

THE FOUNDATIONS OF
POLITICAL SCIENCE

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BY

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FOREWORD

THE classic work by Professor Burgess on *Political Science and Comparative Constitutional Law* was published in 1890 and is no longer easily obtainable. The work made a most profound impression at the time of its publication, both in Europe and in the United States. It served as the basis of the lectures and interpretations which Professor Burgess gave at Columbia University for a generation to thousands of eager and interested students of law and political science.

In 1917 it was suggested to Professor Burgess by the present writer that the time had come for him to prepare for publication, with such revision as he might deem desirable, those chapters of his great work which dealt with the fundamental principles of his doctrines as to the nation, the state, government and liberty. It was pointed out that such a volume might well prove to be of commanding service for the guidance of public opinion when the issues of the great war, which was then raging, were presented for settlement upon its termination. Professor Burgess quickly acted upon this suggestion, but unfortunately his new volume was never published.

It is now offered to the public in the precise form in which he prepared it for the press in 1917, together with the Preface which he wrote at that time. It is believed that in this new and convenient form the unrivaled exposition of the principles of political science, to which the name of Professor Burgess is forever attached, will offer compelling invitation to the more thorough and fundamental study of those underlying political principles upon which our ordered civilization is believed to rest.

In the scope and profundity of his thought, in the ordered

clearness of his exposition, and in the concise precision of his definitions, Professor Burgess reflects and recalls the example and the ideals of Aristotle. No one who has not grasped his clear-cut and well-founded distinction between the nation and the state on the one hand and between the state and government on the other, and no one who has not understood his doctrine of the basis and scope of liberty, can be prepared to deal with full understanding and clear vision with the grave problems, national and international, which this day confront the peoples of the world.

NICHOLAS MURRAY BUTLER

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

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PREFACE

THE world is now filled with discussion concerning the rights of nations and nationalities and their claim to become separate and independent states.

In most that has been said and written it is evident that the element of physical geography involved in the formation of states has not been sufficiently emphasized, while the ethnological element has been too strongly pronounced. In fact, in much of the discussion it has been regarded as the determining, if not the sole, factor in their proper construction, while, as a matter of history, the other element mentioned has always played the larger rôle. There is not now, and there never has been, a great state which is, or was, national from an exclusively ethnological or racial point of view.

Impressed by the desirability, and even necessity, of correct data and theory in dealing with this great subject at this critical juncture in the world's affairs and influenced by the suggestions and advice of some of my professional friends, I have brought together those chapters in my treatise on *Political Science and Comparative Constitutional Law*, published a quarter of a century ago, relating to the nation and the state and have separated them from the other parts of the work. They thus constitute a single volume of moderate size and deal exclusively with the questions which now appear to be uppermost in the minds of the leaders of the thought of the day. They represent the subject, both as to fact and theory, as things stood down to July of 1914, and, thus, entirely antedate the influences and prejudices of the great upheaval in the midst of which we now live. The presentations contained in them are, therefore, wholly the product of scientific considerations, and whichever way they may point, or be con-

ceived as pointing, it cannot be the result of any bias arising out of the experiences of the last three and a half years, or, as for that, of the last twenty-five years. These chapters stand, substantially, as they were written twenty-five years ago. They have been revised as then written only in regard to figures and numbers made necessary by the increase or decrease of populations.

JOHN W. BURGESS

"ATHENWOOD"

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BOOK I
THE NATION

CHAPTER I

THE IDEA OF THE NATION

PRIMARILY and properly the word "nation" is a term of ethnology, and the concept expressed by it is an ethnologic concept. It is derived from the Latin *nascor*, and has reference, therefore, primarily to the relations of birth and race-kinship. It has become, however, one of the commonest catch-words of modern political science. Especially is it so used and abused by French, English and American publicists. The Germans, on the other hand, are more exact and scientific in their political and legal nomenclature. They confine the word and the idea more nearly to their original and natural place, and find another term and concept for political and legal science. We shall do well to imitate their example; and we shall escape much confusion in thought and language by fixing clearly the meaning of this term in our own minds, and using it only with that meaning. As an abstract definition, I would offer this: A population of an ethnic unity, inhabiting a territory of a geographic unity, is a nation.

There is, however, an objection to this definition. The nation as thus defined is the nation in perfect and completed existence, and this is hardly yet anywhere to be found. Either the geographic unity is too wide for the ethnic, or the ethnic is too wide for the geographic, or the distinct lines of the geographic unity partially fail, or some of the elements of the ethnic unity are wanting.

Further, the definition requires explanation. By geographic unity I mean a territory separated from other territory by high mountain ranges, or broad bodies of water, or impenetrable forests and jungles, or climatic extremes—such barriers as place, or did once place, great difficulties in the way of external intercourse and communication. By ethnic

unity I mean a population having a common language and literature, a common tradition and history, a common custom and a common consciousness of rights and wrongs. Of these latter the most important element is that of a common speech. It is the basis of all the rest. Men must be able to understand each other before a common view and practice can be attained. It will be observed that I do not include common descent and sameness of race as qualities necessary to national existence. It is true that they contribute powerfully to the development of national unity; but a nation can be developed without them, and in spite of the resistance which a variety in this respect frequently offers. Undoubtedly, in earliest times, sameness of race was productive of a common language and a common order of life; but the early mixing of races by migration, conquest and intermarriage eliminated, in large degree, the influence of this force. Territorial neighborhood and intercourse soon became its substitutes. In the modern era, the political union of different races under the leadership of a dominant race results almost always in national assimilation. Thus, although the nation is primarily a product of nature and of history, yet political union may greatly advance its development, as political separation may greatly retard it. Sameness of religion was once a most potent power in national development, but the modern principle of the freedom of religion has greatly weakened its influence.

Where the geographic and ethnic unities coincide, or very nearly coincide, the nation is almost sure to organize itself politically—to become a state. There can, however, be political organization without this. The nation must pass through many preliminary stages in its development before it reaches the political, and meanwhile other forces will control in larger degree the formation of the state. Some forms of political organization are even based upon national hostility

between different parts of the population subject to them. This is almost always the case in the despotic and absolute systems, as I shall point out a little more particularly further on. The Emperor Francis II of Austria is reported to have once said to the French ambassador at his court: "Mes peuples sont étrangers les uns aux autres et c'est tant mieux. Ils ne prennent pas les mêmes maladies en mêmes temps. En France, quand la fièvre vient, elle vous prend tous le même jour. Je mets des Hongrois en Italie et des Italiens en Hongrie. Chacun garde son voisin; ils ne se comprennent pas et se détestent. De leurs antipathies naît l'ordre et de leur haine réciproque la paix générale."¹ It is only when the state reaches, in the course of its development, the popular or democratic form, that national unity exerts its greatest influence. In fact, as I shall endeavor to show further on, the existence of national unity is the indispensable condition for the development of that form.

On the other hand, where several nations are embraced within the same state, and the national feeling and consciousness rise to strength and clearness, there is danger of political dissolution. The mere mixture of a variety of nationality over the same territory will not, however, necessarily have this effect. This more frequently leads to a centralization of government, as I shall explain later.

Not all nations, however, are endowed with political capacity or great political impulse. Frequently the national genius expends itself in the production of language, art or religion; frequently it shows itself too feeble to bring even these to any degree of perfection. The highest talent for political organization has been exhibited by the Aryan nations, and by these unequally. Those of them remaining in the Asiatic home have created no real states;² and the Euro-

¹ Bluntschli, *Lehre vom modernen Stat*, I, 110, Anmerkung.

² Bluntschli, *Altasiatische Weltideen*.

pean branches manifest great differences of capacity in this respect. The Celt, for instance, has shown almost none, the Greek but little, while the Teuton really dominates the world by his superior political genius. It is therefore not to be assumed that every nation *must* become a state. The political subjection or attachment of the unpolitical nations to those possessing political endowment appears, if we may judge from history, to be as truly a part of the course of the world's civilization as is the national organization of states. I do not think that Asia and Africa can ever receive political organization in any other way. Of course, in such a state of things, the dominant nation should spare, as far as possible, the language, literature, art, religion and innocent customs of the subject nation; but in law and politics it is referred wholly to its own consciousness of justice of expedience.

Lastly, a nation may be divided into two or more states on account of territorial separation—as, for example, the English and the North American, the Spanish-Portuguese and the South American—and one of the results of this division will be the development of new and distinct national traits.

From these reflections, I trust that it will be manifest to the mind of every reader how very important it is to distinguish clearly the nation, both in word and idea, from the state; preserving to the former its ethnic signification, and using the latter exclusively as a term of law and politics.

CHAPTER II

THE PRESENT GEOGRAPHICAL DISTRIBUTION OF NATIONS AND NATIONALITIES

I MAKE the distinction indicated in the heading of the chapter between the distribution of nations and of nationalities in order to emphasize a very important difference. When I speak of the distribution of nations, I refer to populations of different nationality occupying separate territories. When, on the other hand, I speak of the distribution of nationalities, I have in mind populations of different nationality scattered over the same territory. The political results of these two kinds of distribution are very different; and our political science will suffer confusion of thought unless we keep this distinction clearly in mind.

I will not treat this topic universally, but only in its application to the states of Europe and to the United States; because, as I have before remarked, only Europe and North America have succeeded in developing such *political* organizations as furnish the material for scientific treatment, and though the subject be not one directly of political science, yet it is entirely in its relation to political science that it has interest for us.

I

IF WE regard exclusively the reasons of physical geography, we ought to find nine national unities upon the territory to which we give the name of Europe. I do not speak of the "continent" of Europe, because Europe is really the great northwestern peninsula of the continent of Asia, and because I wish to include in the territory of Europe the British Islands. These geographical unities are none of them perfect, and they vary greatly in distinctness of boundary and in superficial extent.

As the first and most perfect of these, I would designate the southwestern peninsula: bounded by the Mediterranean Sea on the east; by the same, the Strait of Gibraltar and the Atlantic Ocean on the south; by the Atlantic Ocean on the west, and by the Bay of Biscay and the Pyrenees on the north; lying, we may roughly say, between longitudes 2° east and 9° west, and between latitudes 36° and 44° north; forming thus very nearly a square, and having a superficial area of about 230,000 square miles.

As second, and next in the perfection of natural boundaries, I would put the islands lying between the North Sea, the English Channel, and the Atlantic Ocean; filling up about two-thirds of the surface between longitudes 2° east and 10° west, and latitudes 50° and 59° north, and having a superficial area of 120,832 square miles. The chief defect in the unity of this territory is the separation of the large western island from the others by a body of water from ten to sixty miles in breadth—not a very serious break in itself considered, but one which, connected with other unfavorable conditions, is sufficient to throw many impediments in the way of an uniform and easy political development.

Third, and next in the order of distinct natural boundary, I would place the territory lying between the Mediterranean Sea and the Pyrenees on the south, the Atlantic Ocean on the west, the English Channel and the North Sea on the north, and the Maritime and Cottian Alps, the Jura, the Vosges and the Ardennes on the east. Roughly speaking, it is comprehended between longitudes 6° east and 2° west, and between latitudes 44° and 51° north, and has an area of about 220,000 square miles. The chief defect in this boundary is on the northeast, where, from the present city of Liège to the North Sea, there is no physical separation of the territory east and west, unless we take the course of the river Meuse. I believe that the geographers, the historians and

the political scientists are now about agreed upon the proposition that rivers are not, as a rule, to be regarded as proper boundaries of geographic unities. They are the diameters and radii of such unities rather than the circumference. We must therefore consider the line from Liège to the North Sea—whether following the line of longitude, or that of the shortest distance, or the curvatures of the Meuse—to be artificial. It is the open gateway between the lands of the south shore of the North Sea and the Baltic and those of the English Channel far to the south and west.

Fourth, following still the order of geographic perfection, I would reckon the middle peninsula: bounded on the north, northeast and northwest, by the Alps; and on the east, south and west, by the branches of the Mediterranean. It lies obliquely across longitudes 7° and 18° east, and latitudes 37° and 47° north, and measures in square miles about 116,000. The principal defects in this territory as a geographic unity are, first, its great length as compared with its mean breadth—it is more than seven hundred miles long, with an average width of about one hundred miles; second, the fact that the shoulder of the peninsula is almost cut from the arm by a range of mountains, the Apennines, having a mean elevation of about five thousand feet; and, third, the fact that the whole length of the peninsula is separated into a distinct east and west side by this same mountain range. These are serious defects. They have always exercised, and do still exercise, unfavorable influences upon the national development of the population inhabiting this, in many respects, highly favored land.

Fifth, and next in the order of completeness in demarcation, I would place the eastern peninsula. It has a marine boundary on all sides except the north. On the north the line of the Balkans, running almost parallel with the latitude, furnishes a natural separation for about four-fifths of

the distance from east to west. At the latter point it is lost in the transverse coast ranges. On the east, also, the narrowness of the straits separating it from Asia Minor is a great defect. The great topographical irregularity of this territory makes it impossible to fix upon any one or upon a few geographic centers. Its contour and formation are favorable to the development of numerous petty differences in nationality. It is very difficult to fix its longitudinal and latitudinal position in general terms. We may help ourselves a little in the fixing of our conceptions by the general statement that it lies between 19° and 27° east longitude, and 37° and 42° north latitude. It has a superficial area of about 100,000 square miles.

Sixth. The great northern peninsula has geographic isolation, if not geographic unity. Its boundary is one of nature upon all sides, except across its neck. Here an artificial line must be taken. It lies obliquely across the longitudes 5° and 25° east, and the latitudes 55° and 70° north. Its superficial area is about 300,000 square miles. It has no geographic center. A long mountain range on the west coast, descending gradually into a long strip of low land on the east coast, is its general topographic feature.

Seventh. Next in the order of the principle which we have been following, I think we should designate the territory bounded by the Ardennes, Vosges and Jura on the west, by the Alps and Western Carpathians on the south and south-east, and by the North Sea and the south coast of the Baltic on the north. On the east the line of nature fails. From the district about the present city of Cracow we must reach the Baltic, either upon the line of longitude, or that of shortest distance, or by the curvatures of the river Vistula—all of which are artificial, from our standpoint. The line of shortest distance measures about three hundred miles. Here, then, is a very great defect in boundary. Here is the broad and

open way from the far east into the middle and north of Europe. Moreover, the demarcation of this territory is not perfect upon the west. From the northern extremity of the Ardennes to the North Sea is only a surveyor's line, or, at best, only the line of a narrow river (the Meuse). This territory is therefore exposed, both upon the east and the west; and what nature has withheld from it must be made good by art. Its configuration is not bad. It is almost a square; lying between 6° and 19° east longitude, and 46° and 54° north latitude, and having a superficial area of about 300,000 square miles. Its topography is not inharmonious, though presenting much variety.

Eighth. The territory bounded on the north, northwest and northeast by the Noric Alps and the Carpathians, on the east by the Black Sea, on the south by the Balkans, and on the south and southwest by the Carnic and Dinaric Alps, forms a fair geographical unity. It is the valley of the Danube, from the point where this greatest of European rivers breaks through the mountain gate, just above Vienna, to its mouth. Its configuration is rather irregular. It lies, for the most part, between longitudes 12° and 27° east and latitudes 42° and 49° north, and measures in square miles about 280,000. It has several very serious defects in natural boundary. The first and chiefest is on the east, where the Carpathians, after approaching to within one hundred and fifty miles of the Black Sea, suddenly swing around to the west, forming an acute angle about the district of the present city of Kronstadt, and run for one hundred and fifty miles almost due west, then, turning southerly, cross the Danube, forming the celebrated Iron Gate, and, trending southeastward again, reach almost to the Balkans. In fact, this part of the boundary is so very faulty that it appears to me possibly more scientific to exclude the district south and east of the lower Carpathians from this territory, and connect it with the

ninth division. In the southwest, between the Dinaric Alps and the western end of the Balkans, is an open way; also in the northwest, between the Noric Alps and the western Carpathians. On the other hand, the topography is more uniform than that of any of the divisions before described.

Ninth, and lastly. The territory bounded on the southwest by the Carpathians, on the west by the Baltic Sea, on the north by the Arctic Ocean, on the east by the Obdorsk and Ural Mountains and the Caspian Sea, and on the south by the mountains of the Caucasus and the Black Sea, has some of the qualities of a geographical unity, connected with several serious defects. In configuration it is a parallelogram not much removed from the square. It lies, for the most part, between longitudes 22° and 60° east, and latitudes 45° and 70° north, having a superficial area of more than 2,000,000 square miles. Its topography is not only uniform, but positively monotonous. Its natural boundaries, however, break down upon almost every side; in the west, as against both divisions six and seven; in the southwest, against division eight—unless, as I have before suggested, the valley of the Danube below the Iron Gate be connected with this division, which would then make its southwestern boundary the southern Carpathians and the Balkans. This is, however, a greatly mooted question, and one pregnant with great political results. If we look exclusively to the reasons of physical geography, however, I cannot see why it would not be the more scientific disposition. It seems to me that ethnological and political considerations have been allowed to warp the judgments of many of the geographers in regard to this point. Another most serious defect is upon the eastern boundary, where, for six hundred miles, nothing but the Ural River separates this territory from the continent of Asia.

Although the continent of North America is between three and four times as large as all Europe, yet we do not find here

the geographic variety which exists there. Regarding only natural geographic boundaries, we can hardly make out more than three geographic unities, viz.: the territory lying between the Appalachian range and the Atlantic seaboard; that bounded by the Appalachian range and the North Atlantic on the east, the Arctic Sea on the north, the Gulf of Mexico on the south, and the Rocky Mountains on the west and southwest; and that lying between the Rocky Mountains and the Pacific Ocean. It will be seen at a glance that the physical features of North America differ wholly from those of Europe in one respect, viz.: the great mountain ranges of North America cut the territory always longitudinally. Consequently we are referred to climatic differences here, in higher degree than in Europe, for national boundaries. Taking into account these climatic differences, we can enumerate six tolerably well defined territorial unities. The first is the tableland lying between the Gulf of Mexico and the Caribbean Sea on the east and the Pacific Ocean on the west, stretching obliquely across the parallels of longitude from 82° to 115° west, and the parallels of latitude from 10° to 30° north, and measuring in superficial area about 875,000 square miles. The second is the territory lying between the Appalachian range and the Atlantic coast, stretching obliquely across the longitudinal lines from 60° to 85° west, and the lines of latitude from 25° to about 50° north, and measuring in superficial area about 400,000 square miles. The third is the region lying between the 30th and 50th degrees of north latitude, bounded by the Rocky Mountains on the east and the Pacific Ocean on the west, stretching obliquely across longitudes 110° to 125° west, and having a superficial area of about 865,000 square miles. The fourth is the continuation of the same region toward the north, between the same eastern and western boundaries, and stretching obliquely across the lines of longitude from 110° to 165°

west, and the lines of latitude from 50° to 70° north. The area of this territory must be something like 800,000 square miles. The fifth is the vast basin of the Mississippi and Missouri rivers, bounded by the Appalachian Mountains on the east; by the Rocky Mountains on the west; by the Gulf of Mexico on the south; and on the north by the Great Lakes, and, west of these, by the watershed between the Mississippi and Missouri rivers and the Saskatchewan, Lake Winnipeg, and Lake Superior. It lies, for the most part, between latitudes 29° and 48° north, and between longitudes 75° and 110° west at the northern boundary; at the south the territory narrows, lying between 85° and 100° west. It has a superficial area of nearly 1,750,000 square miles. The sixth and last territorial unity is the almost immeasurable region lying north of the fifth division and east of the Rocky Mountains, between latitudes 49° and 80° north, and longitudes 60° and 115° to 140° west. Its area can be stated only approximately at about 3,000,000 square miles.

II

LET us next examine if the ethnographical lines coincide with the boundaries of these geographical unities. Beginning with Europe, we find that the first of its physical divisions is inhabited by three ethnically distinct populations, viz.: Spaniards, Portuguese, and Basques, in about the proportion of 19,000,000, 6,000,000 and 500,000.¹ These three populations occupy different parts of this territorial division. The first spreads over the main body of it. The second occupies a narrow strip upon the western coast, and the third inhabits a small area upon the northern boundary about midway between its extremities. There are, moreover, about 70,000 Morescoes and 10,000 Jews scattered over the southern half of this territory, and some 55,000 gypsies rove

¹ Spruner-Menke, *Handatlas für die Geschichte*, No. 13.

through it. In the west some 3,000 or 4,000 negroes are to be found. Of the three chief varieties, only the third is an original race. The first is an amalgamation of Iberians, Celts, Romans, Goths, Alani, Suevi, Vandals, Moors, Arabs and Jews;² and the second, of Romans, Suevi and Moors, influenced later by Jewish and French elements.³

We find the second of our geographic unities inhabited by two well defined ethnical varieties, viz.: the English and the Celts. Here again, these different populations occupy different parts of this territorial division. Most of the western island and the extreme western and extreme northern parts of the eastern island are inhabited chiefly by Celts. The English chiefly occupy all the rest; but each variety is scattered in greater or less degree over the territory principally occupied by the other. Of these two, only the Celtic is an original race. The English nationality is Teutonic, with a slight Celtic and a very slight Roman admixture. The English manifests the inclination and the power to absorb more and more the Celtic element. At present they stand in the numerical proportion of about 40,000,000 English to about 5,000,000 Celts. I reckon the number of Celts at a designedly generous figure.

In the geographical division which I have numbered as third are found no less than six ethnical varieties of population inhabiting different parts of this territory, viz.: French, Walloons, Italians, Teutons, Celts and Basques⁴—to say nothing of the unamalgamated elements scattered through the whole. The French occupy by far the greater part of this division. The other varieties inhabit districts lying close upon the boundaries: the Basques are along the Pyrenees; the Celts occupy the outer half of the western peninsula; the Walloons and Teutons are upon the northeast, and the Ital-

² Andree, *Geographisches Handbuch*, S. 644.

³ *Ibid.*, S. 637.

