

CHAPTER V

THE NATURE OF THE STATE

CONCEPT OF THE STATE

The task of the investigator who wishes to examine the various premises laid down by supporters of the State is no easy one. Almost without exception, they accuse one another of confusion and, in attempting to set their colleagues right, merely add to the confusion, and that is perhaps the reason why their works have been read by so few people. One trouble lying at the root of this business is that, in our time, there seems not to have been an attempt made by writers on the subject to define the terms they use—the basic terms. The word “State” is difficult enough to define even when the order is simple and the area of its jurisdiction comparatively small. Today, when six of the most populous nations in the western world have six different forms of government, it requires more than one simple definition of the word “State” to assist one in learning just what system of government each one practices. It is impossible to think of a State without speculating upon the reason for its creation. Really there is no such thing as a State *qua* State, for we are told that the State is the body politic organized for supreme rule and government. But this definition fits no State within our knowledge. It refers to an ideal State; not to the State, in practice, which, by no stretch of the imagination, can be held to be an organization of the body politic for

supreme rule. The old notions of differences between conceptions of the State and the government that administers the affairs of the State, are no longer accepted by modern writers on the subject. For example, take Léon Duguit, Professor of Law in the University of Bordeaux. In his book, *Law and the Modern State*, he says:

“The State is no longer a sovereign power issuing its commands. It is a group of individuals who must use the force they possess to supply the public need. The idea of public service lies at the very base of the theory of the modern State. No other notion takes its root so profoundly in the facts of social life.”

This idea of the change that has taken place in the conception of the term State, is as good an example of the confusion that has arisen regarding the purposes of the State, as any that can be found. The State, divested of sovereign power, has become a group of individuals who must use the force they possess to supply the public need. What is the public need? We know that the public need is, to a very great extent, relief, dole, more pay for less work, and it is not inconceivable that the force the individuals will use, will be directed mainly against the industrious and saving. It may be certain that politicians will not be slow to organize those who are in need, to vote the way they desire. The labyrinths of such a procedure are so tortuous and interminable that one shudders at the prospect of the chaos that will ensue if the theory is carried to fulfilment.

It is, however, not clear in the statement I have quoted above from Duguit, whether the group of individuals includes the governors and the governed, and against whom the force they possess must be used. It is

quite clear to all, who notice what is taking place in the modern State, what is meant by supplying the public need. But I doubt if Duguit has taken the time to find out what the public need really is. The public need may be anything from a sewer to a bowl of broth. Usually there are more claimants for the latter than for the former. Moreover, it is just as well, when baksheesh has to be distributed, to know whether there are persons who deserve it and others who have no claim to it. The one class may be as needy as the other. Usually the undeserving is the noisiest class. Of course, it is a disagreeable matter to think of separating the hungry into one class and another; but it has to be done for the protection of the needy.

THE "RIGHT" OF THE STATE

Just to show the thinking mess these writers make when they deal with such subjects, and will not take the trouble to find out whether the terms they use have a definite meaning or not, I may quote Duguit's notions of individual rights. He says:

"The right of the State, then, is opposed to the subjective right of the individual. It is a natural right, at once inalienable and imprescriptible. It belongs to the individual by virtue of its humanity. It is a right anterior, even superior, to that of the State. For the State was founded to assure men protection for their individual rights."

Contrast the two quotations, and ask what has become of that State which was founded to assure men protection for their individual rights? A sovereign power no longer exists. We are left with a group of individuals who must use the force they possess to supply the public

need. But a group of individuals may be, when the sovereignty of the State is gone, a collection of utterly irresponsible persons, in all probability torn with dissension and affected by many different ways of rendering public service. We know quite well that these groups of individuals have many different ideas of how the public need should be supplied. Therefore, the natural right, at once inalienable and imprescriptible, which the State was founded to protect, must be abrogated or transferred to a group of individuals. But Duguit passes rapidly from one confusion to another, and the further he goes, the deeper he gets into the bog of his thoughtlessness. He says:

“Man as an individual is a mere creation of the intellect. The very idea of right implies the idea of social life. If, then, man has rights, he can have them only from his social environment, he cannot impose his rights upon it.”

