powers is no more tenable. Party politics is as much obnoxious in countries with the presidential form of executive as it is in those with cabinet form of executive. The initiative of private members can be ensured through the creation of parliamentary committees allied with every department. The committees should not deliberate on the same basis as the legislature, as is the case in England at present; but they should deliberate more on details of the subject before them than on its policy. Further private advisory bodies can

be attached to every department. This will remove the fear of executive tyranny and cabinet absolutism. The question of deciding whether a certain question can be made a question of confidence can be entrusted to some important body. For example, the speaker in the house of commons in England can well perform this function.

The powers and functions of the executive may be classified under the following heads: 1. Administrative; 2. Defence; 3. Foreign relations; 4. Legislative; 5. Financial; 6. Judicial.

The chief function of the executive is to carry out the laws passed by the deliberative branch of the government.

Therefore this power includes the execution and administration of laws of the government; it involves the direction of the routine business of the government. The chief executive is the administrator-in-chief. This power includes the power of appointment of the executive which may or may not require the collaboration of one or the other or both the chambers of the legislature. It includes the administration of different departments such as education, agriculture, industry, etc. It involves the administration of public services. Administrative power includes the power of direction of the subordinate departments of government and the supervision of their work.

Powers of defence include the defence of the country from external attack and internal revolt or disturbances.

The military, navy and air forces are at the disposal of the executive. The President of the U.S.A. is the Commander-in-Chief of the Army and the Navy; similarly, the King in England is the supreme commander of the army and the navy. Almost in every state armed forces of the state are headed by the chief executive of the state and the latter is empowered to use them whenever and wherever necessary to ensure obedience to the commands of the state. During the period of emergency like the present war or an internal revolution, there is a tremendous concentration of power in the hands of the executive. Very often emergency powers or war powers

are granted to or conferred upon the executive by the legislature but even when they are not so conferred or granted the executive may take any necessary action to safeguard the state and prosecute the war successfully. The general practice of the states of passing Acts of Indemnity which exonerate the executive from any responsibility is a secure insurance of such a right.

The executive is charged with carrying on foreign relations of the country. This function includes the reception and despatch of diplomatic agents ; recognition  
**3. Foreign or non-recognition of states and their independence or legitimacy ; carrying on negotiations with other countries ; conclusion of treaties.**  
 It is true that the executive is not the whole and sole authority in this sphere and is supervised and directed in some cases by the legislature but the executive is the most predominant and the most effective authority in the conduct of foreign relations of a state.

The executive possesses large powers of legislation in the modern state. In countries with cabinet form of government the executive initiates, explains and  
**4. Legislative.** urges the national policy. It introduces the major part of legislation. It controls the time schedule of the legislature. In countries with presidential form of government as well, the chief executive possesses many devices through which he gets his own proposals on the statute book. For example in the U.S.A., the president influences legislation through his powers of message, recommendation of measures, use of patronage, personal conferences with the leaders in the congress and threatening the legislature with his veto power. To-day the American President has come to be the chief legislator.

In almost every country, the chief executive has the powers to summon, open, prorogue and adjourn the legislature. In countries with cabinet system of government the executive has the power to dissolve it and call for new elections. In some countries legislatures meet at the scheduled time as provided in the constitution. The executive is

given the power of calling special sessions, the American President has used this power effectively. Above all, the chief executive generally, possesses the veto power. It is the most important power. This means that the approval of the executive is always necessary for the validity of legislation. The power of refusing this approval is known as the veto power. In the U.S.A., the president can veto within the procedure prescribed by the constitution any bill passed by the Congress. The congress can over-ride it by two-thirds majority in both the houses voting separately. But this is very difficult to attain. Moreover, he can and does use the pocket veto which is the most effective weapon in his hands and which does not provide any opportunity to the congress to over-ride it. The French president as well possesses a veto but it is mere suspensive and less effective. The veto power is valuable as a means of putting a brake upon hasty and ill-considered legislation, and it enables the executive to defend itself against any encroachment upon its constitutional position.

In addition to the above the chief executive enjoys the powers of ordinance-making and rule-making. The ordinances promulgated by the executive have as much force as any law. In the exercise of this power, the executive may make general rules to give effect to the policies which have been determined by the legislature and which have the force of law. By rule-making powers, the executive fills in the gaps left by the legislature in its laws. Further, it makes rules and regulations for the direction and guidance of the administrative personnel in the application of those laws.

The executive almost in every state has control over finance. In England, the Cabinet controls the finance and presents the budget to the parliament. The house of commons finds itself in the impasse of being able to criticise the expenditure only after the money has been spent<sup>1</sup>. In the U. S. A. the annual budget is prepared under the guidance of the

1. Laski, H. J , A Grammar of Politics ; p , 364,

president. This has made him 'the general business manager of the Government'. It is obvious that the power which controls the purse will draw the centre of gravity to itself. Power and influence will accumulate round it and it will be controlling all the other organs to a great extent.

The chief executive possesses the power of pardon, or to issue the reprieves for the criminals. He may not condemn one found not guilty by the courts  
**6. Judicial** but he may pardon one found guilty by the judicial tribunals.

The chief executive may also issue a general proclamation of amnesty whereby large numbers of persons may be absolved from the consequences of their acts. This is generally done after a rebellion or a revolution. This power is sometimes not an exclusive privilege of the executive and may be exercised with the collaboration of the legislature.

Civil service is the permanent personnel of the executive organ of the state. Dr Finer defines  
**The Civil Service.** civil service as "a professional body of officials, permanent, paid and skilled."  
 The number of the personnel of the administration shows the comprehensiveness of the activities of the state and is an indication to its nature.

The chief features of a civil service should be its energy and efficiency, initiative and creativeness, impartiality and independence. It should be capable of originality in administration. It should be capable of dealing with problems, big and small, simple and complex, and it should possess power and ability to manage men. Mere knowledge of the departmental work and official routine is not sufficient.

The above mentioned requisites may be secured in some of the following ways: The higher officials should exercise fuller and greater insight into the problems which come before them and should be capable of it; they must not depend merely on those who put papers before them.

Those who show some intelligence should be given a chance to exercise it; those who better their academic qualifications along with their official work should be promoted and their zeal which is being employed in seeking higher academic qualifications can well be conserved and employed in raising the standard of the administration. Those, who may show an inclination towards taking an enquiry into some aspect of administration should be given an opportunity to undertake research and should be given an opportunity to apply the results of such researches. Intellect and research should be respected and utilized. There needs to be a greater contact between the officials, big and low, in a department so that every member may be able to contribute towards making the administration of that department most efficient. This can be done through departmental conferences. The present bureaucratic secrecy should be lifted and the members of civil service should be allowed to write what they feel about the organization of the government or their particular administration. The officials should be kept in touch with the development of contemporary thought in the science of administration. This can be done by encouraging civil servants to maintain their study of departmental problems in their spare hours. For this purpose good libraries need to be organized and ample leisure to be allowed to civil servants. A person who has to work for 8 hours in the office and then carry the files to his home will have no originality or creativeness in his work.

The administration should be kept in constant touch with the universities where problems can be studied and analysed in a scientific spirit. William Beveridge writes, "The Civil Service is a profession and I should like it to become and realize itself as a learned profession."

The present aloofness of the administration and its habits should also vanish. The above-mentioned methods will go a long way to remove these defects. Much can be done by organizing advisory or consultative bodies of persons from the public. This will make possible a direct

contact between the administration and the public. The administrative officials will have more insight into the problems and will have greater sympathy and regard for the sentiments of the public in the execution of their duties. This will provide them with a support which is impossible otherwise to gain. This will provide a means for the government to demand more confidence in its commands and support in its schemes. Innovation in administration will be much more easy.

Impartiality and ability can be achieved in the administration only through a system of competitive examinations. It involves the existence of a public service commission whose members enjoy an independent status and security in their tenure and salary as the judges do. These members should not be eligible for any other post. The possibilities of personal favouritism and political patronage on the part of the appointing authority will be diminished to a vanishing point. Further, competitive examinations will ensure the entry of best intellect and wisdom in the administration ; it would make the civil service an honourable profession. The tenure and salaries of officials should be secure. Progress is generally based on seniority. But mere seniority will be injustice to ability and harmful to the efficiency of the administration itself. The persons who reach higher positions only due to seniority have lost all their initiative by that time. Moreover, the really able persons are not provided an opportunity to exercise their faculties and thus contribute towards the betterment and development of administration. Therefore, promotion should be based on ability, intellect and energy.

A good civil service, therefore, should not only include special knowledge but also *intellect, innovation, energy, efficiency, honesty, sincerity* and *impartiality*. The present bureaucratic attitude of conservatism and aloofness needs to be replaced by a spirit of change and a sense of co-ordination with public opinion.

Administration of justice is one of the fundamental principles of state life. In early life justice was personal and private. To-day, justice is a function of the state. All crimes committed against the individual are crimes committed not only against the individual but also against the state. The individual in the modern state requires protection not only against fellow individuals but also against the tyranny of the executive and the arbitrary usurpation of power by the legislature. The state may commit as much (or more) injustice as any individual, and, therefore, the individual needs a protection against the state itself. The state dispenses justice and provides such guarantees and protection through an organ, known as the judiciary.

The importance of judiciary in the modern state is well brought out by Sidgwick when he says: "The importance of judiciary in political construction is rather profound than prominent." And according to Laski: "When we know how a nation-state dispenses justice, we know with exactness the moral character to which it can pretend." The excellence of a state lies in the excellence of its judiciary. The most decisive test for determining the status of a state in political civilization is the "degree in which the justice, as defined by law, is actually realized in its judicial administration, both as between one citizen and another, and as between private citizens and the members of the government."

Chief characteristics of an efficient judiciary are its *independence* and *impartiality*. The judge should be so appointed, his tenure and salary be so secure, that he may not be at the mercy of the executive or the legislature for continuing in his office. In that case, his decisions would bear the colour of his consideration for winning the favour of either of the two or even of both. The judge should not be influenced either by the legislature, executive or even the people in the deliverance of

**Requisites of an efficient judiciary.**



his judgment. Not only a judge needs to be independent but he needs to be impartial as well. In his judgment, considerations of wealth or poverty, high or low social, economic or political position should not weigh. Executive should not be allowed to dictate to the judiciary the kind of judgment the latter is to deliver ; and, particularly, when executive is a party to the case. A judge should be skilled and learned in his profession ; otherwise, the respect for the courts in the eyes of the public will reach a vanishing point. Further, judges should be incorruptible and should possess a high character ; they should be upright and fearless.

Another, and the most important allied problem of efficient judiciary is the *swiftness and certainty of justice*. Cases should not take longer time to be decided than what is essential for finding facts, hearing arguments, sifting evidence and formulating and declaring judgment. In certain Indian states, certain cases of very trivial nature take years to be decided. This should go. This can be made possible through a proper adjustment of work and the number of judges in a court. The judicial process should be less costly, direct, straightforward and simple.

In every state judiciary has numerous functions to perform. Generally, these functions are common in almost every state except that in a federal state judiciary is called upon to perform certain functions which it does not perform in a unitary state. The more important of the functions which judiciary is called upon to perform in any state are the following.

The most important function of the judiciary is to apply law to individual cases, both criminal and civil. In such cases, the judge determines the facts of the case, whether or not the case is bonafide at law ; which law shall apply and how the application of law would affect the legal rights of the different parties to the case.

However, law is very often ambiguous. Circumstances may have arisen where two or more laws may be

applicable. It is the judge who would decide as to which law would apply. Then, the law cannot be adequate for all the cases. The framers of law are not omniscient. The judge has, therefore, to interpret law and expand its dictates. In so doing the judge not only interprets the law but also makes it. In every country a large body of judge-made law or case law exists. In France, "almost the whole body of administrative law has been built up by the decisions of the council of state, the supreme administrative court of the country" Judges, make law through setting up precedents which in most countries as in England and the U.S.A. are considered binding in subsequent cases of similar nature. In certain states, such as France and Germany, however, precedents do not bind even the smaller courts.

The judiciary protects the rights of the individual from encroachment by the state. This function is effected through different forms in different countries. In countries like France and Germany, it is performed through the 'administrative courts'; in the U.S.A. it is performed through the 'judicial review,' and in countries like England and Belgium and other English speaking countries it is secured through the 'equity of law.'

Courts may pronounce a declaratory judgment on a request by the interested parties as to what the law requires without causing any expense of litigation to the parties. In 1934, the federal courts of the U.S.A. were ordered (by an act of the congress) to give declaratory judgments. In England, this practice of declaratory judgments is very frequent.

The judiciary may be asked by the legislature or the executive to give an advisory opinion on certain law or laws. It is very often that the house of lords in England when acting as the Supreme Court of Appeal may ask the opinion of the judges. In Canada, the Supreme Court gives advisory opinions on law to the Governor-in-Council when

so required. In countries like Austria, Panama, Switzerland and Columbia the practice of rendering advisory opinions exists in one form or the other. However, the Supreme Court of the U.S.A., and the other federal courts have refused to render such opinions except when the case is actually before them. In India the Federal Court may also be asked to give its opinion on any matter referred to it by the governor-general.

In federal countries, the judiciary reviews the acts of legislature and executive so as to determine that the two organs have exercised their powers properly and have not violated the constitution. It acts as a protector of the constitution and guarantees the rights of individuals and of the federating units.

Courts act as tribunals for arbitration and reconciliation. Arbitration is a procedure for settling mostly commercial disputes; arbitration is generally used in disputes between labour and capital. A great use of arbitration is made in England and that of conciliation in the United States.

Courts perform certain non-judicial functions such as appointing local officials of the courts, granting of licences, administering of estates of deceased persons and minors, appointing guardians and trustees, registering marriages, naturalizing aliens, appointing receivers and arbitrators.

Regardless to the differences in the actual organization of judicial organs in different countries all the states recognize certain fundamental principles of organization. It is essential that judiciary should be independent of legislature and executive and should have sufficient facilities, such as financial, for adequate performance of their task.

In every country, the judicial organ consists of a supreme court at the head and a series of lower courts or a hierarchy of local magistrates and judges. These

lower courts may be organized on the collegiate principle as in Germany and France where two or more judges sit in one court. It is pointed out in support of this system that it provides against arbitrariness of judges and improper outside influence over them. But, on the other hand, it may be pointed out that it is more expensive. In England, the U.S.A., and the other English speaking countries, the method of 'one judge in one court' is followed. In Anglo-Saxon countries, the method of circuit-courts is also followed. The judges go on circuits from place to place. This provides a great convenience to the litigant public. In continental countries the courts are "sedentary" or localized. The litigants have to come to courts.

In Great Britain and the U. S. A., a distinction is made between two types of civil cases : cases 'at law' and cases 'in equity'. By cases 'at law' is meant those cases for which law provides a specific remedy. Cases 'in equity' are those for which the law is not definite and no ready made formulae exists. Generally, both these types of cases are tried by the same courts, though, procedure followed in the two cases is different. However, in some of the states in America, they are tried by different and separate courts. A further and more popular distinction is made between civil and criminal cases. In some countries civil and criminal cases are tried by the same courts, but in other states, they are tried by separate courts.

Very often, special courts are also created for specific purposes. Commercial courts, labour courts and arbitration courts are some of the examples of such special courts.

In federal countries, there is usually a duplication of judicial organization. There is a set of courts which administer national or federal law throughout the whole country; there is another set of courts which administer the local law of the federating units. In the U. S. S. R., and Switzerland, there is only one supreme federal court; federal law is administered by the state-courts locally. In the

U. S. A., however, two different sets of courts exist. The supreme court is the chief federal court and a hierarchy of federal courts follows, such as circuit courts of appeal and district courts. On the other hand, there exist state courts. The state courts have full jurisdiction except when the nature of the question, or, the nature of the parties to the case, gives jurisdiction to the federal courts. Federal courts operate directly upon the individual citizens.

In other countries, courts are organized on a different basis. There are ordinary courts and administrative courts. France is the most representative example of this type. Ordinary courts deal with cases involving private citizens; administrative courts deal with cases between individuals on the one hand and the state, or, the executive, on the other.

Layman, or unprofessional element as Laski calls him, plays an important part in the judicial organization of modern states. Almost all the states employ jury-system. Its object is to help the judge to understand better and appreciate fully the facts of the case. It is supported on the following grounds: it is a safeguard against the judiciary which is so often at the mercy of the executive; it provides a safeguard against the fixed prejudices of the judge; it provides a safeguard against corruption and bribery on the part of the judge; it provides education in civic duties and responsibilities; it makes for greater respect for the state in the minds of the people; it ensures a sympathetic consideration of the accused. The defects of the jury system are: that the people sitting as jurors "will tend in all cases where political opinion is involved, simply to reflect the prevailing current of opinion about it (jury)."<sup>1</sup> The example of unsympathetic treatment of the cases of Negroes by the American courts and the jury sitting therewith is quoted by Laski. An unpaid jury is reluctant to give its time when proceedings are long; and very often, they become a little

1. Laski, *op cit.*, p. 559

careless or indifferent. The present system can be improved by providing adequate remuneration for the service on jury. Secondly, a standing penal of jurors may be fixed, from which the jurors may be selected for different cases. This would tend to make the members of this penal take a keener interest in their duties and will give a greater training to their minds. There should be no property qualifications for the jurors.

Another mode of associating laymen with judiciary is that of creating honorary magistrates or justices of peace. In England, the system of justices of peace has proved a failure. The judgments of honorary judges or justices of peace are not certain and equitable as the occupiers of these offices possess no, or very little, legal knowledge. This will provide in the hands of the executive an instrument of patronage for inferior political service to the party in power or the government. In India this system of creating honorary magistrates has been used for providing a check upon the rising tide of nationalism.

However, there are two methods suggested by Laski, in which the judiciary can take many advantages by associating itself with unprofessional element. For example, special local committees may be created to deal with local problems such as administration of factory acts, pure-food supply acts, etc. Cases of dispute can be well tried by these committees with a safeguard that appeals may be taken to judicial organs as against the decisions of the former. This will relieve ordinary courts of a great burden.

Further, judges need to take advice of laymen while pronouncing judgment. The duty of the judge is not merely to award a punishment to the offender. His duty does not finish at awarding punishment, he has to see what effect his judgment will have on the accused, whether it will make of him a better man or a greater offender. Therefore, he needs to take the advice of those who can better analyse human nature and human mind scientifically and can have a far more clear perception of human psychological behaviour.

Judges can be appointed only in two ways: election or nomination. Election may take two forms: elect on by the people and election by the legislature.

Election by the people cannot be supported because of the following reasons: the masses do not possess adequate knowledge and ability to elect judges; the judges will be elected for political reasons and this is to be avoided if judiciary is to be independent and impartial; the best jurists may often be defeated in election and inferior type of lawyers who can deal with masses better may be elected; the candidates for judicial offices have no programmes to offer or no individual pleas to make and therefore it would be very difficult for masses to choose between the different candidates. The election by people will not give efficient and impartial judges. If the election is for the whole life, the choice may fall on a wrong type of person; if it is for a short term, and, if re-election is provided, the decisions of the judge will be delivered with a view to win popular votes. The independence and impartiality of the judiciary would be impaired.

Election by the legislature is an improvement upon the system of popular election. But it is rejected on the following grounds: it would make judiciary dependent upon the legislature, political and geographical considerations will be given a greater weight than the technical qualifications required for the office; the judicial office may become a reward for political service to the party; political prestige and private influence will be exercised in election; the average member of the legislature is in no way a better judge of the quality required for the office and of the persons who are seeking election.

Nomination by the executive seems to be the most proper method of the appointment of judges. This is followed in the U.S.A., Great Britain, and the Dominions. It is supported on the grounds that the executive is more capable of determining the necessary qualities in a judge than the people or the legislature; judges so chosen are more likely to be independent of popular influence, politi-

cal and sectional or of party considerations. This system is opposed on the ground that under it political considerations or personal favouritism will determine the election of judges.

Many political writers would like to create safeguards around the executive in the selection of judges. It is suggested that the appointments to judicial offices may be made by the executive from amongst a standing panel nominated by the judges of the court in which the vacancy occurs or by the judges of the higher court, themselves independent and likely to be familiar with the qualifications of those they recommend.

In France, a different method is employed for the appointment of judges. There the examination system prevails. The judges are selected through a competitive examination as for civil service. This method, it is contended, results in a judiciary at once learned and independent. But the defect of this method is that it results in a judiciary tending towards a narrow legal outlook. Promotion should be based not on seniority but on proved ability. There should be no bar for a judge of a lower court to occupy the highest judicial office.

Once appointed, the judge should continue in office during good behaviour. In England, **Tenure.** judges continue to hold office during good behaviour and can be removed only when both the houses of parliament present a joint address to the King for their removal. Tenure during good behaviour would secure independence, wisdom and experience in the judiciary. It would result in a "steady, upright and impartial administration of the law." There needs to be a retiring age limit. It should not be very low; it may well be put at sixty-five or seventy years.

There needs to be some provision for the removal of **Removal.** inefficient, corrupt, imbecile, incompetent and incapacitated judges. Different methods have been employed in different countries. In England, a judge can be removed by the King on an address of both the Houses of Parliament. In the U.S.A.,



the method of impeachment is utilized. But it can be depended upon only in cases of corruption or of high treason. Certain states in America have adopted the method of recall by the people. But this method may be rejected on those very grounds on which the popular election of judges is rejected. In continental countries, judges are removed only by the court of which they are members; or they may be removed by the supreme court sitting as a disciplinary tribunal, and after a regular trial and for reasons expressly stated in the laws. This system has much in its favour! The proper method is that of removal by the legislature as in England or in countries with a uni-cameral legislature by two-thirds majority of the legislators.

It is the legislature that determines the organization of judiciary. All the courts are created, **Judiciary and the legislature.** modified and abolished by the legislature except those which are enacted by the written constitution such as the supreme court of the U.S.A. It determines the number of judges, their salaries and tenure. The judiciary depends upon the legislature for funds. Thus the legislature exercises some degree of control over the judiciary. In some states, the lower house of the legislature has the power to impeach judges for corruption and bribery or high treason and misdemeanour whereas the upper houses act as judicial tribunals for the trial of such cases. In most of the states, the upper houses exercise direct judicial powers. They try impeachments of high officials of the state. In England, the house of lords is the highest court of appeal. It has original jurisdiction for the trial of its peers, but seldom the house has sat as a court of trial for its peers.

On the other hand, the judiciary may exercise great influence over the legislature. The judges make law while interpreting and applying the laws framed by the legislature. The judiciary may express opinions in its judgments of which the legislature may often have to accept and embody them in law.

The most important and most effective influence which the judiciary exercises over the legislature is its power to review the acts of the legislature. This power has attained its greatest peak in the United States. In federal states in general, and in the United States in particular, federal courts pronounce upon the validity or invalidity, constitutionality or unconstitutionality of laws passed by the legislature. The supreme court of the U. S. A. has exercised an overwhelming influence over the congress. President Roosevelt while speaking on his supreme court reorganising scheme remarked, "The court in addition to the proper use of its judicial function has improperly set itself up as a third house of the congress—a super legislature as one of the justices has called it". The supreme court does not legislate through any formal process. It applies the clauses of the constitution and gives them such an interpretation that super-constitution, a super-law, which is un-challengeable in many respects, is created. When the court decides what property is clothed with public interest, what constitutes liberty and what action constitutes a public purpose, it is legislating. The public policies are based on these judgments to a great extent. Further, the congress is always under the fear lest its laws be declared *ultra vires*. There can be no vigorous policy on the part of the congress. Much useful legislation does not initiate in the congress because of the fear of judicial veto. However, this may be pointed out that the supreme court can exercise its powers only when actual cases come before it.

In Great Britain, the supremacy of the parliament is admitted. The courts possess no powers of judicial review of the acts of parliament. No acts of parliament can be declared invalid though the acts of minor legislative bodies may be declared illegal. However, the Judicial Committee of the Privy Council, subject to the provisions of the Statute of Westminster, in the case of dominions, may declare the acts of dominion legislatures unconstitutional. In France an unsuccessful attempt was made to force the courts to assume the power of

reviewing the acts of the legislature though the Council of State regularly reviews executive orders.

Executive in many countries controls the appointment of judges. Opposition to the executive may mean a loss in the promotion of independent and recalcitrant judges. Where tenure of office during good behaviour is the rule, the course of government for years to come may be determined. For example, the appointment of John Marshall, who believed in the supremacy of the federation, meant a tendency towards the strengthening of the federal government as against the states. Further, the enforcement or execution of decision of the courts depends upon the might of the state which is controlled by the executive. The judiciary may be influenced by the threat of the executive not to enforce a particular type of decision. To take an example of the U.S.A., supreme court, it delivered its judgment in the case of "The Cherokee Nation V. Georgia" in favour of the plaintiff. But President Jackson was in favour of the state Georgia and he refused to enforce this decision. However, such cases are rare.

To understand further relation between the judiciary and the executive two problems need to be considered: rule of law and the administrative law.

Rule of law is one of the fundamental characteristics of the English constitution. Rule of law means supremacy of law. Lord Hewart has defined the rule of law as "the supremacy or the freedom of law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals<sup>1</sup>".

The meanings of rule of law have been well explained by Dicey. According to him it implies three things or has three aspects. Rule of law means, firstly, that every man is subject only to the law of the realm. No person can be punished or can be made to suffer either in person

1. Hewart. The New Despotism ; p. 23.

or in goods except when a distinct breach of law is established in the ordinary legal procedure before the ordinary courts. This means that the government cannot act with arbitrariness having no regard for law. "No minister or government department in this country can inflict punishments, arbitrarily or capriciously as a despotic monarch or a dictator can"<sup>1</sup>.

It means, secondly, that every man, whatever his rank or position, is subject to the ordinary law and is amenable to the ordinary courts of the land. This involves equality between private individuals and officials before law. This means that every person from the minister down to the peon is responsible for every act done without legal justification as any other citizen is. No official can plead in his defence that a certain act was done in public interest or under orders from the crown.

It means, thirdly, that the principles of the British constitution are based on the rights of the individual and the rights of the individual are not based on the constitution. There is no constitutional guarantee for individual rights as in other constitutions, *e. g.*, in France and the U.S.A. All rights of individuals depend upon the ordinary law of the land. There is no distinction between ordinary law and constitutional law; and hence, no distinction between constitutional rights and ordinary rights. For the sake of convenience a distinction may be made between constitutional rights and ordinary rights but it does not mean that they are in any different legal position from other rights. There is no sanction behind the constitutional rights higher than that of the ordinary law.

Since Dicey wrote, many changes have occurred. There are certain classes which are, partially, if not altogether, not subject to the ordinary law. The Dicey's conception of the rule of law does not hold good today due to the following:—

Firstly, the above conception of law means no discretionary powers in the hands of government. To-day,

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1. Fraser, W, I R., An Outline of Constitutional Law. p. 19.

the government has wide discretionary powers entrusted to it by statutes.

Secondly, crown cannot be sued in courts for civil wrongs. Crown is not only above law but it further implies that he cannot do any wrong. This is an important modification of the rule of law. An employer is held responsible for the acts done by his servant in the discharge of the latter's duties, but, here, the crown (or the department) cannot be held responsible for the acts done by its employees and civil servants. Thus the crown or the governments are in a privileged position.

Thirdly, foreign ambassadors, or minister or agents or rulers are not amenable to British courts. They are completely immune from both the criminal and the civil jurisdiction of the British courts except when the former submit themselves to the jurisdiction of the latter voluntarily. So is all the property of foreign states and their representatives immune from the jurisdiction of the courts.