⁴ Spruner-Menke, *Handatlas*, No. 13.

ians upon the extreme southeast. In numerical strength we may reckon the French in round numbers at about 37,700,000, the Walloons at about 5,500,000, the Teutons at about 3,800,000, the Celts at about 1,250,000, the Basques at about 150,000, and the Italians at about 125,000. Of these, the Basques, Celts and Teutons (Flemings) may be regarded as probably simple races; the rest are amalgamated populations. The French blood contains Iberian, Celtic, Roman and Teutonic (Frankish, Burgundian and Norman) elements.⁵ The Walloons are a mixture of Celt, Teuton and Roman, and the Italians in this division have the same ethnical composition.

In our fourth division of the European territory, we find the lines of physical geography and ethnography most nearly coincident. The population is so nearly pure Italian that the variation is not worth the mention in a treatise upon political science. The Italian is an amalgamated population, and it is of great importance that we observe the fact that, in the different parts of this territory, different elements enter into the compound, and the same elements in far different degree. In the north, Celt, Roman and Teuton make it up, with the latter as the preponderating component; in the middle, we have the same elements, but with the Roman in the ascendancy; while in the south, Greek and Saracen, and later, French and Spaniard, have contributed to the ethnic constitution of the population. The numerical strength of the entire Italian nation is now about 35,000,000.

On the other hand, great ethnical variety is to be found in the fifth division, the eastern peninsula of Europe. The entire extremity of the peninsula, the eastern half of it and the coasts of the Aegean Sea, of the Sea of Marmora and of the Black Sea, are inhabited by an exclusively or a mainly Greek population. The western half of the peninsula, ex-

⁵ Andree, *Geographisches Handbuch*, S. 684.

cluding the extremity but reaching up to the northern boundary of the division, is occupied by the Albanians. The middle lands above the extremity of the peninsula are inhabited by South Slavs; and between these and the Greeks upon the coasts of the Sea of Marmora and the Black Sea, a Turkish population resides. The numerical strength of these ethnically different populations may be roughly estimated at 3,800,000 Greeks, 1,800,000 Turks, 1,700,000 Slavs (Bulgars and Serbs) and 2,000,000 Albanians.⁶ Of these four populations, only two can be regarded as simple and original races, viz., the Turks and the Slavs. The Greeks are a mixture of Hellenic, Slavic and Turkish elements, with the first greatly preponderant; and the Albanians are probably compounded from Greek, Epirotic and Illyrian elements. Even the Slavs in this division have a little Teutonic admixture.

Our sixth geographic division shows again a greater ethnical harmony in the population. The great mass are Teutons, of the northern or Scandinavian branch, numbering about 8,500,000; but a wedge-shaped bit of territory reaching from the neck almost to the crotch of the peninsula, inhabited by about 25,000 Finns and Lapps, separates the Teutons, as to their places of abode, into an eastern and a western branch.⁷ The influence of this separation upon the politics of the peninsula has been very great, as we shall see further on.

In the seventh division, on the other hand, the lines of geography and ethnography again separate. The great mass of the population are, indeed, Teutons, of the Germanic branch, to the number of nearly 70,000,000; but upon the southwest boundary exists a French-Walloonianish element, to the number of about 4,000,000; and a very large block of this territory, upon the east, is occupied by Slavs, to the num-

⁶ Spruner-Menke, *Handatlas*, No. 13; Andree, *Geographisches Handbuch*, S. 790.

⁷ Spruner-Menke, *Handatlas*, No. 13.

ber of more than 12,000,000 souls. Moreover, the 3,000,000 Teutons inhabiting the peninsula on the north of this division must be reckoned with the Scandinavian branch of the Teutonic stock.⁸ The dominant race in this division is also scattered throughout those parts chiefly inhabited by the other ethnical elements; and upon the northeast, Slavic components are to be found in the parts occupied chiefly by the Germans.

The eighth geographic division presents us with a population of decided ethnical variety. Some of the other divisions, indeed, offer as great variety in this respect, but in none are the different elements so evenly balanced numerically as in this. In the west and northwest are the 3,000,000 Teutons; in the north, south and southeast, the 13,000,000 Slavs; in the center the 15,000,000 Hungarians; in the east the 2,500,000 Rumans.⁹ If we connect the valley of the Danube from the Iron Gate to its mouth with this division, then we have 3,000,000 more Rumans, 1,500,000 more Slavs and about 550,000 Turks; but from a geographic standpoint, as I have before indicated, I think it questionable if we should do this. Of these populations, the Hungarians and Rumans are mixed races. The predominant simple element in the Hungarian compound is the Magyar, originally a Turanian branch. The other elements are Teuton, Slav and Ruman. In the Rumanic compound the predominant element is Roman. The Rumans are the descendants of the Roman colony planted by Trajan during the second century in the province of Dacia. They have become somewhat modified in their pure Romanism by contact and amalgamation with Slavic elements.

The ninth geographic division of Europe presents the greatest ethnical variety in its population, but contains a decidedly dominant race. It is calculated that about one hun-

⁸ Spruner-Menke, *Handatlas*, No. 13.

⁹ *Ibid.*

dred and twenty different race-branches inhabit this territory, speaking at least forty different languages or linguistic dialects.¹⁰ I shall enumerate only the different races, and not descend into the details of tribes and idioms. First, the great Slavic race, numbering about 110,000,000 souls, occupies the center and reaches out nearly to the circumference upon all sides. On the western limits are about 3,000,000 Teutons, 3,000,000 Jews, 3,500,000 Lithuanians and 1,000,000 Tschuds; on the northern, about 2,500,000 Finns; on the eastern, about 1,500,000 Finns, 2,000,000 Tartars and 100,000 Kalmucks; and on the southern, about 2,000,000 Caucasians, about 2,000,000 Jews, about 1,000,000 Tartars and about 700,000 Rumans. If we connect with this division the valley of the Danube below the Iron Gate, as appears to me more scientific geographically, then we must add to the population about 3,000,000 more Rumans, 1,400,000 more Slavs and 550,000 Turks. It should be remarked that the Slavic element in the northern part of this division is by no means so pure as in the middle and southern parts. In the north it is considerably amalgamated with both the Germanic and Scandinavian branches of the Teutonic race, and also with Finnish elements. It is also to be remarked that the great Slavic race in this division is to be distinguished into three branches, viz., the Poles in the west, the Muscovites in the center and the Ruthenians in the south, numbering, as to the Poles, some 15,000,000; as to the Muscovites, some 60,000,000; and as to the Ruthenians, some 35,000,000. These ethnical facts have had immense influence upon the political conditions within this territory, as will become apparent in our further considerations.

We come now to the continent of North America. For the purposes of this work it will be necessary to analyze only that population which inhabits the territory lying between

¹⁰ Andree, *Geographisches Handbuch*, S. 764.

the 30th and 50th degrees of north latitude and stretching from sea to sea. It will be seen by referring to pages 13 and 14 that this territory comprehends the second, third and fifth geographic unities. In ethnic character there is no very sharp distinction between the populations occupying these different divisions. In all of them an amalgamated Teutonic race is the dominant factor. But there are many qualifications to be noted in regard to this progressing amalgamation and domination. In the first place, the different branches of the Teutonic race are not yet fully amalgamated. The Anglo-Americans, Germans and Scandinavians do not yet mingle their blood completely. They do not, however, inhabit separate portions of either of these territorial divisions, and the Anglo-American element is still so greatly in numerical ascendancy that no ethnical conflict need be feared between them. There is little doubt but that the Anglo-American element will absorb the other Teutonic elements. It has already, however, suffered some modification thereby, and will undoubtedly suffer more. In the second place, many other ethnical varieties are strongly represented in all three of these divisions. The first in the order of strength is undoubtedly the negro race, which must now number between 10,000,000 and 12,000,000 of souls, seven-eighths of whom reside in the territory of our second and fifth divisions below the 37th parallel of north latitude, and make up about one-third of its entire population. They do not intermarry with the other elements of the population to any degree worth mention. There is, therefore, little prospect of physical amalgamation between them. Next in order of numerical strength is the Celtic race, not inhabiting any distinctly separate portion of territory but scattered for the most part through the cities and larger towns of the division east of the Appalachian range. There are at least 3,000,000 of foreign-born Celts within this territory, to say nothing of those born therein of

pure Celtic parentage. The Celt and the Teuton, again, do not amalgamate very readily, though of course far more readily than the negro and the white races. There are, moreover, about 125,000 Mongols throughout these three divisions, nineteen-twentieths of them in the territory of the third division. The white races show about as little tendency to amalgamate with them as with the negro race. There are also about 60,000 Indians scattered through the three divisions as regular elements of the population, and about 240,000 as exceptional elements, having distinct tribal organizations. These latter are to be found in the third division and the western part of the fifth division of this territory. Finally, there is a considerable Romanic element in the southern part of all three of these divisions. It is not, however, foreign-born. It is the indigenous progeny of the original Spanish and French settlers in these parts. It amalgamates easily with the Teutonic element. Its influence, however, in the development of opinion and institutions is unmistakable.

In these three divisions there must be about 100,000,000 inhabitants. If now we should say that all white persons resident within this territory before 1820, and their pure descendants, are Americans, we could hardly figure more than 42,000,000 of these at present (1914) from any known percentages of excess of births over deaths. We know, on the other hand, that about 25,000,000 white persons have immigrated into this territory since 1820. The other 45,000,000, then, of the present white population must be the living remainder of these 25,000,000, together with their pure descendants and the issue of marriages contracted between these newcomers and those whom I have termed Americans. We know also that the present foreign-born population resident within this territory numbers between 10,000,000 and 12,000,000 souls, mostly Teutons and Celts. About one-half are Teutons, and about one-third are Celts. This has been

about the proportion throughout this whole period of immigration. It will thus be seen that the ethnic character of the population of this territory is very cosmopolitan. It is, as to the greater part of it, a compound of many elements, mostly congenial and not difficult of amalgamation, having for its base the English branch of the Teutonic race; but it is conglomerated, so to speak, with other elements, numerically quite strong, with which it shows no tendency, or little tendency, to amalgamate. The influence of this ethnical character upon the political and legal civilization of this population has been and is still very great, as we shall see again and again in our further considerations.

III

LET us now examine the political divisions of Europe and North America, and see how nearly they coincide with these divisions of physical geography, on the one side, and of ethnography, on the other. Where the three exactly correspond, there we have a completely national state, the strongest and most perfect form of modern political organization. In the degree that they diverge from this relation, they depart from this condition of strength and perfection. Almost every question concerning the governmental system and organization of a state springs out of these relations. A clear and minute understanding in regard to them is therefore absolutely necessary to the student of political science and constitutional law.

The first geographic division which we have made of the European territory is occupied by two states, Spain and Portugal. The latter occupies a strip about one hundred miles in breadth stretching along the Atlantic coast from the southern extremity to the mouth of the river Minho and measuring about 33,000 square miles. The part occupied by Spain measures about 198,000 square miles. There is no natural

geographic boundary between the two states. On the other hand, the ethnographic lines are tolerably distinct, and correspond with the lines of political geography. The Spanish and Portuguese nations are, however, so nearly akin that ethnic considerations do not seem to demand the complete political separation of the two countries. The ethnic difference justifies nothing more than a federal organization of government; and when the absence of any geographic boundary is taken into account, it seems that a single state with a federal system of government would best satisfy all the conditions. It must not be overlooked in this connection that the ethnographic unity of Spain suffers a slight break in the northern part of its territory by the existence of the nation of Basques. These, however, number only about 500,000 souls, while the population of Portugal is about 6,000,000 and that of Spain about 20,000,000.

In our second geographic division the lines of physical and political geography may be said to coincide, although the geographic coherence between England, Scotland and Ireland is not perfect. This imperfection is not sufficient to amount to division, and yet it is sufficient to amount to distinction. The superficial area of the kingdom is 120,832 square miles. On the other hand, there are two nationalities in the kingdom of Great Britain, viz., the English and the Celtic, occupying tolerably distinct parts of the territory of the state and standing in the numerical relation of about 40,000,000 to 5,000,000. Some of the knottiest questions of British politics have arisen from this relation.

The third geographic division of Europe is occupied by two states, viz., France and Belgium, and by a portion of Holland, in the proportion of 204,092 square miles by France, 11,373 by Belgium, and the remainder, about 4,600, by Holland. Between these states, therefore, the lines of physical geography fail. Neither do the ethnographic lines

coincide exactly with those of political geography. The French nationality is predominant south and southwest of Brussels, while to the north, northwest and northeast of Brussels the German nationality predominates in an ever increasing degree of purity as we advance in these directions. On the other hand, the French state includes in its population a Walloonish element along the eastern border, some 1,250,000 Celts in the northwestern peninsula, about 115,000 Basques on the spurs and in the northern valleys of the Pyrenees and about 125,000 Italians in the southeast corner. We may call its population about 40,000,000. The population of the Belgian state may be reckoned at about 8,000,000 souls, one-half French, and the other half German—unless, indeed, we call the whole population Walloonish, and say simply that the Germanic element predominates on the one side, and the French upon the other.

It is in our fourth geographic division that the lines of political geography are most nearly coincident with those of natural physical division on the one hand and of ethnography on the other. It is only on the north that the Italian state is not quite coincident with geographic and ethnographic Italy. The latter reaches to the crest of the Alps, while the former stops in some points at the foothills; as, for instance, in the district about Lugano. I would roughly estimate that Italy occupies 114,500 square miles of the 115,000 in this fourth division, and that there are about 600,000 members of the Italian nation subject to France, Switzerland and Austria.

Regarded wholly from the standpoint of physical geography and ethnography, it appears somewhat strange that an Italian national state has been so long in coming to its development. Reasons of ecclesiastical and external politics must be looked to for the explanation.

The fifth division of the European territory is occupied

by six states, viz., Greece and Albania, Bulgaria, Servia and Montenegro south of the Balkans, and Turkey in Europe. Greece covers 35,000 square miles, Albania about 5,000, Bulgaria about 22,000, Servia about 22,000, Montenegro about 1,000 and Turkey about 15,000. The line of physical geography between Greece and these other states as well as between themselves is therefore wanting. Neither do the lines of ethnography and those of political geography coincide. The Greek state does not include the whole of the Greek nation, but it does include a considerable Albanian population in the western half of its territory north of the Morea. The whole population of Greece is about 3,000,000; of Albania, about 500,000; of Bulgaria south of the Balkans, about 2,500,000; of Servia south of the Balkans, about 1,000,000 and of Turkey in Europe, about 2,000,000. Bulgaria includes Serbs, Greeks and Turks as well as Bulgars. Servia includes Bulgars, Greeks, Turks and Albanians as well as Serbs, and Turkey includes Greeks and Bulgars as well as Turks.

In our sixth division exist now two independent states. The kingdoms of Sweden and Norway are separated from other states by broad bodies of water on all sides except across the neck of the peninsula, where they are separated from Russia, for the most part, only by the insignificant streams of the Tornea and the Tana. The superficial area of the two kingdoms is 297,005 square miles, of which 172,876 lie in Sweden and 124,129 in Norway. The population of these states is almost exclusively North Teutonic or Scandinavian; but about 25,000 Finns and Lapps occupy a broad strip of this area, extending from the neck to the crotch of the peninsula, and separating the Teutonic population into an east and a west branch. So influential has this condition been in the political development of this people as finally to cause the separation of these states, or at least to aid in causing it.

Moreover, not all the northern branch of the continental Teutons are resident within the kingdoms of Sweden and Norway. The Danes must, I think, be classed ethnologically with the Swedes and Norwegians. The population of Sweden is now 6,000,000 souls and that of Norway nearly 3,000,000.

In our seventh division the lines both of political geography and of ethnography diverge from that of physical geography. The territory of the German Empire, measuring 211,135 square miles, covers the most of it; but the states of Denmark, Luxemburg and Switzerland, about three-fourths of Holland, about one-fourth of the Austrian Empire and some 15,000 or 20,000 square miles of Russian territory lie within it.¹¹ On the other hand, a part of the German Empire lies outside of this division, viz., East Prussia, i.e., Prussia beyond the Vistula, some 15,000 square miles in area. The ethnographic and politico-geographic lines diverge almost as widely. The German Empire fails on the northwest, south and southeast to comprehend the entire German nation; while on the east and northeast it includes a considerable Slavic population. There are thus no natural boundaries between the German Empire and Denmark, Holland, Switzerland, Austria and Russia. The German Empire has now a population of nearly 70,000,000 of souls. Of these about 4,000,000 are Slavs, about 4,000,000 are Walloons and French, about 160,000 are Lithuanians, and about 150,000 are Scandinavian Teutons. About 60,000,000 therefore are Germans. Denmark has a population of something over 3,000,000, nearly all North Teutonic. That part of Holland included within this division is inhabited by about 4,000,000 persons, nearly all Germans. That part of Switzerland included in this division has a population of 2,700,000, four fifths German

¹¹ Denmark has an area of 14,124 square miles; Luxemburg, of 998; Holland, 12,648, about one-fourth of which lies in our third physical division; Switzerland, 15,892, about 500 square miles of which lies in our fourth physical division.

and the other one fifth French. Lastly, about 16,000,000 of the subjects of the Austrian Empire and about 3,500,000 of the subjects of the Russian Empire are resident within this seventh division of Europe's physical geography.

In our eighth division the lines of political geography are again greatly divergent from those of physical geography and ethnography. About two thirds of the Austrian Empire, the larger part of Servia, and those Turkish provinces assigned by the Treaty of Berlin of 1878 to Austrian administration, and lately incorporated into the Austro-Hungarian state, viz., Bosnia, Hertzegovina and Novi Bazar, lie within it. If we should make the parallel of latitude from Kronstadt in the eastern angle of the Carpathians to the Black Sea a part of the boundary of this division instead of following the curves of the Carpathians, which I hardly think so correct scientifically, then would this division contain also that part of Rumania originally named Wallachia and northern Bulgaria. On the other hand, about one third of the Austrian Empire lies outside of this division. That is to say, the larger part of the Austrian Empire—all of it lying to the south of the Noric Alps and the Carpathians—is geographically united with northern Servia, Bosnia and Hertzegovina, and geographically separated from that part of its territory lying to the north, northwest and northeast of these ranges. The Austrian Empire has an area of 240,942 square miles, of which about 51,695 lie in our seventh physical division, and about 30,307 in the ninth. Northern Servia has an area of 18,750; Bosnia, 16,417; Hertzegovina, 4,308; Novi Bazar, 3,522; Northern Bulgaria, 24,360; Wallachia, 27,500. In the second place, the political boundaries within this division do not correspond any more nearly with those of ethnography. The western and northwestern parts of the Austrian Empire are inhabited by Germans, to the number of about 10,000,000 souls; the northern, northeastern and southwest-

ern parts, by Slavs, to the number of about 15,000,000; the eastern, by Rumans and Magyars, to the number of about 5,000,000; and the middle and southern parts, by Hungarians, to the number of about 17,000,000. About 3,000,000 or 4,000,000 more of these different nationalities are scattered throughout these different parts so as to make a mixture of all these elements in greater or less degree in each of these parts. Servia, Bosnia, Hertzevovina and Novi Bazar are pretty thoroughly South Slavic. The population of northern Servia must number at this date about 2,500,000; that of Bosnia, Hertzevovina and Novi Bazar, about the same. The South Slavic Bulgars, also, make up about two thirds of the population of northern Bulgaria; the other one third is for the most part Turkish. Taken together, we may count them, at present, for about 4,000,000 souls. Finally, the state of Rumania in both of its original parts, viz., Moldavia and Wallachia, is mostly national Rumanian, with a Turkish population on the southeast border.

Our ninth physical division is covered almost entirely by the territory of the great Russian Empire in Europe, to the vast extent of 2,095,504 square miles. Only about 15,000 or 20,000 square miles of this immense territory lie outside of this division, viz., a strip on the western boundary, which must be reckoned in the seventh division. On the other hand, I think the state of Rumania, about 48,000 square miles in area, the northern half of the state of Bulgaria, 24,360 square miles in area, about 15,000 square miles of the territory of Prussia, and about the same amount of Austrian territory, fall within this division. The lines of political geography and ethnography are still more divergent. Russia in Europe has a population of more than 135,000,000 souls. About 110,000,000 or more of these belong to the Slavic race or nation in its three branches of Muscovites, Poles and Ruthenians. They inhabit the center of the Em-

pire, and reach nearly to the circumference on all sides; but on the western limit there are about 4,000,000 Teutons, 3,000,000 Jews, 2,500,000 Lithuanians and 1,000,000 Tschuds; on the northern, about 3,000,000 Finns; on the eastern, about 1,500,000 Finns, 2,000,000 Tartars and 100,000 Kalmucks; and on the southern, about 2,000,000 Caucasians, 2,000,000 Jews, 1,000,000 Tartars and 700,000 Rumanians. The population of Rumania is almost wholly national Ruman, and numbers about 7,000,000 souls; that of northern Bulgaria is about 4,000,000 souls, of whom two thirds are South Slavs, and the remainder for the most part Turks.

Finally, when we turn to North America again, we find a very different set of relations between political and physical geography and ethnography from those obtaining in Europe. In the first place, the United States occupies about all of this territory that is well fitted for the geographical basis of a great state. Its area, excluding Alaska, is about 3,000,000 square miles. It stretches over the second, third and fifth physical division of the continent, ignoring the natural separation of its domain into three parts by the Appalachian and the Rocky Mountains, and recognizing the boundaries of climate rather than those of mountain ranges. In the second place, the population of the United States, numbering some 100,000,000 souls, is far more cosmopolitan than that of any European state. As I have already indicated under Division II of this chapter, its base is English; but it has become amalgamated in more or less degree with German and Celtic elements, so that of the 100,000,000 hardly more than 42,000,000 can be regarded as pure American, as I have elsewhere shown.¹² Moreover, Romanic elements have entered into the amalgamation in some degree—in the extreme southern parts of the United States in large degree. At least three fourths of the 10,000,000 or 12,000,000 of negroes inhabit-

¹² See page 21.

ing the United States reside in the commonwealths lying south of the Ohio and east of the Mississippi rivers, and make up about one third of the population of this section. As I have already remarked, they do not amalgamate with the white races; or more correctly, the white races do not amalgamate with them. They seem destined to maintain a separate race existence. On the other hand, the 10,000,000 or 12,000,000 of foreign-born inhabitants of the United States—in large majority Germans and Celts—are scattered, for the most part, over that part of the territory of the United States lying north of the 37th degree of north latitude; and while they do not amalgamate as freely with the Anglo-Americans as these latter do among themselves, still there are no such insurmountable impediments in the way of the same as manifest themselves when the white races are brought into contact with negroes and Mongols. Finally, there are a few Indians and Chinese, hardly to the number of half a million, resident within the territory of the United States. Their presence would scarcely be felt except for the fact that about 240,000 of the Indians inhabit a separate part of this territory and live under tribal organizations, and three-fourths of the Chinese reside in a single commonwealth, viz., California.

