

CHAPTER II.

AMPLIFICATION OF THE FUNCTIONS OF GOVERNMENT.

—NATURAL INALIENABLE RIGHTS.— THE STATE SHOULD MIND ITS OWN BUSINESS.

The first, or self-preserving function of government includes whatever must be done to establish and maintain power necessary to the efficient discharge of its other functions. This power, as already seen, can not be too great, but justice demands that the expense and burden of its maintenance shall be as light as possible and equitably apportioned among the people.

Since the service to be rendered by the State is for the equal and common benefit of all, justice demands that the expense incident to such service should be shared equally by all. Persons without means, however, of whom there are too many in every state, seem unable to contribute their share, and taxes are therefore for the most part levied upon property, either directly upon what men save or indirectly upon what they spend. It is argued in justification of this method of taxation

for public expenses, that the owners of property are especially indebted to the State for the protection afforded their property, and that each should, therefore, pay in proportion to what he owns. The argument is without foundation in reason or fact. Thrifty and economical owners of property are, as a class, less trouble and expense to the State than persons without property; they are conservators of the peace, and protection should be given to their property because justly due in return for their foregoing and surrendering to the State the exercise of the natural right to protect it themselves. Each member of the body corporate known as the State should contribute equally to its support; and there is no reason why it should collect more from one man than from another, unless in payment for some advantage which it enables him to enjoy above others, the value of which he should then pay into a public fund for the common benefit of all. Such payment, however, would not be primarily of the nature of a tax, since it ought to be made even if there were no public expenses and no need of taxation, in which case such fund should be divided equally among all the individuals composing the State. But since there are public expenses which ought to be borne equally by each and all, if there be such a fund in which each and

all have an equal interest, common business sense would suggest the application of it to the payment of such expenses, and that other taxation should not be resorted to until that fund was exhausted; if it should prove sufficient to cover all public expenses and be used for that purpose, they would then be shared equally by all since paid out of a fund belonging equally to all. That such fund exists and should be collected by the State and applied to such purpose, thereby doing away with all necessity or excuse for prevailing systems of taxation, will appear later upon inquiring into laws relating to land, labor and property. It is in the exercise of this, its first function, also that the State protects itself by diplomacy or war against the invasions or encroachments of other governments, wherein appears clearly the necessity of compelling all persons within its jurisdiction to unite and cooperate for its support and defense.

In the exercise of the same function the government suppresses rebellion and prevents secession as alike incompatible with the maintenance of its supreme power. The real issue in the late civil war in the United States was whether or not the national government was supreme. In that war was demonstrated and established the principle equally dear to the North and to the South, that

the government must be stronger than any power or powers within it, a demonstration as invaluable to the country and its government, as was the blood of the brave men that on either side of that momentous issue took part in finally establishing that great fundamental principle. There can be but one government, one supreme power existing at the same time in any one place, and self-preservation is the first law of its being as of every other.

It is in discharge of this function, moreover, that the State is warranted, if at all, in undertaking to secure the education of all persons within its jurisdiction, not because it is under any obligation to provide instruction for anybody, but because its own safety depends upon popular intelligence in regard to matters of government, intelligent citizens being at all times as necessary as are trained soldiers in time of war.

The second, or peace-preserving function of government includes all such exercise of its power as is directed immediately and solely to the preservation of the peace and public order, for although every act of government has that for its ultimate object it is well for purposes of analysis and classification to distinguish between acts having that object only and acts which, in addition to that, their remote object, have for their direct and immediate

purpose the accomplishment of something intermediate but legitimate, because necessary to the preservation of the peace, the former class of acts belonging to the peace-preserving function, and the latter to either the third or fourth function according as they have for their direct and immediate object the preservation of some natural right or the carrying on of some necessary public service.

The peace-preserving function is exercised chiefly in prohibiting and preventing conduct which might be unobjectionable but for its tendency to disturb the peace. It is by virtue of this function that government interferes with the natural right of self-defense and forbids its forcible, peace-disturbing exercise whenever adequate protection can be by the State substituted and provided for the person foregoing such exercise. For instance, if property be stolen or unjustly detained, or premises unjustly occupied, the person injured has an undoubted natural right to use force if necessary in retaking such property or possession of such premises, but the State for the sake of peace and public order prohibits the use of force for such purpose and subjects whoever uses it to penalties which it imposes in the discharge of its peace-preserving function. In order, however, to insure the more prompt and willing obedience to its com-

mand, as well as in justice to him that obeys it, the government provides for the righting of the wrong by peaceably restoring the property or possession of the premises, thereby exercising its third, or right-preserving function.

