

# THE MODERN STATE

IN RELATION TO

## SOCIETY AND THE INDIVIDUAL

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## CHAPTER V.

### *Definition of the State—Genesis of its Functions.*

LOWLY beginnings of the State—Its two primitive functions: as directive organ of the tribe against outsiders, and as the organ of an elementary common law—Third function, of later development, that of contributing to social development—The organism of the State essentially coercive: the twofold constraint of laws and of taxes, legislative or regulating power and fiscal power—The State in civilised societies takes the form of a trinity: authority national, provincial, and municipal—Genesis of the State's functions—Attributes which to-day seem inherent in the State in reality have but tardily fallen to its share: instance the service of internal security—The plastic nature of the social medium gives birth spontaneously to the organs which are indispensable to Society—Some slight degree of insecurity is preferable to an excess of strenuous regulations—The principle of division of labour has been most active in definitely investing the State with various functions hitherto performed by free spontaneous agencies—Sometimes the plasticity of Society reacts against the faults of the State, by abandoning its organs to return to others of its own spontaneous creation—Laws for the most part were originally only sanctions given to customs which had instinctively grown up—Commercial law is entirely of private origin—Many enterprises which seem naturally unsuited to private initiative are yet undertaken and successfully accomplished by

it—Historically free associations have lent their aid to the State for the services devolving upon it: farmers of taxes—The State is entirely devoid of inventive genius—Almost all human progress is due to “individuals without a mandate”—Hierarchical collectivity is always incapable of the inventive spirit—Instances of the State’s barrenness of invention—The State is an organ of criticism, of co-ordination, of generalisation, of vulgarisation—The State is not the highest form of personality—The State is above all an organ of preservation.

WHAT is the State? This is a question somewhat difficult to solve. We all know M. Renan’s fine lecture on the theme, “What is a nation?” The nature and essence of the State are no less difficult to determine.

We must not seek the answer in any purely philosophic conception. Only by the examination of historical facts, of human evolution, the attentive study of the fashion of living among different peoples, and of the movement and progress of Society can we discover with any degree of clearness what is the actual concrete State, which is, moreover, a very different thing in different countries and at different times.

Like all other human things the State sprang

from very lowly beginnings. In the far-distant past we find that the State was the guiding organ of the tribe for self-defence against outsiders. It is also the organ of a certain elementary law, an assemblage of very simple rules, traditional and customary, for the maintenance of social relations. The work of defence against the outer world, and the maintenance of justice within, these are the two most essential, irreducible functions of the State. Heaven forefend that I should maintain that they are sufficient for a civilised people, as some economists of the wilder sort have long been preaching! It will be seen in the course of this examination that though I should wish to prevent the State from scattering its energies to infinity, I am none the less prepared to allow it a very considerable share.

The two departments of service which I have just indicated are, moreover, the only two without which the State cannot be conceived as existing. Both, but especially the second, that of administering justice—the *Rechtsweg* of the Germans—

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are capable besides of remarkable extension, with ever-increasing complexity of detail, so that the tasks they undertake begin to be positively enormous.

In proportion as society emancipates itself, and increases both in size and in complexity, as it passes from the savage into the barbarous, and from the barbarous to the civilised state, gradually another mission comes to be laid upon the State, that of contributing so far as its nature and its strength allow, and without encroaching upon or hampering the action of other forces, to the perfecting of national life, to that development of wealth and well-being, of morality and of intellectuality, which moderns call progress. It is here that we run the risk of falling into strange exaggerations.

What we mean in so speaking is a contribution, an assistance, an aid, which it affords, but not by any means a direction, an initiative impulse, an absorption of other action into itself. Where it is a question of defending the society against attacks from without, or of preserving peace among its

citizens, there the State plays a dominant part; but where, on the other hand, it is a question of the improvement of social conditions, there the State plays no more than an accessory part. But however accessory it be, it is still of great importance, and very few Governments have yet succeeded in discharging it in an entirely fitting manner.