Fourthly, judges themselves are immune to a very large extent for their words spoken or acts done in their judicial capacity from the jurisdiction of ordinary law.

Fifthly, the trade unions and their members enjoy a privileged position since 1906. No court can entertain an action against a trade union in respect of any tortious act which may be committed by or on behalf of the union. Tortious act is an act which is a civil wrong and which usually would lead to liability in damages. This immunity is applicable to all acts except those which are done in furtherance of strikes or lock outs which are prohibited under the Trade Disputes and Trade Unions Act, 1927. Thus immunity is applicable to cases not only those which are done in furtherance of strikes and lock-outs, which are not prohibited by the state, but in other cases as well.

Lastly, the executive has come to administer certain laws itself, certain departments of government exercise final powers of judgment in regard to many matters which fall within the scope of their work. This gives judicial powers to the executive. For example, the Ministry of

Health, the Board of Education, the Board of Trade, the Minister of Transport, the Railway Rates Tribunal and other authorities finally decide cases which involve "facts so complicated and disputable as between parties, and thereby affect the person and property of the subject, that justice requires careful jurisdiction." These authorities do not follow the ordinary procedure followed in the courts nor are they specifically trained for this purpose. They work in aloofness and secrecy; their proceedings are not reported; nor are their decisions made precedents for deciding similar questions in the same way in future. Thus there is no certainty of justice. The officials may even decide on *ex parte* statements and may take no evidence. Lord Hewart, ex-Lord Chief Justice of England, calls it "administrative lawlessness".

These are the exceptions to the general rule of the "Rule of Law". The rule of law is modified in so far as these exceptions go, otherwise, the rule of the law remains still the fundamental principle of the British Constitution.

The system of "*Droit Administratif*" is fundamentally opposed to that of the "rule of law".

**Administrative law.** The system prevails in continental countries, notably in France and Germany. According to Barthelemy *droit administratif* means: "All the services which combine to the execution of the laws, excepting the services of justice, are administrative services, and *droit administratif* is the sum total of principles according to which their activity is exercised. It is one of the branches of public law which includes further, constitutional law, criminal law, and public international law. Constitutional law teaches us the political organization of state, the distinction between public authorities, the rules according to which are designated the personages invested with the double function of making the law and procuring its execution, which constitutes the essence of Government. Administrative law analyses the mechanism of Government machines. How the machine is constructed is taught by constitutional law. How it works how each of its parts functions, is

the subject matter of the administrative law"<sup>1</sup>. A German view of administrative law is that of "public law applied to the needs of public administration"<sup>2</sup>. Further, it has been defined as "the law peculiar to the relationship between the administering state and its subjects met in the process"<sup>3</sup>. We may simply define administrative law as the law which relates to public administration.

Under *droit administratif* the rights and duties of the civil servants, and those of the individuals when coming in contact with servants, are governed by rules different from those governing the relationship of individuals with each other. These rights and obligations are also enforced in a different form and are enforced by tribunals different from ordinary judicial courts. The ordinary courts have no powers to deal with cases involving rights and duties or responsibilities of the state officials. For example, in France they are dealt with by administrative courts. The Council of State in France is the chief administrative court. Cases of conflict whether certain case falls under the jurisdiction of administrative courts or that of ordinary courts are decided by a court of conflicts, which is elected by and composed of the members both of the ordinary and administrative courts. The officials of the court are exempt from any personal punishment or liability for any act of interference with the liberty or rights of citizens, if the act was done in obedience to the orders of a superior.

However, an individual may claim against, and recover from, the state itself damages for illegal acts of the government officials. Thus administrative law provides safeguard against arbitrary action of the government officials. It provides a simple, direct and less expensive means to the individuals to protect themselves against the tyranny of the executive and for recovering damages for any such arbitrariness on the part of the

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1. Finer, Herman, op. cit. p. 1475.

2. Ibid, p. 1476.

3. Ibid, p. 1476.

officials. Dicey is wrong when he remarked that *driot administratif* provides protection to state officials who committed illegal acts and have abused the power against private individuals.

The ordinary courts are incompetent to handle all the matters and decide them justly. For example, ordinary courts are incapable of understanding niceties and complexities of the administrative processes and would be incapable of bearing the strain of cases arising out of administration. In England, this difficulty was felt and special tribunals, like tribunals dealing with unemployment relief, were created. The officials on administrative courts, further, being in the knowledge of processes of administration, can find out the extent of arbitrariness on the part of executive officials better than the ordinary judges and thus can administer more equitable justice than the ordinary courts can.

Further, the administrative courts also follow judicial process, take evidence, hear the plea of both the parties, decide and publish their decisions. Decisions are not in the nature of only "yes" or "no" but are fully supported by arguments for and against the decision. These arguments are also published along with the publication of the judgment of the court. These decisions are used as precedents and future cases of similar nature are decided in similar way. This ensures certainty and equity of justice.

Lord Hewart defines *driot administratif* as 'a definite system of law, the rules and principles of which, it is true, differ essentially from the rules and principles of the ordinary law governing the relations of private citizens *inter se*. Nevertheless, it is a system of true "administrative law," administered by a tribunal which applies judicial methods of procedure".<sup>1</sup> Thus judgments in these courts are not arbitrary but are arrived at and delivered through a judicial procedure.

1, Hewart, *op. cit* , p. 42,



However, there is a danger of these courts abusing their power and becoming an instrument in the hands of the executive for the protection of their arbitrariness. This danger can be removed if certain safeguards are provided and these safeguards may be summed up as follows :—

- (a) The officials who sit on the administrative courts must be selected carefully so as to ensure men of intellect and character.
- (b) Such officials, after they are so appointed, should be assured of a permanent tenure and their promotion should not depend merely upon the discretion of their immediate higher officials.
- (c) They should serve on the tribunal alone.
- (d) The procedure in these courts should be governed by the laws of natural justice. The parties should be allowed enough opportunity to present and argue their respective cases fully.
- (e) The judgments should be supported by arguments for and against. They must be reported and published along with these arguments. They should be used as precedents.

“Party government is the vital principle of representative government” remarked Bagehot. It is parties alone that can give real meaning to democracy. The electorate being unable to govern directly has to depend upon the representative method. And representative method involves party system. If there were no parties, the legislative assembly would be an assemblage of different representatives with as many programmes as their number, with no coherency and cohesive force. A party crystallises ideas and ideals and presents them in a uniform programme, and thus the responsibility to carry out that programme is centralized. The electorate gets an opportunity to choose between different programmes and blame or praise those responsi-

**Political Parties.**

ble for them. If democracy is a government by ballot, party system becomes inevitable.

Political party has been variously defined. Prof. MacIver has defined a political party as

**Definition.** “an association organized in support of some principle or policy which by constitutional means it endeavours to make the determinant of government.” But it is a narrow definition. A party may employ not only “constitutional means” for gaining political power, but may employ revolutionary and violent means as well. The example of the communist party in Russia is the most representative in this regard. Ramsay Muir defines political party as ‘organized co-operation among those who think alike.’ But this is too wide a view. There may be a large number of persons who may think alike but may belong to no party. Therefore we may define a political party as an association of a group of people united in opinions or actions, with a more or less permanent organization having an aim to control the personnel and policy of government. In simple words it may be defined as a group of people organized on certain principles whose object is to form the government ; if they have the power to retain it ; if they have lost it to regain it. A modern German definition of a political party is “the battle fellowship established in the form of a permanent association, to obtain power over the state to realize political aims.”

Parties are not legal or constitutional associations or institutions. They are extra-legal growth and have grown according to the needs of the country and conducive to the conditions and surroundings prevalent therein.

**Multiple Versus Two-party system.**

In some countries there are two or three main political parties as in England and the U.S.A. In England, major parties are the Conservative, the Liberal and the Labour. In the U.S.A , they are the Democratic and the Republican. In other countries as in France, there are

many political parties and political groups. The most important of them are : the Radical and the Radical socialist, the Socialist and Republican Union, Socialist and Communist, the Democratic Alliance, and the National Republican party, etc.

Multiple party system has been supported by Ramsay Muir on the ground that it avoids 'violent oscillations' from one side to the other. Secondly, it makes possible to compel "reasonable compromises and adjustments of view." It makes for a more frank discussions in a legislature and enhances its prestige.

The demerits of the multiple party system are :

- (a) The centre of choice of the government is shifted from the electorate to the elected representatives. The electorate may have wished to make Mr. Chamberlain the prime minister and in actuality under multiple party system Mr. Attlee may become the premier.
- (b) Multiple party system means coalition government 'with its erosion of principle.' Coalition government is always a weak and an inefficient government. Compromises would be made in hurry and political or economic principles would be compromised. Such a cause in political life is extremely harmful.
- (c) Multiple party system may very often mean minority government which is always weak and lacks clarity of purpose.
- (d) Nor is the prestige of the legislature, for example that of the Chamber of Deputies in France, is enhanced under a multiple party system than it is under two-party system. On the other hand, it discredits the government because of the freedom of individual members to manouvre.

Two-party system has also certain defects :—

(a) It divides the legislature into two 'serried and disciplined' armies which are at every moment fighting against each other.

**Demerits of the two-party system.**

(b) It gives unreality to the proceedings of the parliament since everything is decided in the party caucus and individual members are left no choice or freedom.

(c) The fear of losing office and making an opportunity for the opposition to capture authority makes the government party "swallow all its scruples and support the government in all it does, abdicating the duty of frank and candid criticism except when it is not likely to have any serious results." It is pointed out that the trend in countries with two-party system is towards multiple party system. For example, in England, there are three parties and not two.

The merits of the two-party system are as follows :—

**Merits of two-party system.** (a) The electorate can choose the government directly.

(b) They can blame or praise the government for its policy.

(c) Responsibility is located and centralized.

(d) It makes an effective, efficient and strong government.

(e) It means a stable government.

(f) It enables the government to drive its policy on the statute book because of coherence, stability and secrecy.

(g) It makes possible immediate alternative government.

The two-party system is, therefore, preferable since it gives substance to the sovereignty of the people; it makes for a strong, stable and efficient government; it makes responsibility centered and crystallized.

Parties are inevitable in democracy. Democracy is a government by ballot rather than by bullet. It counts heads without breaking them. This involves government by majority and the existence of a minority but a strong minority. This implies the existence of the party system. The merits of political parties, therefore, are :

(1) Democracy is based on public opinion. Public opinion is better expressed and crystallized through parties.

(2) Political parties serve as a broker agency in the field of politics. There must be an external agency to formulate our ideas, and a political party is such an agency.

(3) Public opinion is not only crystallized but is also informed, formulated and created by them.

(4) Parties provide political education to the people. They provide alternative solutions of public problems and explain as well as criticise them. They give a flood of information on problems under discussion which it would have been impossible for the people to get otherwise.

(5) Through public meetings, processions, political slogans and political thrills they create a popular interest in public affairs and political matters.

(6) Parties provide the greatest and the most effective check on the atrocities of the government. Parties are the most solid obstruction in the path of Caesarism.

(7) Parties make harmony between different organs of government possible. For example, in the U.S.A., it is only the party system that has made strong federal government possible. It corrects the abuses of the theory of the separation of powers.

The following are the abuses of political parties :

(1) They are a hindrance than an aid to democracy.  
**Abuses of political parties.** Parties are mostly controlled by big interests and, therefore, popular sovereignty reaches a vanishing point.

(2) Parties stimulate artificial and superficial agreements. They encourage insincerity and hollowness.

(3) Parties are after power and to get it at any cost, even by forsaking their principles and ideals.

(4) Parties are not only a divisive force in the legislature but also in the nation. As a consequence of their existence people are divided into hostile camps.

(5) Parties exclude the best brains of the country.

(6) Party loyalty is preferred to loyalty to the state. This is not a healthy sign.

(7) Parties instead of educating people, demoralize them by appealing to the weaker side of human nature and exploiting the mean passions of men through theatrical performances, press, platform and radio.

(8) Political parties mislead the electorate. They represent every problem merely from their view point with the purpose of gaining as many votes as possible. The view point of the opponent party, howsoever right it may be, is presented in its worst colours ; wrong interpretations are given, false accusations are made, and, impossible achievements are promised.

(9) Party system has led to spoils system and graft system so often.

(10) Everything is judged from party considerations. Even in local bodies problems are seen in party colours.

## QUESTIONS AND TOPICS

1. Define a constitution. What are the chief characteristics of a constitution ?
2. How can stability in a constitution be secured ?
3. Distinguish between rigid and flexible, written and unwritten, constitutions.
4. Write a critical note on the theory of the separation of powers.
5. 'Separation of powers is a [confusion of powers.]' Discuss.
6. Is bi-cameral system necessary in a modern state? If so, how will you organize a second chamber ?
7. Write a short note on the problem of suffrage.
8. Discuss the claims of functional and territorial representation in the modern state.
9. Discuss the problem of adequate representation of minorities. What do you think of the method of proportional representation ?
10. What are the merits and demerits of direct and indirect representation ?
11. Give a comparative view of the advantages and disadvantages of instructed and uninstructed representation. What are the duties of the representative ?
12. What should be the relation between the legislature, the representative and the electorate ?
13. Write critical notes on initiative and referendum. Is direct legislation advisable ?
14. What are the fundamental principles essential for the organization of the executive ?
15. Distinguish between 'nominal' and 'real' executive.
16. What are the chief functions of the executive ?
17. Write a note on the relations between the executive and the legislature.

18. Which of the two forms of executive—cabinet and presidential, do you prefer and why?

19. Write a short note on the civil service.

20. What is the necessity and importance of judiciary in the modern state? How can the independence of judiciary be achieved?

21. Write a short note on the organization of judiciary.

22. What is the relation between the judiciary and the legislature?

23. Write a short note on the 'judicial review.'

24. Write a brief note on the rule of law and administrative law. Bring out their comparative merits and demerits.

25. Discuss the merits and demerits of the party system.

26. Discuss the advantages of dual party system against the multiple party system.

27. 'Party system is essential for the success of democracy.' Explain.

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## CHAPTER 15

### LAW

To a layman law is a command that the government issues and enforces. He comes into contact with it, apparently, only when some of his rights or duties are touched or affected by law. For example, when a cyclist rides along the wrong side of the road and the policeman challans him, he comes in direct contact with law. But reasons for law itself, the different forms of law, and the different conceptions of law as it is, and as it ought to be, rarely concern him. He never worries himself to know the basis of law.

Most of the controversies among juristic writers or writers on political science revolve on the basis and nature of law. The legal school of thought interpret law in legal terms. For example, Austin, the most representative of this school, defines law as a command issued by determinate person, or a body of persons, who are in authority in the state: laws are commands of the sovereign. And they are absolute because of the fact of sanctions of the powers of the sovereign behind them. Analytical jurists try to explain the fundamental principles and theories of law and to explain the law as it is. However, they maintain the absolute and unitary nature of the state and its commands, that is, law.

Another school—Historical Jurist school, views law in its historic retrospection. To them law is not a deliberate creation of those who have framed it. They place emphasis more on legal history than on legal philosophy. Though they contribute a valuable and exhaustive data for legal analysis, yet their approach tends to be conservative because of its reverence of the past. Sociologists hold a more reasonable and saner view of law. They justify law not merely because of its form as the Austinians do but because of its contents. They view law as the product of social forces and consider that its purpose is to serve the social ends of the community. They take into consideration not only the method of preparing of law but also the way in which it is administered. Law is justifiable only if it serves social ends. Its *results* not its legal *abstract theories* justify it. Therefore, according to this view, law exists outside, and is superior to, the state. It is possible to conceive of a society in which there exists law without the existence of state. Philosophical juristic school view law as an ethical principle. This school endeavours to create an ideal system of law.

Law is not merely a command of the sovereign or a generalization of custom or habit. Law is, as Vinogradoff has defined, “a set of rules directing the relation and conduct of their (the state’s) members.”<sup>1</sup> They are rules and decisions which get accepted as a result of social forces<sup>2</sup>. Laws are merely embodiments of the experiences, and the wants felt by the experience of those who frame them. Therefore, a law to be just, should embody the experience of all, not of any particular class in the community; it should cater to the needs of the community felt as a consequence of that experience. Further, it need not only embody such experience but facilities and instrumentalities should be provided so as all may be able to contribute towards the framing of law. Law is justifiable only in terms of its content and in terms of the mode of its framing.

1. Quoted by Laski, H, J, A Grammar of Politics, p, 275.

2. Ibid, p, 275.

1. Law is the very antithesis of command. Law is general in character : it deals with general situations or with particular situations in a general way. Command on the other hand is individual.

**Difference  
between law  
and command**

2. Command is issued from a superior to an inferior; it separates the two. Law, on the other hand, does not separate the two but unites the giver and the receiver.

3. Commands cannot deal with general questions while law does. Commands are more in nature of administrative writs.

4. Command is, therefore, temporary in character while law is fundamental and has an element of permanency.

5. Command may be capricious. But law must be based on reason and must give its justification. It is just possible that a law may also be capricious but the fact is that there is a test for the justification of law while command is justifiable only because of its source. A community can be ruled through laws but not through commands.

**Sources of Law.** There are the following sources of law :

Writers on political science and law are all agreed that custom is one of the most important

1. **Customs.** sources of law. Early tribes and communities were governed by customs. Early patriarchs and monarchs also had to observe and rule according to the customs of the community. Later, with the development of the legal system, a fusion between customs and legal conceptions resulted in modern law.

Along with custom, religion has played an important part in the development of law. Religion

2. **Religion.** prohibited certain actions and imposed certain duties, the breach of which was punishable under divine commands. Most of these prohibitions or duties or rights as prescribed and declared by religion were later on embodied in law.

It has been the most contributing source in the framing of law in the modern states. Most of

3. **Legislation.** the countries have legislatures, elected by the people. They frame laws and embody in them the promises made at the election time. Even in countries with dictatorships or monarchies the dictators and monarchs frame laws with the help of parliaments. Formal deliberation and enactment of law is the practice of almost all the legislatures in modern states. Legislation has been the most profound source of law : it has taken the place of custom and religious commands and has reduced the area of the judge made laws.

With the growing complexity of modern problems and the necessary 'general' character of law,

4. **Adjudication.** the judge has found a great sphere to create law. He gives interpretation to law and applies it to special situations. He fills in the gaps in the law left by the legislature. In some of the countries the judge has played a very important part in law-making. For example, the supreme court of the U.S.A., has come to be called a third chamber of the Congress. The judges interpret law according to their own experience under the environments in which they grow and which are often quite different from those of the legislatures. It is true that they do not formally enact laws, yet they perform this function when in applying laws they decide what constitutes liberty, property or income, or whether a legislature is capable of taxing income or not, etc.

The modern parliament, due to shortage of time at its disposal and a heavy work to be done,

5. **Decree-law.** leaves much discretion to the executive to fill in the details of law. The executive issues decrees, proclamations, orders and frames rules and regulations. This is known as decree law or administrative law.

Along with the passing of law, analysts and philosophers have been analysing and propounding as to what the law is and what it ought to be. Writers like Blackstone in England

6. **Commentaries.**

have published commentaries on law which have been most effective and have influenced the legislature and the judge alike.

The volume of law having become great several attempts have been made in the past and in the present to codify and systematize its enormous volume. The most famous examples of codification are the Justinian Code dealing with the Roman law and Code Napoleon. In India also the East India Company tried to systematize and codify Hindu Law.

**Characteristics of Law.** The most important characteristics of law are as follows:—

Law is general in character. It should apply generally to all persons within a category without any exception. It means, further that law takes no account of details. Details must fall outside it. However, generality does not mean fairness or equity. We are concerned with the generality of the form of law and not that of its contents.

It means that law has a certain form and is formulated through a certain definite procedure. It must have an authority, no less than that of the state as a sanction behind it.

It must apply to all within the scope of its contents. Even where law exempts any person, or when it declares any person above law, it follows that the law is operating. Wherever the writ of the state runs, the law must operate.

Law is essentially external in character. It is concerned with intentions and not motives.

Administration of law, and, therefore, of justice, must be certain to all who seek its protection.

**Different forms of Law.** The following are the different forms of law :

International law is that law which governs the relations of one state with another. Adherents of the Austinian School hold the view that International law is no law since it has no sanction of a sovereign authority behind it. But it may be pointed out that the real sanction behind the law is not the might of the sovereign but something else. And it is on the same basis, as we shall show later on, that both law and international law are obeyed. Hence international law is law.

Law other than international law is known as national, or, municipal law. This body of laws results from the internal sovereignty of the state and forms law in the positive sense. Every national law may be divided into public law and private law.

Public law includes the whole field of law through which the government is set up and sustained, and which defines and regulates the relation of its different branches. It also regulates the relations between the state and the individual. It includes both constitutional and ordinary law.

Constitutional law deals with the organic nature of the state. It is a law which governs the relationship of the different organs of the state with each other and that of state and the individual.

Administrative law includes rules, regulations, proclamations and decrees framed and issued by the executive officers. This power is delegated to executive by the legislature. Such decrees must be issued within the scope and powers delegated by the legislature. Administrative law also indicates the remedies which the individual has against the violation of his rights by state officials.

Criminal law is that part of ordinary public law which deals with criminal cases, *i.e.*, cases which affect adversely the public welfare and security and which are considered



by the state to be offences against itself and not merely against the individual injured.

Civil law is that part of ordinary public law which deals with controversies which do not involve an offence against the state and are adjudicated through civil processes. All private law and most of public law is civil law.

7. **Civil Law.** It Regulates the relations of individuals with each other and deals with the maintenance of rights and enforcement of obligations as to both persons and things. Private law draws from both constitutional and ordinary law.

8. **Private Law** International law deals with relations of one state with another. It has been defined by **International Law.** Lawrence as "the rules which determine the conduct of the general bodies of civilized states in their dealings with one another." MacIver has defined it as "the system which orders the relations between states." Another jurist has defined it as "the body of principles and rules generally recognized as binding by the community of states in their relations with one another." Fenwick has defined international law as "the body of general principles and concrete rules which the states that are members of the community of nations recognize as binding upon themselves in their mutual relations." International law includes both "the substantive law, which defines the mutual rights and duties of states, and the *adjective* law, or law of procedure, which prescribes the means by which rights recognized by the community of nations may be enforced with the sanction of the community."

At the present moment the controversy as to whether International law is true law or not has lost its significance since it is now mostly admitted that it is law.

**Is International law true law?** Austin and his followers declared international law as no law since it has no formal authority behind it as a sanction; nor has it been issued by one determinate superior to

an inferior. International law has been called half law and half morality. It has been further described as a vanishing point of jurisprudence.

It is true that there are no formal sanctions behind international law. But to say that it is non-existent because of its violation is tantamount to say that municipal criminal law is non-existent because some violators of it escape punishment.

In International relations questions involved in international law are treated as legal questions. Legal forms and proceedings are employed in the courts and in arbitral procedure and legal authorities and precedents are quoted as in courts of ordinary or municipal law. In England and the U.S.A., international law is considered as a part of the law of the land and in some instances, statutory law provides specifically for enforcement of international law. There are certain most definite principles, most faithfully observed, which deal with International relations of relative unimportance or obvious convenience, such as the treatment of aliens in foreign parts or the regulation of shipping documents.

There has been, of late, a tendency on the part of various international conferences, international and national organizations and commentators to formulate and systematize international law. For example, the work of the Hague Conferences of 1899 and 1907, that of the London Navy Conference and the Washington Conference of 1921-22, has led to a great deal of codification of International law. Certain associations have also been carrying on the codification. For example, the Institute of International Law codified "Manual of the Laws of War on Land" in 1880. The International Law Association presented many drafts to be considered by the governments. The American Institute of International Law drew up the "Declaration of the Rights and Duties of Nations". Similarly many other attempts have been made.

The tendency on the part of general international organizations and conferences to formulate specific agree.

ments on many problems is leading to a growing body of what Mauley O. Hudson has called "International Legislation", tending to make the content of international law more definite and satisfactory. Its enforcement by international agencies such as the Permanent Court of International Justice is also a step forward in its recognition as true law.

There are certain rules known as international comity or international morality which are observed by the states in their relations with each other and for which no legal status is claimed. The rules of international comity are rules of courtesy based on mutual convenience and good-will. International morality provides standards of conduct to which the international law may be in conformity with or from which it may lag behind.

The sanction behind international law is the same as that behind the ordinary or municipal law. Municipal law is obeyed not merely because of its origin; it is obeyed not because it has the force of the state behind it. There are certain other elements which enter into its observance. We obey law because we find it convenient to be ruled by it. Law is obeyed because it facilitates the relationship of individuals among themselves. It is not because of the fact of its source or origin or external character that the law is justified but it is its content that justifies it. The real sanction behind law is public opinion. Similarly the fact of the absence of any external authority to enforce international law and the frequency of its violation does not mean its non-existence. In fact, the violation of international law is the very proof of its existence. However, it is the restricted scope of international law, or, more strictly speaking, the whole area assigned to the free decision of the individual state, that constituted, and to a less extent still constitutes its essential weakness<sup>1</sup>.

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1, Fenwick, *International Law*; p. 45.

## CHAPTER 16.

### INTERNATIONAL ASSOCIATIONS.

The setting up of the League of Nations in 1919 at the Paris Peace Conference is the first and most ambitious attempt at setting up an all-world organization for dealing with the political relations of the states with each other. Before that attempts had been made by people in their private capacities to organize and set up common institutions to deal with economic, religious, scientific and many other interests of different countries. Other institutions dealing with communication, transportation, commerce, finance, health and sanitation and other social problems, had been set up by the states in common. But no such institutions were set up to deal with broad political questions. There are exceptions such as the Concert of Europe and the Hague Conferences of 1899 and 1907. But they were temporary and functioned fitfully offering no hope for permanent peace. It was the "world-shattering cataclysm of 1914—18" that gave an impetus to the setting up of permanent organization to deal with political relations of the states and to avoid war. The consequence was the framing of the Covenant of the League and the setting up of the League of Nations.

The League of Nations, as established in 1919, has been variously called by writers and thinkers, politicians and statesmen, commentators and scholars. It has been described as an alliance, a confederation, a partnership, a super-state and a corporation. It is none of these, though it contains certain elements of each. It is not an

alliance since it possesses its own permanent institutions which are always absent in an alliance. It is neither a confederation, nor a super-state, since it acts only through the states, it has no jurisdiction over individuals. It does possess its own administrative instrumentalities but it can reach decisions only by unanimity. It has no finances of its own but has to depend upon the contributions of the member-states. Its administrative organs have no authority "except that conferred upon them by the members and, in general, they can take no action which is not at the same time action by the member states". Nor can it be compared to partnership or a corporation since the League cannot sue or be sued against in any national or international court; it has no legal status of persons in courts as corporations and partnerships possess. It bears a close resemblance, as Professor Schuman points out, to public international unions.

The functions of the League of Nations are set forth in the preamble of the Covenant of the League. It reads as follows:—

#### The High Contracting Parties,

In order to promote international co-operation and to achieve international peace and security :

By the acceptance of obligations not to resort to war ;

By the participation of open, just and honourable relations between nations ;

By the firm establishment of the undertakings of the international law as the actual rule of conduct among governments ; and

By the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized people with one another ;

Agree to the Covenant of the League of Nations.

Professor Schuman divides the functions of the League into three categories :

Firstly, it had to act as an agency in the enforcement of certain obligations created by certain provisions of the peace treaties and other supplementary agreements. In this capacity it exercises certain administrative and supervisory functions, such as, the working of the mandate system, the administration of Saar Valley, the supervision of the free city of Danzig and the protection of national minorities.