The exercise of the peace-preserving function is directed largely against conduct commonly characterized as taking the law into one's own hands. It is exercised in preventing language that, although expressing not unmerited censure, would disturb the public peace, and also mutual combat indulgence in which might be nobody's business but the combatants', except for its peace-disturbing tendency.

The third, or right preserving function of government is by far the most comprehensive and complicated of all, and includes whatever is necessary to be done in order to protect man in the enjoyment of his natural, inalienable rights, and to make them secure in the case of every man and every right from the fraud or violence of other men. The ultimate object of this function as of the others is, as already seen, the preservation of the public peace and order, but so necessary to that end is the accomplishment of the direct and immediate object of securing natural rights that the latter has often been mistaken for the primary end, authorizing

motive and necessary cause of government. And although a secondary object in that it becomes legitimate only because necessary to the preservation of the peace which constitutes the sole warrant for the establishment of civil power, nevertheless the protection of man in the enjoyment of natural rights is so absolutely necessary to permanent preservation of the peace, to the stability of government and the just exercise of its power, that the framers of the Declaration of Independence were not far from correct in declaring that "to secure these rights governments are instituted among men." It matters not whether regard be had to what is necessary to insure its own permanence and peace-preserving power or to that justice without which the exercise of power is tyranny, the highest function of government is to make equally secure to every person within its jurisdiction as free and full enjoyment of every natural right as is compatible with the preservation of the peace and the supremacy of the civil power.

Efficient discharge of this function is impossible without a clear and definite conception of the natural rights of man. There have not been wanting those affecting to deny the existence of such rights, none of whom, however, it is believed, ever seriously questioned the validity of that first law of

nature the right of appeal to which is universally recognized as belonging to all men—the right of self-defense. But without primary natural rights there could be no valid foundation for the secondary right of self-defense, which must indeed arise from the violation of some primary right. If man had no rights, nothing of which it would be wrong for another to deprive him, there would be nothing which he could rightfully defend, nor any right of self-defense. Without rights there could be no wrongs which are but the violation of rights, and without wrongs there could be no just warrant for government, for there could be no justice in preventing what was not wrong nor in enforcing what was not right. The State cannot make right wrong, nor wrong right.

By natural rights are meant simply those relations which every man by the very nature of his being sustains to the universe and to preserve which from destruction or injury he may justly use whatever force is necessary. What are those relations? The first to suggest itself is that of life, the taking of which from man is universally admitted to be wrong unless necessary in the defense of life. Murder was none the less wrong before the giving of the ten commandments than after, the command, "Thou shalt not kill," being but the

enunciation of a law existing in the very nature of things. Every man has by nature the right to say to every other man, Thou shalt not kill me and I will kill you, if necessary to prevent you from taking my life. The right to life being the highest of all rights, primary and so sacred as to warrant even the taking of life when necessary to its defense, it must entitle its possessor to the enjoyment of whatever nature has made necessary to or provided for its preservation, support and healthful continuance, and man must therefore have a natural right to enjoy whatever is necessary to the preservation of an existence as healthful and happy as he can maintain by embracing the opportunities provided by nature for that purpose. To that end man should have the freedom to use his mental faculties and physical powers not only in protecting himself from violence, but also in laboring for food, clothing and shelter, in seeking, occupying and using localities most favorable to securing a subsistence, as well as to securing his health and happiness, the only natural and just limit to such freedom being that necessary to the equal freedom of other men. This freedom contemplates not merely freedom from imprisonment, from chattel slavery, the absence of restraint over man's conduct in any given place or places, but the freedom to go whitherso

ever and to remain wherever he thinks best and to occupy and to use whatever place or opportunity nature has adapted to the promotion of his happiness. That is not liberty in any complete sense which wants this freedom, against any unnecessary encroachment upon or restraint of which by others a man may as justly defend himself as against direct attempt upon his life.