Now we know where we are, so far as our place in the muddle is concerned. Because Duguit thinks the idea of right implies the idea of social life (which it does not), we must understand that, although the right of the individual (as he says) is anterior, even superior, to that of the State, no rights existed *until* the State granted rights to the individuals who founded the State, to assure men protection of their individual rights. Absurdity *in excelsis!*

He does not explain how the individual, before the formation of the State, had a right anterior, even superior, to that of the State, nor does he attempt to explain why it was a natural right at once inalienable and imprescriptible. He does not see the extraordinary paradox of having a natural right before the State was created, and losing it when the State was formed. It

may be that, in the process of creating a State, the natural right was exchanged for a State "right," but Duguit does not say so—probably because he cannot see why it was necessary for the transference of right to take place. In dissertations of this nature, I notice that the writer seems to lose his moorings the moment that he attempts to merge the individual into a group. While he deals with the individual as having a natural right, he seems to be on safe ground, but the arguments for the individual do not in any way pertain to the group of individuals, when they have "forfeited" the exercise of their natural rights, and become creatures of the State.

This book, when it was translated into English and published, was solemnly read by numbers of young men at the universities. Indeed, it came out in America under the sponsorship of Mr. Harold Laski. Great lawyers have read it and quoted from it, but neither Laski nor the lawyers seem to have stopped on a page to wonder what it is all about. I have not yet found one who had read the work, who was conscious that he had been wading through a morass.

THE SOCIOLOGICAL STATE

There are other writers who attack the problem from another standpoint. Franz Oppenheimer in *The State* says:

"This treatise regards the State from the sociological standpoint only, not from the juristic—sociology, as I understand the word, being both a philosophy of history and a theory of economics."

He lays it down firmly that "the State as a class State can have originated in no other way than through conquest and subjugation." It is refreshing in a book which pretends to inform us as to the origin and the nature of the State, to find a writer wedding a theory of economics to a philosophy of history. The union, however, in Oppenheimer's case did not bring forth a perfect offspring. The blemishes from which it suffers may be readily recognized in the section of the book which deals with economics.

Nevertheless, Oppenheimer succeeds in clearing away the long accretions of nonsense which have been written about the functions of government and the blessings of the government. He says:

"There are two fundamentally opposed means whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are work and robbery, one's own labour and the forcible appropriation of the labour of others. . . . I propose in the following discussion to call one's own labour and the equivalent exchange of one's own labour for the labour of others, the 'economic means' for the satisfaction of needs, while the unrequited appropriation of the labour of others will be called the 'political means'."

Here in a few sentences he states the problem clearly—a problem which Herbert Spencer failed to make clear in a long essay. I know of no work in short compass that treats the development of the State historically with a grasp of data so thorough, and with a force so clear and arresting. Oppenheimer says:

"The developed feudal state is, in its essentials, exactly the same thing as it was when yet in the second stage of state formation. Its form

is that of dominion, its reason for being, the political exploitation of the economic means, limited by public law, which compels the master class to give the correlative protection, and which guarantees to the lower class the right of being protected, to the extent that they are kept working and paying taxes, that they may fulfil their duty to their masters. In its essentials government has not changed, it has only been disposed in more grades; and the same applies to the exploitation, or as the economic theory puts it, 'the distribution' of wealth."

"Disposed in more grades" is good.