CHAPTER III

NATIONAL POLITICAL CHARACTER

THIS is a very difficult and, in some cases, a very puzzling subject. Some nations manifest apparently contradictory traits at different periods of their development. I think we should take this fact as evidence that such traits should be excluded from our estimate of national character. Only such traits as endure through all the periods of a nation's life should be regarded as peculiar to that nation. If we adopt this rule, I think we shall be delivered from much confusion of thought.¹

The great races from which the nations of modern Europe and North America have sprung are the Greek, the Latin, the Celt, the Teuton and the Slav. I shall therefore confine my treatment of political psychology to these races. I shall not trouble my readers with an enumeration of the political traits ascribed to these different nations by the long list of writers upon this subject. I shall simply take the peculiar political institution which each of these races has produced and to which it has clung, as expressive of its innermost political life in all the periods of its development; and from this I shall attempt to lead up to a recognition of the political ideals peculiar to each race. It seems to me that in this manner we shall gain a surer foothold and shall be less likely to substitute fancy for fact.

First. The Greeks and Slavs. To my mind the political institution in which the political life of the Greeks incorporated and still incorporates itself is the community. In this

¹ Waitz, *Anthropologie der Naturvölker*; Vollgraff, *Erster Versuch einer wissenschaftlichen Begründung, sowohl der allgemeinen Ethnologie durch die Anthropologie wie auch der Stats- und Rechtsphilosophie durch die Ethnologie oder Nationalität der Völker*.

the Greek and the Slav agree, and for this reason I treat of them under the same heading. In the organization of the community, the narrowest circle of political life, the political genius of the Greek and Slavonic natures has been chiefly occupied and almost exhausted.² According to their political psychology, the whole power of the state must be in the community; i.e., the sovereignty must be in the community. Any wider organization could be regarded only as an interstate league, exercising delegated and very limited powers, while the rights of individuals as against the community could have no existence. In this form of political organization the way lies open for a development, in richest variety, of other qualities of genius, such as music, poetry, art, eloquence, philosophy and religion, provided the germs of the same exist in the psychologic character of the nation; but the race that clings to this form of political organization manifests a low order of political genius. Its failings must quickly reveal themselves in political history in three general directions, viz., in the poverty and insecurity of individual rights, in the inability to regulate the relations between different communities, and in weakness against external attack. All three of these failings point in the same direction. They make it absolutely necessary that the political organization, in highest instance, of the Greek and Slav nations should be undertaken by a foreign political power. It is no play of chance nor contradiction in character that Greece has been obliged to receive its general constitution from the Roman, and then the Turk, and now the Teuton; nor that the Slavs are subject to the autocratic government of the Osmanli and the Teutonic dynasties of Rumanoff and Hapsburg. This is the natural result of their want of any comprehensive political

² Laurent, *Études sur l'histoire de l'humanité*, II, 1-26; Curtius, *Griechische Geschichte*, I, 1-32, 175; Bluntschli, *Lehre vom modernen Stat*, I, 37, 40; Leroy-Beaulieu, *L'Empire des Tsars et les Russes*; Wallace, *Russia*; Foulke, *Slav or Saxon*, p. 64; Freeman, *Federal Government*, c. 2.

genius, and of the exhaustion of their political powers of production in the creation of the lowest forms of political organization. Whether they will ever become educated up to higher degrees of political capacity or are destined permanently to work upon the development of other lines of culture than the political is, I think, still a question. I do not believe that a consciousness of the political principles which we call modern has been awakened in any considerable number of the Greeks or Slavs, and I do not think that these few more enlightened minds are aware how totally unpolitical their national genius is. They are constantly being disappointed by the want of support from the masses in projects of general political reform. I remember that some twenty-eight years ago a distinguished professor of the University of Moscow, one of the best lawyers and publicists of the Slavic race in Russia, said to me that he expected the Russian revolution to be an accomplished fact before his return to Moscow, which was to be in about six months from the date of this conversation. Time has shown that he was woefully mistaken, and his mistake was in the assumption that the imperial government appeared as unnatural and tyrannic to the mass of the Russian subjects as to himself. I do not suppose there is an American schoolboy fifteen years of age, who has not wept bitter tears over the fate of Poland, and who does not think he could reform the government of Russia; and I have no doubt he would begin by dethroning the Czar, abolishing the army and disestablishing the Church; and I am sure that the practical result of the procedure would be that in less than twenty-five years there would be little left of the civilization of Russia. Let the Caesarism of Russia be made as honest and benevolent as possible, but Caesarism must be the general system of its political organization so long as the political psychology of the Slav is what it is and what it has been. Let the Danish monarchy

in Greece educate its subjects politically with patience and probity, but the Teutonic power must remain there if Greece would be preserved in the future from the political barbarism of her past. The same is true in regard to the Slavs of Austria and the Danubian principalities. Foreign genius and power must continue to make for them their political organizations of highest instance as it has done in the past and does now; for in all of these cases the incapacity is not one of degree simply, but one of kind. There is a diversity of gifts among nations as among individuals, and political genius seems no more to have been bestowed equally than other kinds of genius. The dispensation of history seems rather to be and to have been that some nations shall lead the world in religion, others in art, science and philosophy, and still others in politics and law.

Second. The psychology of the Celt is, if anything, still more unpolitical than that of the Greek and the Slav. This is somewhat singular, since the Celts were further removed, territorially, from the influences of Asia than the Greeks and Slavs. The Asiatic ideals, customs and traditions are all unpolitical, as I have elsewhere shown, and it might naturally be expected that when the branches of the Aryan stock migrated into Europe, those going farther westward would be under better conditions for curing this failing in the Asiatic character. However that may be, the Celts made nothing of it. On the other hand, while they produced and elaborated a great religion, and developed a learned and powerful priesthood, they have never created anything in the political world, which they can call distinctively their own, higher than the personal clanship. Personal attachment in small bodies to a chosen chief is the peculiar political trait of the Celtic nations.³ This has appeared in all places occupied by them and throughout all the periods of their history.

³ Martin, *Histoire de France*, I, 45 ff.; Prichard, *History of Mankind*, III, 175.

The effect of such a political character has always been the organization of the Celtic nations into numberless petty military states; in each of which individual rights have been always ignored; between all of which civil war has been the permanent status; and against all of which foreign force has been continually successful. Neither in highest nor lowest instance have they created, or can they create, political institutions of a superior order. Many examples of reckless courage and touching personal devotion are to be met with in their history, but they have never manifested any consciousness of political principles or developed any constancy in political purpose. Government has always been to them a personal affair, and they have never appeared to be conscious of committing any political wrong in using its powers for personal advantage. Violence and corruption have always marked the politics of Celtic nations. These are failings, on their part, rather than positive vices. They spring from the want of political genius rather than from vicious political character. The Celtic nations have always been compelled finally to suffer political organization by foreign talent, and have therefore become subject nations. It would be irrational to dismiss this fact with a phrase of indignation concerning unrighteous spoliation. The Celtic nations were more warlike than either the Roman or the German. Had they possessed fair talent for political organization, they would have been irresistible: Italy, France and Britain would today be subject to them. Whatever their gift may be, it certainly is not, and never has been, political, and their subjection to politically endowed nations in state organization is both natural and necessary. Any other order of things would confound distinctions which are implanted in the psychologic character of nations.

Third. On the other hand, the Roman or Latin nations have shown from the earliest beginnings of their history

great political and legal genius. The organization of government and the legal formulation of rights were the problems for the solution of which they seemed peculiarly called. But the juristic and political faculties are themselves not simple, but compound. In any particular nation some of their elements may exist in much higher degree than others, and *vice versa*. The Teutons are also nations of high political and legal endowment, as we shall see further on, but differing widely from the Romans in the composition of their genius, as will appear in the organizations created by them. A further discrimination is therefore necessary. What part of the great problem of legal and political organization has been worked out by the genius of the Roman, and what other part by that of the Teuton? I cannot answer the first part of this question better than Professor Rudolph von Ihering has done in the introduction to his brilliant and suggestive work, *Geist des römischen Rechts*. "Three times," he writes, "has Rome dictated the order of the world; three times has she bound the nations in unity together: the first time, when the Roman people were still in the fullness of their power, in the unity of the state; the second time, after they had fallen into decline, in the unity of the church; the third time, in consequence of the reception of the civil law in the middle ages, in the unity of rights—the first time by the force of arms, but the second and third times by the power of ideas. The world-historic significance and mission of Rome, expressed in a single word, is the triumph of the principle of universality over national diversity."⁴ The universal empire is the institution peculiar to the Roman political genius. Its creation is a majestic work of political capacity and power. Theoretically, at least, it solves the question of defense of the state against the external foe; in fact, the

⁴ Von Ihering, *Geist des römischen Rechts*, I, 1; Bluntschli, *Lehre vom modernen Stat*, I, 29, 41.

complete realization of its principle would leave no external foe. It would comprehend mankind within its organization. It also solves the question of the relation of all local organizations within the state; in fact, in the complete realization of its principle there can be no local organization, except in the form of an imperial agency. On the other hand, it has its failings; and so soon as its mission has been fulfilled—the mission of diffusing political civilization, of making it universal—these failings appear unendurable. But these failings are the necessary result of the imperial ideal itself. In the first place, it must sacrifice in large degree the liberty of the individual. Uniformity is its deepest law; and therefore its rule of individual conduct must be that what is not expressly permitted is forbidden. In the second place, it cannot popularize its government. Unity and fixedness of purpose must reign always and everywhere. In the long run this will stifle and destroy the capacity of the individual subject. His education and development must not only be neglected, but hindered and prevented, in order that his unquestioned obedience may be secured and preserved. In the third place, the empire must suppress all local autonomy. Law and ordinance must be one and the same in every district and for every part of the population. In the fourth place, it must ignore and destroy all ethnical differences, for that, above all things, is its mission and its significance. It is of course possible that if the seat of the Roman Empire had remained in Rome instead of having been removed to Constantinople, and if the German invasion had been successfully repelled, the strong political genius of the Romans might in practice have found the remedy for these failings, and been able to reconcile uniformity with variety, sovereignty with liberty; but I do not think it probable. This was not the mission of the Romans in the civilization of the world, if history is to be taken as indisputable evidence of the missions of

nations. This was the work reserved to the Teutonic nations.

Fourth and last, we come to consider the political psychology of those nations which may be termed the political nations *par excellence*, viz., the Teutonic; and if the peculiar creations of these nations may be expressed in a single phrase, it must be this: that they are the founders of national states.⁵ It is not possible to divine whether this great work could have been accomplished by them without the training in Roman ideas received by them in the Carolingian Empire and the Roman Christian Church. The Teutons strove most earnestly and determinedly, during the earlier, pre-Frankish period of their political history, against even the necessary organization of the state, and came to the consciousness of their mission as the founders of national states only after half a century of life in the European Empire of the great Charles; but education can only develop what already exists in seed and germ, and we may therefore conclude that no amount of Roman discipline, which was distinctly antinational in its universality, could have evolved the national idea unless this had been an original principle of Teutonic political genius. Even before their union with each other and with Romanic populations in the Frankish Empire, the continental Teutons showed this national tendency, in that their political organizations were coextensive, generally, with the lines of dialect and custom. Their restlessness under, and resistance to, the system of the European Empire sprang from their feeling of its unnational character; and since the division of the Empire in 843 they have pursued, with a gradually but continually growing consciousness of their political mission, their work of establishing states upon the principle of national union and independence. Almost every state of modern Europe owes its organization to the Teutons. The Visigoths in Spain, the Suevi in Portugal, the Lombards

⁵ Laurent, *Études sur l'histoire de l'humanité*, X, 43.

in Italy, the Franks in France and Belgium, the Anglo-Saxons and Normans in England, the Scandinavian Teutons in Denmark, Norway and Sweden, and the Germans in Germany, Holland, Switzerland and Austria have been the dominant elements in the creation of these modern national states; and today Teutonic houses are organizing Greece, Rumania, and the principalities along the Danube, and even Russia. The United States also must be regarded as a Teutonic national state. In the light of history and of present fact, our propositions cannot be successfully disputed, that the significant production of the Teutonic political genius is the national state; that only the Teutonic nations have produced national states; and that they have proved their intense positive force in this direction by creating national states upon the basis of populations belonging to other races, even upon the basis of a population belonging to a race of so high political endowment as the Roman.

The national state is the most modern product of political history, political science and practical politics.⁶ It comes nearer to solving all the problems of political organization than any other system as yet developed. In the first place, it rescues the world from the monotony of the universal empire. This is an indispensable condition of political progress. We advance politically, as well as individually, by contact, competition and antagonism. The universal empire suppresses all this in its universal reign of peace, which means, in the long run, stagnation and despotism. At the same time, the national state solves the problem of the relation between states by the evolution of the system of international law. Through this it preserves most of the advantages of the universal empire while discarding its one-sided and intolerant character. In the second place, the national state solves the problem of the relation of sovereignty to liberty; so that

⁶ Bluntschli, *Lehre vom modernen Stat*, I, 52 ff.

while it is the most powerful political organization that the world has ever produced, it is still the freest. This is easy to comprehend. The national state permits the participation of the governed in the government. In a national state the population have a common language and a common understanding of the principles of rights and the character of wrongs. This common understanding is the strongest moral basis which a government can possibly have; and, at the same time, it secures the enactment and administration of laws whose righteousness must be acknowledged, and whose effect will be the realization of the truest liberty. In the third place, the national state solves the question of the relation of central to local government, in that it rests upon the principle of self-government in both domains. In the perfect national state there can thus be no jealousy between the respective spheres; and the principle will be universally recognized that, where uniformity is necessary, it must exist; but that where uniformity is not necessary, variety is to reign in order that through it a deeper and truer harmony may be discovered. The national state is thus the most modern and the most complete solution of the whole problem of political organization which the world has as yet produced; and the fact that it is the creation of Teutonic political genius stamps the Teutonic nations as the political nations *par excellence*, and authorizes them, in the economy of the world, to assume the leadership in the establishment and administration of states.

CHAPTER IV

CONCLUSIONS OF PRACTICAL POLITICS FROM THE FOREGOING CONSIDERATIONS IN REGARD TO PHYSICAL, ETHNICAL AND POLITICAL GEOGRAPHY, AND NATIONAL CHARACTERISTICS

WE CONCLUDE, in the first place, that national unity is the determining force in the development of the modern constitutional states. The prime policy, therefore, of each of these states should be to attain proper physical boundaries and to render its population ethnically homogeneous. In other words, the policy in modern political organization should be to follow the indications of nature and aid the ethnical impulse to conscious development.

Where two or more independent states are situated in one and the same geographical unity, it is presumably a sound policy which seeks the union of these states in a more general political organization or the absorption by one—the most capable and powerful—of the others. Which one of these courses should be pursued depends upon the circumstances of each case. If the populations of the several states vary in their ethnical character and yet possess about equal political capacity, the united state with a federal system of government will be the more natural arrangement and the one more easy of attainment. If, on the other hand, the population of one of them far excels the populations of the others in political endowment and power of political organization, then annexation and absorption of the other states by the superior state will work the best results in the advancement of political civilization. If, finally, the ethnical character of these different states be the same, then it will make little difference, as a rule, whether their unity be at-

tained by federalization or by absorption. When a state insists upon the union with it of all states occupying the same geographic unity and attains this result in last resort by force, the morality of its action cannot be doubted in sound practical politics, especially if the ethnical composition for the populations of the different states is the same or nearly the same. What unprejudiced publicist or statesman questions today the morality of the policy of Prussia in the foundation of the German Empire, or of Sardinia in the political unification of Italy? And who does not see that the further rounding out of the European states to accord still more nearly with the boundaries which nature has indicated would be in the interest of the advancement of Europe's political civilization and of the preservation of the general peace? It would expel the Turk from Europe; it would put an end to Russian intrigue in the valley of the Danube; it would give Greece the vigor and the power to become a real state; and it would bring the petty states of Switzerland, Denmark, Holland, Luxemburg, Belgium and Portugal into connections which would enable their populations to contribute, in far greater degree, to the political civilization of the world, and receive, in far greater degree, the benefits of that civilization, than their present conditions permit. Even then there would be weak places enough in the boundaries of each national state, but their number would be greatly decreased, and the temptation to invasion which they offer greatly lessened.

On the other hand, if a state organization extends over several geographic unities, then there is good ground, in sound public policy, to consider whether the political civilization of the world would not be advanced by its separation into several independent states, corresponding in political extent with the boundaries indicated by nature. Especially will this be true if the ethnical character of the populations

of these several geographic unities be different. If, however, the ethnical character be the same, the geographical reason for partition is, in this day of steam and electricity, by no means conclusive.

Again, where the population of a state is composed of several nationalities, we are forced to conclude that it will be sound policy in the state to strive to develop ethnical homogeneity. The morality of a policy which insists upon the use of a common language and upon the establishment of homogeneous institutions and laws cannot be successfully disputed. Under certain circumstances the exercise of force to secure these ends is not only justifiable, but commendable; and not only commendable, but morally obligatory. Take, for example, this condition of things. A state, we will say, has a naturally exposed boundary. It must rely, therefore, in extraordinary degree upon the loyalty of that part of its population resident along such boundary; in other words, the intensest national spirit must exist here; and if it does not, the state must create it at all costs. If now a portion of this frontier population be ethnically hostile, the state is then in perfect right and follows a sound policy when, after having made all reasonable efforts to nationalize them, it deports them, in order to make way for a population which will serve as necessary defense against the violence and the intrigue of the foreign neighbor. It should, however, make other provisions for them, if possible, or pay them a just compensation for the expropriation of their vested rights. Again, let us suppose the case of a great colonial empire. Its life will depend, of course, upon the intensest nationality in that part of its territory which is the nucleus of the entire organization. It cannot suffer national conflicts to make this their battleground. The reigning nationality is in perfect right and pursues, from a scientific point of view, an unsailable policy when it insists, with unflinching determina-

tion, upon ethnical homogeneity here.¹ It should realize this, of course, through the peaceable means of influence and education, if possible. When, however, these shall have been exhausted in vain, then force is justifiable. It may righteously deport the ethnically hostile element in order to shield the vitals of the state from the forces of dissolution, and in order to create the necessary room for a population sufficient in numbers, in loyalty and in capacity to administer the empire and protect it against foreign powers. It should, of course, make other provision, if possible, for the deported population in less important parts of its territory, or at least make just compensation for the expropriation of vested rights; but the state cannot safely or righteously give way, in such a case, to sentimental politics and the claim of an inalienable right to fatherland. This cry is but a mockery in the mouths of men whose presence in the fatherland threatens to render it incapable of fulfilling its mission or maintaining its own existence. In practical politics we cannot lose the great *morale* in the petty.

A fortiori, a state is not only following a sound public policy, but one which is ethnically obligatory upon it, when it protects its nationality against the deleterious influences of foreign immigration. Every state has, of course, a duty to the world. It must contribute its just share to the civilization of the world. In order to discharge this duty, it must open itself, as freely as is consistent with the maintenance of its own existence and just interests, to commerce and intercourse, ingress and egress; but it is under no obligation to the world to go beyond these limits. It cannot be demanded of a state that it sacrifice itself to some higher good. It cannot fulfil its mission in that way. It represents itself the highest good. It is the highest entity. The world has as yet no organization into which a state may merge its existence.

¹ Bluntschli, *Lehre vom modernen Stat*, I, 305.

The world is as yet only an idea. It can give no passports which a state is bound to accept. The duty of a state to the world is a duty of which the state itself is the highest interpreter. The highest duty of a state is to preserve its own existence, its own healthful growth and development. So long as foreign immigration contributes to these, it is sound policy not only to permit, but to cultivate it. On the other hand, when the national language, customs and institutions begin to be endangered by immigration, then the time has come for the state to close the gateways partly or wholly, as the case may require, and give itself time to educate the incomers into ethnical harmony with the fundamental principles of its own individual life. It is a most dangerous and reprehensible piece of demagogism to demand that a state shall suffer injury to its own national existence through an unlimited right of ingress; and it is an unendurable piece of deception, conscious or unconscious, when the claim is made from the standpoint of a superior humanity. Certainly the Providence which created the human race and presides over its development knows best what are the true claims of humanity; and if the history of the world is to be taken as the revelation of Providence in regard to this matter, we are forced to conclude that national states are intended by it as the prime organs of human development; and, therefore, that it is the highest duty of the state to preserve, strengthen and develop its own national character.