{The concrete State, as we see it at work in all countries, manifests, as an organism, two essential characteristics, which it always possesses, and which, moreover, it is alone in possessing: the power of imposing by methods of constraint upon all the inhabitants of a territory the observance of certain injunctions known by the name of laws or administrative regulations, and the power of raising, also by methods of constraint, from the inhabitants of that territory large sums of money of which it has the free disposal. }

The organism of the State is, therefore, essentially coercive: the constraint it exercises takes two forms, the one of laws, the other of taxes. Legislative power, or the power of regulating, and fiscal

power, or the power of taxing—both alike backed up by constraint either active or potential—these are the distinguishing marks of the State.

The organism which possesses these powers may be central, or it may be local, but it is always a part of the State. Provincial and municipal authorities, wielding by virtue of delegation or a remote transmission both regulative and fiscal power, are as much the State as is the central organism.

The State, among the generality of civilised peoples, assumes the form of a trinity: national authorities, provincial authorities, and municipal authorities. Thus, in studying the *rôle* and the mission of the State, we shall have to speak as much of provinces and municipalities as of the national Government. There are, perhaps, even more crying abuses to-day in the commune, the lowliest manifestation of the State, than in its highest manifestation, the Government.

What is the legitimate and useful sphere of action for every kind of public authority, that is, of those which wield the power of constraint?—this is the



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question which we have to answer. If we cannot reply to this question with a formula which will be absolutely general and simple, we shall at least find it possible, by studying the various departments of social service in their historical development and in their present conditions, to indicate some of the limits which the State must observe in each of its three forms.

Many writers have exhausted themselves in the attempt to indicate *à priori* what are the essential and what the optional functions of the State. Most of these are arbitrary classifications.

It is impossible theoretically to arrive at a fixed demarcation between the sphere of the State and that of free societies or of individuals. The two spheres often overlap each other, and often displace each other.

History and experience alike prove that all down the ages, functions which to-day are regarded as forming part of the very essence of the State have very tardily fallen to its lot: that at least they have been for a long time partially performed by individuals and by the associations formed by them. Society is

a plastic being which enjoys a marvellous facility for adapting itself to its environment, and for creating those organs which are indispensable to its preservation or to its progress. [We cannot brand as false Herbert Spencer's doctrine that every institution which is suited to the performance of collective social functions springs up spontaneously.] The idea seems true in a great measure, so long as society is left to its natural plasticity, and is not crushed by authoritative force, that is, by the apparatus of constraint which we call the State.

What can be more natural than to identify the preservation of security with the notion of the State? Experience proves, however, that societies have been able to live, and even to grow and develop—imperfectly and slowly, it is true—without much care for security on the part of the State, and without its having the possibility of ensuring it to the country. Insecurity is no doubt a terrible evil, the most discouraging condition for man: where there is insecurity there is no longer any fixed relation, sometimes even no probable relation between the efforts and sacrifices

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of men and the end for the sake of which they consent to these sacrifices and make these efforts. There is no longer any certainty that he who sows will reap. Not only do labour and economy cease to be the surest means of acquiring wealth, but violence becomes a far surer means than they.

The plasticity of society in early or troublous times offered a resistance to this evil. The practice was to place one's self under the protection of some brigand rather more honest than the rest, and to make an agreement with him. This is how it came to pass that brigands played so important a part in ancient times and among primitive peoples: some of them were regarded not as devastators, but as protectors. The great men of Greek antiquity, and of almost every other antiquity, were professed brigands, punctual in their performance and faithful to their word.

In the Middle Ages we frequently find an analogous state of things. The small proprietors of freeholds sought for protection by placing themselves under the patronage of more powerful lords, and became by choice their vassals, or even their serfs.

At the beginnings of the modern time these free and spontaneous organisations outside the State, for ensuring a relative security to men, had not entirely disappeared. In Spain the celebrated Society known as the Holy Hermandad, which ultimately became odious and absurd, rendered very excellent service in the early days of its existence. In Flanders and Italy trade-societies and others often had the same object, to maintain security either for their members or for the public.