There was a time when a statesman hesitated long before he added to the bureaucracy. At that time, say in the days of Disraeli and Gladstone, Lincoln and Cleveland, the statesman was forced to consider the legitimate claims of industry in general. He might be conscious of the need of social reform, and desirous of mitigating the evils of low wage and long hours. Still, although a humanitarian in his heart of hearts, he was a practical politician and had to proceed cautiously. Usually, the statesman in private was an excellent business man, long schooled in the complexities of domestic and international commerce. It was impossible, in that day, for a small but noisy group to intimidate politicians. Now, all is different. Small groups, advocating separate measures of reform, completely dominate the political scene. It is generally accepted that, in this year of grace, these small groups have Congress under their thumbs. One of the chief publicists of the country writes, in connection with a grave strike, that there is no one at the White House, in the Cabinet, or in Congress, who dares say a word. So the result of the essentials of government, having been "disposed in more grades," is that the political means is

now in danger of being exploited in many various ways by small groups of the economic means. And the citadel, both politicians and bureaucrats have built for themselves, seems to have been founded upon what was an extinct volcano, which is now showing signs of coming to life again.

I have dealt at greater length with these two books—Duguit's *Law and the Modern State* and Franz Oppenheimer's *The State*—in my book *The Eleventh Commandment*, and I make no apology for the repetition, because they are two works which have been published in recent years which touch closely the subject we have under review. The one, Duguit's work, is largely responsible for the legislative mess which has come from this administration; the other, *The State*, is in the nature of a reply to the ideas set out by Duguit.

CREATION OF THE STATE

Perhaps it may be as well to revert to the imaginative state of mind which will lead us back to the condition which existed when man's individual right was inalienable and imprescriptible, before the conquest took place. First, consider the matter of whence the theorists of the State derived their notions of its creation. Many of them go back to the tribe or family as the nucleus. But when one or the other is selected, it ought to be considered in its entirety, not merely as a numerical and directing agency. Unfortunately, those who develop a theory of the State from the tribe or family have overlooked the more important conditions, such as that of father and mother, breadwinner, defender of the household, and all those inalienable and imprescriptible rights that were enjoyed before the State was created. Those who are satisfied with mere numbers to

make a nucleus for society, and the authority of the father over the family, as a natural step in building up the theory of the State, may be asked if there really be anything in the State (no matter how ancient it may be or how modern it may be) at all like or comparable to the family. In the first place, there is no similarity whatever between the relation of the State, or its chief minister, to the people, and that of the father to his family. Here there exists what can never exist in the State, and that is the blood tie. There is no delegation of power, there is no surrendering a right to sovereignty; each member of the family, no matter how young, is recognized to have the inalienable and imprescriptible right. Furthermore, there is no parallel between the governor or governors of the State and the father. The father is the breadwinner for those who cannot fend for themselves; governors are never breadwinners, save only in connection with their own families. Such a thing as a governor of a State being a breadwinner for the people has not, and could not, exist. It is true the mediocrities, in and out of politics, today look upon the ruler as a dispensing agent of patronage, bread and circus. No doubt, these people would very willingly subscribe to the idea that the State was founded on the notion of what the family was. But there are innumerable other dissimilarities.

THE RÔLE OF PROTECTOR

Compare the means of protection of individuals, which are exercised by the head of a State and his ministers, with the means of a pre-State father of a family. Here, at once, the question of direct interest arises and direct interest never arises, so far as the individual is concerned, in administering the laws of

the State for the individual's protection. I once heard an educationist say that the minister at the head of the department was like a father, always ready to instruct his children in sound knowledge and good deeds. Well, that was merely a rhetorical phrase. The head of the department laughed when he read it, because he happened to be a serious student of natural law. Still, this only goes to show how loose the thinking of intelligent persons who are selected to instruct our children can be. There is no similarity in fact and there can be none, no matter how hard the group of individuals in the new State strives to satisfy the public need. And for a very good reason: the father of a household was personally responsible for whatever education his children received. Such a thing as an educationist could not have been dreamed of in the early family. Anyway, what need was there for education beyond the precept the child, as he grew up, could observe every day; that given by the father in the routine of his work? For long milleniums this was the only form of education. It is difficult to think of what we call education bothering the early families who were concerned in agriculture, fishing and hunting. Education, in the sense that we use the term, to my mind, always seems to imply sad deficiencies in the home. Still, we have records of simple conditions in States when great things were done to help the people towards enlightenment. There are many instances in the lives of Charlemagne and Alfred the Great, and numerous other kings of western civilization, who started schools for the purpose of teaching the people how to read and write. But the so-called education of that day is in no way comparable with that which is now inflicted upon us.