Secondly, it performs the functions of integration and co-ordination of the activities of the existing international organizations. It deals with and promotes international co-operation in the problems of health, sanitation, labour and finance, communication, transportation, and other like social questions.

Thirdly, it acts as an agency for the prevention of war and the settlement of disputes between states through specific means such as conciliation, arbitration or adjudication<sup>1</sup>.

Provisions for membership and withdrawal are provided in Article I. of the Covenant of the League. It provides for original membership of thirty-two states, which were named in the Annexe to the Covenant. But of these three states—the U.S.A., Hejaz and Ecuador, failed to ratify peace treaties and the Covenant. But thirteen other states, which had been neutral during war, were called in to join the League. They agreed and the League started with an original membership of forty-two states. The Covenant further provided that any "fully self-governing state, dominion or colony" could also become a member of the league, if its admission was agreed to by two-thirds of the Assembly, provided that it would give effective guarantees of its sincere intention to observe the international obligations and to accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments. As a consequence several states had been admitted to the League at different

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1, Schuman, F. L., *International Politics* (1934). P. 201.

periods. Austria, Bulgaria, Costa Rica, Finland, Luxemburg and Albania in 1920 ; Estonia, Latvia, Lithuania in 1921 ; Hungary in 1922; Ireland and Abyssinia in 1923 ; Dominico Republic in 1923 ; Germany in 1926 ; Mexico in 1931 ; Turkey and Iraq in 1932 ; U.S.S.R., Afghanistan, Ecuador in 1934 ; Egypt in 1937.

The covenant provides for the withdrawal of a member from the League. It reads: Any member of the League may, after two years' notice of its intention to do, withdraw from the League provided that all its international obligations and its obligations under the Covenant shall have been fulfilled at the time of its withdrawal.

Several countries have withdrawn from the League. Costa Rica was the first who withdrew in January 1927. Brazil ceased to be a member of the League in 1928. Japan and Germany ceased to be members of the League on 26th March and 21st October, 1935, respectively. Guatemala, Honduras, Nicaragua and Paraguay followed the suit. Austria, Abyssinia, Albania and Czechoslovakia lost their independent existence and hence the membership of the League. Italy, Chili, Salvador, Hungary, Peru and Venezuela have also withdrawn. Russia was also expelled from the League in December, 1939<sup>1</sup>.

The League of Nations acts through three organs : the **The League Assembly**, the Council and the **Permanent Assembly**. secretariat. The Assembly is the representative and deliberative organ of the League. All the members of the League are represented in the Assembly. Each member may send three representatives but every delegation has only one vote. Thus it provides equality to all the states. The Assembly meets annually at Geneva in September. Special sessions may be called as were called to deal with the question of the admission of Germany to the League or with that of the Manchurian conflict or with that of the Italian attack on Abyssinia. The Assembly elects its own president and frames

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1, For fuller details refer to 'The Geneva Racket' (1940), by Robert Dell,

its own rules of procedure. The Secretary-General prepares its agenda but that is subject to amendment by the Assembly itself. The Assembly employs committees for executing its work. There are six standing committees dealing respectively with the following :

- (1) Legal and constitutional questions.
- (2) Technical organizations and the intellectual co-operation organization.
- (3) The Reduction of Armaments.
- (4) Budgetary matters.
- (5) Social, humanitarian and general questions.
- (6) Political questions including mandates.

The committees include representatives from all the countries who are members of the League. Their decisions are in actual import the decisions of the Assembly and the ratification of their decisions by the Assembly is merely a formality. Sometimes the reports of a committee may fail to get ratification due to its inability to get unanimity in the Assembly. But such cases are rare. The meetings of the committees are generally public but they may be held in private as well.

The functions of the Assembly are very broad. **Functions of the Assembly.** Article 3 of the Covenant of the League provides that the Assembly "may deal at its meetings with any matter within the sphere of the League or affecting the peace of the world." Professor Schuman has summed up its powers under three headings: electoral, constitutional and deliberative. Under the electoral powers, it decides upon the election to and admission in the League of new members by two-thirds majority vote. It elects three out of nine non-permanent members of the Council of League every year by bare majority vote. It elects acting in conjunction with the council every nine years fifteen judges of the Permanent Court of International Justice. It also approves the appointment of the Secretary-General of the League.



Under constitutional powers, it amends the Covenant of the League according to the procedure provided in Article 26 of the Covenant. As a deliberative body it considers general, political, economic and technical questions of international interest ; it advises the reconsideration of inapplicable treaties under article 19 ; it supervises the work of council and of technical organizations ; and it prepares the annual budget of the League<sup>1</sup>

The Council is the second organ of the League of Nations. It was intended originally to consist of nine members of which America, France, Great Britain, Italy and Japan were to have permanent seats ; the rest of the seats were to be filled by election by the League Assembly. Thus the council consists of two kinds of members : permanent and non-permanent. The non-permanent element is elected by the Assembly for a limited period. The failure of the United States to ratify the Versailles treaty and its consequent abstaining from the League of Nations made the non-permanent and permanent seats equal in number. But the changes made during the last twenty years have given a large majority to the non-permanent members of the council. Immediately before the war and the collapse of France (April 1940) there were in all thirteen members of the council—eleven non-permanent and two permanent (France and Great Britain).

The Council is empowered under Article IV of the League Covenant to increase the number of permanent as well as non-permanent seats. To do this it is required to get secure the approval of the majority of the Assembly and its own decision must also be unanimous. New permanent seats were created for Germany in 1926 and for Russia in 1934. But two of the permanent seats have been vacant since Germany and Japan left the League. The number of non-permanent seats was increased to six on 25 September 1922, to nine on 8 September 1926, to ten on 25 October 1933, and to eleven on 10 October 1936.

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1, Op, cit.

The last two additional seats were only provisionally created, but the council decided in December 1939 to continue them until 1942.

The Council holds three sessions annually. It can hold a special session as well if need arises.

**Working of the Council.** The procedure of the Council is determined by its own rules of procedure. The presidency of the council goes by alphabetical rotation of the names in French of the states represented. The real work of the Council was done in private. At its private meetings certain League officials together with the Secretary-General used to be present. A verbatim report of the proceedings was taken and afterwards published. The Council used to hold secret meetings also. At such meetings only the members of the Council and the Secretary-General were present and no reporting of proceedings was taken.

The Council acted as a *Commission of Inquiry and Conciliation* in many disputes which were referred to it. It used to appoint as well as supervise various international bureaus and commissions; it received reports on the government of Mandates and recommended action to be taken to enforce League obligations imposed under the Covenant. It could deal with any matter affecting world peace or falling within the scope of the League.

The Secretariat is the permanent administrative organization of the League of Nations.

**The League Secretariat.** The Secretary-General is appointed with the approval of the Assembly by the League Council. The staff of the Secretary-General is appointed by and is responsible to him. The staff of the League Secretariat constitute a true international civil service, although they do not leave their citizenship of their respective states. They enjoy diplomatic privileges, and may take directions, not from their government but from superior League officers.

The work of the Secretariat is to prepare data on questions to be considered by the League Assembly or

Council, it performs the administrative work for committees and technical organizations of the League; it keeps the League records and registers treaties which do not become binding unless registered with the League Secretariat; it supplies information to members of the Assembly and Council as well as to the member states about the League activities; It distributes information on many international problems.

There are three Technical Organizations—the **Auxiliary Organizations.** Transit-Organization, the Health Organization, and the Economic and Financial Organization—within the League of Nations. These three organizations formulate their own policy but are subject to the final control of the League Assembly. The main work of these organizations is to give advice and help to states which need them. In addition to these organizations there are numerous advisory committees, administrative commissions, and institutes which exist to handle questions on an international basis.

India being a signatory to the versailles Treaty is a **India and the League.** Founder-Member of the League and enjoys within the League equal rights with other member states. But it should also be remembered that there is no member of the League, except India, which is not a fully self-governing country. Thus India is a curios in the League museum. She has equal rights along with other member-states to participate in all international questions within the competence of the League, without having a full self-government herself. It is curious that a country should have the right to direct, in partnership with others, common international matters of fifty four countries without possessing the right of self-government. For this anomaly and unhappy plight India has to thank her rulers. There are some who argue that League should remove this anomaly, but they overlook the real position of the League. It is not a super-state. It was still born and throughout its life it has remained inarticulate and where-

ever it made an effort to speak it faltered and stammered. The League deserves pity and sympathy and not condemnation.

With the outbreak of the second world war the League's authority, whatever remained of it, may be said to have come to an end. No member of the League not even Poland asked for its intervention. Though political activity came to a stand still, it was, however, decided that the League should continue to handle non-controversial technical matters and should ensure that its organization should be fully ready to handle any of the special activities or matters which war demands or permits. The Deputy Secretary General of the League summed up the following three items of work :—

1. Adaptation of its work to meet the needs of the present world crisis.
2. Preparation of material for helping the settlement which will eventually come out of the present world war.
3. Examination of economic conditions to be faced in the problem of reconstruction.

Large reductions have been effected in all sections of the budget of the League Secretariat. Administration of the International Labour Organization whose technical services have been transferred to the United States also effected staff reduction on an extensive scale. The Permanent Court of International Justice had had to leave the Hague immediately after the occupation of Holland. Meanwhile a number of League members have notified the League of their withdrawal and the territories of many more members have either been occupied or are a scene of bloodshed, rapine and fire.

It is an autonomous international organization, though closely affiliated with the League of Nations. This organization was provided under Section XIII of the Versailles Treaty. The purpose of the Inter-

**International  
Labour  
Organization.**

national Labour Organization is the welfare of the workers all over the world. The Commission which recommended the establishment of the I. L. O., also declared nine principles guiding the policy of the signatories to the Peace Treaty. The following are those nine principles :

1. Labour is not an article of commerce and is not to be considered so.

2. The employees as well as the employers have the right of free association for all lawful purposes.

3. Workers should be paid such wages as to enable them to live a decent and a comfortable life.

4. Forty-eight hour week should be universally adopted.

5. Workers should get at least 24 hours continual rest which should include Sunday if possible.

6. Children should not be employed and young persons should be so employed so as to leave them sufficient leisure for their mental and physical development.

7. Men and women workers should be paid equal wages for work of equal value.

8. Each country should fix some standard of labour conditions with a view to equitable economic treatment for all workers.

9. Inspectorate should be created to ensure that labour regulations and laws for the protection of the worker are enforced. The inspectorate should include women also.

The I. L. O., consists of all member states of the League of Nations and such other nations not being members of the League—which wish to join it and abide by its decisions. It has two organs: the International Labour Conference and the International Labour Office.

The Labour Charter provides for an annual conference to which each member sends four delegates. Of

these four delegates two represent their government, one the employees and the other the employers. The Conference draws up Recommendations and Draft Conventions. These are referred to the governments for action. Delegates vote individually. The Conference had held 24 sessions since the holding of its first session at Washington in 1919. A total of sixty seven conventions has been adopted.

The Governing Body of the Conference consists of thirty-two members (since June 1934), of which sixteen are the representatives of the governments, eight of the employers, and eight of the workers. It is required that at least two members of each group must represent *non-European* states.

The International Labour Office is the secretariat of the International Labour Organization. It is headed by a Director. Its business is to carry on research in problems affecting labour conditions ; it prepares the agenda for the conference, keeps in touch with other organizations in different countries which are interested in labour problems ; it also maintains itself in regular touch with the states members and handles the administrative work of the Governing Body as well as of the International Labour Conference. The budget of the International Labour Office is included in the League budget. International Labour Office has a branch at New Delhi of which Dr. P. P. Pillai is the Director and Mr. K. F. Mathew the Deputy Director.

The outbreak of the present world war found the International Labour Office prepared to carry on its work. As early as February 1939, the Governing Body had decided to appoint an emergency committee to meet more frequently and rapidly in critical times as the present. The emergency Committee laid before it two important principles, *viz.*:-

**Present world war and the International Labour Organization.**

(1) that the International Labour Organization should continue to function as effectively and as completely as is possible in times of war ; and (2) that the continued

existence of the Organization as an 'instrument of co-operation between governments, employers and workers would be of unusual importance in such circumstances.'

The twenty-sixth session of the Conference was scheduled to begin on 3rd June 1940 which had to be postponed indefinitely due to the war. Even Committee Meetings had to be given up. By July 1940, Swiss territory was nearly completely surrounded by the German Forces. In such circumstances it became difficult to hold the Conference in Geneva. It was felt necessary to establish a working centre somewhere outside Geneva and transfer to it the requisite staff. In August 1940, the Canadian Government came forward with an offer to have the organization temporarily transferred to Canada. Montreal was chosen for its seat and University of McGill generously provided for the office accommodation of the organization as well as library facilities.

Consequently the transfer from Geneva to Montreal has resulted in reduction and administrative changes. The Organization is now carrying on its work of collection and distribution of information regarding labour and social conditions from Montreal; plans have been made for carrying on unhampered and un-impaired the work of the Organization as far as world conditions permit.

In pursuance of this determination a Conference of the International Labour Organization was held at New York (27th October to 5th November 1941) and at White House, Washington (6th November 1941). At the concluding session addressing the Conference on the part to be played by the International Labour Organization in winning the war and of the peace President Roosevelt said: "In planning of such international action the International Labour Organization, with its representation of labour and management, its technical knowledge and experience, will be an invaluable instrument for peace. Your organization will have an essential part to play in building up a stable international system of social justice for all peoples everywhere."

The Indian International Labour Office continues to maintain its regular activities and functions unimpaired from its New Delhi Office.

**The Permanent Court of International Justice.** The Permanent Court of International Justice was set up under the provisions of article 14 of the League Covenant and began to function in 1921. The Court is not an integral part of the League machinery, but it is closely connected with it. The Court is competent to hear and determine any dispute of an international character which the contesting parties submit to it. The Court may also give an advisory opinion on any matter referred to it by the League Assembly.

The Court is open to every nation of the world under conditions laid down by the League Council in 1922. There are fifteen judges on the Court ; the salary of each judge is 15,000 Dutch florins. The judges hold office for nine years. Candidates who are appointed by an absolute majority of the League Council and the Assembly meeting separately must be persons of high moral character qualified for appointment to the highest judicial office in their own country.

#### QUESTIONS AND TOPICS.

1. What purpose is served by International Associations ?
2. Estimate the usefulness and importance of the League of Nations.
3. Do you subscribe to the view that the future League of Nations should be a 'super-state' ? Give reasons for your Answer.
4. Is International Law truly a law ? Why it is obeyed ?
5. Describe the International Labour Organization and evaluate the work done by the organization.



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## CHAPTER 17.

### THE SPHERE OF STATE ACTIVITY.

The state was born when man was born. It came into being so that man may live and is continued so that he may live well. But the problem of living well is not so simple as it seems. Living well or happily implies the one absolute right of man, *viz.*, the highest development of his personality. This right may well bring him into conflict or into an antagonism with the state. The desire to avoid this conflict led to the rise of the conception of rights and duties and man seriously began to think about his relation to the state. The problem was if man wanted to live a happy life what limitations he would place on the sphere of state activity; on the other hand, if the state was to justify the reason for its existence and continuance what restrictions, prohibitions and conditions it would place on the action and imagination of man. In fact the problem of demarcating a sphere of activity between man and state is as old as the world itself. Solutions have been offered from various view points which have come to be known as individualism, socialism, anarchism, communalism, idealism, fascism and pluralism. The problem has baffled writers, thinkers, statesmen and philosophers and continues to add to the richness of political science by urging both man and state to endeavour to find ways and means, as conditions change and permit to strike a compromise and end this tug of war for which we may well hope till eternity.

To-day this problem has assumed great significance. The great leviathan, the state, seems to be eating up

another great leviathan, the man. But the problem was not so important in older times as it is to-day. In the Greek period the individual indented himself with the state; his attitude towards the state was that in her happiness lay his happiness, in her woe, his woe. Thus in view of this identity of interests there could be no conflict between the individual and the state, though individual instances of conflict between the state and the individual could be found even in the Greek period—the trial and death of Socrates. But the Greeks believed that the state could embrace all which contributed or related to the happiness or the highest development of the personality of the individual. In brief the end of the individual was indented with the end of the state.

During the Roman period also the question of the proper sphere of state activity did not assume any great importance and did not much occupy political writers and thinkers. The middle ages were consumed by a long, bitter and vitriolic struggle between the state and the church for supremacy which fact threw the question of individual liberty into the background. Then arose the nation-states on the ashes of feudalism and established their absolute authority over their subjects. As fate would have it, Protestant Reformation made its appearance and brought in its wake the doctrine of divine right of kings which strengthened still more the absolute authority of the secular rulers. This marks the beginning of a sharp conflict between the interests of the people and those of the rulers. In England the Tudor rule, however, benevolent, was despotic in character. The Stuarts offered a stubborn resistance in support of the principle of the divine right of kings. One of these good kings Charles lost his crown as well as his head in this struggle. Thomas Hobbes appeared as an apologist for absolutism for to him no law was unjust. The limits of the state action came to be measured by the limits of the power of the ruler. But such a state of affairs could not continue for ever. The people began to feel the galling yoke and an eternal struggle ensued on behalf of the rights of

the people. In the course of this struggle the theory of natural law and natural rights was developed and greatly influenced the development of western political thought.

This movement found its philosopher in John Locke in the seventeenth century. He held that originally men lived in a state of nature endowed with certain inherent rights which could not be alienated; when they emerged out of that state and established a civil government by means of a contract, they did so only for a limited purpose—protection of life, liberty and property. Starting from this premises it was simple for him to argue that government had no claim to be absolute. The natural rights of man could not be taken by any form of government or by ‘any act of government.’ Thus the limits of state action came to be measured or determined by the natural rights of man. This theory of natural law and natural rights received universal acceptance in the eighteenth century and provided a philosophical background for the nineteenth century theory of individualism. The nineteenth century conception of individualism in some form or another has come down to our own day. It, however, needs to be pointed out that to-day our hatred to state action is not so much as it was in the eighteenth and the first half of the nineteenth century. Spencer’s attitude ‘Man versus the State’ has given place to man and the state.

## INDIVIDUALISM

The theory of individualism, otherwise known as the *laissez faire* theory has greatly influenced the political and economic life of the western world. It became prominent at the end of the eighteenth century. It can be traced to the writings of John Locke, Jeremy Bentham and the utilitarians in general. In the economic field it found a great exponent in Adam Smith. It had its origin in actual historical, political and economic conditions. It was a natural reaction against the irksome, irritable,

### Origin of Individualism.

meddlesome and even foolish interference on the part of government with the liberty of the individual. In fact it was a reaction against too much government. For example, there were petty laws prescribing the kind of food which one should eat on certain days and the kind of cloth in which one should bury his dead. There were irritating and killing restrictions on the freedom of trade. But the industrial revolution released tremendous forces as a consequence of which there was bound to be a reaction against all irritating, unnecessary or meddlesome forms of state action. The industrial revolution had wrought in the economic life of the people. Men of intelligence, industry and enterprise claimed the right to be left alone by the state so that they may utilize to the greatest advantage their powers and those which were at their disposal as a result of the industrial revolution.

Individualism arose as a natural reaction against state interference. Naturally it considers the state an evil, but a necessary evil, necessitated by the selfish and rapacious nature of man. It holds that if the state were not to have the power of control peace and order would not exist. Therefore, according to the individualist the one duty of the state is to protect the individual. The promotion of the welfare of the individual did not fall within the scope of the state. The main business of the state is to suppress fraud, violence and danger to life. The state must interfere with the life of individual only so far as it provides him protection and affects the protection of the state itself. Thus the guiding motto of the individualist may be said to be 'maximum possible individual freedom and minimum possible state action.' The individualist is opposed to interference of the part on the state where only his good interest is concerned. In fact John Stuart Mill was emphatic on this point when he declared: "Over himself, over his own body and mind the individual is sovereign". Individualism pitches man against the state. It conceives the two almost as enemies occupying the opposite camps. But there is no agreement among the advocates

of individualism as to the proper or legitimate functions of the state. Among them are to be found moderate individualists and extreme individualists who differ as to the legitimate functions of the state. According to the moderate individualists the functions of the state may be summed up as :

1. Protection of the state form external and internal danger.
2. Protection of the individual against external enemies.
3. Protection of the individual against internal enemies, that is, from other individuals against physical, mental or moral coercion or injury.
4. Protection of property against damage, destruction or robbery.
5. Protection of the individual against 'false contracts or breach of contracts.'
6. Protection of the weak, needy and the unfit.
7. Protection of the individual against epidemics which are preventable—cholera, malaria, etc.

According to Herbert Spencer, the extreme individualist, the functions of the state are :

1. Protection of the individual against external and internal enemies, and
2. The enforcement of lawful contracts.

Individualism has been supported from three different points of view—ethical, scientific and economic.

It is argued that the end of man is the harmonious development of all his faculties. For the realization of this end man requires the freest possible scope. In the absence of full freedom the individual becomes more an automaton than a human being. His personality is not developed but dwarfed. To have the freedom of moulding and directing one's life according to one's ideas and ideals is

### 1. The Ethical Argument.

what gives meaning and joy to life and makes it worth living. The individual can reach his highest development only when he is given *opportunity for self-reliance*. When the individual is left to his own resources and has to find for himself, there is provided a tremendous power of motivation for the exercise of his faculties of originality, initiative, self-reliance and enterprise. If there is any worth in him it will manifest itself.

If government exceeds a certain limit it cramps the individual, his powers do not find an outlet and from a human being he is transformed into a machine. He begins to rely more and more on government and loses the quality of relying on self. This is hindrance to individual initiative and power of self-help. The result of this over-government is that both the individual and the society are losers. It is simple to understand. The individual is tempted to become lazy and expects the government or other agencies to do for him what he should do for himself. He does not receive any stimulus for the expression and development of his talents. Therefore man's ethical development demands that government interference should be the least.

The chief exponent of this argument is Herbert Spencer. According to him the law of the struggle for existence and survival of the fittest should be applied to man also. It is argued that the operation of this law is necessary in the interest of social well being. According to its advocate the natural course of progress means that the weak, the poor, the needy and insane must go to the wall. They have no right to exist if they cannot stand the struggle of existence going on in the universe. Only the fittest have a right to survive. This may mean hardship and bring misfortune to some individuals, but the interests of humanity demand that it should be so. The reason is simple : the interests of humanity as a whole are more important than individual interests. The hardship in individual cases is the price which is to be paid to secure general social uplift and well being. If this law of survival of the fittest

were to operate only those who are fit will survive and those who are not will not. This will lead to elimination of the poor, weak and the needy and will help to bring into being a race of strong, virile and able human beings. This will necessitate the least interference and activity on the part of the state. It should only undertake 'negatively regulative' functions. When it enforces sanitary legislation, provides for public education, poor relief and social amenities it obstructs the wise way of nature and thus defeats the purpose of the individual—the highest development of his powers.

It is argued on behalf of this argument that every man is selfish and self-interested and, therefore, knows his interest better than anyone else. Therefore, if each man is allowed to seek his interest in his own way, society as a whole will be the gainer. The un-restricted operation of the law of demand and supply and free competition are necessary if society as a whole is to profit economically. Prices should be unfettered (what does the individualist think of the present day price control policy?). Increased demand means increased supply. There should be no restrictions on foreign trade. It should have freedom to adjust itself to natural conditions. Artificial aids—regulation of prices, setting up of tariffs and tariff walls, giving subsidies and bounties, and regulating conditions of labour—are all unjustified.

This teaching of the individualistic theory led to the repeal of a number of long standing laws of a mischievous character specially in England. It was responsible for the repeal (1813—14) of the long established labour regulations under the Elizabethian statute. Under its influence were abrogated the laws against the union of labourers (1824—25); it led to the repeal of the navigation code (1842) what had remained of it. The introduction of free trade and the repeal of corn laws may be considered as great victories of the teachings of individualism.

The state should protect the individual against treachery or false contracts and keep the market free and



open. Beyond this there is little which the state should do in the economic field.

In addition to these theoretical arguments which are advanced in favour of individualism, the supporters of the theory advance practical reasons, some of the more important of which are :

1. It is maintained as a result of actual experience that governmental interference as a matter of fact had produced bad results in many particular cases. It is pointed out that whatever it does it does badly, therefore, governmental activity must not be multiplied. Government management as contrasted with private management has produced more failures. Governments are making and remaking laws all the time. This means, according to Spencer's argument, that many of their laws should never have been made.

2. The administration of laws is made more often than not irksome, due either to officials who administer them or to the nature of the laws themselves.

3. It is argued that too much governmental interference or activity means in effect paternal government. But paternal government is inconsistent with the normal dignity of man.

Individualism embodies a great truth, but exaggerates it to the point of grossness. It places **Criticism.** emphasis only on one aspect of social life ignoring its other aspects. Starting as a protest and reaction against petty and meddling legislation it has gone to the other extreme. The arguments advanced in its favour are not only biased and one sided but also false.

1. We have no hesitation in conceding that individual initiative, originality and self-reliance are all desirable qualities to cultivate. The ethical argument seems to assume that the individual is always free to act. But this is not the case. What experience shows is that the external conditions which surround life are so badly organized that it becomes extremely difficult if not impossible for the individual to act freely. In fact often the question

is not whether the individual can act freely, but can he act at all. Imagine your plight if you were to be left to your own resources at the present time to get sugar, or if the government were not to control its price. The complex conditions under which we live often call for the interference of the state. Left alone, in the present day world, the individual will have a poor personality. The state cannot be driven out entirely from the life of individual. They are not enemies as Herbert Spencer seems to have conceived them in his 'State versus the Man'. Theoretically speaking the idealist position seems better in this respect. The idealist, as the individualist, also believes in the moral development of the individual, but he believes that the external conditions relating to this development or to good life should be maintained or regulated by the state to enable the individual to earn his good life. The individualist feels shy of the state, the idealist invites the state to help him to realize his end. Complex conditions of modern day life leave the individual bewildered. If he is left to himself he cannot develop his personality unless the state comes to his help. There are many factors or situations in the life of the individual at the present time which are beyond his control. It is obvious that without extensive state control or state action vast majority of people can not have any chance of developing themselves fully. Pure, and unmixed individualism will produce nonentities more than individualities.

2. The scientific argument of Spencer is open to many objections :

- (a) It is difficult to define the term 'fittest.' It is a relative term and cannot be used in an absolute sense.
- (b) Spencer's formula of 'the survival of fittest' does not and cannot mean survival of the best. His formula seems to mean one thing, 'that which survives deserves to survive. This is quite absurd : For, if the only test of fitness to survive is to be found in the fact of sur-

vival, then a rich thief must be an object of admiration and an honest but poor worker an object of condemnation. If the law of the survival of the fittest were to apply to human beings, the world will cease to be a fit place to live in for a normal person.

- (c) What is applicable to lower animals can not and should not be applied to man. Man is the noblest of nature's creations. The lower animals helplessly adopt and subordinate themselves to the forces of nature. On the other hand, man, due to his superior intelligence, endeavours to harness nature for the satisfaction of his needs and to make his life more comfortable. Therefore one may logically say that "instead of allowing nature blindly to fit a few to survive, man by using his higher intelligence, should fit as many as possible to survive." Man is not an animal. He differs from animals; he has intelligence, conscience and highly developed feelings of sympathy. Because of these qualities and faculties he is led not to be harsh and cruel on those who are unsuccessful in life.