We can still find some traces of this kind of combination, which is peculiar to primitive ages and to troublous times. In England and the United States the organisation of special constables, and in the Far West of America, more especially, the lynchers, are the direct successors of all these free associations made for the purpose of security.

Thus even this first and most elementary requirement of society which seems to us to-day only possible of attainment by means of the direct and uninterrupted intervention of the State, was formerly achieved through processes less convenient and in a measure

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less complete, by the action of private persons or of free societies.

Insecurity is in any society a cause of slowness of development, but not necessarily of retrogression or decline. Oppression is the only inevitable cause of decay. If Turkish Pachas and the petty officials under them would be content with affording a moderate protection to life and property, or if, at least, they were not subject to such constant changes, and could keep some sort of regularity in their exactions, Turkey would not now be dwindling into decay. Her condition is due to the action of unstable oppressors, which is not only brutal but positively exhausting to the vital forces of the country. Mere insecurity would have a far less serious effect.

We must not, it is true, conclude from this that the first duty of the State in modern societies ought not to be to guarantee security: we are merely concerned to point out that in the course of history the plasticity of society has proved capable, for the relative satisfaction of this primary need, of supplementing the inertia of the State by special organisations of its

own spontaneous creation. It is also necessary to add that even in our own times, in the interests of a very large number of transactions, a slight measure of insecurity is better than an excess of legislation.

It has been by virtue of the principle of division of labour that the State has been invested definitely, constantly, and exclusively with the duty of maintaining security.

Political Economy, when by the pen of Adam Smith it brought into such strong relief the principle of division of labour, shed a singularly broad and penetrating light on the whole of human and even of natural history. This great economic principle has been the means of constituting one after another the chief functions of the State.

A number of services which a free and flexible society would not be incapable of performing for itself, which in fact it has for many centuries performed for itself, have gradually fallen to the lot of the State, simply because it could perform them better, more economically, more completely, with less effort and less expense.

We see, therefore, that one after another these special and definite functions have been clearly defined and permanently handed over to the State by society as soon as the altered conditions of both have rendered it more expedient that such and such a work should be performed by a general coercive force rather than by private and intermittent forces. Those who lynch criminals on the confines of the Far West have neither the time nor the mental qualifications necessary for acquitting themselves always properly of their task: permanent judges would be decidedly preferable. It is the same with special constables, volunteer fire-brigades, independent crossing-sweepers, such as we still see in London: less numerous but permanent bodies of professional workers would perform these offices better.

Thus it is the principle of division of labour, unconsciously applied, which has caused the transfer to the State of certain functions formerly exercised instinctively by society, but now carried on by the State with premeditation.

This kind of cleavage which is gradually made

between the prerogatives of the State and those of the free society has for its object to leave more leisure to individuals for their private tasks, and at the same time to secure the better organisation of certain services. Therefore, we must regard as retrogrades those who propose that we should return to the civil jury, to arbitrary tribunals: unless, of course, we can see in these tendencies a salutary reaction against abuses which the State has allowed to enter into its discharge of the tasks it has undertaken. | This would be a case in which the plasticity of society reacted against these defects of the State, by abandoning the organs which it has instituted and returning to others of its own spontaneous creation. |

This historical sketch of the genesis of State functions might be carried a great deal further. Thus the legislative power which the State has assumed in certain matters, commercial and other, has not always devolved upon it: it has come latterly and only by degrees. Formerly, it was exercised by individuals and by free societies. The fertile invention of commerce had discovered various clever devices,



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bills of exchange, demand-drafts, contracts for future delivery in all their variety, syndicates in stocks, &c., and many others: custom had regulated the employment of all these means: in this way commercial usages were of spontaneous growth and successive development: the State finally laid its hand upon them, took possession of them, generalised them, in some cases improved upon them, but in others spoiled and deformed them.