PROPERTY AND REDISTRIBUTION

To my mind, the trouble with these modern writers on the State seems to be a desire to redistribute wealth on a predatory basis. They have for so long now heard, or read, about the "predatory" industrialist that they think the time has come for a change, and that a new system should be devised if "a leaf might be taken from the capitalists' book." In some vague way, our Laskis, Frankfurters, Duguits, Hobsons, and many other sentimental "liberals," who have not the courage to call themselves Communists, think that "property" is something derogatory for the individual to hold, and that if it be taken from the individual and distributed among the group, it will become sacrosanct. Yet, there is not one with whose works I am familiar, who has ever taken the trouble to find out just what property is; and no matter how voluminous the literature dealing with property, this seems to have escaped their notice. When they are taken to task about this omission, some of them look quite hurt, and one told me that the old question of property was merely a legal matter, and that the modern economist paid little or no attention to it. Nevertheless, greater minds than we have round about us at present thought it worth while to spend much time in finding out what property is and, particularly, in regard to the preservation of property under the sovereignty of the State. Towards the end of the sixteenth century, Hooker, who probably inspired Locke's *Two Treatises of Civil Government*, dealt with this question. He said:

"The supreme power cannot take from any man any part of his property without his own consent. For the preservation of property (that

property which men have in their persons as well as goods) being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society which was the end for which they entered into it; too gross an absurdity for any man to own."

To mention the men since Hooker's time who have dealt with the term property would require too much space. Still, it may be said that scarcely any work of philosophical importance, published since the beginning of the seventeenth century, overlooked the necessity of defining the term clearly. Elsewhere, I have dealt with the absurd notions of it held by modern authors, and I have several times reviewed groups of books that are supposed to be written by economists, sociologists, and legalists, and I think I have shown clearly enough that in these works the authors have scarcely ever stopped to define any of the leading terms they use. It seems the more complicated the business of the State becomes, the more confused become the minds of the people who would reform it. And we have the preposterous situation in which men, who do not know what property is, would take it (because they consider the owners of great masses of it are "predatory" persons and did not accumulate it honestly) and divide it among the proletariat and the politicians. This must be so, because they seem to be under the impression that the people who ought to be robbed of property will still have the power to accumulate more, dishonestly. No one suggests, for a single moment, how the business should be ended; all that these people desire is that the capitalists, the industrialists, should go to all the trouble of collecting it so that the modern State may take it away from them—a

moral proceeding which will spread the acquisitive science of theft among all ranks of society, including the reformers of the State. It never occurs to any of these men that it is worth while to find out what is and what is not property, so that they may not make a mistake, and take what is a man's own. Neither social welfare judges of the Supreme Court, nor modern legalists, who instruct the young in our universities, nor up-to-date economists and sociologists of the various schools, think it worth while to find out whether the changes they wish to make, will make things worse or better in the end.

There never was, in the history of the world, such a muddle-headed business as this about reforming the State, and redistributing the wealth the industrialist accumulates! All society is affected. Small wonder then that Duguit in his book says:

“However little we may like it, the evidence conclusively demonstrates that the ideas which formerly lay at the very base of our political systems are disintegrating. Systems of law under which, until our time, society has lived, are in a condition of dislocation.”