3. The assumption of individualism that every man knows his interest best is wrong. In a large number of cases, it can be shown, that everyman does not know his interest best. The individual may know his *present* interests, but there is no guarantee that he knows his *future* interests as well. Even if it is conceded that the individual is the best judge of his interests, it can not be said that he knows best the means to such interests. All over the world there are a large number of ignorant people who are unable to take any precaution against dangers of which they know nothing. It can be said without much fear of contradiction that sometimes the state is a better judge of the intellectual, moral and physical needs of the individual. For example, the state certainly knows better in matters of sanitation, epidemics, water-supply, etc.

Often the individual has to be protected against himself and it is the state alone which can do this. This was admitted even by Mill when he said that society should protect a man when he contracts himself into slavery or when he tries to cross an un-safe bridge.

4. In the economic argument the individualist points out that everyman is self-seeking. This is not absolutely true. The individual is not absolutely devoid of genuine elements of altruism. The individualist is mistaken in assuming that every individual seeks his own pleasure. Even if it is granted that man is self-seeking, we cannot grant that he always knows his interests best. The average man may be a good judge of the present interests, but he is not always the best judge of his future interests. In such cases the state because of its wider experience may very well be a better judge.

5. There is no automatic adjustment between demand and supply. Those who believe that there is automatic adjustment between demand and supply close their eyes to the conditions of life. It is not true to the facts of life. If it were there would not be a demand for un-economic goods and even vicious things. Things of real value may not have much economic demand.

6. The labour and capital do not have the same bargaining capacity. The employer is better placed in regard to the bargaining capacity—more often than not what the employee gets is not in proportion to what he deserves, it is simply what he can get.

7. Individualism may be a sound theory, if everybody were to compete in a free and open market but the facts are that the market is neither free nor open. There is much waste and duplication and a killing competition is the order of the day in the economic field.

In conclusion we may say that the individualism contains an important truth; but it exaggerates the evils of state control forgetting that it may result, more often than not, in good than in harm. Its basis is un-sound. It regards the in-

dividual as essentially self-centred or egoist. Government and state are regarded as 'un-natural' and 'artificial' because they stand in the way of self-assertion and self-interest. But this is not a sound view. Man is social through and through. Man is born in society and depends upon it for the development of his personality. The state is not opposed to the individual, it is a part of his development. It is necessitated by his nature. 'It is the world the spirit has made for itself.'

#### QUESTIONS AND TOPICS.

1. Critically examine the doctrine of Individualism.
2. What is the proper sphere of state action according to individualism?

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## CHAPTER 18

### PROPER SPHERE OF STATE ACTIVITY, (continued)

#### **Socialism.**

Socialism is the greatest question of our time. All—  
**Introductory.** its opponents and supporters—are agreed that its rapid advance and tremendous influence are the most impressive and noteworthy features of the modern world politics. In fact it may be said to be the keyword of our time. Within the life of a single generation it has attracted millions of earnest men and women, young and old. It has made out its case well, so well indeed, that in most countries of the world its capture of governmental power is a great issue in political struggle. It has almost become a religion to many and the devotion which it has roused in its supporters is worthy of the apostles. The hold which it has acquired on the minds of the people, the hopes and the ambitions which it has roused and excited among the proletariat, the faith and the zeal, one may say fanaticism, which it arouses in its devotees, give socialism and its study an importance unique in the history of social, economic and political doctrines.

The treatment of socialism is full of many difficulties. It is difficult if not impossible to give a full and comprehensive treatment to all aspects of socialism in the limited space of such a volume. This difficulty is due to various factors :

Firstly, socialism is not purely a body of doctrine, nor it is purely a political movement, it is both. Although our main concern here is with the treatment of socialism as a body of doctrine it is not possible to ignore or

exclude references to the nature of variety of organizations which profess it.

Secondly, the socialist doctrine is at once a political as well as an economic doctrine. These are so intercoiled that when dealing with the one it is not possible to ignore or exclude the other entirely.

Thirdly, socialists are hopelessly divided among themselves. They are not agreed as to their aims, objects and methods. In certain cases these different schools of thought are well defined and are known definitely to their supporters. They are not simple socialists, but communists, syndicalists or guild socialists.

Fourthly, socialism has been described in such contradictory and varying terms by its advocates and supporters that more than any other creed it proves to be a different creed in the hands of its exponents.' It differs with the temperaments of its supporters and the nature of abuses which have prompted its advocacy in different countries and climes. The number of its advocates has been and is so large, many of them have been and are first rate political pamphleteers and its literature so enormous that it is extremely difficult to say definitely in what exactly socialism consists.

In brief in the light of the above we may liken it to a topee which has lost its shape because it is worn by everybody.

The word 'socialism' was invented in the nineteenth century, therefore the term is a modern one. In its fundamental sense it denotes the 'cult of community as against the 'cult of the individual'. The distinction of invention has been a matter of dispute between the French and the English. This controversy was finally decided in favour of the British when one hundred and fifteen years ago Max Beer while searching the vaults of the British Museum for materials for his History of British Socialism encountered the word 'socialist' in the Co-operative Magazine for November 1827.

But it must be pointed out in connection with this controversy that the term which became current in France was the abstract term 'socialism' and not the concrete term 'socialist' which was used in England. These two terms differed from each other in form as well as in connotation. The term 'socialism' was employed by the French as opposed to individualism; the term socialist was used by the English as the opposite of 'capitalist'. Thus in France 'socialism' was a sociological expression while in England 'socialist' was an economic expression; the one signified the exaltation of the community over the individual, the other collective ownership of land and capital as opposed to private ownership. Thus it is clear that the terms 'socialism' and 'socialist' are two different terms which are distinct in their origin as well. But before long they became intertwined and created complexities. 'Socialism became familiar in England; socialists were discovered in France'. The confusion created by this indiscriminate use of terms was further aggravated when one or both of these terms began 'to accumulate secondary meanings' and were associated with such irrelevant causes as atheism, republicanism, and free love.<sup>1</sup> Socialism was shorn off of any definable significance by Hen Bebel—the leader of the German social-democrats—when he declared that: 'It is in reality an entire world philosophy: in religion it means atheism, in the state a democratic republic; in industry a popular collectivism; in ethics a measureless optimism; in metaphysics a naturalistic materialism; in the home an almost entire loosening of family ties and of the marriage bond'.<sup>2</sup> It must be clear from the above that any one term which has so many meanings or which means so much really means nothing. In this connection William de Morgan, in his well-known novel 'Somehow Good,' remarks in despair: "Really nowadays such a lot of things get called socialism that the word has lost all that discriminative force one values so much in nouns substantive".

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1, Hearnshaw, F. J. C., *A Survey of Socialism* (1928), p. 23.

2, Quoted by Hearnshaw in *A Survey of Socialism* (1928), p. 23.



Any impartial student who attempts an examination of the term socialism is struck by the elusive and vague character of the term. For example Professor J. S. Mackenzie in his 'Introduction to Social Philosophy' says: "Socialism is a loose term at the best." Mr. Guyot, quoted by Hearnshaw, points out that "as soon as you attempt a discussion with socialists, they tell you that the socialism which you are criticising is not the true one." It is described by Ellis Barker as "most elusive and bewildering in its doctrines, its aims and purposes". To Dr. Shadwell "socialism is the most complicated, many sided, and confused question that ever plagued the minds of men."<sup>1</sup>

Socialism is not an enigma only to those who are opposed to it but also to those who are its supporters and who believe in it. For example Alban Gordon in his 'The Common sense of Socialism'—issued by the Labour Publication Company—points out: "I can not define socialism for you in some short snappy phrase, and what is more neither can any other socialist. Even if I could other socialists would probably repudiate my definition as heartily as I should theirs."<sup>2</sup> According to Edmund Kelly, "Socialism is too vast a subject to be brought within the forecorners of any one definition". Lord Thompson—a member of the late Mr. Ramsay Macdonald's 1924 ministry—tells us: "I have many friends who call themselves socialists, and no two of them give me the same explanation of what socialism is." Finally it is pointed out by Tugan Baranowsky who is one of the most authoritative and ablest exponents of revised Marxism that 'socialism as a doctrine is as yet very far from the ideal of an accomplished scientific system.'

It is difficult to understand what socialism is from the study of current literature on the subject which is almost staggering. Many statements that are made and many interpretations

**Definitions of Socialism :**

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1. Shadwell, A . The Socialist Movement (1925), p. IX,
  2. Op. cit. p. 26,
  3. Op. cit. p. 26.

tations that are given about it are either prejudiced or partial. The saying that definitions seldom define applies more appropriately to socialism than to any other term. In the columns of *Le Figaro* in 1892 six hundred different definitions of socialism, bewildering in their interpretation and variety were published ; during this interval of half a century, at a modest estimate, as many more must have been added. With the establishment of a socialist government in England in 1924, Dan Griffiths brought out a book called 'What is Socialism.' This whole volume is entirely devoted to the definitions of socialism and includes two hundred and sixty three definitions of socialism.

According to J. W. Bowen, " Socialism is light in the darkness of a depressed world." To Walter Hampson, " Socialism is sunlight opposed to darkness." For R. Neft ' Socialism is man's mind developed.' R. W. Sorensen considers socialism as ' the navigation of social currents by the liberated soul of man,' while R. J. Wilson calls it " Spirit in Action." The above definitions are from a comparatively obscure persons and need not be considered seriously. Let us now see how socialism has been defined or described by some of the more important persons. According to late Mr. Ramsay Macdonald, ' no better definition of socialism can be given in general terms than that it aims at the organisation of the material economic forces of society and their control by the human forces.'

It may be pointed out that this definition does not tell us what socialism is, it only says what it aims at. Considered as a whole this definition of socialism does not enable one to understand clearly what it is.

The great Belgian Leader Enile Vanderville gives a better and more sensible definition of socialism when he says : " Socialism means the organization of workers for the conquest of political power for the purpose of transforming capitalist property into social property." Mr. Bertrand Russell says : " I think we come nearest to the essence of socialism by defining it as the advocacy of com-

munal ownership of land and capital.”<sup>1</sup> Dr. Schaffle quoted by Hearnshaw holds that ‘the alpha and omega of socialism is the transformation of private and competing capitals into a united collective capital.’

From the multiplicity of definitions of socialism one gathers that it is a religion, a faith, an attitude, a science, a philosophy, a spirit, a belief, an aspiration, a way of life, a tendency, a movement, a name, a body of doctrines, a theory, a system, a form of society, a demand, an endeavour, an ideal, a conception, an awakening, an atmosphere, and a programme<sup>2</sup>. Many of the definitions of socialism are good, bad and indifferent. It is difficult to define because of its many sidedness. It ranges from schemes of profit sharing between the employee and the employer or between capital and labour to state paternalism. It is compared by its opponents to a hydra who say that while you are busy in cutting off one head another crops up in its place.

For ourselves we believe that socialism is a vision and people perish where there is no vision ; it is not visionary. It is a philosophy and an ideal. It is a way of life. Therefore it is difficult to give an academic definition of socialism. It is not possible to work out in advance a detailed cut and dried socialist programme. It is not a dead formula or a dead force nor is it a rigid system incapable of adaptation to changing circumstances and conditions. It is a living movement which is full of great possibilities as its aim is the good of all and not the benefit of the few. It is a stage in the long struggle for political liberty and may be called next step in democracy, for the freedom which we at present enjoy in democratic states untouched and un-influenced by socialism is the easy and simple freedom to starve and suffer.

A brief but a good definition of socialism is given by J. W. Hughan, who says that “socialism is the political

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1, Russell, B., *Roads to Freedom* (1919) p, 23,

2, Hearnshaw, *op. cit* p, 23,

movement of the working class which aims to abolish exploitation by means of the collective ownership and democratic management of the basic instruments of production and distribution." Another good definition is by Sellars to whom socialism is "a democratic movement whose purpose is the securing of an economic organization of society which will give the maximum possible at any one time of justice and liberty."

The enemies of socialism have confused and identified it with all manner of isms and doctrines. It has been identified with materialism, republicanism, atheism and free-love. None of these is of the essence of socialism. It has also been identified with anarchism, collectivism, syndicalism and communism. But it may be pointed out that socialism is neither of these.

Socialism believes in change by legal means, whereas anarchism believes in change through illegal means. Socialism believes that the state is a positive good, anarchism is individualism run mad; it believes that the state is an un-mixed evil; socialism is realistic or evolutionary, anarchism, philosophical anarchism excluded, "revolutionary and sentimentalistic." Again collectivism is *not* socialism. No doubt it displays some of the features of socialism. It exalts society above the individual and extends the sphere of the state. But these elements by themselves do not tend to eliminate capitalism, kill private enterprise or abolish competition, three things which genuine socialism implies. Bernard Shaw identifies collectivism and communism with socialism. According to him "communism is the same as socialism, but better English."<sup>1</sup> If they were one and the same thing why the English Labour Party which calls itself a socialist party refuses to admit communists in its ranks. Socialism admits private property in certain forms (it permits consumption goods to individual ownership), communism abolishes private property entirely.

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1. Quoted by Hearnshaw,

T. Davidson brings out clearly the difference between the two. He says "Socialism and Communism are very generally confounded, but they are quite distinct economic systems. Socialism seeks only to control the instruments of production, land and capital; whereas communism leaves nothing to the individual which he can call his own." Thus we may say that socialism is much more than collectivism, but much less than communism.

Moderate forms of socialism stand for a 'progressive nationalization of the means of production with a view to a progressive equalization of incomes.' It places human welfare above private profit. Its motto is that production is neither for personal profit, nor for power, nor for ostentation, but for use. It aims at the abolition of unequal opportunities for self-development. According to Sellars socialism aims to achieve the following:

**What does socialism aim at?**

1. It aims to reduce the economic disorder which is the hall-mark of the present economic system. Some of the evils which are found in the present day order socialism seeks to remove by substituting group in place of individual ownership and control. It refuses to tolerate the subordination of the production of the necessities of life to that of luxuries.

2. It aims to substitute motive of social service for the incentive of private profit.

3. Its aim is to lessen waste. Under the present economic system there is tremendous waste of goods as well as of time. According to socialism money spent on advertisement is a criminal waste, because it leads to competition and not to cooperation. It points out that business is unbusinesslike. Not only goods, time but human energy and resources are also wasted. Capitalism necessitates a staggering army of middlemen. This useless class, with proper co-ordination, could be put to more productive purposes.

4. It wants to remove anti-social forms of competition. Socialism places competition on a higher level than what it is at present.

5. In the existing social order there is undesirable poverty. The individual is a victim of circumstances which are not his creations and over which he has no control. In the struggle for existence between two persons of equal ability, equal efficiency or readiness to work, the absence or presence of capital makes much difference. The law of demand and supply does not operate freely.

6. By means of education and increasing opportunities for selection of work socialism hopes to tap new energies for social good.

7. It seeks to make labour saving devices really saving of labour.

8. It seeks to provide a fair degree of leisure for all. It needs to be pointed out that in the present social and economic order most people when inherit wealth tend to become both economic and social parasites.

In brief, socialism would eventually mean the elimination of capitalism and landlordism. It aims to create a society which is healthy mentally and physically.

It has been pointed out that socialism covers a very wide range of standpoints in reference to social reconstruction. All these standpoints are agreed on one point which is that 'the economic instruments of human well-being should be adequately distributed,' so that decent means of livelihood may be afforded to all members of the society. But they differ as to the extent of social control and the methods for achieving the desired end. Some of the more important schools of thought in socialism are :—

It is mainly economic in its character. It believes that production and equitable distribution is possible only through state ownership and management of key industries.

It is an English type of socialism. It is evolutionary in character. It differs from Marxian Socialism as it rejects the three essential features of marxian socialism—theory of class war, theory of revolution and the

### Kinds of Socialism.

#### 1. State Socialism.

#### 2. Fabian Socialism or Fabianism.

theory of the dictatorship of the proletariat. It accepts the ordinary socialist doctrine and believes in attaining its end through persuasion and propaganda. People must be first convinced that socialist type of society is best. For this purpose the Fabian Society was founded in England in 1883. The Fabian essays were first published in 1890. The Fabians abstain from political work and concentrate on literary propaganda. Many of the several well-known play-wrights of England belong to this movement. The Fabian pamphlets have been most influential. Their influence on legislation and administration has been considerable in England, particularly in London. The British Labour party is Fabian in outlook and attitude. Some of the more important Fabians—past and present, are Sidney and Beatrice webb, Graham wallas, Sidney Oliver, G. B. Shaw, Annie Besant, H. G. Wells and E. R. Pease.

It believes that the doctrine of christianity requires collective ownership. It was started in the middle of the last century (1049—53) by F. D. Maurice. The poets Wordsworth Coleridge, and Southey were sympathetic towards communism. Carlyle in denouncing the 'cash vexus' provided inspiration to the founders of christian socialism. The first christian socialists—Ludlow, Maurice and Charles Kingslay—were broad churchmen. The movement was afterwards taken up by high churchmen under the leadership of Bishop Gore.

The chief aim of Maurice was to encourage co-operative production and workingmen's association to improve the conditions of workingmen. It regarded competition among that class the origin of most of the evils.

Its chief exponent is G. D. H. Cole. It is advocated by Russell and Hobson also. It believes that in each major industry control should be in the hands of the workers councils or guides. In this workers include skilled as managers and technicians as well as hand workers. This means that each industry would be a

corporation or a guild. It points out that collectivism means a vast governmental organisation which will result in bureaucratic tyranny. National guilds will control all industries. The state is not to be abolished; it will continue in some sort of equal partnership with the guilds. Its main function will be co-ordination in regard to industrial production and distribution.<sup>1</sup>

It believes that any kind of political action must be based on force and hence is evil in its consequence. It believes in the total abolition of the state. It would have the workers in each industry to carry on the work voluntarily. It may be said to be an impossible and impracticable type of socialism.

**5. Anarchistic Socialism.** Karl Marx's 'Das Kapital' is generally considered to be the bible of socialism. It is essentially economic in character. The state is regarded as a means to achieve its goal. Before the new economic conditions old system is tottering. Society is moving towards collective ownership.

**6. Marxian Socialism.** It adopts a materialistic interpretation of history. Hitherto workers have been exploited by the rich. Labour is the only measure of value. The Labourer only gets a subsistence wage while the capitalist takes all the surplus. It preaches class war.

Socialistic theory was born as a result of certain mal-adjustments in the economic and political order. The socialist theory has been constantly changing from time to time to adapt itself to changing political, economic, and social conditions. It has never remained static for long. Marxian philosophy can not be ignored by any intelligent person. A detailed account of the socialist philosophy (particularly Marxian) may be said to rest on certain propositions.

These propositions may be summed up as follows :

1. The Materialistic Interpretation of History,
2. The Theory of Value.

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1, Guild socialism is discussed at length in a separate section.



3. The Theory of Surplus Value.
4. The Theory of Class War.
5. Conception of the state as an Instrument of Power.

It is in the materialistic conception of history that Karl Marx may be said to have been original. But it may also be pointed out that many writers—Aristotle, Epicurus, Harrington (1656) Dalrymple (England), Mizer (Germany) Garnier (France), all eighteenth century writers; Saint-Simon, Hegel, Feuerbach—before Marx had recognised the influence and importance of economic factors on the course of world history. Marx starts by asking a question: how society came to be so organised as to enable a small privileged class to appropriate persistently the surplus value created by labour with the help and under the protection of law? His answer to this question is the materialistic conception of history. Writers before Marx (not all) had explained great historical events as due to personal ambition, political aggression or court intrigues, but Marx pointed out that economic considerations and motives which lie at the root of political tendencies not only influence but determine them. Thus according to him history in the long run is influenced and determined by the interaction of economic factors, and the method of production in material existence determines social, political and spiritual evolution in general. Thus “it is not the consciousness of mankind that determines its existence, but, on the contrary, its social existence that determines its consciousness”. Marx goes on to explain that the economic changes brought by the Industrial Revolution at the beginning of the nineteenth century had brought into existence two forces—a small privileged class owning means of production and a large propertyless class (proletariat). Of course there had been employers and employees before the Industrial Revolution as well; there had been even small capitalists, but the characteristic features of the modern society are:

### 1. The Materialistic Interpretation of History.

(1) The *dominance* of the capitalists *as a class*; (2) The organization of the state *in a manner* which gives expression to this dominance; and (3) The conflict between the capitalists and the proletariat. The eternal differences in the interests of the two classes lead to the death struggle between them which is called 'the class war'. Marx goes on to explain at length that just as feudalism gave birth to conditions which facilitated the rise of the bourgeoisie, and which ultimately, through the development of industry and commerce sounded the death-knell of feudalism, in the same manner capitalism, 'by reason of its creation of class-conscious proletariat, is forging the instrument of its own destruction'. Each social system has two aspects. Looked at from outside it brings into being its opposite; looked at from inside this tendency seems to embody 'synthesis of opposites'. Therefore each social system contains within itself its opposite, and it is conflict between it and the opposite which leads to its destruction and suppression by another social system.

It follows from the above that Marx's philosophical back-ground is not only *materialistic* but *dialectical* as well, According to his dialectical theory movements—social, political, economic etc—result from the conflict of opposites, and that which comes out as the result of this conflict 'comprises within itself and transcends both opposites whose conflict has produced it.' According to his materialism—as has been noticed—the ultimate motive power behind the dialectical process is 'not mental but a physical event.' What determines the course of history is not the ideas and wills of men, but requirements of climate, scientific discoveries, technical improvements and the nature of raw materials. To Marx creating or inventing activity is not a spontaneous mental activity, but is the function or by-product of environmental circumstances.<sup>1</sup>

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1, Joad. C. E. M. Guide to the philosophy of Morals and Politics. p. 667.

We are informed that all past history, except in its primitive stages—has been the history of class struggle, that society is dynamic not static. It is in a process of constant change and evolution. The future development of capitalism 'will take the form of the concentration of capital into fewer and fewer hands and the progressive elimination of the small capitalist on the one hand, and the ever closer and the more elaborate organization of the proletariat will arise with all its strength and overthrow capitalist class confiscating the means of production.' According to the theory political events are determined by economic changes and the victory of the proletariat will bring changes in the social structure and will lead to the abolition of class divisions.

Marx's theory of the development of history is called 'dialectical materialism'. It is so called because it is believed by Marx and his followers that the course of history or social development is *solely* and *ultimately* determined by conflicting economic forces. This 'dialectical materialism' is not the same as 'mechanistic materialism', because Marx did not believe that the spirit of man is merely the pawn of the mechanical forces in the universe. (It is admitted by him that man can accelerate or change the direction of economic movements; he finally believes that the character of life—political, social and intellectual—is really determined by the economic system.) It is as it should be. For it would have been the height of inconsistency in Marx if he had admitted that whatever happens in society is simply the result of mechanistic or blind movements and at the same time had propounded and developed a philosophy making a clarion call to the workers of the world to unite and to bring into being a classless society by their sacrifices and mutual efforts.

'Dialectical materialism' is not to be confused with 'mataphysical materialism'. According to the former the laws of history and actions of men are 'hyperphysical, while to the latter man in history does not possess any *autonomy*; he and all what he does are merely by-products of irrational, inanimate and blind movements of 'mass-particles'.

Much has been said against Marx's dialectical materialism and his historical interpretation of history. As a philosophical doctrine it is incapable of universal application. It is simple to understand as pointed out by Laski that "the insistence upon an economic back ground as the whole explanation is radically false". He points out that Balkan nationalism can not be explained in the light of economic background solely<sup>1</sup>.

It is true that to-day society is composed of two mutually opposed classes—the haves and the haves-not ; their interests are not common. But the gulf between these two classes is great ; the life of the working class is being spent in misery, sacrifice and suffering. The remedy suggested is that of a revolution involving a complete transformation of the present social structure. But it must not be forgotten that society is an organism—a living structure embodying growth and decay. These are slow processes ; human energy, effort, and intelligence may help and accelerate them, it can not cause their sudden stoppage or reverse them or abruptly speed them. (The avenue of progress lies in a series of well-planned reforms designed to help society in its gradual march towards a rational and not an abrupt transformation in its social structure. Society can not be transformed overnight in all the aspects of its complex life. You have yet to find a magic wand which could do it. Taken as an evolutionary philosophy 'dialectical materialism' has much to recommend it. Taken as a revolutionary philosophy explaining social cause and effect it has much to condemn itself.)

In conclusion we may say that in addition to the economic interpretation of history, there are other interpretations of history as well. It has an ethical, a political, a linguistic, a religious, a scientific, a jural and an æsthetic interpretation.) It is neither possible nor reasonable to bring the entire range—a wide range at that—of man's motives and interests under a single signboard—economic.

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1. Laski, H J., Karl Marx (1922), p, 33,

Marx's conception of history can not explain religious fanaticism or aspiration, racial prejudices, mischief and play instinct, sex-desire and sex attraction, hunger for power, name and fame. In what way these factors are less real and primary than economic environment. Marx's materialistic conception of history can not explain Budha or Luther, Christ or Mohammed, Vivekananda or Tolstoi. History has tended more towards Christ than towards Cæsar. Human affairs are influenced dominantly but not *exclusively* by economic forces.

Human race has been divided by Marx in his *Communist Manifesto* and other works into two classes—the bourgeois and the proletariat, the exploiters and the exploited, the oppressors and the oppressed, the haves and the have nots. But who is bourgeois and who is proletarian is difficult to say. In the bourgeoisie are included all professional men—teachers, lawyers, doctors, etc.,—all shopkeepers, big and small, all the independent artisans and all the peasant farmers. This leaves out one class—wage earners in large industrial areas. But according to Marxism if any of these wage earners is opposed to Marxism he loses his claim of being a proletarian and becomes what Marxians call petit bourgeois (petty bourgeois). According to this classification it is extremely difficult to say who is a proletarian and who is not. Marx himself would not come under any definition of proletarian. In fact the International Working Men's Association did its best to expel him from this class. Be that as it may, it would not be much incorrect to say that 'proletarian' to-day means more or less 'a disciple of Karl Marx'.

According to the Marxian theory of value, "The value of each commodity is determined by the quantity of labour expended on and materialised in it, by the working time necessary, under given social conditions, for its production" Different followers of Marx have expressed the idea differently—Karl Kautsky holds that: "A commodity possesses value only because homogeneous or

general human labour is embodied in it.”<sup>1</sup> In the opinion of Spargo “The value of commodities is determined by the amount of social labour necessary, on the average, for their production”<sup>2</sup>.

We may state the theory in simple words that all real economic value is created by human labour alone. Thus the outstanding points of the theory are :

1. Value is a quality which is inherent in a thing or commodity.
2. This value is entirely due to labour.
3. All factors other than labour for determining value are un-important or unessential.

This is a revolutionary theory with far reaching consequences, but at present we are not concerned with its consequences. The question at present is : How much truth there is in the assertion that labour is the *sole* determinant of value.

There are two propositions involved in the Marxian theory of value :

Firstly, It is maintained that the cost of production is the only determinant of value.

Secondly, it is maintained that the only active essential element in production is labour, as a consequence of which the wage of labour is the only ‘justifiable element in determining cost of production’.

It needs to be pointed out that the first proposition—cost of production is the only determinant of value—does not take into account the most essential factor which is an important determinant of value, viz ; demand. The absurdity of the second proposition is so evident that it does not merit any treatment. It is the limit of absurdity to ignore factors of production other than labour. We may point out that value is a ‘psychological phenomenon’; it is not to be found in the commodity but in the desire of

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1, Kautshy, Karl ; Economic Doctrine of Karl Marx (1925) p. 14.