We can, therefore, only condemn the superficiality of those philosophers who, inhabiting the clouds, and perceiving only in a confused manner on this earth the State in possession of certain instruments, fancy that it is the State which has created them, and utter cries of lamentation, mourning, and woe when anyone speaks of the fertile invention of private associations.

Not only has commercial law this spontaneous origin, but also the general agents and protectors of commerce: the consuls were at first syndics of certain trading communities, though they became public functionaries later on. Commercial jurisdiction has passed through the same vicissitudes.

In almost every order of human activity we see at first free groupings of individuals who undertake to organise certain services of general utility of which ultimately, but it may be only after the lapse of centuries, the State assumes the management and regulation.

It is the same with roads and highways. Even before the 18th century the States, both ancient and modern, constructed a few thoroughfares for military purposes. They did this to discharge a strategic, not an economic function. Private associations did the rest; the ferries, the bridges constructed by these special brotherhoods which, especially in the South, were called *pontifices*, the toll-roads in England and in many other countries, also toll-bridges, primitive instruments if you will, but which historically preceded by a long time public works carried out by means of imposts, even ports and docks, the work of companies founded and maintained on strictly commercial principles, all these spontaneous growths are still traceable to-day, especially in Great Britain, and by a singular contrast also in some primitive coun-

tries. The only existing highway in Syria, which runs from Beyrout to Damascus, is the work and the property of a private company, a French Society, and a very fairly remunerative property it is.

There are other enterprises which, being still more markedly disinterested in their character, might seem even more unpalatable to private initiative, but which, nevertheless, have often been undertaken by it with signal success. Stuart Mill in his day still classed scientific explorations among the works which in right and in fact devolved upon the State. But could he maintain this to-day? Even thirty years ago he ought to have been careful how he said such a thing. He forgot that the earliest and perhaps the most remarkable of the travellers of modern Europe, Marco Polo, having a father and uncle who were merchants, accompanied them both on a commercial expedition to the court of the Grand Khan of the Moguls, and subsequently extended his journeyings throughout the whole of Asia. He further ignored the incomparable Frenchman, Caillié, who, in the early part of this century, without resources

and without assistance, traversed the dreaded north-western corner of Africa, from Senegal to Morocco, passing through Timbuctoo, which perilous journey was not again attempted until half-a-century later by a young German traveller.

Stuart Mill could not then foresee that the first completed journey through Africa from the Atlantic to the Indian Sea would be accomplished by a free adventurer, subsidised by entirely new forces in the shape of two great newspapers, the one American, the other English. Heaven forefend that I should dispute the fact, that in Spain and Portugal, in England and France, and more recently still elsewhere, the State has given powerful aid to voyages of discovery and to the work of taking possession of the world. All that I wish to prove is that, among the prerogatives which certain feather-brained theorists claim as a monopoly for the State, there are many which have been and which can still be exercised in the happiest manner by free groupings, whether of wealthy men, or of learned men, or of devoted men, or of curious men, or of men who have

thrown into a common stock their share of wealth, of devotion, of learning, or of curiosity.

( So far from the State being the origin of all great works of general utility, it can be shown from history, on the contrary, that free associations have constantly lent their machinery to the State for those services which do most unmistakeably devolve upon it. )

# The State for a long time, some States even to-day, in some measure even the State in France, did not and do not know how to get in their taxes. Hence, we find these private companies, the farmers of revenue who undertook to collect contributions under the Roman empire, and in ancient France, who still exist under our eyes for certain classes of taxation in Spain, Roumania, and Turkey, quite recently in Italy, and, indeed, I may say in many of the French communes, which find it more economical to farm out their taxes than to collect them themselves.

The historical summary we have now given leaves us evidently in a great difficulty. For since most of

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the prerogatives which are to-day considered as essential to the State did not belong to it primarily, but long remained in the hands of individuals or of free associations, and only devolved upon the State gradually, through the slow application of the principle of division of labour, and the recognition of the fact that a great collective organ, armed with the power of constraint, is more capable of generalising ✓ them than a number of small collective organs, spontaneous and variable, possessing little more than the power of persuasion—how then are we to fix, either for the present or the future, the limits of the domain of the State? This same historical account will, however, give us some assistance by enabling us better to recognise the general characteristics of the State.