My second conclusion from the facts considered in the previous chapter is that the Teutonic nations are particularly endowed with the capacity for establishing national states, and are especially called to that work; and, therefore, that they are intrusted, in the general economy of history, with the mission of conducting the political civilization of the modern world. The further conclusions of practical politics from this proposition must be, that in a state whose

population is composed of a variety of nationalities the Teutonic element, when dominant, should never surrender the balance of political power, either in general or local organization, to the other elements. Under certain circumstances it should not even permit participation of the other elements in political power. It should, of course, exercise all political power with justice and moderation—it is these very qualities of the Teutonic character which makes it *par excellence* political. It should also, of course, secure individual liberty, or civil liberty, as we term it here, to all; but, under certain circumstances, some of which will readily suggest themselves to the mind of any observing American, the participation of other ethnical elements in the exercise of political power has resulted, and will result, in corruption and confusion most deleterious and dangerous to the rights of all, and to the civilization of society. The Teutonic nations can never regard the exercise of political power as a right of man. With them this power must be based upon capacity to discharge political duty, and they themselves are the best organs which have as yet appeared to determine when and where this capacity exists. In a state whose controlling nationality is Teutonic, but which contains other ethnical varieties, it will always be sound policy to confer upon these alien elements the privilege of participating in the exercise of political power only after the state shall have nationalized them politically. It must not, of course, seek to prevent or delay nationalization in order to be able to exercise oppression—that would be to deny its very calling; but, on the other hand, it must not hasten the enfranchisement of those not yet ethnically qualified for reasons outside of such qualification. Again, another conclusion from our proposition in reference to the mission of the Teutonic nations must be that they are called to carry the political civilization of the modern world into those parts of the world inhabited by unpolitical and

barbaric races, i.e., they must have a colonial policy. It is difficult for North Americans to regard this duty in its true light, in spite of the fact they themselves owe their own existence to such a policy. They are far too much inclined to regard any policy of this character as unwarrantable interference in the affairs of other states. They do not appear to give due consideration to the fact that by far the larger part of the surface of the globe is inhabited by populations which have not succeeded in establishing civilized states; which have, in fact, no capacity to accomplish such a work; and which must, therefore, remain in a state of barbarism or semibarbarism, unless the political nations undertake the work of state organization for them. This condition of things authorizes the political nations not only to answer the call of the unpolitical populations for aid and direction, but also to force organization upon them by any means necessary, in their honest judgment, to accomplish this result. There is no human right to the status of barbarism. The civilized states have a claim upon the uncivilized populations, as well as a duty towards them, and that claim is that they shall become civilized; and if they cannot accomplish their own civilization, then must they submit to the powers that can do it for them. The civilized state may righteously go still further than the exercise of force in imposing organization. If the barbaric population resist the same, *à outrance*, the civilized state may clear the territory of their presence and make it the abode of civilized man. The civilized state should, of course, exercise patience and forbearance toward the barbaric populations, and exhaust every means of influence and of force to reduce them to subjection to its jurisdiction before adopting this policy of expulsion; but it should not be troubled in its conscience about the morality of this policy when it becomes manifestly necessary. It violates thereby no rights of these populations which are not petty and trifling

in comparison with its transcendent right and duty to establish political and legal order everywhere. There is a great deal of weak sentimentality abroad in the world concerning this subject. So far as it has any intellectual basis, it springs out of a misconception of the origin of rights to territory, and a lack of discrimination in regard to the capacities of races. It is not always kept in mind that there can be no dominion over territory or property in land apart from state organization—that the state is the source of all titles to land and of all powers over it. The fact that a politically unorganized population roves through a wilderness, or camps within it, does not create rights, either public or private, which a civilized state, pursuing its great world-mission, is under any obligation, legal or moral, to respect. It would be a petty morality indeed which would preserve a territory capable of sustaining millions of civilized men for the hunting ground of a few thousand savages, or make its occupation depend upon contract and sale with and by them.

Finally, we must conclude, from the manifest mission of the Teutonic nations, that interference in the affairs of populations not wholly barbaric, which have made some progress in state organization, but which manifest incapacity to solve the problem of political civilization with any degree of completeness, is a justifiable policy. No one can question that it is in the interest of the world's civilization that law and order and the true liberty consistent therewith shall reign everywhere upon the globe. A permanent inability on the part of any state or semi-state to secure this status is a threat to civilization everywhere. Both for the sake of the half-barbarous state and in the interest of the rest of the world, a state or states, endowed with the capacity for political organization, may righteously assume sovereignty over, and undertake to create state order for, such a politically incompetent population. The civilized states should not, of course,

act with undue haste in seizing power, and they should never exercise the power, once assumed, for any other purpose than that for which the assumption may be righteously made, viz., for the civilization of the subjected population; but they are under no obligation to await invitation from those claiming power and government in the inefficient organization, nor from those subject to the same. The civilized states themselves are the best organs which have yet appeared in the history of the world for determining the proper time and occasion for intervening in the affairs of unorganized or insufficiently organized populations, for the execution of their great world-duty. Indifference on the part of Teutonic states to the political civilization of the rest of the world is, then, not only mistaken policy, but disregard of duty, and mistaken policy because disregard of duty. In the study of general political science we must be able to find a standpoint from which the harmony of duty and policy may appear. History and ethnology offer us this elevated ground, and they teach us that the Teutonic nations are the political nations of the modern era; that, in the economy of history, the duty has fallen to them of organizing the world politically; and that if true to their mission, they must follow the line of this duty as one of their chief practical policies.

BOOK II
THE STATE

CHAPTER V

THE IDEA AND THE CONCEPTION OF THE STATE

DEFINITIONS of so comprehensive a term as the state are generally one-sided and always unsatisfactory. Nevertheless they are useful and helpful. This is primarily a question of political science. Not until the state has given itself a definite and regular form of organization, i.e., not until it has formed for itself a constitution, does it become a subject of public law. It may be said that a state cannot exist without a constitution. This is true in fact; but the state can be separated in idea from any particular form of organization, and the essential elements of its definition can be found in the principle or principles common to all forms. There are two ways of reaching the definition. The one is the process of pure philosophy, the other that of inductive logic. The one gives us an idea of the reason, the other a concept of the understanding. The two ought to coincide, but they more frequently differ. The sources of the difference are manifold. Either the speculation is colored by fancy, or the induction is not exhaustive. Either the idea is too abstract, or the concept too concrete. There is something deeper, too, than the intellectual character of the particular political scientist, which creates this disharmony between the idea and the concept of the state. The idea of the state is the state perfect and complete. The concept of the state is the state developing and approaching perfection. There is one thing, however, which modifies this divergence between the idea and the concept of the state, and that is the dependence, after all, of the speculative philosopher upon objective realities to awaken his consciousness of the idea. This brings the two nearer together. It makes the idea the pioneer of the concept, and the concept the stages in the realization of the idea.

If we keep in mind the two processes followed in the formation of the definition, we shall be better able to reconcile the views of the different authors upon this subject. There is nothing more disheartening for the reader than to be dragged through a list of conflicting definitions at the beginning of a treatise, and to be required to select the principle before he knows the facts and details of the subject; still something of the sort must be done, briefly and tentatively at least, in order to give logical consistence to the work. The reader may take the preliminary definition upon trial at least, and accept it with a temporary faith.

From the standpoint of the idea the state is mankind viewed as an organized unit.¹ From the standpoint of the concept it is a particular portion of mankind viewed as an organized unit.² From the standpoint of the idea the territorial basis of the state is the world, and the principle of unity is humanity. From the standpoint of the concept, again, the territorial basis of the state is a particular portion of the earth's surface, and the principle of unity is that particular phase of human nature, and of human need, which, at any particular stage in the development of that nature, is predominant and commanding. The former is the real state of the perfect future. The latter is the real state of the past, the present, and the imperfect future. In a treatise, therefore, upon public law, and upon political science only as connected with public law, we have to deal only with the latter. Our definition must, therefore, be that the state is a particular portion of mankind viewed as an organized unit. This definition requires a great deal of analysis and explanation.

¹ Bluntschli, *Lehre vom modernen Stat*, I, 34. "Der Stat ist die organisirte Menschheit. Der Stat ist der Mann."

² *Ibid.*, S. 24. "Der Stat ist die politisch organisirte Volksperson eines bestimmten Landes."

I. What is the principle according to which the portions of mankind forming states are to be determined? No answer can be given to this question that will be valid for all times and conditions. In the ancient civilization the principle of common blood or a common faith, in the mediaeval that of personal allegiance, and in the modern that of territorial citizenship, have chiefly determined the political divisions of the world. We must be careful, however, not to separate these principles, as to the time of their application, too exactly from each other. Each of them reaches out beyond its proper period and, so to speak, overlaps the next; creating that confusion in regard to citizenship and alienage which every public lawyer meets and dreads. But these answers are not wholly satisfactory. They resolve the problem in part, but they raise other and more difficult questions. How far will a bond of blood, or of faith, preserve sufficient strength to serve as the principle of political organization? What are the circumstances which direct personal allegiance towards this point or that? What are the conditions which make a particular territory the home of a state? With these questions, we have again entered the domains of geography, ethnology and the history of civilization. In so far as the modern state is concerned—i.e., in so far as the question is practical—I have attempted to show, in the previous book, what answer these sciences afford. As to the ancient and mediaeval states, we can only say that their principles of organization left their political limits and boundaries uncertain and inexact, producing continual unrest and conflict.

II. What are the peculiar characteristics of the organization which we term the state?

First, I would say that the state is all-comprehensive. Its organization embraces all persons, natural or legal, and all associations of persons. Political science and public law do

not recognize in principle the existence of any stateless persons within the territory of the state.³

Second, the state is exclusive. Political science and public law do not recognize the existence of an *imperium in imperio*. The state may constitute two or more governments; it may assign to each a distinct sphere of action; it may *then* require of its citizens or subjects obedience to each government thus constituted; but there cannot be two organizations of the state for the same population and within the same territory.⁴

Third, the state is permanent. It does not lie within the power of men to create it today and destroy it tomorrow, as caprice may move them. Human nature has two sides to it—the one universal, the other particular; the one the state, the other the individual. Men can no more divest themselves of the one side than of the other; i.e., they cannot divest themselves of either. No great publicist since the days of Aristotle has dissented from this principle.⁵ Anarchy is a permanent impossibility.

Fourth and last, the state is sovereign. This is its most essential principle. An organization may be conceived which would include every member of a given population, or every inhabitant of a given territory, and which might continue with great permanence, and yet it might not be the state. If, however, it possesses the sovereignty over the population, then it is the state. What now do we mean by this all-important term and principle, the sovereignty? I understand by it original, absolute, unlimited, universal power over the individual subject and over all associations of subjects to command and enforce obedience by punishment for disobedience. This is a proposition from which most of the publicists,

³ Bluntschli, *Das moderne Völkerrecht*, S. 216.

⁴ Von Mohl, *Encyklopädie der Staatswissenschaften*, S. 72.

⁵ *Ibid.*, S. 71; Bluntschli, *Lehre vom modernen Stat*, I, 26.

down to the most modern period, have labored hard to escape. It has appeared to them to contain the destruction of individual liberty and individual rights. The principle cannot, however, be logically or practically avoided, and it is not only not inimical to individual liberty and individual rights, but it is their only solid foundation and guaranty. A little earnest reflection will manifest the truth of this double statement.

First, power cannot be sovereign if it be limited; that which imposes the limitation is sovereign; and not until we reach the power which is unlimited, or only self-limited, have we attained the sovereignty. Those who hold to the idea of a limited sovereignty (which, I contend, is a *contradictio in adjecto*) do not, indeed, assert a real legal limitation, but a limitation by the laws of God, the laws of nature, the laws of reason, the laws between nations. But who is to interpret, in last instance, these principles, which are termed laws of God, laws of nature, laws of reason, and laws between nations, when they are invoked by anybody in justification of disobedience to a command of the state, or of the powers which the state authorizes? Is it not evident that this must be the state itself? It is conceivable, no doubt, that an individual may, upon some point or other, or at some time or other, interpret these principles more truly than does the state, but it is not at all probable, and not at all admissible in principle. It is conceivable, also, that a state may outgrow its form of organization, so that the old organization no longer contains the real sovereignty; and that an individual, or a number of individuals, may rouse the real sovereign to resist triumphantly the commands of the apparent sovereign as misinterpretations of the truths of God, nature and reason. That would only prove that we had mistaken the point of sovereignty, and would teach the lesson that the state must always hold its form to accord with its substance. When the

French National Assembly of 1789 disputed the commands of the King, it could find no ground to rest upon, either in logic or in fact, until it declared the sovereignty to be in the nation—in the nation organized in the Assembly. The common consciousness is the purest light given to men by which to interpret truth in any direction; it is the safest adviser as to when principle shall take on the form of command; and the common consciousness is the state consciousness. In the modern national state we call it the national consciousness. The so-called laws of God, of nature, of reason and between states are legally, and for the subject, what the state declares them to be; and these declarations and commands of the state are to be presumed to contain the most truthful interpretations of these principles, which a fallible and developing human view can, at the given moment, discover. It is begging the question to appeal to the consciousness of the world or of humanity against the consciousness of the state; for the world has no form of organization for making such interpretations, or for intervening between the state and its citizens to nullify the state's interpretation. I do not ignore the fact that some great publicists think they see in the body of general agreements, positive and customary, between states, called international law, the postulates of a consciousness wider than that of a single state. This may be true; but we must not forget that these agreements and customs are not law between a state and its own subjects unless the state recognizes them as such. For instance, it is a firmly established principle of our own constitutional law that our own governmental organs, authorized thereto by the state, are the interpreters, in last instance, of international law for all persons subject to their jurisdiction.⁶ At the present stage of the world's civilization, a nearer approximation to truth seems to be attainable from the standpoint of a national state

⁶ *Thirty Hogsheads of Sugar v. Boyle*, U. S. Reports, 9 Cranch.

consciousness than from the standpoint of what is termed the consciousness of mankind. An appeal to the consciousness of mankind, if it bring any reply at all, will receive an answer confused, contradictory and unintelligible. In the far-distant future it may be otherwise; but for the present and the discernible future, the national state appears to be the organ for the interpretation, in last instance, of the order of life for its subjects. Contact between states may, and undoubtedly does, clarify and harmonize the consciousness of each; but it is still the state consciousness which is the sovereign interpreter, and the state power which is the sovereign transformer of these interpretations into laws. But, it may be objected, if sovereignty must have this character of infallibility, it should be denied to the state altogether. That would mean, at once and from the start, the annihilation of the state. The state must have the power to compel the subject against his will: otherwise it is no state; it is only an anarchic society. Now the power to compel obedience and to punish for disobedience is, or originates in, sovereignty. This condition can, therefore, offer no loophole of escape from the proposition.

In the second place, the unlimited sovereignty of the state is not hostile to individual liberty, but is its source and support. Deprive the state, either wholly or in part, of the power to determine the elements and the scope of individual liberty, and the result must be that each individual will make such determination, wholly or in part, for himself; that the determinations of different individuals will come into conflict with each other; and that those individuals only who have power to help themselves will remain free, reducing the rest to personal subjection. It is true that the sovereign state may confer liberty upon some and not upon others, or more liberty upon some than upon others. But it is also true that no state has shown so little disposition to do this, and that no

state has made liberty so full and general, as the modern national popular state. Now the modern national popular state is the most perfectly and undisputedly sovereign organization of the state which the world has yet attained. It exempts no class or person from its law, and no matter from its jurisdiction. It sets exact limits to the sphere in which it permits the individual to act freely. It is ever present to prevent the violation of those limits by any individual to the injury of the rights and liberties of another individual, or of the welfare of the community. It stands ever ready, if perchance the measures of prevention prove unsuccessful, to punish such violations. This fact surely indicates that the more completely and really sovereign the state is, the truer and securer is the liberty of the individual. If we go back an era in the history of political civilization, we shall find this view confirmed beyond dispute. The absolute monarchies of the fifteenth, sixteenth and seventeenth centuries were, no one will gainsay, far more sovereign organizations of the state than the feudal system which they displaced; and yet they gave liberty to the common man at the same time that they subjected the nobles to the law of the state. In fact they gave liberty to the common man by subjecting the nobles to the law of the state.⁷ Should we continue to go backward from the absolute monarchic system to those systems in which the sovereignty of the state was less and less perfectly developed, we should find the liberty of the individual more and more uncertain and insecure, until at last the barbarism of individualism would begin to appear.

At the beginning of this argument, I assumed the state to be deprived of its unlimited power over the individual. But who or what can do this? That which can be so deprived is

⁷ Ranke, *Französische Geschichte*, I, 34; *Englische Geschichte*, I, 97, 98; Von Sybel, *Über die Entwicklung der absoluten Monarchie in Preussen*, S. 24 ff.; Krones, *Handbuch der Geschichte Österreichs*, IV, 488.

not the state; that which deprives is the state. Really the state cannot be conceived without sovereignty; i.e., without unlimited power over its subjects. That is its very essence. Of course the state may abuse its unlimited power over the individual, but this is never to be presumed. It is the human organ least likely to do wrong, and, therefore we must hold to the principle that the state can do no wrong.

I think the difficulty which lies in the way of the general acceptance by publicists of the principle of the sovereignty of the state is the fact that they do not sufficiently distinguish the state from the government. They see the danger to individual liberty of recognizing an unlimited power in the government; and they immediately conclude that the same danger exists if the sovereignty of the state be recognized. This is especially true of European publicists, most especially of German publicists. They are accustomed practically to no other organization of the state than in the government; and in spite of their speculative mental character, they, as well as other men, reveal in their reflections a good deal of dependence upon the conditions of the objective world. In America we have a great advantage in regard to this subject. With us the government is not the sovereign organization of the state. Back of the government lies the constitution; and back of the constitution the original sovereign state, which ordains the constitution both of government and of liberty. We have the distinction already in objective reality; and if we only cease for a moment conning our European masters and exercise a little independent reflection, we shall be able to grasp this important distinction clearly and sharply. This is the point in which the public law of the United States has reached a far higher development than that of any state of Europe. Several of the most modern European publicists, such as Laband, von Holst and Jellinek, have discovered this fact; and their conception of

the state has, in consequence thereof, become much clearer. The European states have made great progress towards this condition since the period of the French Revolution. Europe has seen the French state several times organized in constituent convention; and in the years 1848 and 1867 something very like constituent conventions sat at Frankfort and Berlin, to say nothing of the Spanish Cortes and the less important movements of similar character. Such an organization of the state is, however, hostile to independent princely power. It tends to subject the prince to the state. It may leave the hereditary tenure, but it makes the princely power an office instead of a sovereignty. Therefore the princely government disputes the sovereignty of the constituent convention; and the political scientists become confused in their reflections by the din and smoke of the conflict in the objective world. They do not know exactly where the state is; and, therefore, they hesitate to recognize its great and essential attribute of sovereignty. The national popular state alone furnishes the objective reality upon which political science can rest in the construction of a truly scientific political system. All other forms contain in them mysteries which the scientific mind must not approach too closely.

CHAPTER VI

THE ORIGIN OF THE STATE

THIS has been, and is still, a greatly mooted question. The views of publicists and jurists differ widely in regard to it. I think, however, that these divergences of opinion may be so classified as to reduce the apparently numerous shades of difference to three propositions. I will call the first of these the theological theory, the second the social, and the third the historical. The first claims that the state is founded by God, the second that it is founded by human agreement, and the third that it is the product of history. I think the last is the true view, and that, when correctly comprehended, it will be seen to do full justice to the other two, and to reconcile all three. The proposition that the state is the product of history means that it is the gradual and continuous development of human society, out of a grossly imperfect beginning, through crude but improving forms of manifestation, towards a perfect and universal organization of mankind. It means, to go a little deeper into the psychology of the subject, that it is the gradual realization, in legal institutions, of the universal principles of human nature, and the gradual subordination of the individual side of that nature to the universal side. Many were the centuries before the human mind became even partially conscious of the state in idea, character and purpose. The state existed as a fact long before it was known and understood, and its powers were long exercised under forms which we do not now regard as political at all. If the theologian means, by his doctrine of the divine origin of the state, simply that the Creator of man implanted the substance of the state in the nature of man, the historian will surely be under no necessity to contradict him. The unbiased political historian will not only not dis-

pute this proposition, but he will teach that the state was brought through the earlier and most difficult periods of its development by the power of religion,¹ and in the forms of religion, i.e., that the earliest forms of the state were theocratic. This is entirely comprehensible from the standpoint of a correct political philosophy. The first and most fundamental psychological principle concerned in the development of the state is that of piety; i.e., reverence and obedience. Unless the character of the mass of the population be molded by this principle, the reign of law can never be attained. Now the lifting of this principle from under the barbaric powers of hate and defiance was the first tremendous struggle of civilization with barbarism. It took thousands of years to accomplish it, and exhausted the spiritual powers of Asia in its accomplishment. I have already indicated the fact that Asia has produced no real states. Asia has, on the other hand, produced all the great religions of the world. This will not be held to mean, however, that Asia has done nothing towards the historical development of the state, when we consider that her religions have educated and disciplined the larger part of the human race in that preparatory spiritual principle absolutely indispensable to the development of the state. It is often said by modern writers that Asia is but the home of theocracies and despotisms. This is undoubtedly true, but it should not be taught in the language of depreciation. Theocracies and despotisms have their place in the historical development of the state; and their work is as indispensable in the production of political civilization as is that of any other form of organization. We have not done with them yet, either. The need of them repeats itself wherever and whenever a population is to be dragged out of barbarism up to the lowest plane of civilization. To

¹ Laurent, *Études sur l'histoire de l'humanité*, I, 98; Von Ranke, *Weltgeschichte*, Erster Theil, S. 1.

subject barbaric liberty to law is the first problem in the development of the state everywhere; and the world's history teaches no way to accomplish this save through the theocracies and the despotisms based thereon. Every close reader of Europe's political civilization knows that the political organization of the European states rested originally upon the union of the throne and altar; i.e., upon the principle of the Asiatic despotism. The principle, so happily expressed by Rousseau, that "le plus fort n'est jamais assez fort pour être toujours le maître, s'il ne transforme sa force en droit, et l'obéissance en devoir,"² is as true for Europe or America as for Asia; and religion is the only power that can work this transformation in the earliest stages of man's civilization. It was the Christian religion, the Christian church, and Christian bishops that enabled the Carolingians to organize Europe politically, and to start the Teutons upon the path of political civilization.³ Prize as highly as we may the ancient liberty of the Germans, there was in it but little organizing force. The fact that the Saxons, the German race *par excellence*, had made no political progress from the time when Tacitus wrote of them to the period of their incorporation in the Carolingian Empire, is satisfactory proof of this. The same religious forces enabled the Rurics to organize Russia and stand behind the throne of the Czar today, procuring for it the support and obedience of the great masses of the population.⁴ The same forces sustained the Cerdics in the making of England. Dunstan, Lanfranc and Wolsey were the pillars of the English monarchy; and the church is still today the chief bond of unity between the masses and the throne.⁵

² *Du contrat social*, Livre I, Chap. III.

³ Waitz, *Deutsche Verfassungsgeschichte*, III, 162.

⁴ Weber, *Geschichte des Mittelalters*, I, 757 ff.

⁵ Stubbs, *Constitutional History of England*, I, 236 ff.; Bagehot, *The English Constitution*, p. 111.