Another natural right commonly given a separate classification is that of property, Man in the exercise of his liberty labors to produce that which is necessary or conducive to his life and happiness, but in order that his labor may not be in vain, that his liberty may be complete, he must control and make such use and disposition of the product of his labor as seems best to him. That product is called property because proper to him, *proprius*, his own. It is his, however, not because necessary to his life or happiness, but because produced by him. It might become necessary in order to save his life for him to appropriate the property of some other man, and that without permission from the owner, but such appropriation, although necessary, would no more render the thing so appropriated his property than the taking of another man's life in self-defense would render that life his own. Property is a natural right, common alike to all men, because

a right necessary to the existence of man; it is but the substance of the right to labor, and as there is no natural or just limit to the kind or amount of labor a man may perform if he chooses, except that prescribed by his natural ability and opportunities, so there can be no just limit to the kind or amount of property a man may acquire and hold except that prescribed by nature.

Life, liberty and property constitute a comprehensive classification of the natural rights of man; life and liberty being provided by nature, and property being acquired through the exercise of liberty. There are two ways of acquiring property, however, one by producing it and the other by receiving it in exchange for other property or for labor, that is, through contract, which although but the exercise of liberty may, nevertheless for convenience, be classified as one of the natural rights of man. A man may have produced certain property, but be in need of other property which he is unable to produce directly by his own labor, and he may desire to exchange some of that which he has for some of that which he lacks, for instance, bread for meat. If he finds another man willing to make the exchange to which they voluntarily and mutually agree, the bread thereby becomes the property of him that had the meat

which becomes the property of him that had the bread. The right of contract results naturally and of necessity from the rights of liberty and property. In its exercise property may be exchanged for property or labor, and labor for labor, the sale of labor being but the sale of its product whatever it may prove to be, that is, a transfer of the property resulting from the labor.

The right of self-defense, although natural and inalienable, is secondary in that it exists only by reason of the violation of some one or more of the above described primary rights of life, liberty, property and contract. It is in order that it may efficiently and not unjustly restrain and regulate the exercise of this secondary right, that the State in the discharge of its third function undertakes, and is in duty bound to secure the enjoyment of primary rights. This it seeks to accomplish through the enactment and enforcement of laws civil and criminal, having for their legitimate purpose the defining of rights and the securing of their enjoyment through direct protection and the infliction of deterrent penalties for their violation.

The fourth, or public-serving function of government has for its immediate purpose the carrying on of enterprises and the performing of services necessary to the peaceful enjoyment by all of nat-

ural rights, provision for which enjoyment cannot be made without the aid of the State. For instance, the right of liberty as already seen includes not only the right to occupy and use natural opportunities, or land, but also the freedom to go from place to place, or the right of locomotion. But the going from place to place necessitates the passing over intervening places which may be in the rightful possession of persons whose rights will be infringed by such passing, and who will disturb the peace in their defense; hence it becomes necessary, in order to preserve the peace and also to secure the right or freedom of locomotion to all, that highways shall be established and maintained over and upon which all persons may at all times freely pass at will. It is clear that nothing short of the supreme power of government is adequate to the establishment and maintenance of such highways, and that the principle applies not more to county roads and city streets than to the great railways of a country no one of which could be built or operated without the authority and aid of the State. The same principle applies to every natural monopoly and to every necessary enterprise whose nature or extent is such that it cannot be carried on as a private undertaking through the unaided effort and co-operation of natural persons. In this

class are street railways, municipal water works, gas and electric light plants, telegraphs and telephones. If a postal system, safe deposit banks and a legal tender currency are public necessities, and cannot be maintained without the aid of government, it should in the discharge of this function provide and control them. It should not, however, assume to carry on any gainful service or business that could be peaceably conducted by natural persons without its aid. To do so would be to unjustly interfere with natural opportunities for the support of life and the pursuit of happiness, and to deprive man of natural rights rather than to secure them to him. Nor is the fact that any given or proposed enterprise or undertaking exceeds the compass of unaided individual ability alone sufficient to warrant the government in assuming to carry it on or to aid in its performance. That an enterprise seems desirable or would be beneficial in its results, is of itself no sufficient reason why the State should undertake or aid its performance. It can legitimately do only those things necessary to the efficient performance of its primary or peace-preserving function.

All these four functions should in every case without exception be performed by the government itself through its own exclusively public servants

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independently of any and all interests save the public. Separation of Church and State is not more essential to good government than is the separation of the State from private interests of whatever name or nature. No man can serve two masters, nor can any man, the agent of a quasi-public, quasi-private corporation, render the best service to the public, especially when he holds his position subject to the will of private stockholders. The State should have no partnership with persons natural or artificial. It should mind its own business.