The first point which forces itself upon our notice is, that the State is absolutely devoid of inventive genius.

The State is a rigid collective organ, which can only act by means of a complicated apparatus, composed of numerous wheels and systems of wheels,

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subordinated one to another ; the State is a hierarchy either aristocratic, or bureaucratic, or elective, in which spontaneous thought is by the very nature of things subjected to a prodigious number of controlling and hampering checks. Such a machine can invent nothing.

The State, as a matter of fact, invents nothing, and never has invented anything. The whole or almost the whole of human progress is traceable to particular names, to those exceptional men whom the principal Minister of the Second Empire called "individualities without a mandate."

It is through and by these "individualities without a mandate" that the world advances and develops itself. These are the prophets and inspired teachers who represent the fermentation of the human mass, which is naturally inert.

All hierarchical collectivity, moreover, is incapable of invention. The whole of the Musical Section of the Academy of the Fine Arts could not produce a respectable sonata, nor the Painting Section a good picture. A simple, independent individual, Littré,

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made a Dictionary of the first order long before the Forty of the French Academy.

[No one can say that while art and science are matters of personal work, the labours of social progress are matters that can be done by the community: nothing is more untrue. New social methods demand a spontaneity of mind and heart, which are only found in certain privileged men. These privileged men are endowed with the gift of persuasion, not the gift of persuading sages, but that of gaining over the simple, and those generous but often timid natures, which are scattered broadcast among the crowd. A single man of initiative, among forty million inhabitants of a country, will always find some bold spirits who will believe in him and follow him, and find their fortune or their ruin with him. He would waste his time if he tried to convince these bureaucratic hierarchies, which are the heavy though necessary organs of the thought and action of the State.)

We see, therefore, how sterile, in regard to invention, is this being, whom certain foolish thinkers have



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represented as the brain of society. The vocation of a State, of any State, is first and foremost a military one. They represent, above all, the defences of the country. We should, therefore, be inclined to expect that the State, through its functionaries, would produce the greater part of the inventions and appliances relative to war, navigation, and the rapidity of communication. But this is not the case.

The invention of gunpowder is traced to a monk, not to the State. In our century it was only a chemist, the Swedish Noble, belonging to the most peaceable country in Europe, who invented dynamite. Michel Chevalier in July, 1870, called the attention of the Imperial Government to this formidable explosive. During the second siege of Paris, M. Barbe, afterwards Minister of Agriculture, begged M. Thiers to use this new substance. But in both cases, though the Governments were so differently manned, and held such different principles, they paid no attention to these proposals.

The same thing goes on in maritime as in military discoveries; the Marquis of Jouffroy, in 1776, navi-

gated the first steam-boat on the Doubs; but on seeking encouragement from the Minister Calonne he was repulsed. He was a bad Minister, you will say; but in the constant series of Ministers in all countries there are, at least, as many bad or indifferent ones as good ones. Even when Fulton, a quarter of a century later, addressed himself to a really great man—Napoleon—this great statesman considered his attempts childish. While the State disdained steam and was slow in applying it, it was no less incapable of inventing and slow in applying the screw. Sauvage, the inventor, passed from a debtor's prison to a madhouse.

We find the same holds good with regard to communication and locomotion. By the end of the Restoration there were three small railroads working in France, created by private initiative and without State-subsidies of any kind. It took the State ten years to discuss the best kind of railroads, and by its tergiversations, its absurd demands, it proportionately retarded, as I shall show later on, the development of the iron network in our country.

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It was ten years after the cutting of the Suez Canal by M. Lavalley's dredging-machine that the French State began to introduce it in its own works in constructing ports and harbours. Neither submarine cables, nor the piercing of isthmuses, nor any other of the principal works which have changed the face of the world are due to our own or to any other State.