2. Spargo, J., Kael Marx (1911) p. 341

the mind. To-day the theory of value is completely swept out of the field of economics. According to Dr. Niles Carpenter, "The labour (Marxian) theory of value has long since been cast into the lumber-room of economic theory, along with the canonist doctrines of interest, the wage fund theory, and other venerable fallacies."<sup>1</sup> We may conclude with Professor Simckhovitch who in his *Marxism versus Socialism* (1913) says: "There are few theories that have been so carefully examined, so thoroughly sifted, and so completely condemned upon their own documentary evidence as Marx's theory of value". According to Professor Cole the Marxian labour theory of value is "to a great extent a polemic which continues to thrive as a result of the persistent misunderstanding of it by Marx's own disciples"<sup>2</sup>. In conclusion we may say that the labour theory of value has failed to stand the test of criticism; is not in harmony with the facts and is not at all self consistent.

The theory of surplus value flows from the Marxian theory of value. In Marxian language **Theory of surplus value.** 'surplus value' is the difference between the value of what the labourer produces and the value of the wages which he receives. We may explain the theory by an example: Suppose the labourer (worker) receives Rs. 5 per week for forty-eight hours' labour, and the commodities he makes realise Rs. 15 in the market. This difference of Rs. 10 between the value of the produce and the value of the workers' labour power is the surplus value, which the obliging capitalist quietly pockets as if he had a right to do so. But from where this surplus of Rs. 10 has come? All the value represented by Rs. 15 was created by the labourer, but under the iron law of wages the labourer is compelled to give the 'hours of surplus value' to the exploiting capitalist. This surplus value which is appropriated by the capitalist comprises 'rent, interest and profit.' It is argued on behalf of the theory that only

1. Carpenter, N., *Guild Socialism* (1922) pp. 237-38.

2. Quoted by Hearnshaw, *Op. cit.* p. 261.

one-third of the total value goes to the labourer while two-thirds is confiscated by the capitalist; since labour creates the whole value all charges in excess of Rs. 5 received by the capitalist are 'robberies'. This in effect is the Marxian theory of surplus value.

It is not possible to agree to the fundamental factor in the theory of surplus value because **Criticism.** it is *not* true that labour however it may be interpreted and defined alone creates value or wealth. It must use instruments, such as machinery, steam power, electric energy, etc., without instruments it cannot work. Most valuable and useful wealth is the free gift of nature, e.g., coal and other minerals. In the creation of wealth or value both capital and labour are required and both play an equally important part in the process. In modern industry it cannot be said that 'proletarian labour' or 'manual labour' are the most important element. In modern times such labour is being substituted by machinery which is the result of the intelligence and enterprise of a few inventors and not of the 'embodied toil of many proletarian labourers.' Even Engels, the collaborator of Marx confessed this after the death of his colleague when he said: "The perfecting of machinery is making human labour superfluous."<sup>1</sup> Today skill, industry, enterprise, knowledge, organizational capacity of the captains of industry are more essential in the creation of wealth than the unshepherded herd of proletarian labour.

In conclusion we may say that the Marxian theory of surplus value is false. It does not and cannot stand the test of economists. In actual life wages represent nearly three-fourths of the cost of production of most commodities. The so-called capitalist has many charges other than the payment of labour to meet and defray out of this so called surplus, e.g., taxes, depreciation charges, improvements, facilities for labour, social charities. etc. It is a monstrosity to say that labour alone creates wealth or value. We may agree with Bertrand Russell when he

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1. Engels, F., *Socialism, Utopian and Scientific* (1920, 5th edition) p, 60.



says that it is rather to be viewed as a translation into abstract terms of the hatred with which Marx regarded the present system than as a contribution to pure theory<sup>1</sup>. It may be pointed out that a critical examination of the surplus doctrine requires a much difficult and abstract discussion of pure economic theory, without "having much bearing upon the practical truth or falsehood of socialism".

The Marxian theory of class war is a corollary to Marxian conception of history. It follows also from the theory of surplus value, because under such a system of production there is no other alternative except an incessant class war between the capitalists as a class and the proletarians; between the haves and the have-nots. In the modern society the middle class (the bourgeoisie) has come to occupy the chief role. Modern economic society consists mainly of two elements, the haves (the minority) and the have-nots (the majority). The theory of class war is the central theme of the Communist Manifesto in the first section of which it is explained that: "The history of all hitherto existing society is the history of class struggles. Freeman and slave, patrician and plebian, baron and serf, guildmaster and journeyman, in one word, oppressor and oppressed, standing constantly in opposition to each other, carried on an un-interrupted warfare, now open, now concealed". Thus the theory of class war is made the 'master-key' to explain universal history.

There are two observations which need to be made with regard to the Marxian theory of class war. Firstly, it is bad and harmful; secondly, it is false.

**Criticism.** It is bad and harmful because it teaches a hymn of hatred to the individual. Instead of teaching sympathy with the poor it teaches him jealousy of the rich. Its genesis is not sound as is explained by the late Mr. Ramsay Macdonald: "The class war found its way into the

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1. Russell, B. Roads to Freedom (Feb. 1933) p. 38,

general body of socialist dogma quite simply. Marx saw that no proletarian movement could be created in Europe without some passion. The wage earners had to feel the enemy. They had to be marshalled as a class.....The idea of the class war no longer represents the motive forces organizing socialism and forming the socialist movement.”<sup>1</sup>

We do not agree with the late Mr. Macdonald when he says that “the idea of the class war no longer represents the motive forces organizing socialism and forming the socialist movement.” It must be clear to any one that the theory of class war still constitutes not only the active, but also operative principle of revolutionary socialism and communism. How harmful it can be to humanity may be inferred from experience in Russia where there was a wholesale massacre of the middle class and the total appropriation of their property. It has led to general strikes, social disturbances and crimes which will remain distinguishing features of the twentieth century in human history. It is a wrong theory. It is a battle cry which is at once ‘causeless and abominable’. Class war, economic or social, must prove suicidal as it did in the case of Ancient Greece and Imperial Rome.

The theory is false as the theory of the Marxian conception of history is false. The Marxian conception of history can not give a rational explanation for the evolution of human society ; and as we have noticed the economic causes alone can not explain great social, intellectual, aesthetic or religious movements in the world. In the same way the theory of class war falls to the ground when it attempts to interpret and explain the actual course of human history. No period of history can be definitely pointed out in which one could observe a sharp, definite and a clear division or separation between the middle class and the proletariat. In all periods of history they have freely intermingled and even intermarried. The course of the history of the classes has been

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1, Macdonald, J. R., *The Socialist Movement* ; p, 150,

more synthetic than analytic. Moreover each main class is subdivided into numerous groups and the difference between these innumerable groups is so marked and sharp that it is impossible to combine together as one class for purposes of Marxian class war. In short the theory of class war is false.

It is agreed that the state, under the present capitalistic system is an instrument of power to keep the workers under the heels of the capitalistic class. Its army, police, judiciary or even the legislature is used to perpetuate private ownership and the use of land, plants and credit by a handful of capitalists. Since the state is an instrument of power in the hands of the capitalist the labourer is at a disadvantage. His bargaining capacity is not equal to that of the capitalist. Police power is used to break labour unions ; judicial power is used to punish strikers; money is used to corrupt labour and infuse spirit of disunity among the labour. Thus political power is the instrument by which the capitalist class maintains its economic power by which they can purchase legislation and influence the administration and judiciary.

Under such conditions the only means by which the workers can raise their standard of living is by capturing political power, that is the state and then use it to get control over land, banking system and factories.

Thus the first step in the socialist structure is to capture the state and raise the proletariat to the position of ruling class for purposes of establishing democracy. Then the proletariat will use this newly acquired political power to transfer all capital from the bourgeoisie in order to centralise all means of production in the state, which in effect will be the proletariat, because it has captured political power. In its development the working class will replace the present bourgeoisie ridden society by a class less society. For this change Marx advocated revolution.

**The State as an instrument of power.**

**The Theory of Social Revolution.**

The modern state presumably exists to promote common good. The idealist tells us that **Criticism.** 'will not force is the basis of the state'. But actually the effective will in the state is not the common will, but the balance of wills between conflicting interests. The active organised interests influence as well as control the state and its power. These organised groups know for certain what they want and know for certain the means by which to get what they want.

But can a violent revolution remedy this defect and successfully establish 'a cooperative commonwealth' instead of a compelling class organisation within a democratic state is a problematical question. A better alternative will be conversion by persuasion, discussion and debates and to effect this change through representative assemblies in which conflicting groups should come to realise that concession, compromise and co-operation are more helpful in the creation of a better social order than competition, hatred and dogmatism.

Again neither Marx nor his adherents have satisfactorily made it clear how a classless society would emerge from the most violent class conflict. What proof or guarantee there is that the working class will have this generosity of mind, wisdom of action or sufficient insight to recognise that qualitative differences of capacity and intelligence exist in the members of society. In all societies there are lesser fools as well as bigger ones, there are stupid as well as intelligent members. The danger is that the proletariat will be vindictive because the revolutionary socialist advocates draws its energy and inspiration from hatred. The proletariat after the revolution can not succeed to create a classless society, but it may succeed by the use of power at its disposal to be juggernaut.

There are a number of problems to which socialist doctrine gives rise. Many of these questions are extremely controversial and much can be said for and against these controversial matters. We can consider only

**Problems of Socialist Theory.**

some of them here. According to Joad the most important of these problems are three :

1. Incentive to work under socialism ;
2. The problem of functional democracy ; and
3. The merits of different methods for creating a socialist society advocated both by the revolutionary and evolutionary socialists.

The question whether men could be induced to work except for their own monetary profit is at the basis of all forms of socialism. If socialism is not to prove a failure it must justify in practice the assumption which socialists make with regard to this question.

The anti-socialist position is simple. It is said that men dislike work. They work or will work only for themselves and for momentary considerations. An average man is not at all moved by considerations of social service ; the idea leaves him cold. It follows from the above that the only sufficient driving motive for men to work is competition and private profit.

The anti-socialist position is doubtful. The arguments advanced do not seem to be conclusive for the following reasons :

1. The assumption seems to be that it is mutual for men to dislike work. It is true that men have an unreasonable prejudice against work at present. The reason for this dislike is not that it is natural for men to dislike work, but that they often suffer from not only dull work but from over work also. Two-thirds of the working lives of the majority of men are spent in obtaining the 'means to make life' and one-third in enjoying what remains of it. In fact most men like work but they like it *in moderation*. Again to the most of man *a life of mere enjoyment will be a life of boredom*. If men nationally dislike work, it means that it is natural for them to remain idle and have a perpetual holiday, and perpetual holiday is the best definition of a perpetual hell. It is true that for the

majority of men the best prescriptive for happiness is not to have enough time or leisure to think whether we are miserable.

It is true that there are a few kinds of men—tramps, artists and beggars—who naturally dislike work. But their temperaments are queer and rare. Idleness is not natural to men. It is effort which is natural to them. If they cannot work for themselves, they will try to work for others. In this connection Prince Kropotkin points out that it is not work but overwork that is repulsive to man; work or labour is a physiological necessity, because it is necessary that accumulated bodily energy should be spent and this spending of accumulated bodily energy is life and health.

What is needed is to make work less burdensome and cumbersome in quantity and more varied in quality. If this could be done, there are reasonable chances that most men will do their work more cheerfully.

Here an important question arises. Men may do that work cheerfully which is safe and pleasant. Who will do the work which is dirty, dull and dangerous.

2. The amount of dirty, dull and dangerous work can be diminished. It may not be possible to do so in a society which is based on private profit motive; but it can certainly be done in a community which is based on the principle of *social service*. This could be done by harnessing scientific knowledge to work and industry. Mechanical devices and machines are not employed to do dirty work because unskilled human labour is cheaper. Kropotkin points out: 'If there is still work which is disagreeable in itself, it is only because our scientific men have never cared to consider the means of rendering it less so; they have always known that there were plenty of starving men who would do it for a few pence a day'. If industry were run for the benefit of the whole community, and due consideration was shown to the convenience and comfort of the workers, the resources of science would be devoted to the elimination of dirty and un-plesant work.

3. It is not correct to say that the motive of social service leaves men un-moved or cold. It is well-known that it is by appealing to the sense of social service that society secures the performance of its most difficult as well as dangerous enterprizes. In small communities the *desire to serve, to work for and stand well* with the rest of the *community* is found to be very strongly operative; and is one of the strongest factors in men's life. This desire to social service must be encouraged and kept alive by the community by means of social recognition.

4. It is often argued that socialism encourages idleness and it would lead to under-production. It is not correct if it is remembered that most forms of socialism demand a certain amount of work from each individual. Thus according to collectivist socialists it is work alone which entitles to the enjoyment of produce of work and point out that in the modern society many people enjoy wealth which has not been produced by their own labour, but by the labour of others. The guild socialists and the communists hold the same view. It is only anarchism that proposes to distribute common commodities to all and sundry without imposing any obligation to work. Their assumption is that in an anarchistic society every individual will work voluntarily. It is a very pleasing idea, but the difficulty is that it is *extremely impracticable*. In fact the problem of work is an anathema to anarchism. Again according to the collectivists work must be performed before a person is entitled to the necessaries of life. But *who* will determine *what* work is to count? Is hostile or seditious writing or painting such picture for which the world is not prepared to be counted as work.

The solution of these difficulties is suggested by Professor Joad who says that such questions should not be dealt with by the central administration, but left to the guild of produces in which every citizen, no matter what his calling, would be organised. The principle of functional democracy demands that such questions as

work and pay should be settled by functional bodies. Let us examine this principle.

To-day the old conception, the socialist doctrine seeking to substitute un-limited and all persuasive state authority for private ownership, management and enterprise, is not true. It is now conceded by them that control should be exercised not by the national or central but by local and functional bodies. In the modern period there is found a wide spread antipathy to centralised government and its all persuasive bureaucratic administration. It is argued that if men's faith in social action is to be *recreated* the state 'must be cut up' and its functions divided. The individual must find it possible to belong to a variety of small bodies possessing executive powers, dealing both with production and local administration, as a member of which he can once again feel that he 'counts politically, that his will matters, and that his work is really done for society'.<sup>1</sup> This is only a plea for reducing the machinery of the state, for making it manageable by making it local, so that people by seeing the concrete results of their political labour may know that self-government is a fact and not a fiction and that they can influence society because 'society is themselves.'

It is argued that a society so constituted would be in a better position to call forth the motive for social service both in the skilled and unskilled field of labour which is not possible under the present system. But this does not necessarily mean the substitution of the central authority by the local bodies or its abolition. The state will be required to regulate such activities. Thus in practice it may not be possible to set up a society according to the Anarchist dream.

The question of method to bring about the socialist society is a difficult one. We are not concerned with it here at any length. Those who are impatient and disgusted with the

### 3. The question of Method

1. Joad, C. E. M., Introduction to Modern Political Theory (1924), p. 120.



existing conditions in the present society believe that a complete break with it is the only remedy. Modern communists regard this break to be *necessarily* of a *violent* character and such as will lead to a *prolonged* civil war. The syndicalists hope to achieve it by means of a general strike.

It can not be said whether the methods suggested by the revolutionary socialists will achieve their results or not. Let us see whether it were better to seek revolution or to avoid it. The following considerations must be borne in mind if it is to be avoided :

1. During the revolution society goes into melting pot and it seldom comes out in the form expected by the promoters of revolution. It may find that a group of individuals have been placed in power who are of quite a different type from the revolutionaries. Thus revolution seems to involve a risk which foresighted people will prefer not to take, but will help to bring about the desired changes by means other than the violent revolution.

2. Violent changes bring violent reactions. In Russia though the revolutionary party still retains power, the main principles for which it stood have been practically abandoned. In to-day's Russia one comes across state capitalism, private landlordism and private trading. To-day society in Russia is very little different from what it was in the pre-revolutionary Russia. There the state instead of withering away is very much strong. The dictatorship not of the proletariat but of the communist party has perpetuated itself. From the experience of the Russian revolution it would not be much wrong to say that the policy of evolution is likely to secure better results than the policy of violent revolution and a civil war between the classes.

1. Anti-socialists say that socialism actually means authoritarianism. Private business will be replaced by governmental factories and government store-houses. Everybody would be an employee of the state. The amount of supply needed in each commodity would be

**Criticism of Socialism and our reply.**

fixed by government officials who for this very purpose would have to pay frequent visits to families which in itself will be a nuisance. Government officials would assign us to our jobs or to our work and determine the leisure as well as the reward which every one is to enjoy.

This objection has some strength or rather used to have some strength in it. To be fair to democratic socialism, it must be said that what people do for themselves can not be called authoritarianism or paternalism. According to Sellars it is only an indication that government is no longer 'a semi-caste affair.' It is only an instrument which the citizens have learnt to use for their service and benefit. To check the growth of 'officialdom' under socialism by same methods of control which are applied in trade unions and for political institutions may be applied.

2. It is said that socialism advocates class war ; it is at once utilitarian, selfish and materialistic. It is a raid of the 'have nots' upon the 'haves.' We may point out that the theory of class war is not democratic socialism, though it is marxism. If socialism to-day preaches and advocates class war, it is more in the nature of a platform propaganda which is meant to bring together the workers than a genuine article of faith. It may be further pointed out that why we should feel shy of the class war preached by socialists when a class war of a different kind is already going on in the present individualist capitalist society. This war, without any exaggeration can be described as the raid of the 'haves' over the 'have nots.' While the present capitalistic order stands for the good of the *few* or the *many* socialism stands for *human welfare* or the *good of all*.

3. It is argued that under socialism there would be *no* proper motive production. Productive efficiency would fall in the absence of individual enterprise, initiative and freedom.

May we ask how efficiency in production under socialism would decrease? And again *what adequate* motive there exists for the mass of workers to produce under the present order? The lot of the worker is not what it should be. It is more to avoid starvation than any other

motive which leads him to work under the present order of society. Capitalism takes a very low view of human nature when it says that under socialism men will have no adequate motive for work. No doubt there are certain difficulties on the question of motive to work, but they are not un-surmountable. Need private profit and self-interest be always the motive power? As the social consciousness advances it may be possible to appeal more and more to higher and other motives than pure self-interest and private profit. In a community with an awakened social conscience non-material rewards are as effective as—may be even more than—material rewards in using men to some society. According to Bertrand Russell man needs his 'creative impulses' to be satisfied and not the desire for profit. To be allowed to do the kind of work one likes and which fits one, or to have the satisfaction that in doing one's work, one is rendering public service is a reward in itself.

4. Professor Sidgwick points out that under socialism total output will be less. But it is not a calamity. The present order suffers from over production and the production of un-economic goods. Is it not the blame of the modern economic order to be always obsessed with idea of production. What is of greater and immediate importance is the problem of *just distribution* and not of production.

5. It is said that because of its sheer magnitude it is not possible to organise large scale industry on state basis. There is some truth in it. Russia has experienced some difficulty, but the science of management is yet to develop. We may point out that nationalisation of industry may be open to some serious objections, but mechanisation is not. With the growing experience, of management can be extended to forests, mines, waterways, waterpower, railways, airways, etc.

6. It is said that socialism is a process of a 'levelling down.' It is agreed that under socialism instead of some being rich and some being poor, *all* will be *poor*,

*miserable* and *unhappy*. Why it will be so? What proof there is that it will be so? No socialist society has ever come into being in its full form which could warrant such a sweeping charge. The lot of the worker in England is not better than in Russia. May we not say that socialism is *not* a process of levelling down *but* a process of *levelling up*. It is wrong to say that socialism discourages ability or talent, only it wants them to be utilised and harnessed to nobler and higher ends than mere private profit.

If people are not to perish they must have a vision.

**Conclusion.** Socialism is a vision, it is only its enemies who say that it is 'visionary'. It is not visionary. It is to a great extent even practicable. It may not come in our time, but the movement is needed by every society; it is essential for every political move. It may not have a positive value, but it has a very important negative function to perform. It has already done much good. It has provided a platform for the unity of working class and has roused in them a sense of strength and unity and dignity. It has led to many reforms, social and economic. To-day the workers under the inspiration of socialism are insisting on better wages, better conditions of work, reduction in the hours of work and improvement of factory conditions. Most of these things in many countries of the world have been accomplished by trade unions. It sets before people the standard of personal self-sacrifice and engenders a spirit of comradeship thus raising an enlightened social conscience in the community. It points out an important truth that more often than not the individual is a victim of circumstances over which he has no control and which he has not created. It brings home to the modern society the important fact that political democracy is incomplete without social democracy. Thus it is the next step in democracy. It has forced upon the attention of the modern society the *need* for social *justice* and *social equality*. Any state of society in which there is so much misery and poverty in plenty as is the case in the

present society can not be satisfactory ; it can not be tolerable permanently. Socialism only demands and rightly so that there should be no leisure for any one except for adequate services rendered. Until the minimum needs of every one are satisfied no one should have plenty ; it demands for all a 'civic minimum'.

Summing up we may say that socialism on the whole is a *sound* and a *useful* theory. Particular forms of a socialism may be defective, dangerous and impracticable, but its spirit is right and much needed and the intelligent people of the world should not let it die. To-day all of us are socialists because all of us are seeking a measure of social justice and equality. The world badly needs socialism ; it is an eternal light guiding man to the development of the personality.

#### QUESTIONS AND TOPICS.

1. Discuss 'Socialism is the next step in democracy.'
2. Critically examine the problems of socialist theory.
3. Would you prefer to be a 'socialist' or an 'individualist?' Give reasons for your answer.
4. Critically examine Marx's theory of class war.
5. What type of society socialism aims at and what are the means by which it hopes to realise it?

#### SELECT REFERENCES.

A combined list of select references for socialism, communism, Guild socialism and syndicalism will be found at the end of the next chapter.

## CHAPTER 19

### PROPER SPHERE OF STATE ACTIVITY (concluded)

#### Communism.

There are a majority of people in India as elsewhere to whom the word 'communism' is just a term of abuse. It is simple to understand. In the minds of such people Communism, Socialism, Bolshevism, Marxism and Anarchism are all one and the same and what is more all are of the devil.

Only extremely prejudicial and ignorant people can have such a point of view. So far as India is concerned an ordinary person may discover in the end that he has no or very little sympathy with communist ideas. More he may be even repelled by them. But no one has the right to take up a hostile attitude towards communism without first discovering what Communism is.

Unfortunately for the world Communism is not easy to define. You cannot define it in half-a-dozen simple neat words. In some respects it is a simple doctrine, but 'it is based on a very complex reading of history'. Another difficulty in trying to define Communism, specially at present, is that it has two aspects—a theoretical and a practical aspect. Then it may be said to be at once *an idea* and an *actual method of government*. A scientific study of Communism reveals that it is at least six things: (1) it is an ethical doctrine; (2) it is a political doctrine; (3) it is a metaphysical philosophy; (4) it is a theory of the nature of Reality; (5) it is a theory of knowledge and (6) lastly, it is a theory of eco-

nomics. We are here concerned with communism as a political philosophy.

Theoretically Communism is a political and social philosophy. Practically, Communism can only be judged by what it has achieved in Russia since the Revolution of 1917. To have a clear idea of the subject one has to distinguish between theory and practice of communism.

Communism is explained in the formula "From all according to their ability; to each according to his needs". Communism seeks to abolish private property altogether. 'Communism presupposes a common store of wealth which is to be drawn upon by the individual consumer, not in accordance with services rendered, but in response to a human right to sustenance'. Socialism requires some medium of exchange whereas Communism requires no such medium. Communism believes in the disappearance of the state. It recognizes the state only as a temporary expedient during the complete communist stage. Lenin points out that 'for the complete extinction of state complete communism is necessary.' Communism is more rigidly equalitarian than socialism. According to Anton Menger: "As soon as the principle of equality is applied to socialism, it becomes communism". Communism signifies the seizure of power by force or violent revolution, as distinguished from constitutional methods; and since such seizure can hardly be prepared for openly, it carries with it the idea of secret conspiracy.

As a powerful political force in the modern world communism is derived from Marxian philosophy. But its general principles and notices go much farther back than the middle of the nineteenth century when it is said to have taken its modern shape from the teachings of Marx. In fact its motives and principles can be traced back to Plato, more than two thousand years ago.

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1. Shadwell, A., *The socialist Movement* (1925), pp. 95-96. i

In all times there have been men who were attracted and impressed by the contrast of the lives of the poor and the rich. Such men postulated an ideal of social justice and advocated, on moral grounds, a more equitable distribution of wealth. Some of these thinkers did not content with merely advocating a greater measure of economic welfare for every member of the society by the abolition of private property and by resting ownership in the community as a whole.

In a sense these may be said to be the real founders of communism. Thus one may say that there were communists long before communism was born as a political creed with a 'practical programme of its own'. But it needs to be pointed out that before the middle of the nineteenth century communism was 'essentially a moral ideal and a moral ideal alone'. A typical communist was a thinker preaching a primitive kind of socialism on ethical and humane grounds. Not concerned with practical politics, he did not seek following among the masses and put forward no plan of action. No doubt he talked and preached about the abolition of private property, but did not give any indication as to how it could be achieved. It was left to Karl Marx to transform this kind of communism into modern communism.

The works of Karl Marx are holy scriptures for the communists. There is no single work of his which may be said to give a complete exposition of the communism. But there is one broad statement of the theory of communism in his 'Communist Manifesto'. It is a joint work (1848) of Marx and his friend Friedrich Engels. The 'Communist Manifesto' even to-day forms the boldest and simplest statement of communist view point on all political questions. The Manifesto and 'Das Kapital,' another of Marx's works, form the title of modern communism.

The teachings of Marx were later elaborated by Lenin who is the founder of Russian Communism. Lenin adopted Marxian philosophy to Russian Communism



and founded what may be called 'Leninism.' In our own times Stalin has made some modifications in the Leninist view point and has made some contribution to modern Russian Communism, and has brought into being what may be termed 'Stalinism'. Thus Marx, Engels and Lenin may be said to form the trinity of communism. It is in the writings of Marx and Engles that socialism and communism for the first time received a realistic and a scientific treatment.

The starting point of Marxism is the 'Dialectic principle'. This 'Dialectical principle' is an ancient philosophical term meaning a 'process of intellectual analysis', This 'dialectical principle' was re-employed by Hegel, the German philosopher in the system of his philosophy which Marx first studied and then entirely reversed in the process of developing his own theories. According to this 'Dialectical principle' the development of thought and of things is brought about through a conflict of opposing tendencies.' Hegelian dialectics means that (1) all organic processes are dialectic ; (2) reality is an organic process ; (3) reality is idea.

We may simply explain it to mean that human progress is by means of contradictions ; secondly that it is in 'the form of thesis, anti-thesis and synthesis' thirdly that it is unity of opposites ; it is in the nature of a spiral staircase and finally that it consists of contrast, negation and contradiction.

Modern Communism is an answer to the inherent evils of capitalism. It is not an exaggeration to call it the nemesis of capitalism, the chief features of which are private ownership, private enterprize and private profit. In our society goods are produced not so much for use as for private profit, and it is the individual capitalist who appropriates social product. The tragedy of our times is that there are millions of men who are destitute in the midst of potential abundance. A survey of human history often enough reveals millions of men starving in time of famine, but it is the most striking feature of the

### **Ideology of Communism.**

twentieth century that one finds *want*, *hunger* and *privation* amidst *plenty*. Our economics is characterised by *under-consumption* and *over-production* which have become the bane of modern western civilization and are causing many an agony to conscientious thinkers of the west. To Julius Hecker the failure of capitalism is imminent because of its failure to meet the three crying needs of the world, *viz.*, freedom of self-expression, economic security and social security. It is claimed by him and the supporters of communism that communism will meet these needs.