And should we examine carefully into the sources of that readiness to obey law which has characterized the true American citizens of this republic, we should without doubt find ourselves ultimately face to face with the early religious discipline of New England.⁶

The principle of the historical genesis of the state does not, then, stand opposed to the doctrine of the divine origin of the state, when that doctrine is rationally construed: it includes it, and makes it the starting point in the evolution.

On the other hand, the theory of the social compact, though reconcilable with the principle of the historical development of the state, requires far more modification in its interpretation. In the first place, the historical principle cannot accept this theory as the starting point in the evolution of the state. The application of this theory—yea, even the conscious recognition of it—presupposes an already highly developed state-life. It presupposes that the idea of the state, with all its attributes, is consciously present in the minds of the individuals proposing to constitute the state, and that the disposition to obey the law is already universally established. Now we know that these conditions never exist in the beginning of the political development of a people, but are attained only after the state has made several periods of its history. This theory cannot therefore account for the origin of the state: its place is far forward in the evolution of the state. Its application can be conceived in changing the form of the state or in planting the state upon new territory by a population already politically educated, but not in its primal creation. The political historian can accept it only as a force in the development of the later forms of the state, through popular revolution or colonization.

Under this interpretation it fits into and harmonizes with the principle of the historical development of the state, but

⁶ Bancroft, *History of the United States*, I, 370 ff.

under no other interpretation. It would be utterly senseless to speak of the state as a product of history, if, before it came into existence, the individuals proposing to create it were already so highly educated politically as to solve the great problem of sovereignty by the resolution of an original convention. The solution of this problem is the goal towards which political history is working. The most advanced states of the world are today still occupied with it, and will continue to be until the mission of man on earth is fulfilled. To assume its complete solution at the beginning, as this theory presupposes, would be either to deny the law of history altogether or to inject into political history the theological doctrine of paradise, fall and redemption. Primal paradise and redemption cannot be conceived of, however, except as the immediate creations of Deity. The Rousseauist cannot therefore take shelter under this doctrine. He would destroy the basis of his own theory, and range himself with the followers of Augustine, Hildebrand and Aquinas.

Finally, the principle of the historical development of the state needs some further explanation, but no modification or qualification. It takes for its basis and point of departure human nature; it distinguishes in that nature a universal side and a particular side; it recognizes the former as the state subjective; it accepts the principle that the creator of that nature is, therefore, the originator of the subjective state, i.e., the political idea. But the political scientist is looking for the state made objective in institutions and laws, and this is the product of history. It may be that divine power is continually engaged upon this work; but if so, it is not through direct intervention, but by influence upon human consciousness and human wills. We may, then, without questioning the doctrine of the divine origin of the state, claim that the great work of making the subjective state objective in institutions and laws is, for the political scientist, a cre-

ative process which may properly be termed origination. Man through history has been the sole, immediate force in the accomplishment of this. Our knowledge of the history of the human race does not, indeed, reach back to the beginning of that history. We know nothing of the influences and the conditions under which the human mind first awakened to the consciousness of the state, and felt the impulse to exert itself for the objective realization of that consciousness. We are fully warranted, however, by the status of human society which history first presents us, in concluding that this great light did not come to all at once. The period of barbaric liberty and self-help permits and promotes the development of the few mighty personalities and their elevation to those heights of superiority over their fellows which the dawn of civilization first illumines. These few great personalities form the nuclei of political organization. They are, at first, priests rather than statesmen. They are inspired by the belief that what they behold in themselves is divinity. They so represent it to the masses of the uninitiated. They invent the means to impress this belief upon the masses. They establish a cult, and from behind its power and influence they govern the people. The religious sanction secures obedience to the laws of the state. Religion and law, church and state, are confused and mingled. They are joint forces in the period when the human race emerges from barbarism and enters upon its course of civilization; but the state is enveloped by the church, and exists only by the moral support which it receives from the church. Under this form the people are disciplined and educated. The consciousness of the state spreads wider. Non-priestly personalities begin to be touched by its light. They are forced thereby either to regard themselves as priests, or to reflect that the state, in its subjective character, is not a special revelation of divinity. They either seek entrance into the ranks of the priesthood or begin to

dispute its exclusive political powers. The resistance of the priesthood to these movements provokes the view on the part of the newly enlightened that the existing system is a pious fraud, and incites them to organization about one of their number, as chief, for the purpose of forcing the priesthood to a division of power. The struggle must not be allowed to come to open conflict. The newly initiated must not declare what they have seen to the masses, lest the faith of the masses be shaken and the supports of law and order, of civilization and progress, be destroyed. The two parties must compromise. The priests must divide their powers with the warriors. They must also support the rule of the warriors by the power of religion. The despotism results. In spite of its ugly name, it marks a great step in advance.⁷ It gives greater exhibition of violence, but, at the core, it is far less despotic than the theocracy. It leaves a larger sphere of individual activity unrestrained. It lightens the spiritual oppression and depression which rest upon the souls of men, subject at every step and turn to the immediate intervention of divine command. It is a more human, if not a more humane, system. It tends to prevent the respect and obedience for law developed by the theocracy from becoming too timorous and servile. It raises human courage. It opens the way for a more general exertion of human reason. It makes it easier for the consciousness of the state to spread to still wider circles, while it holds fast to what has been won in political piety during the preceding era. It prepares the forces for the terrible struggle of the succeeding era, to whose awakening and exciting power we owe the spread of the consciousness of the state to the masses. The conflict in principle between the royal organization and the priesthood becomes irrepressible. The king loses his religious support in the eyes of the masses. His official subordinates learn to defy him successfully, and

⁷ Bluntschli, *Lehre vom modernen Stat*, I, 392.

by the help of the priesthood to change their official agencies into more or less independent powers. It is an all-around battle between all the existent directing forces of human society. So far as these forces are concerned, it is not only irrepressible, but interminable. They can never bring peace; at best only armistice. A new and still more controlling force must appear. At last, through the educating power of the terrible antagonism, a large proportion of the population is awakened to the consciousness of the state, and feels the impulse to participate in the work of its objective realization. Animated by patriotism and loyalty, by the sense of human interests and by rationality, they gather about their king, as the best existing nucleus of their power. They give him the strength to overcome both defiant priesthood and rebellious officials. They establish the objective unity of the state. They bring the absolute sovereignty to objective realization. They subject all individuals and all associations of individuals to its sway. Apparently they make the king the state. Really they make him but the first servant of the state. The state is now the people in sovereign organization. This is an immense advance in the development of the state. It is the beginning of the modern political era. Under its educating influence the consciousness of the state spreads rapidly to the great mass of the population, and the idea of the state becomes completely secularized and popularized. The doctrine that the people in ultimate sovereign organization are the state becomes a formulated principle of the schools and of political science and literature. The jurists, the publicists and the moral philosophers lead in the evolution of the idea. The warriors and the priests are assigned to the second place. The sovereign people turn their attention to the perfecting of their own organization. They lay hands upon the royal power. They strip it of its apparent sovereignty and make it purely office. If it accommodates itself to the position, it is

allowed to exist; if not, it is cast aside. At last the state knows itself and is able to take care of itself. The fictions, the make-shifts, the temporary supports, have done their work, and done it successfully. They are now swept away. The structure stands upon its own foundation. The state, the realization of the universal in man, in sovereign organization over the particular, is at last established—the product of the progressive revelation of the human reason through history.

Many are the races of men whose powers have been expended in the process of this development. The torch of civilization has been handed from one to another, as each exhausted bearer has ceased to be the representative of the world's progress. Many are the races, also, which still wait to be touched by the dawn of this great light. Of all the races of the world only the Roman and the Teuton have realized the state in its approximately pure and perfect character. From them the propaganda must go out, until the whole human race shall come to the consciousness of itself, shall realize its universal spiritual substance, and subject itself to the universal laws of its rationality.

This, in many words, is what we mean by the proposition that the state is *a* product, nay, *the* product, of history. It contains, certainly, a nobler conception of the state in origin, development and ultimate character, and of the relation of the individual to the state, than does any other doctrine or theory. In its contemplation, men feel the impulse to heroic effort, rejoice in sacrifice, learn to know true liberty and to despise fear. If it makes the state more human, it makes humanity more divine.

CHAPTER VII

THE FORMS OF STATE

THERE is no topic of political science concerning which a more copious literature is at hand than this. There is none, again, in regard to which a less satisfactory treatment has been attained than this. A careful student of what has been written upon this subject, both in Europe and America, will, I think, discover that the cause of this unsatisfactory result, upon the part of the European publicists, is the fact that they do not discriminate clearly between state and government; upon the part of the American writers, that they copy too closely the European authors.

Both of these facts are explicable. In Europe, state and government are actually more or less mingled and commingled. The publicists are confused in their reflections by the confusion in the external object. It will be profitable to dwell upon this point a moment, and inquire how this actual condition of things has come about, which has exercised such a troubling influence upon political science. I think the explanation is to be found in the consequences of the historical development of the state. No great state in Europe, except France, has cut its history into two distinct and separate parts by revolution, and founded its existing institutions directly and consciously upon revolution. We may say then, as the rule, that in the European states the form of state generated in one period of their history laps over upon that developed in the succeeding period or periods. A close scrutiny of this process will disclose the following significant facts, viz., that in the transition from one form of state to another, the point of sovereignty moves from one body to another, and the old sovereign body, i.e., the old state, becomes, in the new system, only the government, or a part

of the government. Take the example of English history after 1066, to make this clearer. First, the king was the state as well as the government. Then the nobles became the state, and the king became government only. Then the commons became the state, and both king and lords became but parts of the government. Now this change from the old form of state to the new, when it works itself out gradually and impliedly, so to speak, does not mark off the boundary sharply and exactly between the old and the new systems. Naturally the old state does not perceive the change at all or, at least, not for a long time, and not until after suffering many bitter experiences. It still expresses itself in the language of sovereignty. It still struts about in the purple, unconscious that the garment is now borrowed. On the other hand, the new sovereignty comes very slowly to its organization. Moreover, it organizes itself, for the most part, in the government, and only very imperfectly outside of and supreme over the government. For a long time it has the appearance of being only a part of the government, and, at first, the less important part. For a considerable time it is uncertain where the sovereignty actually is. With such conditions and relations in the objective political world, it is not strange that the European publicists have failed, as yet, to distinguish clearly and sharply between state and government, nor that their treatment of all problems, dependent for correct solution upon this distinction, is more or less confused and unsatisfactory.

In America, on the contrary, existing conditions and relations are far more favorable to the publicists. Our state is but little more than a century old, and rests wholly and consciously upon a revolutionary basis. The organization of the state existing previous to the year 1774 was completely destroyed, and did not reappear in the succeeding organization as a part of the government, holding on to its traditions of sovereignty. We Americans have seen the state organ-

ized outside of, and supreme over, the government. We have, therefore, objective aids and supports upon which to steady our reflection and by which to guide our science. The reason why the American publicists have not written better upon this subject cannot, therefore, be the lack of the proper external occasions for the excitation of thought. It is, it seems to me, as I have already said, the fact that they still copy too closely the European authors, and have not ventured to essay independent work. America has yet to develop her own school of publicists and her own literature of political science. Down to this time, the two names which stand highest in our American literature of political science are Francis Lieber and Theodore D. Woolsey. The former was, as everybody knows, a European, educated under European institutions, and a refugee from their oppression, as he regarded it. The latter was Lieber's ardent admirer—we might almost say disciple. It is not strange that they should have suffered under the power of the old influences, and should have confounded, in some degree at least, state and government in their reflections. The new and latest generation of American students of political science have been most largely trained in European universities, under the direction of European publicists, again, and by means of European literature. It will be an effort for them to make such use of their European science as always to gain advantage. It will be of the greatest service to them if they can employ it as a stepping-stone to a higher and more independent point of view; one which will enable them to win scientific appreciation of the distinctive lessons of our own institutions. If they fail to do this, however, we can expect little help from them in the attainment of a better and more satisfying treatment of the topic of this chapter.

It is, therefore, with a good deal of misgiving that I approach this part of my subject. I know that nothing has, as

yet, been written in regard to it which has commanded general assent from the political scientists. I am myself conscious of mental dissatisfaction with all that has been advanced, and I believe that the cause of the confusion of thought, clearly manifest in the different theories presented, is what I have above indicated; but when I come to the task of making clear and exact the distinction between state and government myself, I find myself involved in the same difficulties against which I have just given the word of warning. The fact is, that the organization of the state outside of, and supreme over, the government is, as yet, everywhere incomplete; and that when we assign to it this separate and supreme position, we are, in greater or less degree, confounding the subjective with the objective state, the ideal with the actual state. Nevertheless, I am resolved to make the trial upon this line; content if, upon a single point, I can bring a little more light into this discussion, and make it manifest that a better organization of the state outside of the government would be a great advance in practical politics.

The great classic authority upon this topic is Aristotle. Every student of political science is acquainted with his noted distinction of states, as to form, into monarchies, aristocracies and democracies (*πολιτεῖαι*).¹ Not every student reflects, however, that the Greek states were organized wholly in their governments, i.e., completely confounded with them. This fact made the question far more simple than it is at present. We of today have a double question instead of a single one. We must determine, first, the forms of state, and then, the forms of government. It is perhaps natural that the state and its government should harmonize in this respect; but it is not always a fact that they do, and it is not always desirable that they should completely coincide in form. It is difficult to see why the most advantageous political sys-

¹ *Polit.* III, 4 and 5.

tem, for the present, would not be a democratic state with an aristocratic government, provided only the aristocracy be that of real merit, and not of artificial qualities. If this be not the real principle of the republican form of government, then I must confess that I do not know what its principle is. Now, it seems to me that the Aristotelian proposition contains the true solution of the whole question for the Hellenic politics, and for all systems in which the state and the government are identical; and that it is the true and complete principle of distinction in regard to the forms of state, but not of government, in those systems where state and government are not identical, but exist under more or less separate organization. I accept the Aristotelian proposition, therefore, as to the forms of state, and reserve the discussion of the forms of government to a later part of this work.

Under this modification, the principle of Aristotle must be explained somewhat differently from what he himself intended. He undoubtedly had government in mind more than state when he invented this classification. He spoke of monarchy as the *rule* of one, of the aristocratic form as the *rule* of the minority, and of the democracy as the *rule* of the masses. In limiting his proposition strictly to the state, as distinguished from the government, I must define the monarchy to be the sovereignty of a single person, the aristocracy to be the sovereignty of the minority, and the democracy to be the sovereignty of the majority. Von Mohl criticises the doctrine of Aristotle as being purely arithmetical, and containing no organic principle.² If this were a just criticism, it would also condemn the proposition in the modified form which I have imposed upon it. I think it is not only an unjust, but a crude and careless, criticism. Forty-five years before von Mohl published the first edition of his noted treatise, Schleiermacher had demonstrated the spiritual and organic

² *Encyklopädie der Staatswissenschaften*, S. 110.

character of this Aristotelian principle of classification.³ The numbers and proportions are used simply to indicate how far the consciousness of the state has spread through the population, and to note the degree of intensity with which that consciousness is developed; and the principle is, that no part of the population in which the consciousness of the state is strongly developed can be kept out of the organization of the state, and that, therefore, the number inspired with this consciousness and participating in this organization really does determine the organic character of the state.

Von Mohl's own classification appears to me confused and fanciful.⁴ He distinguishes the forms of state into patriarchal, theocratic, despotic, classic, feudal and constitutional. Now patriarchal and theocratic states are generally monarchies. All states are despotic legally. The feudal state is aristocratic. The phrase constitutional state (*Rechtsstaat*) is very misleading. Looked at from one standpoint, all states are constitutional; and from another, none. As a term of distinction the expression applies to government rather than to state.⁵ The state makes the constitution, instead of being made by it, and through it organizes a government which may act only in accordance with the legal forms, and for the legal purposes prescribed in the constitution. Evidently this is what von Mohl means by his "Rechtsstaat." While as to his "classic state," nothing definite can be concluded from the phrase itself; the adjective is no term of political science at all; it belongs rather to the nomenclature of belles-lettres. Von Mohl concedes himself that the classic state may be either monarchic, aristocratic, or democratic.⁶ Then why use this term at all as distinguishing, in ultimate generalization,

³ *Über die Begriffe der verschiedenen Staatsformen*. "Abhandlungen der Berliner Akademie," 1814.

⁴ *Encyklopädie der Staatswissenschaften*, S. 103 ff.

⁵ Von Holtzendorff, *Principien der Politik*, S. 205.

⁶ *Encyklopädie der Staatswissenschaften*, S. 106.

any form of state? The author would have been more consistent had he classified states into ancient, classic, mediaeval, and modern. Any one can see, however, that this would be unscientific; that it would be a chronological classification, and not one of political science. In a word, von Mohl's classification follows no one consistent principle; its different principles are not all political; and it confounds state and government again. His fundamental error is, I think, to be found in his proposition that states differ in their essence as well as in their form, and that it is the difference in essence instead of in form which is to be considered.⁷ He reaches this conclusion from the observation that one state devotes its energies more to the development of the religious life of the people, another cultivates more especially the aesthetic life, another the legal and practical, another the military, etc. Now evidently we have here no difference in the essence of these different states. The distinction here remarked is in the ends to be accomplished. The essence of the state is everywhere, and at all times, one and the same, viz., sovereignty. The difference is only in the form; and the difference in form determines, more than anything else, the end which will be made most prominent in the activity of any particular state. The monarchic states are more likely to develop the power of the state; the aristocratic make the creation of the system of private rights more prominent; while the democratic rather pronounce the socialistic end. Manifestly what von Mohl regards as a difference in essence is only a difference in ends, or a difference in what the French and Germans call "politique."

The book above all others from which we are justified in expecting clear treatment upon this topic is that of the noted Bluntschli, *Lehre vom modernen Stat.* Bluntschli lived and thought for many years in Switzerland, i.e., in a European

⁷ *Encyklopädie der Staatswissenschaften*, S. 110.

state in which considerable headway has been made practically with the distinction between state and government. Circumstances were more favorable to him than to most of the European publicists. But our expectation is not altogether fulfilled. He holds to the general principle that states are to be distinguished into monarchies, aristocracies and democracies, but undertakes to add a fourth form, which he calls *Idiokratie*.⁸ He defines the idiocracy to be a state in which the supreme ruler is considered to be God or some superhuman spirit or an idea. This appears to me very fanciful. The person or body of persons who in last resort interpret the will of God or of the superhuman spirit or the idea for a given people, and who give their interpretations the force of law, constitute the state. It signifies nothing that that person or body of persons may have professed to *derive* his or its powers, so long as the will of God or of the superhuman spirit or the principles of the idea can only be known and legally formulated through him or it. Political science cannot examine into the truth or fiction of such a claim. Its dictum is simply that the highest human power over a given population is the state, no matter what may be the superhuman support upon which it may claim to rest. We must, therefore, reject this new creation from our political science. It must be relegated to the domain of political mysticism.

Bluntschli very properly condemns the notion that there is a mixed form of state.⁹ I do not think, however, that the reason he advances for so doing is satisfactory. He holds that one of the elements in what appears as the mixed form always holds the balance of power, and the other elements are really but limitations upon it. He has here, again, certainly confounded state and government. The state cannot be limited, simply because it is sovereign; and it does not hold simply

⁸ *Lehre vom modernen Stat.* I, 372.

⁹ *Ibid.*, S. 372 ff.

the balance of power; it is the source of all power. The true reason for the rejection of the mixed form from the classification is that the state is and must be a unit. Its essence as sovereignty demands this; and where the state is not organized objectively as a unit, we have only to say that it has not perfected its organization, that it is, as the Germans express it, *im Werden begriffen*, in the process of development. If we examine carefully the so-called mixed form, we shall either find that no one of the elements, nor any combination of the elements, is the state; or that one of them is the state, and the others are but parts of the government. This view did not escape Bluntschli entirely. He declared that the state must be a unit in its organization; but his adoption of the principle of the relation of the government to the governed, instead of the principle of the relation of sovereign to subject, as the key to the modern explanation and adjustment of the Aristotelian proposition, obscured his vision and made his treatment of the topic confused, at the same time that he attained the correct result so far as the rejection of the notion of the mixed form of state is concerned.

A still more convincing proof that Bluntschli confounded state and government in his reflections is the fact that he introduces a large number of subdivisions into his classification, under such titles as these: the Hellenic and old Germanic kingship; the old Roman kingship and the Roman imperium; the Frankish kingship; the feudal monarchy, the absolute monarchy, and the constitutional monarchy; the Roman aristocracy; the aristocracy of birth, of wealth, of learning; the antique democracy; the modern or representative democracy (the republic). Now here are, in the first place, cross-divisions in this classification, following, in some cases, non-political principles. For example, the terms Hellenic, Roman, old German, and Frankish belong to the nomenclature of ethnology, the terms antique and modern

belong to that of chronology, while the term feudal is more economic than political. In the second place, all states are absolute, whether they be monarchic, aristocratic or democratic. His feudal monarchy is but the government of an aristocratic state. His constitutional monarchy is but a royal government, limited, in its powers and procedure, by the state; while the imperium is, in theory, a monarchic state with monarchic government; but in practice it is more frequently, at least in modern politics, only kingly government over a large territory and population. In political science we must classify states upon a rigidly political principle, and we must always distinguish the state from the government. There is no other way to escape confusion and inconsequence in thought.

Bluntschli closes his discussion of this topic rather unexpectedly to the reader by introducing a fifth state-form, which he calls the compound state (*Zusammengesetzte Staatsform*),¹⁰ i.e., the form in which the sovereignty is divided between the union and the states forming the same. This compound state he subdivides into states having colonies or vassal provinces, states in personal union, confederacies, and federal unions. This appears to me to be a continuation of the old error of confounding state and government. A colony is, at the outset, no state. It is a local government, with perhaps more or less of local autonomy. It may grow to contain in itself the elements to form a state, and may become a state by revolution or by peaceable severance from the motherland; but before this, there is one simple state, and after it, there are two simple states, but at no time is there a compound state. If the motherland should so extend its state organization as to include the colony as active participant in the same, the state organization would still be simple; it would only be widened. A larger proportion of the pop-

¹⁰ *Lehre vom modernen Stat*, I, 555 ff.

ulation of such a state would be thereby introduced into the sovereign body. The only change which could be effected in this manner, as to the form of state, would be possibly the advance from monarchy to aristocracy, or from aristocracy to democracy. The sovereignty would not be divided between the motherland and the colony, for the sovereignty is and must be a unit. It must be wholly in the motherland or wholly in the motherland and colony as one consolidated, not compounded, organization.