Telephones were generally used in all private businesses before the State began to take them up. Afterwards, many States attempted to confiscate them. In the same way the Municipal Council of Paris, by its absurd requirements, retarded for ten years the introduction of the electric light in that city.

The modern State affects a strong predilection for education; yet, the French Central School of Arts and Manufactures was founded by private individuals, and the Commercial Schools of Mulhouse, Lyon, and Havre, were instituted by manufacturers.

The State in a rare moment of initiative wishes to found a *School of Administration*: but it does not

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succeed in the attempt. Ultimately, a free School of Political Sciences is started by a private individual who manages to win for it in two years a brilliant renown both in the old and new worlds.

The State in France grows weary of the ancient educational methods which it originally borrowed from a private society—the Jesuits—it is now seized with a violent infatuation for the work of another private society—that of the *Ecole Monge*—it determines all at once to generalise the principles of this school, and to apply them throughout its territory.

I have no wish to contest the services which in some directions the State undoubtedly renders, or to overlook the perfecting in detail which many of its engineers or experts introduce or disseminate. I do not deny that the State has in its service some eminent and distinguished men; I maintain, however, that most of them, when they have the opportunity, prefer to leave the official administration, where advancement is slow and pedantically managed, and is subject to nepotism or senile incapacity, that they may enter the ranks of private enterprise where

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men are at once admitted to the rank which their talents and their merit mark out for them.

How could it be otherwise? "The spirit," says the Scripture, like the wind, "bloweth where it listeth." Modern philosophy has rendered this great thought by another formula, "Tout le monde a plus d'esprit que Voltaire." (Everyone has more wit than Voltaire.) It is not within regular limits, prudently and deliberately designed, that the spirit of invention will work; it chooses its *élite* freely from among the crowd.

When we say that the State is essentially lacking in the faculty of invention and in the faculty of promptly applying new discoveries, we have no intention of blackening its character, or laying it open to damaging sarcasms. We are simply portraying its nature, which has different and opposing merits.

From the social point of view again, the State can discover nothing. Bills of exchange, demand drafts, cheques, the multifarious operations of banks, the clearing-house, assurance, savings banks, ingenious methods of payment by profit-sharing, co-operative societies—not one of all these improvements is

traceable to the thought or the action of the State. All these ingenious contrivances have sprung out of the free social medium.

What, then, is the State? It is not a creative organ, by any means. It is an organ of criticism, an organ of generalisation, co-ordination, vulgarisation. It is, above all, an organ of conservation.

The State is a copyist, an enlarger, an exaggerator even. In its copies and adaptations from private enterprises, it runs many chances of making mistakes, or of multiplying indefinitely whatever mistakes it finds in the original from which it is borrowing.

It intervenes after discoveries have been made, and it may then give them a certain amount of assistance. But it may also stifle them: with the intervention of the State—which may, in many cases, be beneficent—we have always this element of caprice to fear, this brutal, monopolising tendency, this *quia nominor leo*. It possesses, in fact, a double power, which it can wield with terrible force, legal constraint and fiscal constraint.

From this very fact that the State is so absolutely

destitute of the faculty of invention, that it possesses only the capacity of assimilation and of co-ordination, and that in a very variable measure, it follows that the State cannot be the first agent, the primary cause of progress in human society: it is not in a position to do more than to play the part of an auxiliary, an agent of propagation, which, moreover, runs the risk of transforming itself, by an injudicious presumption, into an agent of perturbation.

It must, therefore, descend from the throne on which some have attempted to place it.

It follows, further, that the State is not the highest form of personality, as M. Von Stein maintains. It is the largest, no doubt, but not the highest, since it is devoid of that most marvellous of human attributes—the power of invention.

Before entering in detail into the tasks undertaken by the trinity of State-powers—the central, provincial, and communal power—we have thought it desirable to refute these errors, and to lay down these principles. The mission of the State will by this means become all the clearer.