Marx points out that there are three stages through which society must pass, *viz.* :—1. Primitive Communism; 2. Historical society *i. e.* the present society and ; 3. Higher Communism. According to him in the third are combined the primitive communism and technical science and achievements of the present historical epoch. It is explained that the transition from the first stage to the second is slow and gradual while the transition from the second to the third is bound to be violent (Revolution), that is, sudden, swift and sharp.

It may be pointed out that Marx in his interpretation of history is *incorrect*. His interpretation of history is not only *theoretical* but *un-scientific* as well. It is simple and clear to understand. Of the first stage of society of which Marx speaks we have no historical knowledge. Even if we concede that it was so, the communist principle could not be universal. Individualistic and communistic societies may have existed side by side on mother earth. The third phase of society of which Marx speaks is not yet a reality even after ninety two years when Marx wrote. It is more, even to-day, a vision of hope. Further, perhaps the features which characterize the second phase of society existed in the first phase of society as well because private property and family life go *far back in society; how far* not even Marxists can tell. There are some who point out that 'private property antedates humanity.' However, it is fortunate for communism that it neither stands nor falls on the Marxist dialectic. Communists also believe in evolution, but for them the culmination of this

evolution is in communism—nothing beyond it. But Marxian position is not very sound. Marx beginning with Hegelian Dialectic and influenced by Fuerbach developed four basic elements of communism : the materialist interpretation of history, the theory of surplus value and class-war, and the iron law of wages. These factors have been discussed under socialism.

**The Communist Theory of the State.**

According to the communist theory the state is the result of the class struggle ; it is an instrument in the hands of the exploiters to keep the masses (exploited) into abject obedience and economic slavery. It is according to Engels “ a force of suppression.” It is the dictatorship of the bourgeoisie over the proletariat. To communism the modern democratic state affords many advantages for the realization of the communist dream. It embodies all the contradictions inherent in capitalism and presents many opportunities to the workers to organize themselves for the coming proletarian revolution. It is pointed out that the capitalist bourgeoisie will not easily surrender power and therefore the only way by which the downfall of the capitalist state can be brought about is by means of revolution. This revolution to be successful as well as useful needs the enlightened (?) and resolute (stubborn if you please) leadership of a ‘ well-organized and disciplined revolutionary party.’ It is made clear that the only enlightened, well-organized, disciplined and revolutionary party is the communist party.

Again it is held that the state will ‘ wither away.’ It is the product of class struggle and can exist only so long as the classes exist. Under capitalism classes exist as a natural consequence of economic inequality who in its turn ensues from the ownership of means of production by private individuals. The ultimate aim of the communist revolution is the creation of a classless society. The first step towards the establishment of the communist state is the overthrow of the capitalist state and the naturalization of all means of production. It is admitted that there must be an intervening interval between the overthrow of the

capitalist state and the final establishment of the communist state. This transition period is characterized by the 'dictatorship of the proletariat.'

We may point out that neither the capitalist state has been overthrown nor the 'dictatorship of the proletariat' has shown any signs of withering away. The dictatorship of the proletariat which was to be a transition stage in Russia has become permanent phase and the Russian constitution to-day include clauses which are decidedly born of capitalist parentage.

Lenin<sup>1</sup> modified Marxism to suit the changed conditions of the twentieth century as well as Russia. He added a number of new principles to Marxism the more important of which are:—

1. Imperialism—a phase of capitalism—is its final phase.
2. The problem of the dictatorship of the proletariat.
3. The question of the forms and methods of successful building of socialism during the transition period—the period of proletarian dictatorship—from capitalism to socialism in a country surrounded by capitalism.
4. The importance of the national and the colonial question.
5. The question of the communist party.

Lenin's contribution to Marxism has been described as "the Marxism of the epoch of Imperialism and proletariate revolutions." We cannot separate Leninism from Marxism, still less we can contrast it with Marxism.

The Leninist theory of proletarian revolution is based on three factors: (1) The domination of finance and capital; (2) the growing flow of capital into the colonies and subject countries and (3) the inter-capitalist battle line which undermines capitalism and helps the union of the proletarian and colonial front against Imperialism.

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1. The clearest exposition of Lenin's views is to be found in his "The State and Revolution" (1907).

Lenin points out that : “Imperialism is on the eve of Social Revolution.” To overthrow the power of the bourgeoisie and establish that of the proletariat in a single country cannot guarantee the complete or final victory of socialism. According to Lenin the proletariat ‘needs the state,’ but according to Marx, ‘the proletariat firstly needs a state that withers away, that is, it should be so organized that it must begin to wither away.’ Further Lenin did not commit himself to any definite scheme or prophecy as to how long it will take for the proletarian state to wither away. He merely held that this ‘withering away’ was to be a natural and gradual process. Finally, according to Lenin “the task of the victorious revolution consists in doing the utmost in one country for the development, support and awakening of the revolution in other countries.”

Lenin is in favour of not only a classless society but also a stateless society. According to him complete communism is necessary for the complete extinction of the state. Lenin was a strong supporter of revolutions.

Stalin has made no new contribution to the theory of communism. It has been pointed out that Marxism as interpreted by Lenin is mainly a doctrine of revolution. According to the Marxian theory socialist revolution should have taken place either in America or in Great Britain or in any one of the other industrially advanced countries. Lenin conceived of the national revolution being turned into a world revolution. The establishment of socialism in one country alone was an idea which was considered un-Marxian, un-serious and impractical. The socialist revolution in a backward agricultural country like Russia was a great shock to orthodox Marxians. However, they consoled themselves with the idea (current after the October Revolution 1917) that the Russian example would be followed by other countries of the world and particularly America. Under this idea the Russian government pursued policies which it considered in harmony with communist ideology. A ray of hope in the bosom of

communists was kindled after the last world war when fatigue, depression, disillusionment and misery were entering into the social structure of the modern society. Revolution had actually occurred in Germany and Austria-Hungary. But this revolutionary movement collapsed and collapsed miserably, striking consternation and dejection among the ranks of orthodox Marxists. In a word the world refused to follow the example of Russia. History once again cruelly proved the Marxian-Leninist 'scientific scheme' unscientific.

Stalin until April 1924 was of the view that socialism could not be successful in one country alone, made a *volte face*, and held that socialism in one country could be successful provided such a country had an extensive territory, a big population and essential natural resources.

The Stalinist theory of 'socialism in a single country' was officially accepted by the communist party. Thus to-day the communist party under the leadership of Stalin has repudiated the dream of Marx as well as Lenin. Of course the doctrine of world revolution has not been officially given up, but it ceased to be an active factor in the foreign and domestic policy of Soviet Russia. The Soviet Republic sought to establish not only diplomatic but economic co-operation as well with capitalist states; in its domestic policy it embarked on an ambitious scheme of economic reconstruction under periodic plans (Russian five year plans). Stalinist doctrine reduced to simplest terms means that the issue was one of nationalism versus internationalism and it was nationalism to which the day belonged. To-day under the leadership of Stalin nationalism is as much the cornerstone of Russian foreign and domestic politics as in any other country.

The Russian constitution of 1936 has introduced many striking and far reaching changes in the Russian governmental structure. The present union Government is based on the familiar bourgeoisie principles of separation of powers. The legislative powers vest in the sup-

**Stalin and the  
New constitu-  
tion.**

reme Soviet ; the executive powers vest in the Council of People's Commissars, the judicial powers vest in the Supreme Court and the Attorney General. The electoral system under the new constitution exhibits the too common features of capitalist countries, *viz.*, universal suffrage, direct, equal, and secret ballot. It is no surprise that many considered the 1936 constitution, which is called Stalin's Constitution in Russia, as a definite proof of Russians' conversion to the principle of capitalist democratic government of the type of America and Great Britain.

Communism and socialism are not identical. Socialism as described by Marx is the lower phase of communism. Socialism is evolutionary while communism is revolutionary. A communist is a socialist in hurry. Socialism advocates social ownership of producer's goods, communism favours social ownership not only of producer's but of consumer's goods also. Socialism sanctions wages on the principle of services rendered or for labour socially useful, but communism sanctions reward according to individual needs. Its motto is 'from each according to his ability, to each according to his need.' Socialism does not abolish the state and believes to utilise it in the gaining of socialist ends, communism naively believes in the 'withering way' of the state. Socialism needs and recognises the use of money but communism does not do so. Again socialism requires some medium of exchange—it may be pounds sterling rupees, roubles or paper notes, communism requires no such medium. The idea of income is acceptable to socialism while it is rejected by communism ; it considers only the sum total required by a person to satisfy his wants. According to Dr. Anton Menger : as soon as the principle of equality is applied to socialism it becomes communism and to Laski, 'compulsory labour is the road to communism.'

### Anarchism

Anarchism is extreme form of individualism. It is said the anarchism is individualism run mad. It does not believe in the state, it

**Statement.**

believes that the state is an evil, pure and simple. It believes in the subversion of existing society, overthrow of established government, appropriation of landlords and capitalists and finally in the seizure of the means of production by the proletariat. Anarchism stands for the freedom of the individual as against the authority of the state and the predominance of the group. It upholds and stands for the unfettered and unlimited self-government of the individual. Therefore, it is opposed to any kind of authority or restraint from without. It is not opposed to the state as such, but to the authority or force or compulsion used by the state. We may say that it is the meeting point of extreme socialism and extreme individualism. It is on the plane of anarchism that the extreme socialists like Count Tolstoy and Prince Kropotkin meet extreme individualists like Spencer and Nietzsche.

Philosophical anarchism appeals strongly to all in whom the love of personal liberty is very strong. Its apostles point out that it is like a well-ordered household where there is a sharing of common joys and sorrows. Everything is common; willing service is done to each other. According to Count Tolstoy human race should be re-organised on these lines of personal freedom and voluntary association of which the love-knit house-hold is the fine model. Everyone in the anarchistic society will instinctively will and do that which is true, beautiful and good. We must say, that there is really something very fascinating and attractive in this idea.

In the society, envisaged by anarchism, taxes will take the form of voluntary contributions. Legislation will take the form of suggestions and advice. The personality of the individual will have freedom to develop unchecked in all directions. Anarchism is opposed to the authority of the state on the ground that it kills all moral values and instead of making a man moral it makes him unmoral.

1. Anarchism is mistaken in believing that liberty is the greatest political good. Liberty is not the greatest political good, because it is not an end in itself, it is only a means to
- Criticism.**



an end. Liberty and authority are not mutually exclusive but are complementary and contributory to each other.

2. We cannot agree with the anarchist in thinking that the authority of the state kills all moral values. All that we can concede is that the moral value of an act performed under compulsion is *reduced* not *killed*. State action may *diminish* moral values—no doubt it does—but it cannot *destroy* them.

3. If the state is the individual writ large, how we can speak of the authority of the state as something external. Society is an organic unity. Anarchism seems to ignore the point.

4. The anarchist is mistaken to think that there is *no authority* in the love-knit household. In a perfect love-knit family, authority, law and restraint are not in evidence on the surface; yet no one can deny their existence; they are there. For the curbing of criminals and criminal tendencies in the natures of individuals, it is necessary to have the authority of the state in reserve. Therefore, for the present at least it is not possible to dispense with the guardianship of the state and the security of law.

5. Anarchism makes human conscience the only guide of human conduct. Here again it is wrong. The individual conscience is an extremely capricious and tricky master.

6. Anarchism places undue reliance upon the changeability of human nature. In this anarchism is very optimistic. The anarchist repudiates all external authority—human or divine. The only authority to which the anarchist submits himself is that of the conscience.

In conclusion we may say that the pure and logical Tolstoyan and Kropotkinist anarchism is overshadowed in importance by the corrupt, inconsistent and impure Bakuninian anarchism and the anarchism of bomb thrower.

### Guild Socialism

**History of Guild Socialism.** Guild socialism is the latest form of socialism. In its origin it is a purely English doctrine. It started with the publication of a book, 'The Restoration of the Guild System' by Arthur J. Penty, in 1906. In this book he laid emphasis on the advantages of organisation on the lines of guilds of craft workers in the middle ages. The guild idea has since been adopted and developed by many writers the most notable among them being G.D.H. Cole. During the last war (1914—1918) it stimulated the shop stewards' movement and encouraged workers throughout England to ask for an increasing share of workers' control. In 1915 the National Guilds League was started. Their aim as described by them is the 'abolition of the wage system, and the establishment by the workers of Self-Government in industry, through a democratic system of National Guilds, working in conjunction with other democratic functional organizations in the community.'

**Ideology of Guild Socialism.** Guild Socialism does not believe in unitary collectivism managed from a single centre. It cultivates the group under the guild. While it admits the state as the final owner of the means of production it claims for each guild of workers in the same occupation right to control the use of those means as trustees. It leaves to the state the promotion of culture, it claims for guild the right to control economic life of the state.

Broadly speaking the general principles on which the statement of the aims of Guild socialism is based may be said to be three as summed up by Professor Joad :

1. The principle of Functional Democracy.
2. Industry should be administered by the common action of workers both skilled and unskilled ; and
3. The principle that power and responsibility should be related and proportional to the importance of the functions which individuals perform in the service of the community.

1. The principle of functional democracy which is not accepted by all guild socialists in its political and administrative implications advocates that it is impossible for any individual—man or woman—to represent another individual; therefore the so called representative institutions are un or mis-representative institutions. It is pointed out by the guild socialists that though a man can not represent others, he can represent a group of purposes which are common to him and his neighbours. Therefore, if representation has to be real it must be functional representation and the only bodies which can be said to be really democratic, in the sense of expressing the will of those who elect them, are those which are related to the various functions which individuals perform. According to their view point 'a democratic society will therefore, be one which is a co-ordinated net work of functional representative bodies, which its members have in common.'

The idea of functional democracy, reacts vigorously against the idea of a centralized and a unitary state; it advocates devolution of powers and functions to a number of different bodies organised on functional basis. The socialists hold that no democracy is possible in the political sphere without there being democracy in the economic sphere first. Again if industry were democratically organised, the democratic organization of society will naturally follow.

2 and 3. The guild idea applied to industry takes the following form: The chief industries and services become state owned; though this nationalization is desirable, but it does not necessarily follow that all industrial problems will be solved by the merelly transferring industry to national ownership.

The guild is formed on the lines of the present Trade Union, but is different from it in many respects. Firstly, it will include all workers—skilled and unskilled—who belong to a particular industry; secondly, its main function would be more to carry on the industry than to protect the interests of its members. Consequently guilds

would be *different in practice* from trade unions in the following two ways :—

1. The trade union protects its members against aggression by the capitalist; therefore, it has been concerned almost *exclusively* with endeavours to shorten working hours and to raise wages.

2. The share of control which the trade unions desire to take at present is bound to be of a negative nature. Control is still in the hands of the employer, therefore, the trade union can only say ‘this should not be done,’ or this is not the way to do it. This leads to a mistaken view that the trade union is obstructive and hostile to industrial efficiency.

The guild socialists claim that their idea is intensely practical. It is realized that no transition from the existing state to socialism is possible without some degree of violence ; still there is no earthly reason why a guild socialist state should not be established on evolutionary basis. For this the guild socialist builds upon the existing trade union and in doing so tries to bridge the gulf between capitalism and socialism. The guild socialist considers trade unions as key to the situation ; he believes that the trade unions of to-day will become the guilds of to-morrow ; again trade unions are the organizations by means of which actual change is to be effected. It may be pointed out that there is no essential difference between the guild and the trade union except that the trade union will have to be modified before it can perform the functions of a guild. The trade union organization is horizontal whereas the guild socialist advocates a vertical organization. According to him vertical organization will include all the workers in a particular industry from top to tail while horizontal organization will include workers who perform one particular process or set of processes, which may be the same in a number of different industries.

**Methods of  
guild  
Socialism.**

**Guild Socialism and the Modern State.** Under guild socialism the modern state will be a community of professional guilds. It will be a real entity in itself. It is on this point that guild socialism parts company with syndicalism which has declared war against the state. Guild socialism assigns to the state all matters that concern the *national soul*—fine arts, education, international relations, justice, public conduct ; to the guild they reserve all matters that concern all *national income*. To the state for example is reserved all higher education, to the guild is left the sphere of technical education.

**Criticism** Guild Socialism is open to the following criticism:

1. It is not possible to divide sharply economic and political questions and say that economic questions can be looked after by the guilds and political questions can be looked after by the state. Economic and political questions are very closely related and can not be placed in watertight compartments.

2. The guild socialist sets up two parliaments—political organized on territorial basis and economic organized on occupational basis. If the political parliament based on territorial representation and the economic parliament representing the guilds come into conflict with one another who is to decide between them? A joint committee of the two co-equal parliaments may not be able to settle the dispute. We need to have one supreme power and that supreme power is the state. The most that can be conceded to guild socialism is the advisability of an economic council with advisory functions.

3. Guild socialism is bound to collapse (it has already declined) because of the vital interdependence of all the activities of "the great societies of to-day. To assign international relations to the state and economic production to the guild is futile. International relations involve the question of economic production and *vice versa*.  
✓Guild socialism is illogical."

In conclusion we may say that though guild socialism is full of many defects, state socialism may have its lessons to learn from guild socialism.

It had its origin in France. It is the nemesis of a corrupt and demoralised democracy. It is a development of the trade union organization and theory. The French word for the trade unions is *Syndicate*. Until 1864, they were illegal associations. They were recognised by law only in 1884. 1902 may be said to be the date of the definite beginning of the syndicalist movement.

Syndicalism proclaims war on all who are not of its way of thinking. Some of the more important of its constituent elements are :

**Constituent elements of Syndicalism.**

1. It believes in the Marxian principle of class war.

2. It is a proletarian revolt—a rank and file movement. It repudiates leaders and national guidance. It is an insurrection of a “conscious minority.”

3. It is dominantly anarchic and nihilistic ; it is an enemy of the national state, It proclaims war on the state, denies its authority and that of its law and repudiates political action. Some have called it ‘organized anarchy.’

4. It proclaims the doctrine of *general strike*.

5. It exalts the industrial union as against the state with its rules and customs and makes it supreme in place of the state.

6. It is opposed to all schemes of profit sharing, co-operation, joint control, reform or conciliation.

It has been pointed out that syndicalism does not believe in political methods as a means of changing the existing society into one desired by the syndicalist. Syndicalism stands for the policy of ‘direct action’ in the economic sphere. If need be this ‘direct action’ can be violent. Starting with the general strike his other weapons are

**Methods of Syndicalism.**

‘sabotage,’ boycott. Strikes are to be encouraged even if they fail, they would have served their purpose of educating the workers. The syndicalist fondly hopes that out of the destruction of the present political and social system, a new world will arise by means of the general strike, revolt, sabotage and violence.

By far the most important of syndicalist’s methods is the *strike*. Syndicalists aim at using it, not to secure much improvements of detail, as employers may grant, but to destroy the whole system of employer and employee and win the complete emancipation of the worker. For this what is wanted is general strike, the complete stoppage of work by a sufficient proportion of the wage-earners to effect the paralysis of capitalism and of the capitalist state. The syndicalists have very little faith in the honesty of politicians.

The aims of syndicalism are less definite than its methods. Nevertheless the negative points of syndicalist objects are sufficiently clear. The syndicalist wishes to destroy the state which is regarded by him as a capitalist institution designed essentially to terrorise the workers. They cannot believe that conditions would be any better under state-socialism. They desire to see each industry growing itself; but as to the adjustment of relations between different institutions they are not clear. ✓ They are anti-militarist for they are anti-state, and because French troops have often been employed against them in strikes; also because they are internationalists, who are confirmed that the one interest of the working man all over the world is to emancipate himself from the tyranny of the capitalist. Their outlook on life is the very reverse of the pacifist, but they oppose wars between states on the ground that these are not fought for objects that concern the workers. ✓ Syndicalism stands *essentially* for the point of view of the *producer* as opposed to that of the *consumer*. It is concerned with reforming actual work and the organization of industry for workers. It aims at substituting *industrial* for *political* action; and at using trade union organization for purposes for which orthodox socialism would look to parliament.

It stands for industrial unionism as opposed to craft unionism. Industrial unionism is the product of America as seen in the I. W. W.

**Significance of syndicalism.** It is a protest against the corruption of modern politics; a reaction against the failure of socialism in bringing about something of an earthly paradise. Socialism has always promised more than it could achieve and raised hopes that it can never fulfil. Syndicalism is for freedom. It demands a return to a simpler communal life, with more local autonomy and with less interference with individual initiative.

**Conclusion.** Syndicalism is a healthy doctrine, but its greatest defect which makes it nearly useless is that the desire for liberty, for self realization and for group autonomy is carried by the syndicalist to the extreme of anarchy. It had its heyday in America and France in the post war period, but to-day it is rapidly on the wane and has not taken root in any other country.

**Collectivism.** In many industrial states of the world a large amount of economic and social legislation has been passed. Such legislation differs from state to state and is based on the exigencies of time in each state. Collectivists are one of the groups of Liberals, Liberal democrats, Radicals and many others who are mostly concerned with social and economic legislation.

Collectivism is interested in the freedom and well-being of all, not of one particular social group. According to collectivism economic policy which is based on extreme individualism is not only ineffective but unfair as well; it is the duty of the state to regulate industry and promote general welfare; it rejects the socialist theory of labour value, of class war, and of economic determinism; it concedes that though there may be divisions in society based on differences in wealth but it does not necessarily mean permanent and continuous antagonism between such divisions; it emphasises the economic interdependence of all members of the community and seeks 'proper adjustment of their relations to one another'



Particular types of collectivism advocate public ownership of public services, *e.g.*, light, water, transportation; labour legislation specially for women and children; regulation of price in the danger of monopoly.

Collectivism advocates public ownership where services cannot be provided at low cost and where the profit motive is not dominant. In the condition of satisfactory operation of services it allows their continuation under private ownership; it holds that the state should protect the worker in regard to hours of labour, wages, conditions of work, compensation, etc.

In conclusion we may point out that collectivism is not socialism. It is true that it exhibits some of the features of socialism. E. Vandervelde, quoted by Professor Hearnshaw, is of the opinion that socialism and collectivism have no necessary connection with one another; that socialism is essentially the elimination of the capitalist, the expropriation of the landlord, the extinction of private enterprise, and the eradication of competition; while collectivism is merely a method of conducting business within the capitalistic system.

#### QUESTIONS AND TOPICS.

1. Discuss the main causes of the rise of socialism. Are any of these same causes found now?
2. Explain the fundamental theories of Marx.
3. What are the problems of Socialist Theory?
4. Show how syndicalism and guild socialism differ from Marxian Socialism.
5. Compare and contrast Individualism and Socialism or Socialism and Anarchism.
6. Discuss the communist theory of the state.
7. Do you prefer to be a socialist or a communist? Give reasons for your answer.

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## CHAPTER 20.

### FEDERALISM.

To-day the federal type of polity has become very **Introductory** important. The most important and the greatest modern states are federations. The United States of America, Russia and Germany are all federations. Among the smaller group of states, Switzerland, Australia, South Africa and Canada are federations. Many present day thinkers of the world see the solution of the present day world tangle in federalism. Changes in economic, political, industrial and social conditions and modern scientific inventions and discoveries with their consequential influence on human life and its problems are necessitating larger and larger political unions. Such unions aim at retaining with these political units as large an amount of freedom as possible and setting up a central organization for purposes common to these units. This process is federalism. Federalism for its successful establishment and working requires a high degree of political experience and consciousness.

Federalism is a type of political union. There are other types of political unions as well. **Types of Political Union.** For example, there are personal unions (between England and Hanover 1714—1837); real unions (between England and Scotland by the Act of Union 1707); confederations or leagues (American Confederation 1781—1789; the Swiss Confederation upto 1874; and German Confederation up to 1874). Then there are mixed type of unions also, *e. g.*, Austro-Hungarian Monarchy. The first three kinds of unions differ from federal unions in that in the first and second kind of union the uniting states retain their independent character and unite for a few advantages, while a confederation is an alliance, effected for specific purposes—economic or

political. This union is intended to be permanent and common institutions are established for giving effect to the purposes of the combination. The decisions of such common institutions are not *mandatory* but *recommendatory*. The federal union is different from the above types in that the federating units lose their independence though they retain some powers for purposes of internal administration. They form one state for common purposes and create a *supreme* power over and above themselves. This supreme authority is the real government in the country.

Federalism has been defined by Prof. Dicey as ‘the distribution of the force of the state among a number of co-ordination bodies each originating in and controlled by the constitution.’ The federal state is “a political contrivance intended to reconcile national unity and power with the maintenance of state rights.” We may say that when two or more states combine together to set up a new state with supreme powers on certain common affairs and retain at the same time some place and power inside the newly created organization, they are said to form a federation. A federation may also be established not only by a process of combination, but by splitting up as well. For example, Canadian Union was split in 1867 under the provisions of the British North America Act (1867) which established a federation in Canada. The Government of India Act 1935 also followed the same practice with the intention of establishing a federal government in India.

↓ Summing up we may say that federation is the making of a contract to which federating units are parties. By virtue of this contract the units lose a part of their power and independence but get in return the benefits and the protection of a union. Under a federal government the national (or central) government co-exists with the governments of the unit states that make the federation, which means that federalism means a loss of a degree of sovereignty by the part states in their individual capacity.

There are certain elements which are needed in federalism. Some of the more important of these are :

**Requisites of federalism.**

In first place there must be a number of small states—

**1. Geographical contiguity.**

Swiss cantons, Canadian provinces, Australian states, states of the American Union, Provinces of India—closely connected geographically so as not to make union physically impossible. The formation of federation is very difficult if not impossible if the federating units are separated by great distances, though with the development of air routes and air traffic the question of geographical contiguity may lose some of its importance. Science has overcome difficulties of distances by television, telegraphy telephone, and cables, and by the fast developing air routes.

Another essential condition for the establishment of a federal system is the presence of a sentiment for union among the people of states which desire to set up a federation. These states ' must desire union, and must not desire unity.' If there exists no desire to unite there exists no basis for federation. The units federating must desire *union* but not *unity*. Federalism flows from the combination of union and separation. The peoples of the units should desire to form a single union for many common purposes, but should not wish to surrender completely their individual existence as citizens of their own state.

It is pointed out that for a successful federation equality among units is an essential factor. If this were not observed there is danger of the larger units influencing and overshadowing the smaller units. But it may

**3. Equality among the units.**

be pointed out that equality artificially created is no prevention to jealousy. No law of a legislature can make Sind equal in importance to the United Provinces. Moreover with the coming into existence the need of prevention against local jealousies is not so imperative as before. National political parties look at matters from a par-

ticular national view point and local jealousies are not permitted to near the national reputation of the party.

Therefore, we may say that equality among units today is not so important a factor as it was sometime before.