The same criticism will apply without modification to the vassal province. Its separate organization is only as government, not as state. If it should become a state, then it would cease really to be vassal; and if any relation, other than that prescribed by international law and treaty, should remain between it and the former suzerain, a scientific analysis will demonstrate that the so-called suzerain is now but a part of its government, for the accomplishment of certain limited and restricted purposes.

Again, two states in personal union form no compound state. They do not even form a compound government. A personal union of two or more states results when the executive head of the government of one becomes the executive head of the government or governments of the other or others. This person then acts in two or more entirely distinct capacities. In international congresses, for instance, he has as many votes as there are states represented by him.¹¹ The fact that two or more states make use of the same person, or even of the same institution, in their governmental organization, does not make these states a compound state. Its influence towards the consolidation of the states is favorable; but that is another thing.

Again, the confederacy is no compound state. The states forming the same remain separate, simple states. The con-

¹¹ Bluntschli, *Das moderne Völkerrecht*, S. 92.

federate organization has no power to bind any one of the states entering into the same without its own separate and express consent; i.e., it has no sovereignty; it is no state at all; it is only government. The confederate constitution is a treaty, an interstate agreement. It differs from the usual treaty in two points, viz., it creates a sort of governmental organization, or rather a council of advisers, and contains the general agreement on the part of the different states to execute the recommendations of this body; and it has, generally, no limitation as to duration. These are circumstances favorable to the consolidation of the separate states into one state. The very fact of the confederacy is the best of proof that there are natural forces at work conspiring to secure such consolidation. After this consolidation shall have been accomplished, however, there is no compound state as the result, i.e., no state in which the sovereignty is partly in the new state and partly in the old states, but there is a simple state of wider organization.

This last reflection leads to the consideration of the final species of compound state cited by Bluntschli, viz., the federal. I take the ground here, again, that this is no compound state; that there is no such thing as a federal state; and that what is really meant by the phrase is a dual system of government under a common sovereignty. If we put this case to a rigid scientific test, we shall find that the so-called federal state is a state which extends over a territory and comprehends a population previously divided into several independent states; that physical, ethnical, economic and social harmony, conspiring to produce political unity, existed throughout the several states; that consolidation was resisted by the governments of some of the states, possibly by some of the states themselves; that, consequently, the consolidation was produced by violence, and the first organization of the new state was therefore revolutionary, i.e., was

not created according to the prescripts of existing law; that the new state under its revolutionary organization has framed a constitution in which it has constructed a government for the general affairs of the whole state, and has left to the old bodies, whose former sovereignty it has destroyed, the residuary powers of government, to be exercised by them, under certain general limitations, as they will, so long as the new state may not see fit to make other disposition in reference to them. Exactly the same result, regarding the position of the old states in the new system, is effected as in the case of the transition of the sovereignty from the monarch to the aristocracy, and from the aristocracy to the democracy, when the preceding form in which the sovereignty was organized is not entirely abolished; i.e., the old states become parts of the government in the new state, and nothing more. It is no longer proper to call them states at all. It is in fact only a title of honor, without any corresponding substance. Confusion and inertia of thought support it for a long time. When new things proceed out of old ones, it is a long time before we invent the new names rightly describing the new character.

It is possible, of course, that several states may consolidate to form a single state, with a federal or dual system of government, peaceably and in accordance with the forms of existing law. It is also possible that a single state may, as a matter of fact, construct its governmental system upon the federal or dual principle. Neither of these processes, however, is very likely to be followed. It is rather fortunate for political science that they are not, at least that the first is not. Should it be followed, it would be far more difficult to clear away the appearances of the confederacy from the new state. In the latter case this difficulty would not, indeed, be felt; but a state which has already attained a consolidated government has probably passed beyond that period of its political

civilization which requires the dual form; and the reëstablishment of it would, therefore, be rather an evidence of retrogression in social conditions.

My contention is, therefore, that the classification of states, as to form, into monarchies, aristocracies and democracies, is both correct and exhaustive; that no additional forms can be made out of a combination of these, or out of a union of several states; and that the notion that there can be proceeds from the confounding of state and government in the treatment of the subject.

There remains now but a single point further to be touched under this topic. What we call the modern states are those based upon the principle of popular sovereignty; i.e., they are democracies. Not all of them appear to be such, but a close scrutiny of the facts will reveal the truth of the proposition that they are. The reason of the deceptive appearance in such cases will be found to be the fact that the state has but recently taken on its new form and has not perfected its organization; while the old state-form, remaining as government, is still clad in the habiliments of sovereignty, shabby and threadbare perhaps, but still recognizable. It will be highly instructive to consider, for a moment, the social conditions which precede, and make possible, the existence of the democratic state. They may be expressed in a single phrase, viz., national harmony. There can be no democratic state unless the mass of the population of a given state shall have attained a consensus of opinion in reference to rights and wrongs, in reference to government and liberty. This implies, in the first place, that they shall understand each other, i.e., that they shall have a common language and a common psychologic standpoint and habit. It implies, in the second place, that they shall have a common interest, in greater or less degree, over against the populations of other states. It implies, finally, that they shall have risen, in their

mental development, to the consciousness of the state, in its essence, means and purposes; that is, the democratic state must be a national state, and the state whose population has become truly national will inevitably become democratic. There is a natural and an indissoluble connection between this condition of society and this form of state. It is this connection which has led to the interchangeable use of the terms state and nation. We must not forget, however, that they belong primarily to different sciences, and should not be used interchangeably without explanatory qualifications.

CHAPTER VIII

THE ENDS OF THE STATE

UPON this topic, also, we have a most copious literature. It is, however, exceedingly inharmonious, and generally unsatisfactory. The most elaborate and advanced treatment of the subject which has yet appeared is to be found in von Holtzendorff's *Principien der Politik*. A critical analysis of his propositions will, however, reveal the fact that he does not clearly distinguish state from government, and that he loses sight of the ultimate end of the state in contemplating the immediate ends, which, from the standpoint of the ultimate end, are but means. The great value of his work consists in the fact that he points out the stages of advance in the attainment of the ultimate end, and warns against attempting to take the third step before the first and second shall have been successfully completed. After an exhaustive review and criticism of the theories which have prevailed, at different periods of history, in the literature of this topic, von Holtzendorff advances his own doctrine under the title of the actual purposes of the state (*die realen Staatszwecke*).¹ He holds that the state has a triple end, the elements of which are interdependent and harmonious. Of these the first is power (*der nationale Machtzweck*). The state must constitute itself in sufficient power to preserve its existence and proper advantage against other states, and to give itself a universally commanding position over against its own subjects, either as individuals or associations of individuals. The second is individual liberty (*der individuelle Rechtszweck*). The state must lay out a realm of free action for the individual, and not only defend it against violation from every other quarter, but hold it sacred against encroachment by itself.

¹ Seite 219 ff.

And the third is the general welfare (*der gesellschaftliche Culturzweck*). The state must stand over against the private associations and combinations of its subjects as independent power, preventing any one or more of them from seizing and exercising the power of the state against the others. It must prevent the rivalries between different associations from coming to a breach of the peace. It must protect the rights of the individual member of any association against the tyranny of the association. It must hold all associations to their primary public purpose, if such they have, and aid them, if strictly necessary, in its accomplishment. Finally, it must direct the education of its subjects.

This appears to me to be a confused and an incomplete statement of the ends of the state. In the first place, it is confused. Why, for example, should the duty of the state to hold itself in a position of independent power over against the attempts of any association to seize and employ the power of the state for its own advantage, or to keep the peace of the public in the midst of the rivalries of associations, be classed under the end of the general welfare, rather than under the end of power? Why, again, should the duty of the state to protect the rights of an individual member of an association against the tyranny of the association be classed under the end of the general welfare rather than under the end of individual liberty? In the second place, the proposition is incomplete. It takes no account of the world-purpose of the state. It makes no place in its political science for the body of customs and agreements which we term, rather prematurely indeed, international law. While Hegel, in his doctrine that morality (*Sittlichkeit*) is the end of the state, lost sight of the proximate ends in the ultimate end, von Holtzendorff, on the other hand, loses sight of the ultimate end in the proximate ends. Moreover, neither he, nor any other publicist who has yet written, indicates any other means em-

played by the state in the attainment of its ends than government. This topic requires, therefore, a new and an independent examination and statement; and the fundamental principle of the new proposition must be that it shall include both the proximate and ultimate ends of the state, in their proper relation, and shall distinguish clearly state from government in the account of the forces employed in the attainment of these ends. Unless these requirements be fulfilled, no advance in the better comprehension of this cardinal subject can be hoped for.

First, then, as to state ends. An exhaustive examination of this subject will reveal the fact that there are three natural points of division. There is a primary, a secondary and an ultimate purpose of the state; and, proceeding from the primary to the ultimate, the one end or class of ends is means to the attainment of the next following. Let us regard the ultimate end first. This is the universal human purpose of the state. We may call it the perfection of humanity; the civilization of the world; the perfect development of the human reason, and its attainment to universal command over individualism; the apotheosis of man. This end is wholly spiritual; and in it mankind, as spirit, triumphs over all fleshly weakness, error and sin. This is what Hegel meant by his doctrine that morality (*Sittlichkeit*) is the end of the state; and the criticism that this doctrine confounds the domain of the individual with that of the state, so freely indulged in by most publicists, is a crude view, a narrow conception of the meaning of the term "morality." The true criticism is, that Hegel takes the third step without resting upon the first and second, and mankind is not strong enough of foot to follow him.

The state cannot, however, be organized from the beginning as world-state. Mankind cannot yet act through so extended and ponderous an organization, and many must be

the centuries, and probably cycles, before it can. Mankind must first be organized politically by portions, before it can be organized as a whole. I have already pointed out the natural conditions and forces which direct the political apportionment of mankind. I have demonstrated that they work towards the establishment of the national state. The national state is the most perfect organ which has as yet been attained in the civilization of the world for the interpretation of the human consciousness of right. It furnishes the best vantage ground as yet reached for the contemplation of the purpose of the sojourn of mankind upon earth. The national state must be developed everywhere before the world-state can appear. Therefore I would say that the secondary purpose of the state is the perfecting of its nationality, the development of the peculiar principle of its nationality. I think this is what Bluntschli means when he says the end of the state is the development of the popular genius, the perfection of the popular life.²

But now, how shall the state accomplish this end? The answer to this question gives us finally the proximate ends of the state. These are government and liberty. The primary activity of the state must be directed to the creation and the perfecting of these. When this shall have been fairly accomplished, it may then, through these as means, work out the national civilization, and then the civilization of the world. First of all, the state must establish the reign of peace and of law; i.e., it must establish government, and vest it with sufficient power to defend the state against external attack or internal disorder. This is the first step out of barbarism; and until it shall have been substantially taken, every other consideration must remain in abeyance. If it be necessary that the whole power of the state shall be exercised by the

² "Entwicklung der Volksanlage, Vervollkommnung des Volkslebens." *Lehre vom modernen Stat*, I, 361.

government in order to secure this result, there should be no hesitation in authorizing or approving it. This latter status must not, however, be regarded as permanent. It cannot secure the development of the national genius. If continued beyond the period of strict necessity, it will rather suppress and smother that genius. So soon as, through its disciplinary influence, the disposition to obey law and observe order shall have been established, it must, therefore, suffer change. The state must then address itself to the establishment of its system of individual liberty. It must mark out, in its constitution, a sphere of individual autonomy; and it must command the government both to refrain from encroachment thereon itself and to repel encroachment from every other quarter. At first this domain must necessarily be narrow, and the subjects of the state be permitted to act therein only as separate individuals. As the people of the state advance in civilization, the domain of liberty must be widened, and individuals permitted to form private combinations and associations for the accomplishment of purposes which are beyond the powers of the single individual, and which could be otherwise fulfilled only by the power of the government. Of course the state must define with distinctness the sphere of free action accorded to these associations, and vest government with such control over them as will prevent them from an abuse of their privileges and powers and hold them to the fulfillment of their public purpose. It may, also, be good policy for the state to aid them in the accomplishment of work which they could not, without such aid, perform, instead of authorizing the government itself to undertake and execute such enterprises. This all signifies, however, only a readjustment by the state, from time to time, of the relation of government to liberty, and does not require the conception of a third immediate end of the state. In the modern age, the state works, thus, through government and liberty, and ac-

compleishes many of its fairest and most important results for civilization through the latter. It is often said that the *state* does nothing for certain causes, as, for instance, religion or the higher education, when the *government* does not exercise its powers in their behalf. This does not at all follow. If the state guarantees the liberty of conscience and of thought and expression, and permits the association of individuals for the purposes of religion and education, and protects such associations in the exercise of their rights, it does a vast deal for religion and education; vastly more, under certain social conditions, than if it should authorize the government to interfere in these domains. The confusion of thought upon this subject arises from the erroneous assumptions that the state does nothing except what it does through the government; that the state is not the creator of liberty; that liberty is natural right, and that the state only imposes a certain necessary restraint upon the same. This doctrine of natural rights or anti- or extra-state rights, which led to the revolutions of the eighteenth century, still exercises a sort of traditional power over popular thinking; but the publicists and the jurists have, most largely, abandoned it as unscientific, erroneous and harmful. The theory did its practical work when the state was a single person, or a few persons, indistinguishable from the government, and, in its formulation of rights, was acting in utter disregard of the popular ethical feeling. Where the state is the people in ultimate organization, the theory can only mean that the state should act rationally in its construction of the principles of liberty; but of their rationality, the state, again, is the final interpreter. In fact, this is the only scientific value which the proposition ever had. There never was, and there never can be, any liberty upon this earth and among human beings outside of state organization. Barbaric self-help produces tyranny and slavery, and has nothing in common with the self-help cre-

ated by the state and controlled by law. Mankind does not begin with liberty. Mankind acquires liberty through civilization. Liberty is as truly a creation of the state as is government; and the higher the people of the state rise in civilization, the more will the state expand the domain of private rights, and through them accomplish the more spiritual as well as the more material ends of civilization; until, at last, law and liberty will be seen to be harmonious, both in principle and practice.

These, then, in historical order, are the ends of state: first, the organization of government and of liberty, so as to give the highest possible power to the government consistent with the highest possible freedom in the individual; to the end, secondly, that the national genius of the different states may be developed and perfected and made objective in customs, laws and institutions; from the standpoints furnished by which, finally, the world's civilization may be surveyed upon all sides, mapped out, traversed, made known and realized. This proposition contains a plan for every appearance and product of human history; for private law and internal public law, for the law between nations and the law of nations, for war and for peace, for national exclusiveness and universal intercourse. Take these ends in their historical order, and pursue them with the natural means, and mankind will attain them all, each in its proper time. But this order cannot be successfully reversed, either in part or whole. The state which attempts to realize liberty before government, or the world-order before the national order, will find itself immediately threatened with dissolution and anarchy. It will be compelled to begin *de novo*, and to do things in the manner and sequence which both nature and history prescribe.

BOOK III
LIBERTY

CHAPTER IX

POLITICAL LIBERTY

THE subject of liberty must be distinguished scientifically into two branches, viz., political liberty and civil or individual liberty. In the perfect democratic state and government the two must go together, but there may be political liberty without civil liberty and there may be civil liberty without political liberty. In fact, in most of the ancient and mediaeval, and in some of the modern states, such has been the case in greater or less degree, if not in complete measure. For example, a constitutional assembly representing through popular suffrage every man and woman within a given state may form a constitution and construct a government and vest that government with unlimited despotic power over the individual, in which case the individual would have no civil liberty although he may have been a full participant in the political action constructing despotic government. On the other hand, an absolute king or emperor may grant a charter or constitution to his subjects, giving them full freedom of religion, thought, opinion and expression, full freedom of physical movement and full security of private property. In which case the individual would have full civil liberty while not participant, in the slightest degree, in the political action which created it.

Liberty in the modern sense, in the democratic sense, comprehends, however, both political and civil liberty, and we must discuss both briefly.

First, political liberty. This consists of full membership in the sovereign body of the state and in the electorate and full opportunity to be heard and to exert influence in fashioning the laws and the policies of the government, through the prerogatives of free speech, free ballot and free petition.

In this sphere of liberty the citizens stand in sovereign organization above the government and may create and lay such limitations upon government as they may will and cannot be made themselves, either collectively or individually, subject to the jurisdiction of government while acting in sovereign capacity. The liberty of the individual as full participant in the sovereign power involves complete freedom of thought and expression and of vote and is subject to no limitation except that involved in the enjoyment of the same freedom by every other member of the sovereign body. These rights are, therefore, the natural rights in a real democracy. Back of them lies only the universal reason and the right of revolution in the sovereign to uphold it. This body is referred entirely to itself in determining its own original organization and methods of action, and, in sound political science, cannot be made subject to the jurisdiction of the government it creates in any authoritative sense, not even by its own act. It is not meant by this that from the beginning of time the state has been organized in this way, as will be seen in some of the preceding chapters, but that when it reaches the real democratic stage in its development, these are the principles which must, in political philosophy, underlie the structure. It is, however, true that in almost every case of the transition of the state from the monarchic or aristocratic to the democratic form the movement has accomplished itself through the free methods of revolution and popular assembly and representation and that through the absolute freedom of speech alone was, or could be, attained that consensus of popular opinion which is the absolutely indispensable foundation of the democratic state. On the other hand when this original spontaneous organization of the democratic state gives itself a fixed and definite constitution of government and individual liberty it creates those fundamental limitations upon natural liberty, inde-

pendence and supremacy with which it came into existence. It establishes legal methods for the amendment of the organic law which must be followed by the sovereign in future developments of the constitution, and in this case limits the sovereign to these methods, and it creates or authorizes a domain of civil or individual liberty, upon which government shall neither encroach nor permit encroachment from any quarter. It is this individual liberty that must, in the second place, be now considered.

CHAPTER X

THE IDEA, THE SOURCE, THE CONTENT AND THE GUARANTY OF INDIVIDUAL LIBERTY

INDIVIDUAL liberty has a front and a reverse, a positive and a negative side. Regarded upon the negative side, it contains immunities, upon the positive, rights; i.e., viewed from the side of the public law, it contains immunities, from the side of private law, rights. The whole idea is that of a domain in which the individual is referred to his own will and upon which government shall neither encroach itself, nor permit encroachments from any other quarter. Let the latter part of the definition be carefully remarked. I said it is a domain into which *government* shall not penetrate. It is not, however, shielded from the power of the *state*. This will be easily understood by those who have carefully perused the previous pages, and will be further explained when we come to consider the source of this liberty.

There is no point in regard to which the modern state presents so marked a contrast to the antique and the mediaeval as in the recognition of a province within whose limits government shall neither intrude itself nor permit intrusion from any other quarter. This is entirely comprehensible from the standpoint of the reflection that the theocracy crushes the individual will at every point by the divine will; that the despotism confounds the state with the government, and vests the whole power of the state in the government; and that the feudal state confounds property in the soil with dominion over the inhabitants thereof, substituting thus the petty despotism for the grand. Not until the rise of the modern monarchic governments upon the ruins of feudalism do we become aware of the fact that a new constitutional principle had found lodgment in the consciousness of the age.

To this period individual liberty had existed only in so far as the government allowed. It had no defense against the government itself. Now the understanding tacitly reached between the King and the people was: that while the people would lend their strength to the King in subjecting the nobles to the royal law, the King would deliver the people from the feudal oppression; i.e., while all governmental power should be consolidated in the King's hands, the people should have a sphere of autonomy, not only against the nobles, but against the King's government itself. The weak point in the system was that there existed no organization back of the King's government to define and defend this sphere against that government. Legally the conscience of the King was the ultimate resort. The organization of the state back of the King was then the indispensable necessity. This is the chief point in what is termed by the political historians the constitutionalization of monarchy. In the so-called constitutional state, i.e., in the state which is organized back of the government, which limits the powers of the government and which creates the means for restraining the government from violating these limitations, individual liberty finds its first real definer and its defender.

Therefore we affirm that the state is the source of individual liberty. The revolutionists of the eighteenth century said that individual liberty was natural right; that it belonged to the individual as a human being, without regard to the state or society in which, or the government under which, he lived. But it is easy to see that this view is utterly impracticable and barren; for, if neither the state nor the society nor the government defines the sphere of individual autonomy and constructs its boundaries, then the individual himself will be left to do these things, and that is anarchy pure and simple. The experiences of the French revolution, where this theory of natural rights was carried into practice,

showed the necessity of this result. These experiences drove the more pious minds of this period to formulate the proposition that God is the source of individual liberty. "*Dieu et mon droit*" was the mediaeval motto made new again. But who shall interpret the will of God in regard to individual liberty? If the individual interprets it for himself, then the same anarchic result as before will follow. If the state or the church or the government interprets it, then the individual practically gives up the divine source of his liberty; for the question of the interpretation and legal formulation of individual rights and immunities is the only part of the question which has any practical value. These two theories embodied a natural and necessary revulsion of sentiment against the practical system of the pre-revolutionary period, which accorded to the individual only such liberty as the *government* might, at the moment, permit. But they overshot the mark; and a reaction of view as well as practice naturally resulted.

The present moment is much more favorable to an exact and scientific statement of these relations. We may express the most modern principle as follows: The individual, both for his own highest development and the highest welfare of the society and state in which he lives, should act freely within a certain sphere; the impulse to such action is a universal quality of human nature; but the state, the ultimate sovereign, is alone able to define the elements of individual liberty, limit its scope and protect its enjoyment. The individual is thus defended in this sphere *against* the government, by the power that makes and maintains and can destroy the government; and by the same power, *through* the government, against encroachments from every other quarter. Against that power itself, however, he has no defense. It can give and it can take away. The individual may ask for liberties which it has not granted, and even prove to the

satisfaction of the general consciousness that he ought to have them; but until it grants them he certainly has them not. The ultimate sovereignty, the state, cannot be limited either by individual liberty or governmental powers; and this it would be if individual liberty had its source outside of the state. This is the only view which can reconcile liberty with law, and preserve both in proper balance. Every other view sacrifices the one to the other.