That is true. One reads the same judgment in book after book that is published today. Yet, I am of the opinion that the system might be reformed, if it were not for the disintegration that is taking place in the minds of men and the dislocation of the mentality of the reformers. To me, it is a question of mind, and there does not seem to be any *mind* today dealing with these problems. Anybody can say anything now. Any brash young man who comes from a university with a diploma, is supposed to be an authority on almost any subject he wishes to deal with. And, as there is no public opinion

worth a vagrant's louse, there is no one to challenge these very young people.

DISREGARD FOR THE WISE

One of the most extraordinary changes of the time is that which concerns the reputation of the wise. It has taken long centuries to select from the remains of other civilizations certain men who, as sages, have stood the test of time. Their names are legion. The newspaper I receive every morning at breakfast usually displays in bold type at the top of the editorial page a saying from a wise man of classical times. I am delighted to see Plato, Cicero, Marcus Aurelius, Seneca, the Prophets, Jesus, and the Fathers of the Church, sometimes, laying down an axiom with which the boys of my youth were familiar, because the sayings were part of the speech of the people. But nobody pays any attention to the wise now. Why? Merely because they lived in the past and, as things now differ in degree, all must be different, and what the wise of classical times had to say about morals, conduct, business, love, hatred, war, peace and wealth, can have no meaning to the modern. All is different because where things were produced in the tens and hundreds, things are now produced in the thousands and millions. No one asks if their principles remain and, if one did ask, in all probability a modern would be shocked to hear that principles do not change, no matter how things differ in degree. Even a dean of a great law school of one of the first universities says that economic fundamentals change.

OUR EARLY ANCESTOR

Now suppose we harness ourselves again to our imagination, and take flight back to the conditions

which must have prevailed before the State came into being. Let us regard our primitive ancestor doing a day's work. Presumably he used the daylight for doing his chores. First, he would seek food for his meal and then, having attended to the alimentary needs of the family, he would set forth to find more food. Later, when he had learned he could produce his own food, he would till his field. The next office to be performed would be that of finding raiment. So he would either trap or snare animals and, if they were edible, he would use the meat—anyway he would dry the pelts. No doubt his mate would assist in putting the pelts together for rude garments. Then food would be required for the evening meal. What other chores had he to perform? Those concerned with shelter. He had to strengthen or repair his hut or clean his cave; and then he had to provide himself with fuel for warmth. When darkness fell, he and the family would sleep. This would be just about the routine of the day for him. Let us say that his day would be occupied in finding food, fuel, clothing and shelter.

What have we today for the simple parent? Food for three meals, or more if he can get it, raiment, shelter and fuel. The primary needs of our early ancestors are the primary needs of man today, and the fact that he wants more and better food, finer raiment, better shelter, and coal or oil in addition to wood for fuel, makes a difference only in degree. The primary needs of early man are the primary needs of modern man. It is useless for our modernist to tell us all is changed because our neighbor wants a radio and his wife wants a washing machine; that he is not satisfied with candle or gas and must have electric light; furthermore, that night should be turned into day now that he has long evenings which must be *wasted* somehow, either at the

movie, a prize-fight, or some other indoor sport. These things are merely additions. For all we know, early man had feats of skill in sport for recreation, but if he had, one may be fairly sure he was a participant and not merely an onlooker. So no matter how much things differ in degree, so far as the primary needs are concerned, man has not changed as a land animal in any particular at all. When, however, one regards the subject from a comparative point of view, modern man suffers in every particular. His early ancestor was busy laying the basis of a culture, and almost every menace and obstacle he encountered drew upon his wit and intelligence, to make things more comfortable for himself. Whether he would or would not, he had to accept the law of his being, and that was to subdue Nature, and raise himself in the scale of intelligence. Life was a task for him every hour of the day, and he succeeded in overcoming all his difficulties because life was a task, which no other one could solve for him. He was left entirely to his own resources. There would never have been a State if he had not overcome these initial difficulties, because no one would have ever dreamed it was worth while forming a State unless there was something worth taking: the property of the producer.