A close study of federal constitutions and their working brings out clearly certain characteristics which are common to all of them and which distinguish a federal constitution from other constitutions. These characteristics are :

**Characteristics of a Federation.**

1. A written—rigid constitution. A federal constitution as has been pointed out is an agreement between the units of the federation and the federal government which is their own creation. The federal constitution contains the terms and conditions

of the contract or agreement between the units on the one hand and the newly established federal government on the other, so that when the federal government has been established—central or provincial—it exercises its authority in accordance with the terms of the contract—the federal constitution. Thus in a federal constitution there is a delimitation of powers between the central and the unite governments. It may be here pointed out that in unitary states there is no such restriction of powers of government. For example, Great Britain is a unitary state. It has a flexible and unwritten constitution. The powers of the British parliament are un-restricted and un-limited. ‘ An Act of Parliament can do no wrong, though it may do several things that look pretty odd.’ To take another example, that of France. The French constitution of 1875 is written, yet it can be easily modified and revised by the French legislature the validity of whose actions cannot be questioned by the courts of law. But in a federation there is a delimitation of the powers of the legislatures—both central and state. The constitution in a federation is in the nature of an anvil on which the validity of every law passed by either the federal legislature or the state legislature is tested. And if any of these has trespassed its prescribed limit there is always an agency in the federal constitution

to declare any law which is repugnant to the federal constitution as invalid. Thus in a federation a particular sanctity is attached to the constitution. It is the supreme law, its provisions are in the nature of a contract between the federation and the federating states. Therefore, it is imperative that it should be unambiguous and definite which means, that it *must be* written. Even in a unitary state a written constitution has its advantages and the tendency in all states is towards this direction ; but in a Federation it is of extreme necessity and importance. In fact, it will not be wrong to say that to have a federation without a written constitution is inconceivable. It is simple to understand. In the process of federating each units have to decide the terms on which they are prepared to join the federation. This is not a simple contract, as it affects all aspects of their independence and autonomy which they had been enjoying. Its terms must be precise, definite, clearly understood and such as to avoid misunderstanding. This is possible only when the constitution is written.

Again, rigidity is implied in the very nature of a federal constitution. All modern written constitutions are more or less rigid, but rigidity inheres in a federal constitution. It is a contrast and it would be other than wise to expose it to frequent and easy changes.

A second feature of a federation is that there exist in  
 2. **Co-existence of two Governments.** it side by side two governments—the federal and the state governments. ✓ It has been pointed out that federating states by mutual agreement set up a common authority above themselves ; and when this common authority—the federal government is set up it exercises its authority within its prescribed sphere while federating units exercise their authority within their limits prescribed under the terms of a federal constitution. Thus an individual living in a federation has a double citizenship. He is the citizen of the state in which he lives as well as the citizen of the federation. ✓



It has already been noticed that a federal constitution is in the nature of an agreement. It arises from its very nature that there must be a demarcation of powers between the units and the federal government. The more detailed definite and clear is this allocation of powers the better it is for the federal as well as the unit governments ; it reduces points of conflict. The powers of each of the two governments are enumerated in the constitutional document. Sometimes this division is general, but more often it is precise. Thus there are powers which belong to the federal government, powers that belong to the states ; and powers that belong to both ; that is there is the federal list, the provincial list and the concurrent list. But it is not humanly possible to include all matters under the sun in these lists. There are some powers which remain unenumerated ; these are called residuary powers. In some federations they belong to the states, *e.g.*, in America, in others they belong to the federal government, *e. g.*, in Canada.

Federal constitutions may be divided into three types on the basis of this division of powers. These types are American, Canadian and Indian (The Government of India Act 1935). The basis of this differentiation is the power conferred on the federal government. In America, the states existed before the federation came into being. They were jealous of their rights, powers and independence. Only those powers which related to their common affairs and such powers which implied in these were allocated to the government of the union ; the residuary powers were left to the states. In Canada the opposite was the process. The provinces became autonomous and independent under the provisions of the British North America Act of 1867. The powers of the provinces were defined in the Constitution Act and the Dominion Government was left all the other powers. The proposed Indian federation is unique—a type by itself. The Government of India Act, 1935, embodies a detailed division of central, provincial concurrent powers. It reserves to the

Governor-General all the residuary powers. It is left to the Governor-General to empower either the federal or provincial government to enact a law in respect of any matter not included in any of the three lists. The federation can also legislate with regard to matters in the provincial list provided the legislatures of two or more provinces express a desire to this effect.

A federal constitution necessitates the establishment of an independent federal judiciary.

**4. Existence of a Federal Judiciary.** There must be some organizations to decide disputes between the federation and the units. In federal constitutions, generally, this power of deciding disputes is vested in the federal judiciary and which is empowered under the provisions of the constitution to declare any act of the legislature—whether federal or provincial—*ultra vires*, if in its opinion the law made is beyond the powers of the law making body conferred upon it by the constitution.

Federalism has several advantages which are admirably summed up by Guilchrist.

**Advantages of Federalism.**

1. Union gives strength and unity. To be a member of a great nation like the united states is more dignified than to remain a citizen of an independent virginia.

2. Federalism means economy for the smaller states, it also means dignity for them.

3. It makes for efficient government as there is a demarcations of functions between the federal government and the state.

Particular forms of federalism have particular weaknesses, but such defects can be remedied by means of an amendment of the constitution. However there are some general defects :

1. There are two systems of government—federal and provincial. It must lead to certain defects—delay and irritation.

2. Federal government is a weak government because of the fear of secession of units. It is not a real defect.

3. Weaknesses which arise from the apprehension of partial combination of the units of the federation. It is not a real defeat, since if a federation is based on true federal principle there is no danger of a combination against it.

#### QUESTIONS AND TOPICS.

1. What are the characteristics of federalism ?
2. What are the advantages and disadvantages of federalism ?
3. Do you propose Canadian or American type of federation for India? Give reasons for your answer.

## CHAPTER 21

### THE IDEALIST THEORY OF THE STATE.

The idealist theory is known by different names. It is also called the metaphysical or the **Introductory** absolutist theory of the state. It is an integral part of the traditional philosophical idealism which till recently was the corner-stone of English political philosophy. In England it was developed by T. H. Green, Bradley and Bosanquet who were influenced by the Greek classical thought as well as by the German idealists, Hegel and Kant. To-day the idealist theory is open to attacks on many counts, but it cannot be denied that on the philosophical side the theory is of some importance.

The English idealist theory of the state as propounded by Green, Bradley and Bosanquet is mainly the product of Oxford. It has mainly two sources: (1) Writings of Plato and Aristotle—Republic and the Ethics; and (2) philosophy of Hegel and Kant. The second of these sources is of more immediate influence. Specially Green found his inspiration in Kant and Hegel as well as in Plato and Aristotle. It is not an exaggeration to say that the idealist theory of the state—both of Green and Bosanquet, is ‘a commentary and exposition, an expansion and modification’ of the political philosophy, which was first elaborated in Germany towards the end of the eighteenth century and the beginning of the nineteenth century<sup>1</sup>. The German idealists and notably Kant were influenced by Rousseau. Thus Rousseau also influenced the English idealists.

1. Joad : Introduction to Modern Political Theory (1924) p. 11.

The Idealist Theory of the state believes that the state embodies in itself an ethical idea. **Statement of the Idealist Theory.** In some sense it is the 'creator' and the 'guarantor' of the real personality of the individual. It is not possible for the individual to develop his personality freely and fully without the state and hence justice consists in the individual finding his proper place and doing the duties of that place in the state. In this connection it is pointed out by Hegel that "man has fully raised his outward self to the level of his inward self of thought. This real freedom which exists in and is a product of society is active and developing." It expresses itself in three things : firstly in law ; secondly 'in the rules of inward morality which the individual receives from society'; and thirdly in the institutions of society. To Hegel 'nothing short of the state is the actualization of freedom.' But it is so by virtue of the fact that the state possesses both a real will and a real personality. It represents the wills of all those who live within it and by this fact it brings into being a new entity which is 'over and above' the 'sum of the individual wills.' This is what social contract writers call the General Will, the state develops a new personality which is again over and above the 'sum of the individual personalities'; this is the personality of the state. Thus according to the idealists the state has a will and a personality of its own which is real.

It believes that 'man by the law of his being is a member of a political community,' but he is an ethical unit and that it is not he who exists for the state but the state exists for him.

The idealist holds that the basis of the state is *will* not *force*. It is pointed out by him that we obey the state not because of force, but because of the consciousness that in obeying the state we are obeying our wills purified and purged.

The importance of the individual to the idealist theory is only man in relation to the state. The idea of the individual apart from the state is hateful to the idealist.

It is pointed out that no disloyalty is involved to our higher self when we serve the state because 'the only master of our loyal service is the ethical and personal ideal.' It needs to be pointed out that there are certain differences among German and English idealists on the one hand and among the English idealists among themselves on the other ; but we are not concerned with those differences here.

The most obvious criticism of the Idealist theory of the state is that it is abstract and does not deal with realities. It speaks of the moral will, free consent and co-operation of the individual and bases the state on them, but where are they to be found? Not on earth, but in heaven—that also is doubtful. It blurs over facts and realities. How does the state embody my will when it leaves me to starve? Do I will to starve? The idealist tells us that man is a rational being; it may be said with equal truth that man is more irrational than rational, more un-social than social. The idealist theory ought to take notice of this fact and construct its premise accordingly.

If the state is an ethical personality, how are we going to reduce it to a concrete entity except on terms of government, thus actually there is no difference between government and the state and the decisions of the government are no more than the decisions of a group of human beings, and human beings are liable to make mistakes and making mistakes does not entitle any one to claim an absolutist position. Therefore in the light of the above the absolutist theory falls to the ground. The truth is that what the idealist theory mainly teaches and believes is abstract, metaphysical, too intellectual. The state can not be judged by announcing in high sounding and vague terms what its purpose is, but by the natural demonstration of its achievement, but the idealist makes away in hurry for achievement. He refers to remain on the plane of ideality rather than on that of reality.

It may further be pointed out that the idealist theory does not so much construct an ideal as it idealises the

state and its imperfect institutions. It puts an ideal interpretation on the existing institutions and endeavours to 'reconcile the social conscience to things which it ought not to accept.' For example Aristotle idealised and thus upheld slavery while Green upheld capital by idealising it. Hobson calls idealism 'a part of the tactics of conservatism.'

In conclusion we may say that the idealist theory of the state is far removed from realities, it blurs over facts and leads to mistaken conceptions and motions regarding the relation of the individual to the state and the position of the state in society and we have no hesitation in agreeing with Professor Joad that the idealist philosophy of the state is not only unsound in theory, but is untrue to facts and may give a dangerous sanction to the state in its dealings with other states.

#### QUESTIONS AND TOPICS

1. Discuss the idealist theory of the state.
2. What are the sources of the idealist theory of the state?

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## CHAPTER 22.

### DEMOCRACY.

To-day a great conflict is going on in the world between two faiths—that of the democrat and that of the new dictators. The democrat holds that man is an end in himself, that much, if not everything, worth living in this life depends on peaceful and friendly intercourse between men of all kinds—black, brown, white or yellow, aryan, semitic or negro. The dictators believe in the glory of war, they hate and despise the ‘humanitarian weakness’ of democracy. The creed of the dictators is attractive and appealing to many; it is a simple faith, a ‘career of adventure, excitement, and self-sacrifice in some great and glorious cause.’ The new democracies including one of the old have crumbled before the attack, the old ones still stand out; whom fortune will favour it is not easy to foretell. To-day what is most significant at the present time is that democracy is under fire. But there is nothing new in this conflict. Democracy has always been under fire.

From times ancient, and if we could say, even before that there have been two conflicting beliefs about control in a political community: Firstly, the assumption that the control of the affairs of the community belongs to the *few*. Secondly, the control of the affairs of the community belongs to the *many* as opposed to the few. We do not take into consideration the control by the one, because the one is ultimately the few. It was the seventeenth century philosopher Hobbes who pointed out that even a despot among despots had to sleep sometimes; and he asked, “who is the sovereign when the sovereign sleeps.”

One can observe, as a student of politics, as they pass in review, the long procession of out-laws, robber chiefs, tyrants, kings, aristocrats great and small, oli-



garch both enlightened and un-enlightened, desposts wise and otherwise, rulers, ruling by blood, by baton, by sword, by gold, by cunning, by craftiness or fraud, or wisdom-Caesars, 'Augustus and otherwise', Alexander, Neros, Genghis Khan, Bonapartes, Hohenzollerns, Tudors, Stuarts, Bourbons, Romanoffs, Alfonsos, Guptas, Mauri-yas, Marathas and Mughals. If their disinherited and expolited, salves and serfs were to form a procession it would wind many times around this earth.

One also notices the endless struggles of a common man for recognition in India, in Greece, in China, in Rome, in Egypt, in the medieval cities. Slavery and serfdom fade away, liberty makes its appearance, universal education, regard for the common man and his dignity and social justice slowly and dimly emerge, recede back but rise again in alternating cycles of hope and despair. In a word the conflict between democracy and dictatorship is historic, ancient and titanic. Both were born together and both have claimed supremacy in human affairs at one and the same time tossing man on the sea of their fury and favour.

### **What is Democracy ?**

The authoritarian theories of the state are definite, systematic and clear cut. But the theory of democracy is fragmentary, vague and tentative. It has been variously defined both by its advocates and opponents. It is said that "it is not a theory at all so much as a number of principles, each of which the democrat takes to be true, but which he would be hard put to substantiate."<sup>1</sup> It will be noticed that this definition of democracy is inadequate, is theoretical and lacks reality. The term 'democracy' strictly speaking means 'the rule of the people', and historically speaking, a democracy has been a state in which either a people has endeavoured to rule itself or has actually ruled itself.

The most popular definition of democracy is that of President Lincoln : "Government of the people, by the people, for the people". But it is pointed out that government by the people means government by crowds

1. Joad.

or masses, and masses are ignorant, untrained and unfit. And it may equally be defined as government of the cattle, by the cattle, for the cattle. Again all governments are governments of the people; all governments are said to be conducted for the people. The essential part of his definition seems to be 'government by the people'. But to define democracy with Lincoln leaves much to be explained. For example except in a small community there must be 'a government' distinct from the rest of the community.

Again democracy has been defined as 'government by the consent of the governed'. But this description of democracy also leaves much to be desired. Consent in the modern state is not active but too passive. If we reduce the role of those citizens who are not "the government" to that of consent we take away all substantial import from the concept of 'government by the people.' After all what does consent mean? It may mean little more than the power to say 'yes' or 'no' by the individual to such matters, problems or questions which the government may 'decide at its own discretion to formulate and present.' It may mean either enforced obedience or voluntary acquiescence. In totalitarian states many coercive methods are employed to secure an acquiescence which may be 'represented as consent.' To describe democracy as 'government by the consent of the governed' is inadequate.

It is further said that government cannot be carried on directly by the people, and that mere consent on the part of the people to the decisions of the government is an inadequate principle to describe democracy, the democratic principle may be applied if 'the will of the people effectively prevails in government.' But may we point out that there is no 'ready-made' will of the people. The members of community can never be and never are in complete agreement on any question or matter. It is equally true of the representatives they elect. More often than not these representatives are elected as a result of the majority decisions and this in particular applies to the choice of those who are to form 'the government.' Consequently

democracy has often been described as 'majority rule.' In fact this is the most widely accepted description of democracy. But it can not be accepted, one reason among others being that the will of the majority of the people is not the will of the people, and the rule of either the majority or of its representatives is not the rule of the people—the whole people.

It has been defined by some as a form of government, a type of state as well as an order of society. But even its advocates are not agreed on this point. For example to J. R. Lowell 'democracy is only an experiment in government.' Seeley defines it as 'a government in which every one has a share.' It may be said that it is utopian definition removed from realities of the case. To Dicey democracy is 'a government in which the governing body is a comparatively large fraction of the entire nation?' We have examined this definition in connection with the 'majority rule' definition. Bryce also treats it only as a form of government.

If democracy is not direct government by the people, if it is not government by the consent of the governed; if it is not majority rule, what is it then? We may define democracy with Mr. R. Bassett as a method of government "by which every citizen has the opportunity of participating through discussion in an attempt to reach voluntary agreement as to what shall be done for the good of the community as a whole. It resolves itself, in practice, into a continuous search for agreement through discussion and compromise, and action on the basis of the maximum measure agreement obtainable."

It is pointed out that this definition of democracy includes all essential points. No doubt all citizens can not participate in the work of government, but all should have the opportunity of participating in the process by which political decisions are made. What they should give is not passive consent but active contribution of their experience. The formulation of the will of the people needs the co-operation of all the people which involves

an attempt to get the voluntary agreement of all citizens. The basis suggested for this agreement is the good of the community as a whole. The method of discussion is the only method to ascertain this. In the process of discussion—a continuous process—all should have the opportunity of playing their part. If discussion fails to produce an agreement, then compromise is essential. Government should be conducted on the basis of the greatest possible measure of common agreement.<sup>1</sup> Therefore discussion is 'the cardinal element in the democratic process.' If it is to be effective, it must not only be free but continuous. It is through discussion in its various forms that the individual citizen can make his influence felt, and can exercise a measure of control over his elected representative and through him, on the government.

Another good definition of democracy is that of Professor Merriam. To him democracy is "a form of political association in which the general control and direction of the commonwealth are habitually determined by the bulk of the community in accordance with appropriate understandings and procedures providing for popular participation and the consent of the governed."<sup>2</sup>

There is much confusion in regard to the nature of democracy. There must be some universal appeal in the name of democracy for even those who are hacking at it proudly claim to possess its soul. Fascist writers loudly claim that theirs is the genuine democracy and that the so-called democracy found and believed in other countries is just a sham. Soviet spokesmen dictatorially assert that theirs is the most democratic constitution on earth, and Joseph Stalin himself declared that elections of 1937 in Russia were "the most democratic the world has seen." The Nazis in their turn point out to their unanimous plebiscites and profess that "the National Socialist form of state, as authoritarian dictatorship of the people, is in

1. Bassett, R. *Constructive Democracy* (1938), p. 80.

2. Merriam, C.E., *What is Democracy?* (1942), p. 6.

truth, the most modern form of democracy in history." Adolf Hitler calls it "Teutonic democracy"—though the adjective teutonic may make all the difference. At the same time England and America claim to be democratic.

Why this confusion? How it is that the countries, where men fear to whisper a word of criticism against their government, where it is dangerous to listen in to foreign broadcasts, where the father cannot speak fearlessly, frankly and honestly before his son, can claim to be democratic along with those where you can switch on to listen a foreign radio; where criticism of the government of the day does not necessarily lead to the concentration camp, (though conditions even in democratic countries are changed now.) where men, women and children can still walk about their business fearlessly, talk honestly and frankly. It seems to us that the friends of democracy are responsible for this anomaly. Democracy has been defined carelessly—perhaps too carelessly. And when it is defined as majority rule, it invites such pretentious claims as are made by apologists of totalitarianism. It is high time that this confused notion about democracy were cleared and democracy distinguished clearly from dictatorship.

In modern times so much has been written about democracy, for democracy, and against democracy that 'the concept itself is beset by serious confusions.' For example, there are people who think it is democratic to take a vote in order to decide the merits of examination answer books, of plays or pictures or merits of a Devika Rani, a Leela Chitnis, a Greta Garbo; or a Shanta Apte, as though there were essentially some relation between popularity and merit. Such people forget that 'popularity runs to mediocrity as a donkey runs to hay.' There are others to whom democracy means 'giving everyone equal authority,' so that no man has any more power than his neighbour. But such a scheme cannot assure the presence of democracy ; it can assure the absence of government ; in brief

it can take us swiftly back to the 'state of nature' of Hobbes.

In considering the nature of democracy the following factors among many others should not be lost sight of. These factors are :

1. Democracy cannot be identified with any particular area or size of a country. For example, a democracy need not be in the nature of a small city state on the Greek pattern as Aristotle held. Again a democracy need not be a national state or an imperial state, and it may not be—though it might come to be a world state. This means that the size of the unit is not a decisive consideration.

2. Democracy does not depend upon any particular economic system either for its existence or efficient working. There might be an industrial democracy, an agrarian democracy, a nomadic democracy or even a technological democracy as pointed out by Professor Merriam. It is true that history furnishes many examples of democracy being linked with particular forms of economic organizations. But economic organization is only collateral and not essential to the basic principles of democracy. These different kinds of democracy were described by Aristotle many centuries ago.

3. Democracy is not a racial phenomenon. It is neither the property of Aryans or non-Aryans. It is not the sole possession of the white or the black or the yellow or the brown or any other one race. It is not an attribute of the Greeks or of the Romans, or of the Western Europeans or of the British or of the Americans, or of any particular group which can be accurately defined. It belongs to the world, and to all people irrespective of their colour, creed, caste and birth.

4. It is not associated with any special form of political cohesion. There are men who are attached to their country but who are not democratic ; for example, Mr. Jinnah who is attached to India as much as any other Indian but who believes that democracy is not suited to India (we are subject to correction). Again there are

democrats who are not unfortunately attached to their country. It is pointed out by Professor Merriam that democracy is not associated with any particular type of administration.

There are a number of assumptions which are implicit in democracy, these assumptions are admirably summed up by Professor Merriam. They are :<sup>1</sup>

1. The dignity of man and the importance of treating personalities upon a fraternal rather than upon a differential basis.

2. The perfectibility of man, or confidence in the development more fully as time goes on of the possibilities latent in human personality, as over against the doctrine of fixed caste, class, and slave systems.

3. The gains of civilization and of nations viewed as essentially mass gains—the product of national effort either in war or in time of peace rather than the efforts of the few.

4. Confidence in the value of the consent of the governed expressed in institutional forms, understandings, and practices as the basis of order, liberty and justice.

5. The value of decisions arrived at by rational process, by common counsel, with the implications, normally of tolerance and freedom of discussion rather than violence and brutality.

The franchise, the representative assembly, a sound system of administration and of adjudication and the ' apparatus of civil liberties ' have been the implements of democracy.

There is one more confusion about the nature of democracy which must be cleared before we take to discuss its positive character. Historically the growth of democracy has been the growth of parliamentary institutions. But it may be pointed out that it is quite possible to think of the existence of democracy without traditional parliamentary institutions ; that is, democracy can exist apart

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1. Merriam, C. E. : What is Democracy ? (1942) p. 8.

from a central assembly consisting of the elected representatives of the people, debating in public, making its decisions by majority vote, and constituting a central and a decisive organ of government. No doubt it is true even to-day that parliamentary institutions cannot exist without democracy, without the free and frank expression of opinion 'as the basis of national policy.' But it does not mean according to Professor Maclver that 'the free play of public opinion *must* register itself in parliamentary forms.' It is pointed out by Maclver that democracy, on the whole, is a recent development. Parliamentary institutions arose when the problems of government were simpler than they are to-day, when public opinion was not heterogeneous but homogeneous, less 'diversified by specialized corporate interests,' when representation of local areas had a meaning which now mostly it has lost, when the predominant occupation of men was agriculture and the relation to the land everywhere the paramount relation. But all that is now changed. For example, already in every democracy, important regulation activities are not directly controlled by parliaments; the needs of administration have created everywhere controls and corporate functions, boards and commissions. If this process continues, as there is every reason to believe that it will, parliaments 'may cease to be the main centres of national life.' But if liberty continues, democracy will still exist and flourish, and still 'the free tides of opinion will determine' who shall govern and to whom power shall be entrusted. In brief the *mechanism* of democracy must always change if conditions change and the principle of liberty abides.

In recent times or to be more accurate in recent years democracy has drawn upon itself a storm of criticism both from revolutionaries and reactionaries. Before we take up the discussion of some of these criticisms it needs to be

**The Challenge to Democracy.**

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1. Maclver, R. M., *Leviathan And The People* [1940], p. 69.

2. *Ibid.*, p. 70.



pointed out that reaction against democracy in recent times may be traced to the presence of certain factors in world thought in the post war world (1918-1939). During this period loss of faith in traditional institutions, particularly political institutions, and traditional patterns of life, intellectual skepticism and emotional fluidity invade not only the sphere of political and economic speculation, but the realm of art and literature as well. The world war (1914-18) cut a nerve connection which no amount of political surgery or jugglery, if you please, could succeed in restoring. Countries which were dedicated, or at least appeared to be so, to democracy when confronted with strain of war resorted to dictatorial methods, curtailing and in some cases even suspending the liberty of the individual for the sake of the common cause. The liberal state which had been committed to *laissez faire*, took to the control of economic activities to a degree unknown and unsurpassed in modern history. The unlimited powers which the individual had granted the state during emergency could not be cast off over-night. The war had magnified and exalted the state, but it had also dwarfed the individual. The post war conditions only emphasized the helplessness of the individual and his need for the authoritarian state. In this sense, the year 1914 may be said to make an end of an era which had made democracy individual liberty and economic and individual freedom a cult. Democracy had functioned most successfully in certain spheres but in others democracy had bungled matters and one thing for certain it had failed to utilize the opportunity offered it by the treaty of Versailles. It could not fairly and justly meet conditions created by the last war in which it became increasingly difficult for it to function normally and where there is no disposition to rational discussion of fundamental problems, where differences between political or economic groups appear impossible of reconciliation, where groups prefer to fight out the final issues involved rather to reach a compromise, where a continuous state of emergency or of crisis exists, it is no longer possible for democracy to function with any success or normally and sooner or later

it has to yield to some other form of government. It is to the presence of these factors that the present reaction against democracy can be traced. The following are some of the criticisms advanced against democracy :

1. The most common criticism levelled against democracy is that it is incapable of making prompt decisions, and of carrying them out vigorously and effectively.

We may point out that it is not only democracy but dictatorship as well against which this objection may be laid. In this respect anti-democratic systems are in no way superior to democratic systems. Opponents of democracy say that "Democracy can neither conduct a war nor organize internal social programs in periods of peace—programs adapted to our times". But it is not true. The charge that democracy cannot prepare for war is not proved by cold historical facts. The modern mechanised army of Germany or Italy is not something which the democracies were incapable of constructing had they desired for war and were prepared to pay for it in the deterioration of national standards of living. The democracies had men, national resources and inventiveness, but lacked one thing—will to kill.

2. It is further said that democracy can never decide because it must carry on too many debates and too many conversations. It reminds one of Carlyle who used to say: if Parliament argues for a month that two and two make five, that does not make it so. They are institutions of talk. Government by talk.

May we ask how decisions are made at anytime anywhere. Are they made in a dumb show? Only cattle are capable of that. Is there no talk between Adolf Hitler and Marshal Goering and Hess and Himmler. Where parliament is silent in Germany or Italy, there is always an anti-chamber where talk, intrigue, discussion conflict are always present and present with a vengeance. More often than not there is delay accompanied by discord. With some ingenuity it can be shown that democracy can move with greater speed than dictatorship. In a democracy debates are in the open, but if we knew all that passes

behind doors in dictatorship it may provide much amusement.

What guarantee there is that a dictator will be decisive unless of course he possesses a decisive mind. He may be a moron—many have been, or he may by nature be indecisive. And if he happens to be a blokehead, all the power in the world will fail to make him decisive or resolute. Only unroll the scroll of history and we find dictators who fiddled while a city—the finest city—burned, who made clocks in the basement while a revolution—one of the greatest revolutions known to history—moved on in its fury, who played with wine and women while their people and land were being destroyed. There would be and there have been middlings and irresolutes even under most complete and perfect sovereignty that lawyers could devise.

France collapsed not because of argument but because of lack of equipment. If the collapse of France is the fault of democracy, then what of Italy ?

3. Democracy is criticised as an in-efficient form of government.

We may say that in-efficiency is not necessarily the trade mark of democracy. Such a criticism seems to be due to an 'inferiority complex'. History provides many examples of inefficiency both in democracies and non-democracies.