The elements of individual liberty cannot be generally stated for all states and for all times. All mankind is not to be found, or has not yet been found, upon the same stage of civilization. The individual liberty of the Russian would not suffice for the Englishman, nor that of the Englishman at the time of the Tudors for the Englishman of today. As man develops the latent elements of his own civilization he becomes conscious of the need of an ever-widening sphere of free action, and the state finds its security and well-being in granting it. It must be remarked, on the other hand, however, that the elements of individual or civil liberty are much more generally and uniformly recognized than the elements of political rights. The brotherhood of man is much more distinctly expressed through the former than through the latter. We can, therefore, approach nearer, at the present time, to a universal system of individual liberty than of political liberty. In fact, in the modern states the realm of individual liberty is almost identical, no matter whether the governmental executive holds by election or hereditary right. In all these states, the disagreement as to the essence of the rights and immunities which constitute individual liberty is really but slight. The divergence is chiefly in the character of the organs which guarantee the enjoyment of these rights and immunities.

We may say, generally, that in all these states individual liberty consists in freedom of the person, equality before the

courts, security of private property, freedom of opinion and its expression, and freedom of conscience. The *rights* of the individual in respect thereto are the powers conferred upon him by the state to exercise certain prerogatives, and to call upon the government, or some branch thereof, for the employment of sufficient force to realize these prerogatives against other individuals or combinations of individuals to the full extent as defined by the state. The *immunities* of the individual in respect thereto are his exemptions from the power of the government itself, or any branch thereof, to enter or encroach upon this sphere, except in the manner and to the extent prescribed by the state.

In the public law of America it is this latter side of individual liberty, the immunities of the individual from the powers of government, which is chiefly pronounced. In the public law of Europe, on the other hand, it is the former side, the protection of the individual by government against the combination and the protection of the weak man against the strong man, which is chiefly pronounced. Not all of the states of Europe pursue this end to the same extent, however. While Germany pronounces it so emphatically as to reduce to a rather narrow compass the exemption of the individual from the powers of government, England pronounces it so weakly as to leave the individual with too little governmental support against the combination and the weak man with too little governmental protection against the strong man, resulting in the production of the plutocracy at the one end of the social structure and the proletariat at the other. France comes a little nearer to striking the proper balance, its system of individual liberty resulting somewhat more favorably to the development of plutocracy and proletariat than the German but decidedly less so than the English. The American system has down to this time dwelt so exclusively upon that side of civil liberty which we have termed immunities

against governmental power as to open wide the way to the tyranny of the great man over the little man and of the corporation or combine over the individual. All of the American states have permitted the development of plutocracy and proletariat in their social structures to a greater or less degree. This is shown in a very powerful way in a book by President Wilson, entitled *The New Freedom*, the careful perusal of which is the duty of every American.

The great problem of present constitutional development is the attainment of a proper balance between the individualistic element and the socialistic element in civil liberty, so that all that is beneficial in individual initiative and effort shall be preserved and encouraged, under such governmental direction and control, however, as to restrain it from transforming the political society into classes with a plutocracy at one end and a proletariat at the other.

The means for protecting individual liberty, on the contrary, differ radically in the states of Europe from those employed in America. This difference appears most prominently on that side of individual liberty which I term immunities. In the system of the United States, it is the sovereignty back of the government which defines and defends individual liberty, not only against all forces extragovernmental, but also against the arbitrary encroachments of the government itself. The sovereignty back of the government vests the courts of the central government with the power to interpret the prescripts of the constitution in behalf of individual rights and immunities, and to defend the same against the arbitrary acts of the legislature or executive.¹ It is the constitutional duty of the executive to obey these final decisions of the United States judiciary in regard to private rights and immunities, and to execute the laws in accordance therewith. Should he refuse, however, and insist upon exercising, in

¹ Constitution of the United States, Art. 3, sec. 2, § 1.

this sphere, powers denied him by judicial decision, or upon exercising his rightful powers in a manner forbidden by such decision, there is no remedy provided in the constitution unless it be impeachment.² Should the legislative and executive powers conspire against the judiciary, or the legislature fail to hold the executive to his duty by impeachment, the sovereignty within the constitution may be appealed to, so to amend the constitution as to prevent the nullification of its intent by its governmental servants. It is difficult to see how the guaranty of individual liberty against the government itself could be made more complete. Its fundamental principles are written by the state in the constitution; the power to put the final and authoritative interpretation upon them is vested by the state in a body of jurists, holding their offices independently of the political departments of the government and during their own good behavior; while finally, recourse to the sovereign itself is open if all other defenses fail.

This is the special point in which the constitutional law of the American states is far in advance of that of the European states. Of the three chief European constitutions, only that of Germany contains, in any degree, the guaranties of individual liberty which the constitution of the United States so richly affords. The German imperial constitution has made a beginning in this direction, but only a beginning. A few of the rights and immunities belonging in this domain are written in the constitution itself by the act of the sovereign, the state.³ No department of the imperial government, therefore, can legally violate them. But the ultimate power of interpreting these rights and immunities is not vested by the constitution in the imperial judiciary.⁴ In fact,

² Constitution of the United States, Art. 2, sec. 4.

³ Reichsverfassung, Art. 3.

⁴ Laband, *Das Staatsrecht des deutschen Reiches*, I, 551 ff.

the imperial judiciary is not created by the constitution at all. It owes its existence to a statute of the imperial legislature.⁵ It is therefore unable to stand between the legislature and the individual in the interpretation of the constitution. The legislative interpretation is the more ultimate. It is not certain that it can stand between the executive and the individual in the interpretation of the constitution. The most reliable commentator upon the German constitution ascribes to the Emperor the power of final interpretation of the constitutionality of the laws.⁶ Neither, again, has the imperial legislature the power to impeach the executive for encroaching upon the sphere of individual liberty guaranteed by the constitution. Lastly, there is no way provided in the constitution for the initiation of an amendment to the constitution, save through the agency of the imperial legislature itself.⁷ Constitutionally, then, the immunities of the individual as against the *powers* of the imperial legislature and executive taken together are nothing; as against the *acts* of the legislature and executive they are what these bodies resolve to allow them to be. This does not mean that the individual has no liberty in the German state. The legislature and executive have created for him a sphere of freedom, and have made it very nearly coextensive with the same domain in the United States. It simply means that the guaranties to the individual against the government itself are still wanting. It means that he is still exposed to the possible caprice and tyranny of the legislative and executive powers. It means that almost the whole power of the state over against the individual is still vested in the government. It means that the distinction between state and government is still in its infancy in this system.

⁵ Gerichtsverfassungsgesetz, 1877.

⁶ Laband, *Das Staatsrecht des deutschen Reiches*, I, 549 ff.

⁷ Reichsverfassung, Art. 78.

In the French system there is not the slightest trace of a constitutional guaranty of individual liberty.⁸ The legislative power is the ultimate interpreter of the constitution;⁹ and the machinery for amending the constitution can be set in motion only by the legislature.¹⁰ Moreover, the executive power appoints and removes at pleasure those quasi-judicial persons who decide controversies which arise between the individual and the government in the course of the administration of the law.¹¹ The regular judicial power in France is created by the legislature, and the judges hold by a tenure and for a term designated by the legislature. The legislature may, therefore, abolish the judicial department or modify the tenure and term of the judges in any manner which it may choose or fancy. Moreover, the ordinary judiciary has, as above indicated, no general jurisdiction over controversies in which the administration is a party. The individual has thus generally but one recourse in case of a denial of his liberty by the administration, and that is to the legislature. The legislature cannot impeach the President in defense of the individual immunity, unless the act of the administration in violating the same amounts to high treason in the President;¹² but it may cause a change of ministry at its will, and it may impeach the ministers in case their acts in violation of the said immunities amount to crimes. Against the legislature itself, however, the individual has no defense. This does not mean that the individual has no liberty in France. In fact, the individual enjoys very nearly the same liberty there as here. It means simply that the guaranties of

⁸ Lebon, *Das Staatsrecht der französischen Republik*, S. 27.

⁹ *Ibid.*, S. 23.

¹⁰ Loi relative à l'organisation des pouvoirs publics, 25-28 février, Art. 8.

¹¹ Lebon, *Das Staatsrecht der französischen Republik*, S. 78.

¹² Loi relative à l'organisation des pouvoirs publics, 25-28 février, 1875, Art. 6, §§ 1 and 2; Loi constitutionnelle sur les rapports des pouvoirs publics, 16-18 juillet, 1875, Art. 12, § 2.

individual liberty against the powers of the government itself are entirely wanting. It means that in regard to this subject the whole power of the state is vested in the government. It means that the distinction between state and government is, in this respect, wholly wanting.

In the English system, while there are no constitutional guaranties of individual liberty against the Parliament, either when it acts as constituent assembly or when it acts simply as legislature, the individual has the defense of the regular courts, i.e., of the independent judiciary, against executive encroachments upon his liberty. The Parliament is the source both of individual liberty and of the courts, and cannot be limited or restrained by either. The Parliament has by statutes marked out a large domain of liberty for the individual; and has made the judiciary the special guardian of this domain, by freeing the judicial tenure from the executive power. But the Parliament may by statute sweep away every vestige of this liberty, if it will, and abolish the judiciary; and it may, furthermore, cause the removal of any judge either by impeachment or by address to the Crown. It is true, as I have demonstrated, that the Parliament, when acting as the state, is somewhat differently organized than when acting simply as legislature; i.e., that the Commons have a supremacy over the Lords and the King in the former case, while in the latter there is parity of powers between them; but this difference does not furnish the individual with an independent way of appeal to the state against the legislature. The appeal must be made *through* the body *against* which it is made. The trouble here again is that the whole power of the state is vested in the government, and that no sufficient distinction is made between the state and the government.

It will thus be seen that individual liberty is really a part of constitutional law in the system of the United States only. In all the other systems it is substantially statutory, Germany

alone having made any progress, in this respect, out of the old system of governmental absolutism. I dwell upon this point, for it is *the* point in which the great advance of the American idea over the European, in the development of constitutional law, is most distinctly manifested. I dwell upon it, furthermore, because I desire to explain, at the outset, why in the discussion of this topic I shall devote myself almost exclusively to the consideration of the constitution of the United States.

BOOK IV
GOVERNMENT

CHAPTER XI

THE FORMS OF GOVERNMENT

IN MY book upon the state I endeavored to show that the conception of the forms of state is vitiated, and the current nomenclature employed to give expression to the conception rendered almost useless, by the confounding of the ideas of state and government. The same criticism must be made as regards the usual and orthodox notions of the forms of government. The absence of the clear and correct distinction between state and government is as fatal in the latter case as in the former. In consequence of its absence in the literature of this subject, I am compelled to break new ground in this case, as in the former, or even more completely than in the former. I am compelled also to create, in large degree, a new nomenclature upon this topic, which may appear, in some respects, clumsy, but which I hope to make clear.

I. My first canon of distinction will be the identity or non-identity of the state with its government. From this standpoint government is either *immediate* or *representative*.

1. Immediate government is that form in which the state exercises directly the functions of government. This form of government must always be unlimited, no matter whether the state be monarchic, aristocratic or democratic; for the state alone can limit the government, and, therefore, where the state is the government, its limitations can only be self-limitations, i.e., no limitations in public law. Nothing prevents immediate government from being always despotic government in fact, except a benevolent disposition. It is always despotic government in theory.

Immediate government may be monarchic, aristocratic or democratic, according as the form of state with which it is

identified is monarchic, aristocratic or democratic. History does not show that there is much difference between the first and the last, from the standpoint of liberty. The first is, I think, the more favorable to liberty. Happily immediate democratic government cannot be extended over a great territory or a great population. The restraints of family ties and neighborhood thus serve as limitations, in fact, upon its despotic tendencies. Were these removed, no more oppressive system could be conceived. Revolt is the only relief of the subject of immediate government in any case, where the government will not yield, and revolt against democratic government is a far more desperate and hopeless movement than revolt against a monarch. On the other hand, history shows immediate aristocratic government to be more favorable to liberty than either of the other forms, but possessed of far less active power. It has neither the volume of strength of the democracy nor the concentration of the monarchy. It is seldom, however, that the complete identity of state and government actually occurs, except in the monarchy, and even there it is ordinarily more apparent than real.

2. Representative government is, in general definition, that form in which the state vests the power of government in an organization or in organizations more or less distinct from its own organization.

Representative government may be limited or unlimited. If the state vests its whole power in the government, and reserves no sphere of autonomy for the individual, the government is unlimited; it is a despotism in theory, however liberal and benevolent it may be in practice. If, on the other hand, the state confers upon the government less than its whole power, less than sovereignty, either by enumerating the powers of government, or by defining and safeguarding individual liberty against them, the government is limited, or, as we now usually say, it is constitutional as to form.

Representative government may be monarchic, aristocratic or democratic, according as one or a few or the mass of the population of the state are made eligible by the state to hold office or mandate.

Naturally, a monarchic state will have a monarchic government, an aristocratic state an aristocratic government, and a democratic state a democratic government. This is not a scientific necessity, however, and, as a fact, it does not always or even generally occur. It frequently happens that a democratic state has a monarchic government. This is the real character of Caesarism, of Bonapartism. A monarchic state may conceivably have a democratic government; but I know no real instance of such a combination in practice. On the other hand, the monarchic state frequently has an aristocratic government. In fact, a truly successful monarchy must always have a real aristocracy for its governmental representatives. It must gather about it the natural leaders of the people and govern through their collective wisdom and support. The democratic state can hold poor talent in governmental authority through the artificial medium of the ballot; but the monarchic state has nothing, in last instance, to rely upon but the influences of superior genius and capacity. The power of numbers and brute force stands naturally against it. Again, an aristocratic state may have a monarchic government. In fact, the transition of the state from the monarchic to the aristocratic form generally leaves the different parts of the political system in this relation. We might say that this is almost a necessity to the existence and perpetuity of the aristocratic state. An aristocratic state with an aristocratic government is always in danger of dissolution. The reasons for this are, in the first place, that the natural power of numbers and brute force is against the aristocracy, and, in the second place, that the aristocracy has not the religious influence of the monarchy over the masses. It has the intel-

lectual power; but intellectual power alone tends rather towards schism, and schism in the governing body destroys the faith and then the loyalty of the masses.

Lastly, a democratic state may have an aristocratic government; and I do not see why, in any condition of society except the perfect, or nearly perfect, this is not the best political system for all states which have attained the democratic form. It is, theoretically at least, government of the people, for the people, and by the best of the people. The transition of the state from the aristocratic to the democratic form generally and naturally produces, momentarily at least, this relation between state and government, but it is very difficult to maintain this relation with any degree of permanence. The mature democracy always tends to the establishment of democratic government, and the immature to the creation of the Caesar, the Bonaparte or the "boss."

II. My second canon of distinction is the concentration or distribution of governmental power.

The first alternative which arises in the application of this canon is between the *centralized* and *dual* systems of government.

1. Centralized government is that form in which the state vests all governmental authority in a single organization. In this form there is no constitutional autonomy in the localities, no independent local government. The local government is only an agency of the central government, established, modified and displaced by the central government at its own will. This form is best suited for states of small or moderate territorial extent and having a perfectly homogeneous population, i.e., completely national states. In such states the period of variety in political and juristic conceptions will have been overcome, a national consciousness will have been developed and recognized as the basis of truth, a national opinion is readily formed. History demonstrates

that all states tend more or less towards the production of this form in the course of their development into national states. When this form shall have been once really and naturally attained, it is a mark of retrogression to exchange it for the dual system. There are other conditions, however, than those of a narrow territory and a perfected nationality which require this form of government. A state whose population consists of different and hostile nationalities is necessitated to adopt this form in greater or less degree. A reasonable and predominant consensus cannot be developed in the localities where such an ethnical condition prevails. A governmental umpire outside of and supreme over the localities must hold the balance and control the war of nationalities. Again, a state having a population which is politically unripe, incapable of local self-government, is forced to adopt this form. A dual system under such conditions would mean dissolution and chaos. Both of these conditions, however, are to be regarded as temporary. The transition from the centralized to the dual form in such cases would be an evidence of advance in the political development of the population. The dual form is, in such cases, the natural connecting link between the temporary centralized form and the permanent centralized form.

2. Dual government is the form in which the state distributes the powers of government between two classes of organizations, which are so far independent of each other that the one cannot destroy the other or limit the powers of the other or encroach upon the sphere of the other as determined by the state in the constitution. Both are completely subject to the state. Either may be changed or abolished at will by the state. Neither is in essence an agency of the other, although it is conceivable, and often true, that the one may and does employ the other as agent.

The dual form is subject to a subdivision. It may be con-

federate government or federal government. Confederate government is the form in which, as to territory and population, the state is coextensive in its own organization with the organization of the local government. Federal government is the form in which, as to territory and population, the state is coextensive in its own organization with the organization of the general government. In the confederate system there are several states, an equal number of local governments, and one central government. In the federal system we have one state, one central government and several local governments.

The confederate system is clearly a transient form. It does its proper work in the period of transition from the condition of several sovereignties to that of a single sovereignty over the combined territory and population.

The federal system is not so clearly transient, although it can hardly be regarded as the ultimate form. Its natural place is in states having great territorial extent, inhabited by a population of tolerably high political development, either in class or in mass, but not of entirely homogeneous nationality in different sections. When these ethnical differences shall have been entirely overcome, something like the federal system may, indeed, conceivably remain, but the local governments will become more and more administrative bodies, and less and less lawmaking bodies. In fact, it looks now as if the whole political world, that part of it in which the centralized form of government obtains as well as that part still subject to the federal form, were tending towards this system of centralized government in legislation and federal government in administration. I do not feel sure that this is not the form of the future, the ultimate, the ideal form, at least for all great states.

The difficulty of the federal form in practice is the fact that it generally confuses the common consciousness as to the

position of the sovereignty, the state. In the confederate system we know where the state is. In the centralized system we have no uncertainty upon this point. In the federal system, on the contrary, the divergence of views in regard to this subject creates the most burning question of practical politics, one which is seldom solved except by bloodshed. I think that most of the difficulty lies in the manner in which the state ordinarily distributes the powers of government between the central and local governments. That manner may briefly be described as follows: The state, the sovereign, first limits the powers of the two governments in respect to the individual i.e., it creates the domain of individual immunity; then it enumerates the powers of the general government and leaves all remaining powers without specification to the local organizations. This appears to many minds like a residuary sovereignty in the local organizations. It requires patient reflection and successful discrimination to attain a point of view from which it is clearly seen that there can be no such thing as residuary sovereignty; that sovereignty is entire or not at all; and that what is left by the state to the local organizations, in this manner of distribution, is only the residuary powers of government. The fact, furthermore, that the localities, the commonwealths, may organize themselves as quasi-constituent bodies, and create other organizations representative of themselves, and confer upon these organizations the immediate exercise of the governmental powers left to themselves by the state, and may forbid to their agents the exercise of some of these powers altogether—all this adds greatly to the confusion of thought upon the subject. It appears as if these quasi-constituent bodies had something more than residuary governmental powers, since they do not exercise those powers immediately themselves. This something more is usually conceived as a part of the sovereignty, to say the least. It requires more than superficial thinking

to reach the principle that sovereignty cannot be partly here and partly there, but is a unit undivided and indivisible.

If the state should designate in the constitution the whole domain of individual immunity against both the general and the local governments, and construct in detail in organization of the local government as well as that of the general government, this difficulty would largely disappear. So long, however, as the usual method is observed, great effort of mind will be necessary to comprehend its real signification.

The second alternative arising from the application of my second canon of distinction is between what I will term *consolidated* government and *coördinated* government.

3. Consolidated government is the form in which the state confides all governmental power to a single body. If this body be a single natural person, then the government is monarchic. If it consist of a number of natural persons, then the government is aristocratic or democratic, according as the number of persons is narrower or wider, whom the state makes eligible to hold voice and vote in the governing body.

4. Coördinated government is that form in which the state distributes the powers of government, according to their nature, between separate departments or bodies, each created by the state in the constitution, and, therefore, each equally independent of, but coördinated with, the other or others. In consolidated government, the single body always finds it necessary, in the exercise of its different functions, to create chief agencies, corresponding in number and character with the functions to be exercised, and to govern through these; but these agencies are entirely dependent upon the will of the single body both as to their powers and their existence. In coördinated government, on the other hand, each department created by the state, in the constitution, has an independent existence as against every other department, and is furnished, or should be furnished, by the constitution

with the means to maintain its own proper existence and powers against the possible encroachments of the others.

Consolidated government is the ideal form for the perfect condition of human society; but for any other condition it tends to result, sooner or later, in crude and arbitrary government.

Coördinated government is the form now almost universal in the great states of the world. It is the form which conduces best to promote and preserve a steady and natural development of an already advanced, though still imperfect, political society. It tends to emancipate government from the spirit of one-sidedness, partiality and radicalness. It has doubtless come to remain, so far as human thought can penetrate the future.

III. My third canon of distinction is the tenure of the persons holding office or mandate. Viewed from this standpoint government is either *hereditary* or *elective*.

1. Hereditary government is the form in which the state confers the powers of government upon a person, or upon an organization or organizations composed of persons, standing in a certain family relation to his or their immediate predecessors. The state determines, in the constitution, what the relation shall be. Four general solutions of this problem meet us in political practice, viz., *ancienneté*, *ancienneté* in the male line, primogeniture, primogeniture in the male line.

The principle of *ancienneté* makes the oldest member of the family of the deceased the successor, without regard to sex.

That of *ancienneté* in the male line makes the oldest male member of the family of the deceased his successor.

The principle of primogeniture makes the oldest immediate descendant of the deceased the successor; or, if the deceased have no descendant, the principle makes the oldest

immediate descendant of the nearest ancestor of the deceased the successor; or, if the immediate descendant of the deceased shall have died before his ancestor, leaving issue, the principle makes the first born among this issue the successor; or, if the oldest immediate descendant of the nearest ancestor of the deceased shall have died before the latter, leaving issue, this principle makes the first born among this issue the successor, etc.