The art and science of administration have sufficiently grown and with this growth we may expect that administration will 'increasingly become a significant factor in democratic government.' It will be interesting to point out here that modern democracy is the first to throw wide open the doors of administration to the mass of the people instead of half opening it to a particular class. Such a criticism is a criticism of management and criticisms of management are not the monopoly of democracy ; they arise under any system from local traditions and from the opposition of interested sections of peoples.

4. The opponents of democracy point out that democracy is dying because some democratic states have gone under.

Is it any argument? It may be pointed out that the principle of democracy is not affected if a nation of eight millions is beaten down by a nation of eighty millions. It is not a matter of 'consternation' for the principles of democracy if a nation of eighty millions crushes a nation of forty millions who failed to arm itself.

5. Often doubt is expressed "can democracy exist where there are widely ranging social groups with varying and conflicting interests? Can they bring about, in a democratic way, in a sufficient bond of unity to make a coherent democracy?"

But this is not the real question. The real question is, "can there be any state at all with too wide a range of interests—racial, geographical, economic, natural, political and social. But this is not a question of democracy; it is a question of 'civic cohesion'. It is pointed out by Professor Merriam that if cohesive interests are too far apart and too wide or too remote, there cannot be any state and if there is it will crumble of its own weight.

6. Modern critics point out that democracy is responsible for the decadence of youth. But this view is not warranted from what we know of the modern youth. We must bear in mind that this is not yesterday, but to-day and it is beginning to be to-morrow. To-day there is a brainier youth, better equipped physically and mentally and we should rejoice to see the signs of a better improved breed.

Only few of the objections raised against democracy have been dealt with in these pages. It is not possible to deal at any great length with all criticism—good, bad or indifferent levelled against it in a limited space in a work like the present. But it may be pointed out that we for ourselves believe that the causes of the break-down of democracy are manifold. In such cases there is always

the danger that we shall over-simplify the situation and we are more often than not tempted to consider our particular nostrum as the only effective remedy for the ills of the world. In the present case there are certain very deep-rooted causes regarding which there can be no controversy and which fairly account for the failure of democracy.

Firstly, democracy of the old school had become out of date and attempt to preserve its form in tact necessarily produced reaction against it.

Secondly, the un-planned and un-coordinated expansion of the process of production and distribution has made a great impact on western civilization.

Thirdly, the tempo of economic development necessitated attention to be paid to every kind of social problem; this placed an impossible strain upon the machinery of democratic states and under the stress of which they reached almost a breaking point.

Fourthly, the mechanical side of democracy has always been over-looked.

Fifthly, democracy by clinging to old, out-worn and out-of-date forms has so hampered its own effectiveness and usefulness that it has created a belief that 'democracy can not work in critical times.'

One of the most important criterion to distinguish  
**Democracy**  
**and Political**  
**Parties.** democracy from other forms is the constitutional right of opinion to determine policy. This factor necessitates the existence of a party system. Opinion in a democracy is at once controlling and free. It cannot control unless it is organized and unless there are political parties it cannot be organized. In the modern state whatever sins political parties may commit, they are one of the essentials of democracy. A single party—the party in power—on the Italian, German or Russian model, is properly speaking no party at all. It is more in the nature of a monopoly than a political party; for its one anxiety and one pre-

occupation is the prevention and suppression of free expression of its opinion and its formation. In fact a party on a totalitarian model is the exact antithesis of the party system. Vocational or functional organizations are not a substitute for political parties. Vocational or functional organizations are either controlled by the state or they are voluntary. If they are controlled by the state they will act merely as mouth pieces of government, e. g., in Italy, and cannot be free agencies of opinion. If they are voluntary, they will act on party lines—workers taking one stand, employers another, or they will divide on political issues which will lead to the emergence of parties. At best these occupational, functional, vocational and other-tional organizations will divert ‘attention and energy’ from real political issues to minor questions of material interest.

We may say in conclusion that on the support of good historical reasons we have no hesitation in saying that democracy is ‘on safer foundations’ in a country accustomed to a two-party system than where there are numerous parties divided up into numerous separate organizations. A democracy may be considered to be most safe when the political struggle is between two historical political parties, which can adapt themselves to changing conditions and circumstances.

It is said that political democracy is not possible without economic equality. The commun-  
**Democracy** without economic equality. The commun-  
**and Economic** its point out that democracy is impossible  
**Equality.** so long as there are class distinctions.  
 The opposite school points out that democ-  
 cracy and economic planning are incompatible. According  
 to some the only way to keep democracy is to ‘espouse  
 socialism’ and to do it at once ; while according to others  
 the only way to avoid dictatorship is to ‘eschew socialism  
 and all its works’.

It needs to be pointed out that actually every democratic system has been associated with some sort of *class distinction*.

But this is only a statement of fact not an argument in favour of any class system. It only proves that people do believe in economic inequality and they can accept it and still remain attached to the democratic system. It is only the dictatorial or despotic systems which advocate and profess social or economic equality. In human society, differences on social and economic plane have always existed and exist, seeking outlet and expression. Such differences cannot be overcome or suppressed except by a dominating power, so dominant indeed that it can take control of all the sources of difference, but such a power is bound to be authoritarian and therefore anti-democratic.

The advocates of democracy should recognise this. It is easy to have equality of voting power, equality before the law and even equality of opportunity to a great extent. But absolute equality neither a democracy nor even a dictatorship can achieve.

But we are not advocating a perpetuation of existing economic inequalities. There are certain economic inequalities and injustices which it is the most important task of democracy to remove and control. Such inequalities bring greater danger and do greater harm than what democracy is facing to-day. The removal of these inequalities is essential for social well-being. It must be said that dictatorships, on the whole, in one or the other country have abolished the hazard of the employment for their people. If they had not done so they could not have been able to hold their people. Democracy can certainly learn something from dictatorship in this regard.

Concluding we may say that democracy must meet its problems in its own way. The most pressing 'problems of any government are economic problems'. It cannot abolish social classes, but it can certainly 'suppress the exploitation of one class by another'. If not complete economic democracy, at least, democratic control of national economic policy is what democracy needs to do.

**Conclusion** Winding up our discussion on democracy it is pointed out that in the present age

when the form of government has become the most important issue what divides not only men but also nations we need clear thinking about democracy.

If we advocate and defend it we should know what it is ; and know it without misunderstanding it. If we are opposed to it and attack it we should know what we are attacking. To those who defend democracy we may point out that it has its defects and limitations. Public opinion cannot be wiser than the people who hold it. And the people are ridden over by the demagogues ; they are moved by catchwords and slogans, deceived by never ending un-meaning arguments, and beset by prejudices—false and true. More often than not they are aroused by small, petty matters and are often not responsive to matters which mean much. Let the advocates of democracy admit this all. To its opponents we point out that we do not get rid of these defects and limitations by resorting to dictatorship. It is very simple to understand. In the present age every system of government 'must rest on the consent of the mass of the people'. On this count all that is said against democracy applies within equal truth to dictatorship, for simple reason that dictatorship depends on mass emotion and it must prevent it from becoming more enlightened and better improved.

As Professor Maclver points out that in ' the modern world there is no way to save government from the people or to save the people from itself.' It is futile to ask for a ' Government of the best men,' because the real difficulty is, who will elect the best ? It is again futile to ask for a government of laws not of men, because government of laws will become a government of lawyers who also ' happen to be men.' In fact every alternative to democracy is open to charges more damaging than any that can be laid at the door of democracy.

Concluding we may say with Professor Merriam that democracy is the best form of political association which the mind of man has devised so far as a result of his experience, analysis or observation. It is the ideal form of association. As a form of political association it may



vanish from the world from time to time, or may decline but it will not die. It is a type of society which is continuous, and which has its roots in the nature of the community, the common affairs of which are decided by the community. And this is 'a basic principle of association,' and whatever may happen in the future, or in the interims this principle will win. In the long run common good will be determined by the community.

#### QUESTIONS AND TOPICS.

1. Write a critical essay on democracy.
2. Why you prefer to be a democrat? Give reasons for your answer.

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## CHAPTER 23.

### TOTALITARIANISM.

To-day totalitarianism and democracy are in a death-grip with each other, which of these will triumph can not be said just now. Before it is explained what is totalitarianism it is better to trace its development.

**Rise of Totalitarianism.**

In the history of mankind the second half and the first decade of the twentieth century was a golden age.

Why ?

The standard of comfort rose in proportion with the progress in most of the fields of science and civilisation. Individual liberty, economic freedom of movement, reign of law and intellectual liberty came to exist in the world unknown in its history. People believed that a way had been found which might lead them out of the darkness of centuries upon centuries of despotism and feudalism into the sunshine of freedom, of universal education, of brotherhood of man, in a word of humanity and liberty.

Then came the world war (1914-1918). Many believed that it had not interrupted but hastened the progress of this process. It resulted in the triumph of the Western Democracies over the four once magnificent empires—Germany, Austria, Turkey and Russia. On the ashes of these empires a series of democratic states were erected. The establishment of the League of Nations was considered a triumph of democracy. But the fates decreed otherwise.

Hardly the ink in which the Covenant of the League was drafted had dried when Lenin struck a death blow to Kerensky's democratic republic in Russia and proclaimed the dictatorship of the proletariat.

Thus to the heritage of democracy a new ideology of dictatorship laid claim. This new gospel confronted the ideal of *freedom* with the ideal of *equality*, *private property* with *Communism*, *parliamentary system* with a *system of soviets*.

In every nation progressive elements partially embraced the Leninist doctrine. The crisis of democracy followed hard upon the footsteps of its glory.

It will puzzle further historians to know how it happened that inspite of all its 'incomparable triumphs', large parts of Europe forsook it after only a few decades.

The solution is to be found in the class war. The class war is not a modern invention. It is as old, if you please much older, as man. Plato had pointed out several centuries before that the state was composed of two states—that of the rich and that of the poor. These have always been in conflict with each other. In the ancient world, in the middle ages and in the modern period the haves have always been shy masters of political power and therefore of the state. They have always been in minority, and yet have succeeded in capturing political and economic power. Power has changed hands continually, but it has always remained in the hands of the minorities—haves—while the majorities—the have-nots have been beaten, burdened, buried and disinherited.

Every civilisation that has appeared so far has been the creation of these minorities. Their possessions afforded them the leisure, the power, and the liberty to devote their energy and time to the cultivation of interest, art and literature. When opportunities of education were got by the have-nots they sought assimilation in the class of haves and co-operated with it in the making up of their cultural world.

Before the advent of democracy this favourable position of the haves was taken for granted and even the ushering in of democracy did not affect their position in any appreciable degree. The French Revolution was a struggle between the middle class and the nobility. The

middle class won in the name of democracy but the poor remained miserably impotent and disinherited as before inspite of the fact of their being enfranchised.

The watch-words of the French Revolution were 'Liberty, Equality, Fraternity'. The poor came to know this liberty by becoming slaves in the factory, threatened with death by starvation for 'every outspoken word' against their masters.

What about Equality ?

It meant that some lived in the comfort and luxury of palaces while others lived in bare, cold and uncomfortable rooms, gutters, slums and dens.

How about Fraternity ?

It meant (it means even now) that the haves never stretched a hand to the have-nots—not even in a fit of absent mindedness. It was considered bad form and even below dignity to stretch it.

But by now a new class of have-nots—the industrial proletariat—had come into existence. The work of this class was merciless and their misery indescribable. The possessing class became more prosperous, but the industrial proletariat became a new class of slaves exploited, deprived and robbed of all their rights by the capitalist. And this inspite of all democracy.

This resulted in a social split in the great cities—the bourgeoisie and the proletariat. The ever-present class conflict took on a new aspect. It became a struggle between a freed bourgeoisie and an enslaved proletariat.

This led to the rise of a new movement—socialism. Socialists demanded political and economic equality, abolition of capitalism, socialisation of the means of production, equitable distribution and the creation of equal opportunities of education for all—rich, poor and middling.

These demands were democratic. They sprang from the equality of man and man before law as well as before property. They sprang from the fact that in a democratic

state it was un-democratic that the minority should command, control exploit and disinherit the majority.

For the realisation of their dream the workers began to organise themselves on the common platform of Marxism. Isolated they were impotent, united they could break their chains and drink at the well of power. They first wanted to fight for universal suffrage in order to unite all the have-nots against the class of haves so that they may overthrow the haves in their own parliaments by out-numbering them.

But the bourgeoisie also mobilised its forces and allies to give a battle royal to its opponents. It did not fight for democracy in vain. To make good its claim it organised its front on the basis of defence of private property against Marxism. It used all tricks which it could command by reason of its wealth, influence and cunning. It advocated and preached nationalism and imperialism as opposed to socialism; it generated national hate in place of class hate; it made an alliance with the forces of conservatism, the might of the church, the sword of the crown, the soft cunning of the nobility, the bureaucracy, the peasantry; it made social and commercial alliances with parliaments and governments.

The anti-Marxist front did not consist entirely of the class of haves. Many who had suffered under capitalism joined it. But the have-nots could not succeed in the formation of a single parliamentary front against the haves. Priesthood and aristocracy swallowed their contempt and hatred for the middle class in order to affect an alliance with it to oppose the progress of Marxism. But Marxism declared war on religion as well which did not allow it to become a majority and thus in spite of the introduction of universal suffrage, it did not succeed in the parliamentary game.

This class conflict split the army of freedom, which had overthrown absolutism a few decades earlier, into the warring camps—the liberal and the socialist—in a life and death struggle. Each of these camps felt that it was the legitimate heir of the movement for freedom. The liberals

'held fast to the institution of private property', and even the French Revolution declared it to be one of the most sacred rights of man. The socialists were opposed to the institution of property and refused to recognise it and considered its disappearance as the one factor of real freedom and justice in the world.

Before the question of the private property the idea of freedom paled into insignificance. The socialists were ready to do away with freedom if it were possible to establish socialistic equality. Thus both sides found conditions which afforded them retreat from the ideal of freedom, which lost its charm as soon as it was attained. It seemed no more worth while to fight for freedom, but 'only for the distribution of private property.'

Thus freedom's front was broken up.

The last world war caused a split in the socialist front between the social democrats and the revolutionary communists. The social democrats allied with the bourgeoisie while the revolutionary communists aimed at the establishment of international dictatorship of the proletariat and the death of the bourgeoisie.

Socialism had once for all lost the parliamentary game. Lenin recognised this and broke away from democracy. The fact of his being a Russian was a deciding factor. The industrial proletariat in Russia was only in a miserable minority in comparison to the agrarian population, the majority of which were conforming believers. Again Marxism in Russia could not hope to get a democratic parliamentary victory for the simple reason that 'any democratic regime would necessarily bear an agrarian character'. Moreover such a regime was problematic in a country in which large masses of the people were illiterate and could make an easy tool in the hands of 'plutocracy and reaction'.

Lenin realised that it was impossible to establish socialism in Russia by democratic methods; he, therefore, demanded revolution by bullets instead of with the ballot. He declared that democracy was 'deformed by capitalism'.

It is useless to conduct the class conflict on the plane of parliamentary democracy. Therefore, all the forces opposed to the proletariat—middle class, nobility, priesthood, capital, land magnates, intelligentsia—were to be destroyed and on the ashes of this destruction the true democracy—the classless state—was to be established. The class conscious proletariat was the only class to construct this classless state.

Thus the dictatorship of the proletariat appeared to be the one condition for the realisation of the socialist society.

The moment Lenin achieved power he began to show an utter disregard for human rights and personal freedom and established a dictatorship of fear, terror and power. Robbery, murder, extortion and torture were employed to exterminate all forces opposed to his ideology. The so called dictatorship of the proletariat was in fact the dictatorship of Lenin though in form it was the dictatorship of the Communist party.

Upto this time Marxism had appeared as the apostle of freedom and equality, but Lenin gave up the ideal of freedom in favour of the ideal of equality. In brief the kernel of the Bolshevik Revolution was "the struggle against individualism, personality, freedom, and the 'gentleman ideal'—against the totalitarian man."

In its place there was to be a totalitarian state with absolute and unlimited power, a 'collective organism' before which the individual was not only out-lawed but impotent as well. The ideal of liberty 'was transferred from the present to the future.' The dictatorship of the proletariat was declared for an unknown period which was to be utilised for the destruction of the state and the construction of individual freedom. A system of soviets was created in place of the parliamentary institutions.

Not satisfied with the conquest of Russia Lenin proclaimed the world revolution. It was an imitation to the proletariat of other countries to destroy what it had taken centuries upon centuries for man to build. This

imitation was accepted by a large proportion of the younger and active elements in all countries all over the world. With the help of the third International and under its guidance and inspiration a series of revolts, revolutions and conspiracies broke out all over the world. But except in Hungary, Finland, and Bavaria, nowhere power came to the revolutionaries.

Another factor could be noticed at this point, the class struggle had entered on a new phase. Bombs, baton and machine-guns were to succeed where the ballot had failed. Propaganda did the rest to shake the ideological attachment for freedom in preference to equality. What was the result? Parliamentary system was derided, liberalism ridiculed and democracy became a contemptible thing to be buried in the deepest ditch. There came a change of values in the minds of the younger generation against individualism, democracy and freedom, but in favour of collectivism.

The danger of world revolution had a powerful effect on European middle class. Defence against communistic world revolution became their immediate ideal. Taking a leaf out of the diary of a communist the middle class youth armed himself with a castor oil bottle and a club or both and took up the struggle for political power as well as for the mastery of the street. Recourse to violence was easy since the communist had broken the rules of the game.

Thus there grew in the bourgeoisie the idea that bourgeoisie dictatorship should fight the communist dictatorship by its own methods in defence of private property against the onslaught of Bolshevism and atheism. The bourgeoisie camp light-heartedly deserted the trembling ground of democracy. In the name of national collectivism a second front came to be erected against freedom and individualism.

This counter-revolution had its beginnings in Hungary and Bavaria after the overthrow of communist governments in Budapest and Munich. But the first decisive



victory of the counter-revolution was in Italy under the leadership of Benito Mussolini.

Mussolini—one time a socialist—created the Fascist movement and philosophy, which cut away from democratic ideals and parliamentary system to meet the Bolshevik revolution with Bolshevik methods.

His dynamic personality, his drive, his appeal to the heroic instincts of the younger generation, to national aspirations and to adventure brought him a gathering not only large but also energetic which was more important. A street warfare between bolshevism and fascism started in Italy; the Italian government strove to keep neutral in order to allow the two movements to exhaust each other out of existence. But the sympathies of conservative elements, of capital, of the army, and of the Ruling House were in favour of fascism. It was favoured not so much as a system as a forceful front against communism.

The individualism of Nietzsche had much influenced Mussolini's philosophy of life, but the Fascist state was fashioned 'into a system of nationalist collectivism'.

He set up the idea of national war and imperialism as against the idea of class war, the idea of national consciousness as against the idea of class consciousness, the idea of collectivism against liberalism, the idea of hierarchy against democracy, and the system of leadership against the parliamentary system. The Fascist Motto came to be "Order, Authority, Discipline."

He deified the nation and promoted himself to be its symbol. Class warfare was not fought to an issue; it was forbidden. The state declared itself to be an umpire in the conflict between labour and capital. Marxism and the scanty remains of liberalism were presented with a vengeance. They did not die, but went underground and by the lapse of time and of the burden of fascist force became cremated.

By a reconciliation with the papacy he combined a cultural policy with a social economic policy together with an imperialist foreign policy.

The success of Mussolini's counter-revolution had the same influence upon the world bourgeoisie as Lenin's Bolshevik Revolution had on world proletariat.

A large part of the youth flocked to fascism declaring that it represented the true spirit of their generation as opposed to 'the out of date ideals of freedom, liberalism, and democracy.'

The fascist counter-revolution showed itself to be more successful than Bolshevik revolution as world revolution in that about half the countries of Europe followed fascism.

The greatest victory of fascism was its victory in Germany in the form of national socialism. The German nazi movement won great popularity because of its opposition to the Versailles Treaty and due to its extreme opposition to Marxism and socialism it secured the help of capitalism. The movement gathered strength, economic conditions in Germany helping its popularity and strength, and led to the nomination of Adolf Hitler as Chancellor who from his position of power converted Germany into a national socialist state.

The main factor which distinguishes national-socialism from fascism is that "it does not proceed from the cultural idea of the nation, but from the mystic biological conception of the race, from the belief in a common Aryan blood stream, creating a common national body of all Germans which no artificial frontiers can divide." Count Kalergi brings out the difference between bolshevism, fascism and national socialism when he writes: "While bolshevism destroys the traditional cultural values of the western world in order to create a new proletarian form of life and a new world order, and while fascism retains western cultural values and protects them from destruction, national socialism takes up a position in the middle; from the cultural standpoint it is less revolutionary than Bolshevism, but less conservative than fascism. It is not atheist, but it is anti-clerical and in part anti-Christian. Its aim is a new world order

under the leadership of the German race, the chosen people of the national social gospel.”<sup>1</sup>

But whatever the differences between these three ‘isms’, they have a common platform in the cult, exaltation omnipotence and the might of the state on the one hand and the impotence, insignificance and degradation of the individual on the other.

In the conclusion it can not be gainsaid that there is today a crisis of freedom, the issue of this crisis is yet in the balance, because the crisis of democracy is equalled by an equally grave crisis of dictatorship. One feels that once again the spirits of Athens and sparta confront each other. It is war of the totalitarian state against the totalitarian man.

Before we define dictatorship it needs to be pointed out that the government of one man, taken absolutely and literally is an impossibility in any modern state. There must be his collaborators and subordinates helping him and possessing a share of his authority. With this qualification dictatorship may be defined as “the government of one man, who has not *primarily* obtained his position by inheritance, but by either force or consent and normally by a combination of both. He must possess absolute sovereignty, that is, all political power must ultimately emanate from his will, and it must be unlimited in scope. It must be exercised, more or less frequently in an arbitrary manner, by decree rather than by law. And, finally, it must not be limited in duration to any given term of office; nor must the dictator be responsible to any other authority, for such restrictions would be incompatible with absolute rule.”<sup>2</sup>

1. The twentieth century totalitarian state is the ‘child of the civil war between the bourgeoisie and the proletariat.’ It is therefore in its essence a military state. To justify its existence, permanent mobilisation

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1. Kalgieri-Coudenhove, R. N. *The Totalitarian State Against Man* (1938), p. 88.

2. Cobban, Alfred. *Dictatorship* (1939), p. 26.

against internal foe is not sufficient. The whole people must be kept up feeling endangered by external enemies. For this a permanent war psychosis is necessitated which must harness all national forces and resources in defence of the state. Therefore all without any exception must range themselves behind the leadership of the state, even if they are opposed to its policy or idealogy.

2. The totalitarian state is opposed to free trade. It favours *autarchy* or economic self-sufficiency. In a totalitarian state military requirements take precedence of social requirements.

3. In the totalitarian state discipline replaces justice, authority replaces freedom and obedience replaces conscience. It is hierarchical. Every man must obey those who are above him and give orders to those who are below him. This obedience must be absolute.

4. The totalitarian state is an extremely centralised state. Being a war state it requires an absolute unification of powers.

5. The totalitarian state is 'omnipotent in all spheres.' It is the master of the personal possession of its subjects or citizens which it can confiscate, commandeer and use at any time. It tolerates no law which limits its arbitrary power over people who are opposed to it. It tolerates no judge to whom right is above the state.

Science becomes the handmaid of the totalitarian state. It must not criticise either its cult, or economic system or politics or its ethics. Statistics should publish figures in such a manner so as to give a favourable view of affairs and things in the totalitarian state. In a word the totalitarian state does not recognise any private sphere of life on the part of the individual.

6. The ideal of individual liberty is crushed in the totalitarian state. Hitherto every state has had four functions :—

1. Protection of man against fellow man ;
2. Protection of the state against man ;

3. Protection of the state against external enemies; and,
4. Protection of man against the state

In the totalitarian state the fourth is conspicuous by its absence. When the right of the individual is in conflict with that of the state it is forfeited. There are only state rights and not human rights; hence the state may in public interest kill, torture, rob, arrest, imprison and exile any individual without trial or without establishing his guilt. In a word all rights as well as all might lie in the state.

7. The totalitarian state regards itself as a trustee for the individual rights of its subjects. But it has absolute power of administration of those rights.

8. The totalitarian state regards itself more as a guardian of a 'mission' and less as a representative of the individual interests of its people. This mission in Russia is based on the ideal of class conflict, in Italy on the national ideal and in Germany on the ideal of the race.

9. The totalitarian state is a one party state, where there is opposition in the sense of parliamentary government there is no totalitarian state.

We may deny totalitarianism as much as we like, but it can not be denied that in certain spheres of life it has done more in a short period what democracies could not do in decades or even generations.

**Achievements of Totalitarianism.** Totalitarianism has given to its votaries 'a faith to live by and a cause to die for.' It has generated a new self-respect, a new self-confidence and an urge for living heroically. It has expelled defeatism, pessimism and idle-ism from amongst the younger generations and has injected them with a strong sense of their importance and manliness. It has offered a common platform for people to unite for the sake of national unity and solidarity.

Whatever else we may say against dictators they are not despots interested in the promotion of their own material interests. No open revolt has broken out against

dictators in any country which may be taken as an indication of the fact that they have lost popular support at their back. 'The totalitarian state has brought into clear relief a new line of distinction between popular and unpopular governments as against parliamentary and non-parliamentary governments.'

The totalitarian states have brought un-employment and poverty under control. The lot of the worker in totalitarian state is no worse than of his counter-part in democratic states.

We are in the midst of the most dangerous revolution in the history of mankind—the revolution of the state against man. We are in the midst of the most dangerous idolatry of all times—the deification of the state. Totalitarianism is the philosophy of this deification of the state. According to its ideology individual is only a man; the state is more than a man; it is many men; therefore, it is more than both the individual and the man.

Man is a creature, the state as a creature is more than him; he is the creature of God; the state being more than him is a demi-god if not god. Each individual is important or valuable to the extent of his services to the state. In so far as he is helpful to the state he is good and valuable, but the moment he hinders its progress he becomes an evil and useless. And finally the state is everything, man nothing, he is only an atom or a cell, if you please, in this supernatural and superhuman superstructure the state.

But the apostles of totalitarianism forget that man is the creation of God while the state is the creation of man; therefore, the state exists for man, it exists to serve him, to make his life happy and noble. It is his servant; one can think of men without states, but states without men are unthinkable. The state is a means to an end, man is an end in himself, he is not a means to an end. The state is important and useful only to the extent of its services to man; to the extent it helps to develop man it is good and useful, but when it hinders man in his deve-

lopment it is evil and useless. The state is only a machine, man is a human being, the state being a mechanism is an instrument for the service of man. The state is a house, man its master and builder. Like a machine the state is both useful and dangerous. So long as man controls it, it enhances his power, his security and his freedom, the moment he loses his control over it, it becomes his enemy, tramples him, destroys him and eats him up. This does not mean that we condemn the state, but what we strongly condemn is its deification, its idolatry—the most fatal heresy of our times.

In conclusion we may say that democracy must learn some of its lessons from dictatorship and solve its problems by democratic methods. It is no use crying hoarse against dictatorship; it must rise superior to dictatorship and instead of remaining a mere formal and half-realised conception must free itself from economic injustice, imperialistic exploitation and expansion and class consciousness. If it desires to survive it needs to become a living reality, a dynamic force full of vitality and reality.

#### QUESTIONS AND TOPICS

1. Critically examine the definition of dictatorship.
2. What is the value of the totalitarian state?

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