The principle of primogeniture in the male line follows the same law of succession as that just described for simple primogeniture, only excluding the female altogether from the succession, and from the transmission of the succession.

There are some modifications of these four chief norms to be found in practice.

The most important is that which prefers the males of the same parentage only before the females, but admits the females of the same parentage with the last male holding power, before the males of a more remote parentage. This is the English principle in the descent of the crown.

Another modification permits the immediate holder of power to designate before his or her decease the member of his or her family who shall succeed. This rule has the advantage, when conscientiously and intelligently applied, of securing the most capable member of the family for the succession; but it is liable to great abuse, and generally prevails only in arbitrary and despotic systems.

Of all of these species of hereditary tenure, primogeniture in the male line appears the most useful and successful. It comports best with the other principles of the modern political systems. It contains no element of personal arbitrariness, and yet it is calculated to secure as good capacity as the family possesses.

2. Elective government is that form in which the state confers the powers of government upon a person, or upon an

organization or organizations composed of persons, chosen by the suffrage of other persons enfranchised by the state, and holding the powers thus conferred for a distinct term and under certain conditions.

Election may be direct or indirect; i.e., the suffrage-holders may vote immediately for the person to hold power, or for another person or other persons who shall vote for the person to hold power.

Election may also be by general ticket or by district ticket; i.e., each suffrage-holder may vote for a number of persons representing a larger division of territory and population, or for a single person representing a smaller division.

Election may be by single or cumulative vote; i.e., where the election is by general ticket, each suffrage-holder may cast his vote for each of a number of persons, to the number to which the division is entitled in the particular governmental body, or he may distribute among a less number of persons a number of votes equal in the aggregate to the whole number of persons to which the division is entitled in the particular governmental body, or he may cast this entire number for one person.

IV. My fourth and last canon of distinction is the relation of the legislature to the executive.

Viewed from this standpoint government is either *presidential* or *parliamentary*.

1. Presidential government is that form in which the state, the sovereign, makes the executive independent of the legislature, both in tenure and prerogative, and furnishes him with sufficient power to prevent the legislature from trenching upon the sphere marked out by the state as executive independence and prerogative. They may be several degrees in the principle of executive independence. The executive may be made only politically independent of the legislature, which would signify that neither he nor his agents are re-

sponsible to the legislature for the executive policies or acts. He may, again, be made entirely independent of the legislature, which would signify that the legislature could not even impeach him for high crime or misdemeanor. He may, again, be made independent of the legislature, except he commit some particular crime of a very heinous nature as, for example, high treason. He may be furnished with an absolute veto upon the acts of the legislature, or a suspensive veto, or a veto which may be overridden by an increased majority. We will not take these degrees of independence into account at this point of our reflections. We will regard the requirements of the principle as substantially fulfilled if the legislature cannot ordinarily originate the executive tenure or terminate it simply on account of political disagreement, and if the executive is furnished by the state with the independent power to defend his prerogatives partially if not completely against the possible encroachments of the legislature.

This is a highly practical form of government. In the first place, it is conservative. It fixes the weight of responsibility upon a single person; and there is nothing like this to produce caution, deliberation and an impartial regard for all interests concerned. In the second place, it is energetic. One capable person can come to an agreement with himself, while a half dozen or more are haggling over questions of precedence and procedure. In the third place, it is powerful. That one poor commander is better than two good ones is the *bon mot*, often quoted, of one of the most powerful commanders whom the world has ever produced. A single capable personality is not lamed and limited by a division of counsel and a divergence of views. He may listen to many counselors; they may assist him in reaching his determination; but that determination does not require the consensus of different wills, and when once made it must be obeyed.

On the other hand, it is quite possible that the independence of the executive may produce a deadlock between the executive and the legislature. For example, the executive may veto a legislative act and the legislature may refuse to pass the appropriations until the veto be withdrawn. The state may, however, reduce this danger to a minimum by commanding, in the constitution, the separation of questions concerning appropriations from all other questions, and by vesting in the executive the power to execute the laws by his own ordinances, if the legislature should fail to enact the measures for their execution. This objection to the presidential form does not weigh heavily against its advantages.

The advantages of presidential government are especially manifest in those states in which a great variety of views and interests prevail, or in which governmental power is distributed among two or more independent organizations, or in which active defense against foreign invasion is a chief necessity. When *all* of these conditions coexist, any other form than very strong presidential government will inevitably meet with speedy and miserable failure.

2. Parliamentary government is that form in which the state confers upon the legislature the complete control of the administration of law. Under this form the legislature originates the tenure of the real (though perhaps not the nominal) executive, and terminates it at pleasure; and under this form the exercise of no executive prerogative, in any sense and manner unapproved by the legislature, can be successfully undertaken.

This is the general statement of the principle; but a little scrutiny will reveal the fact that in practice a still farther adjustment, a second differentiation, so to speak, is necessary. This results from the fact that most legislatures consist of two houses. In legislation the required concurrence

of two independent bodies to the validity of any act is advantageous, but in administration it is unendurable. Hence the control of the administration by the legislature is bound to become, in practice, control by one house of the legislature; and this control naturally gravitates to that house which, by the law or custom of the constitution, has the greater power over the revenues of the government.

This is in some respects, and under certain conditions, an admirable system. Its chief excellence is that it maintains permanent harmony between the different branches of the government; but in gaining this result, it sacrifices entirely the independence of the executive, and destroys practically the independence of one of the two houses of the legislature. Legislation is thus made comparatively easy; but at the risk of an unsteady and an inconsistent administrative policy. Another great advantage which this system offers is the better information of the legislature upon all subjects concerning which it must act, through the presence and voice of the heads of the administration in the chambers. Legislation is neither initiated nor shaped, as in the other system, by the heads of a half hundred legislative committees—by men, that is, who are commonly inexperienced and often visionary. To some minds this advantage is balanced, in some degree at least, by the disadvantage of an undue administrative influence thus gained over the legislature. This reflection would have more value if the executive in the parliamentary form were a really independent department; but since, in fact, it is nothing more than the grand committee of the reigning party in the legislature, or in that house which controls the administration, this point may be disregarded in estimating the worth of the system.

The parliamentary form, however, is not one which is suitable or possible for all conditions of men. In fact, its successful operation is dependent upon peculiar and unusual

conditions. I can conceive of but two phases in the development of political society to which it is really applicable.

The one would be a practically perfect constitution of society, in which the whole population of the state should be highly and nearly equally intelligent, universally self-contained, and moved by a pure spirit of justice. In such a society it must be presumed that the best would always be chosen to exercise the powers of government, and that, where all were so good, the best would need no artificial checks and balances to preserve them from committing wrong or error. Such a perfect society has never existed, does not now exist, and will not appear in the near future. We must not at present build our constitutional law upon any such presupposition. If this were the only condition for the existence of parliamentary government, we might dismiss the further consideration of this form as an ideal of the distant future.

There is, however, one other stage in the evolution of the state at which the parliamentary form of government naturally appears and may work successfully. At this stage the political system consists of three dominant institutions: first, a kingship, i.e., an hereditary executive, with reserved dormant powers, possessing the most sincere devotion and loyalty of the masses; second, an established religion under the headship of the crown, through which the morality of the masses may be preserved and their attachment to the crown secured and perpetuated; and, third, limited suffrage, through which the intelligent, conservative and moderate classes shall be the bearers of the political power. The most cursory glance at the working of parliamentary government will manifest at once the necessity of these institutions, in these relations. How, for example, can the leaders of the majority in the legislature, or in one house thereof, govern with any degree of vigor and success, unless the majority which supports them be stable and resolute, and the oppo-

sition be benevolent and forbearing? How, with the present degree of popular intelligence in even the most advanced states, can these qualities be secured in a legislature whose members are chosen by an universal or a widely extended suffrage? Experience teaches us that such a legislature is inclined to be factious, impatient and rash. But, again, how can a legislature proceeding from a distinctly limited suffrage govern the great mass of the unenfranchised, except through the medium of a kingship with its prehistoric legitimacy; and how can the power of that idea of legitimacy be maintained, save through the influence of a religion loyal to the crown and possessed of controlling power over the popular conscience? Lastly, how can the chiefs of the legislative majority govern at all, if the wearer of the crown may change its prerogatives at pleasure from dormancy to activity, and interfere at any and every point with their movements, or refuse at pleasure the royal sanction to their acts? It is evident, I think, that, at any stage in the development of the political world much short of the perfect stage, these are the conditions and relations essential to the successful working of parliamentary government. Any considerable change in them will undoubtedly impair its usefulness and endanger its existence.

CHAPTER XII

DEMOCRACY IN THEORY

THE etymology of the word is Greek, *demokratia*, and means roughly the rule of the people. Such a definition is, however, too theoretical for practical purposes. Strictly speaking, there never has been, is not, and, so far as human eyes can see, never will be, such an actual existence. Mr. Lincoln's conception of democracy was government *of* the people, *by* the people and *for* the people. This is even more ideal than the shorter proposition and farther away, if possible, from realization. Perhaps we may approach somewhat nearer to the meaning of the term and to an understanding of its practical requirements by taking the words of the definition apart and subjecting them to special analysis.

What, in the first place, is "the people"? The framing of this concept depends largely upon the point of view from which it is contemplated, whether from the geographical, the sociological, the civil, or the political. From the geographical point of view, the concept includes all human beings existing within a given territory, without regard to their relations to each other. From the sociological point of view, it includes all human beings existing within a given territory, but regarded as related to each other both as individuals in classes, and as classes in a totality, by the bonds of natural principle. From the civil point of view, it includes all persons, natural or artificial, within a given state, who, by the constitution and laws of the state, are vested with the enjoyment of civil rights as distinct from political rights. And finally, from the political point of view, it includes all persons vested, by the constitution and laws of a given state, with the right to vote for such governmental representatives or officers as are made elective by that constitution or those laws.

It is obvious that from the last point of view the concept is much narrower than from either of the others, and yet it is *the* point of view which is most important, if not exclusively important, in the consideration of our subject. Only about one-half of all the human beings existing within the territory of a given state are vested, by the most liberal constitution of today, with full civil rights and immunities, and only about one-third of these with the political suffrage. If, therefore, all the people vested by the most liberal constitution of today were unanimous in their rule, it would be the rule of only one-fifth to one-sixth of the people in the geographical or sociological sense. In other words, the political people, the people who may rule, according to the most liberal constitution of today, are not more than one-fifth of the population of the state. But again, unanimity is practically never to be found in any tolerably numerous ruling body. The ruling people are divided into parties, at least two and perhaps more, and we are driven finally to contemplate a situation according to which, in the most so-called democratic state of today, the ruling body of people would not number on the average more than one-tenth of the population of the given state.

It is sometimes contended by the sociologists that this one-tenth may represent the whole or at least a majority of the whole. It must be kept carefully in mind that by such representation, however, is not meant political representation through any form of voting, but the natural representation of the wife by the husband and of the minor children by the father. It is contended that the husband's representation of the wife and the father's representation of the minor children is a natural and moral representation, as being in the interest of the wife and the children, and that this natural identity of interests between husband and wife and between father and minor children makes the wives and minor chil-

dren of a country elements and members of the political society to which the husbands and fathers belong, virtually extending thus the politically qualified from the two-tenths to seven- or eight- or nine-tenths of the population. Others contend that such an identity of interests and, therefore, such a natural representation, do not exist at all. If we assume, however, that they do, there still remain the unmarried women who have attained their majority as politically unenfranchised in any sense. The movement for woman's suffrage has sometimes had its point of departure in consideration of the interests of these.

In the second place, let us endeavor to find what is meant by the word "rule" and how far the meaning has advanced in its application to practice in what are considered the most highly developed democracies in the world. As rulers, the people must be considered from three points of view, viz., as the sovereign power, as the electorate, and as the government. In no state of any considerable population can they act directly as government. Between their act as sovereign and their act as government the principles and the machinery of election must intervene. These principles, though long in developing, are comparatively clear and easy of application. They are representation, majority and plurality. But the machinery of choice is most difficult of construction and it is chiefly in this that democracy in name becomes perverted to oligarchy and plutocracy in fact.

Let us first consider, however, the people as sovereign, as the creators of the constitution of government and liberty. So long as the population of a sovereign state is so small that the politically qualified among this population are so few in number that they can assemble in one place and deliberate and vote, there is little difficulty in the organization of the sovereign body. But so soon as these bounds are transcended, complications and puzzling problems begin to arise.

How to preserve initiative and determination to the majority and secure sufficient instruction and deliberation for all are problems with which the so-called democratic states are wrestling with more or less success, or more or less failure, today. Very few of them have even separated completely the people in their organized sovereign capacity from the legislative branch of the government which is their creature. In fact only one state in the world of any considerable size, and that a small state and an internationally neutralized state, can be said to have done so, viz., the Swiss Republic.

The organization of the sovereign people in the Constitution of the United States permits their action through their immediate representatives in a National Convention proposing amendments to the Constitution and in State Conventions ratifying the same. But this National Convention can be called only by Congress, that is, the legislative branch of the national government, and Congress can issue this call only upon the application of the legislatures of two-thirds of the states, and, finally, the amendments proposed by the National Convention must have for their adoption the ratifying voice of the conventions in three-fourths of the states. It is quite easy to figure out under these regulations how, with a certain grouping of the states of the Union, an amendment to the Constitution, that is, how a sovereign act, may be ordained by a minority of the voters, and with another grouping, how nine-tenths of the voters could not accomplish this. This is certainly no satisfactory organization of a democratic sovereignty. There is no security afforded by it that the majority of the people will rule as sovereign. There is not even sufficient security that the minority will not rule, and rule, too, all the time.

But it is in the electoral systems, even in the very best of them, that the failure of democracy is more clearly seen. It is down to within somewhat less than half a century that the

idea prevailed in the so-called democracies that the election of representatives and officers and the nomination of candidates should be, if not entirely, at least very largely, unregulated by law. The idea was that the body of voters stood above the government and that, therefore, in selecting the members of all branches of the government, they should not be in any measure subject to its control. It is within my own memory that democratic statesmen have warned against too much control of the elections by government and against any control of party organization and the designation of candidates. They considered party organization and procedure to be entirely within the domain of political liberty and the elections as being very largely so, and felt it to be the duty of every freeman of the Republic to resist the attempt of government to extend itself into this domain.

But a little clear thinking would have demonstrated, and some considerable experience has demonstrated, that this apparent liberty for all is only an open door through which a designing group of managers can steal into the very sanctuary of democracy and rob it of the vital principles of its character. The entire caucus and convention system of the political parties, built up through many years of effort, and apparently including the participation of every voter, culminated everywhere in the production of the "boss," against whose power and influence in the selection of candidates for governmental mandate and office, at the behest and in the interest of a small group or clique, the new inventions of nomination by petition and primary registration and election are now being directed.

But already it begins to appear that the management by the clique of professional politicians, which formerly addressed itself to the elections and the caucuses and conventions, is getting behind the petitions and the primaries. It seems next to impossible to eradicate from elective govern-

ment this tendency of oligarchy to wrap itself in the cloak of democracy, and to make the personnel of government subservient to the personal interests of the few. It is difficult to see that the increasing control by law of the elections and the party organization and procedure has, as yet, done very much to maintain democracy or improve government. We may hope and expect that it will do more as we learn by experience at what points it should be exercised and where not. But no scheme of legal control will be largely successful without a universally enlightened public conscience and a universally imperative sense of public duty on the part of the voters which will move them to the sacrifice of their time, effort and means necessary to the creation and perpetuation of real democracy in the origin, the working and the purposes of government.

I will illustrate how very difficult it is to prevent democracy from becoming oligarchy by an experience which I recently had in a matter where pecuniary interests were involved and where, therefore, each person would be naturally expected to participate immediately. It was at a meeting of the stockholders of a railroad company. I had never before attended a meeting of the stockholders of any corporation, but I had imagined that each stockholder must appear armed with his certificate of stock for his identification and for determining the weight of his vote and that without this his presence at the meeting would not be allowed. I was, therefore, greatly surprised that, when I entered the room and took a prominent seat, no one questioned my right to be there, or asked to be shown my certificate of stock. And I was far more surprised when all motions were put to the meeting as composed of persons of equal voting weight, no matter how much or how little stock they might hold, and decided by a *viva voce* majority vote. Not only routine business was performed in this manner, but the road

was bonded for over three millions of dollars and directors elected. I was so shocked by the procedure, that I made inquiry as to its meaning, and was informed that a proxy committee already in possession of a majority of the stock of the railroad, partly as their own property, but in very much larger part entrusted to them by its owners for voting on the subjects proposed at the meeting, had agreed upon what was to be proposed to, and affirmed by, the meeting and that the meeting itself was only a form for fulfilling the requirements of the law. I then asked how this proxy committee was formed and found it to be a self-constituted group of men, who had, by a semblance of authority, induced the scattered stockholders, chiefly those holding few shares each, to entrust their voting power to them, to be exercised with full discretion. If people are so ready to let anybody proposing himself in somewhat impressive form act for them where their personal pecuniary interests are so immediately involved, how can it be expected that they will have sufficient public spirit and a sufficiently strong sense of public duty to give their personal attention to the nomination and election of those who are to exercise governmental powers or to informing themselves about, and voting on, public measures? All of these considerations go to show how very difficult it is to determine whether any political system is a genuine democracy or not when you regard it from the point of view only of the nominal extent of the suffrage or from that and the additional point of view of the identity of interest between the body of suffrage-holders and the entire population.

Of the three tests of democracy set up by Mr. Lincoln, namely, government *of* the people, government *by* the people, and government *for* the people, the last is the most reliable as well as the most important. The body of suffrage-holders who nominally create government and vest it with its powers may be very large as compared with the entire

population, as may be the body of voters for designating the direct holders of governmental office and mandate, and yet the government may be easily perverted, by the means and practices to which brief reference has just been made, from government *for* the people to government in the selfish interests of a relatively few of the people. On the other hand, where government is really *for* the people, it will almost surely be *of* the people, and *by* the people's faithful representatives. This might be true even though the suffrage should not be broadly extended and election should not be the sole method of designating the holders of governmental power. In other words, the most reliable test of democracy is rather more economic than political. Where the distribution of all sorts of wealth, viz., capacity, education, culture, character, rational diversion and property, is fairly general and even throughout the entire population, there we may be justified in saying that we have government *for* the people. It would be a very extraordinary, a very highly endowed, efficient and perfect nation of people, who could attain such a status without the help of government. On the other hand, those democracies, so-called, from an exclusively political point of view, which have produced economic plutocracies are a sham. Most of the democracies of the nineteenth century have done just that, and the people are rapidly finding it out.

The world, therefore, today, whether you call its different states democratic, aristocratic or monarchic, stands face to face with one and the same question, viz., the overthrow of plutocracy and the establishment of an economic democracy, government *for* the people, in its stead. The danger may, when this is once accomplished, well be that the pendulum shall swing too far, that the state shall become too completely socialized, that the government shall become too paternal, and that individual capacity and initiative shall be too far

suppressed or at least controlled. Genuine democracy must always provide a realm of individual immunity against governmental power and endeavor to bring the low up to the level of the high instead of bringing the high down to the level of the low. Every advance in civilization originates as an idea in the brain of some individual. The freedom of thought and of expression and of opportunity to transform idea into reality must therefore not be held down by government in its attempt to secure the equal distribution of the goods of civilization among all the people, otherwise there will soon be no goods of civilization to distribute. It is the deepest problem of political science to reconcile government with individual liberty, and that problem has not yet been solved. When government has been too commanding, it has generally privileged the few at the expense of the many; and when it has been too weak, the strong and the cunning have exploited the less endowed for the gratification of their own unhindered greed.

Nevertheless, I believe this problem to be capable of solution, not indeed through the construction of political machinery alone, but by the joint effort of political science, ethics and economics, and I feel entirely persuaded that when any state becomes genuinely democratic in its politics, it will manifest this fact more convincingly through the economic test of a fairly general distribution of the goods of civilization than through its principles of suffrage and its machinery of election.

Finally, it may be contended that experience has shown that a genuine democracy may be more easily developed under a system of federal government than under centralized government, and that too although the central government in the federal system may itself appear to be more autocratic or oligarchic than democratic. Under the international protection of an autocratic central government in a federal sys-

tem, it is quite possible for the states or commonwealths of such a union to develop democratic government, and the opportunity for the development of such government in the municipalities, the counties, cities and towns within the states, or commonwealths, is still more favorable. It is quite true that in the United States especially advantage has not been taken, at least not at all as fully as it might be, of this opportunity. The municipal governments have been too much used as pieces in the chess game of party politics. They have not generally been allowed sufficient autonomy over against the state government to which they belong in order to free themselves from political party control and develop a genuine municipal democracy. This idea of a municipality as wholly or chiefly a branch of the state administration in the federal system of the United States is very largely the cause of the failure in this country to realize municipal government *for* the people.

Generally it is the tax-paying part of the population in American municipalities whose interests are least regarded; and by the tax-paying part is meant those paying the taxes immediately, not those paying by the so-called shifting process, if indeed there is any such thing. The idea of a municipality as a branch of the state administration is the basis of the practice which excludes a property-holder and taxpayer in one municipality from voting for officers and on municipal subjects in that municipality in case he votes for or upon anything in another municipality. That is, it is the chief cause of the exaggeration of the notion of plural voting, against which, in its true sense, the democratic conscience rebels, to a point which too often delivers municipal government in the United States into the hands of a majority having so small a stake in the welfare of the municipality as to make them the tools of a small group of grafters and privilege-hunters. There are municipalities in the United States

where the payers of at least 70 per cent of the municipal taxes have no voice whatsoever in the municipal government.

Genuine democracy practically always begins in local government and too frequently ends there, and we shall have no genuine democracy in the United States until the position of the municipalities becomes more autonomous over against the state government as well as the national government, until the municipality is considered and dealt with in our public law not only as a branch of the state administration but as having sufficient autonomy in organization to enable it to fulfill the ends of social welfare.

We are, as to our general governmental system, opportunely placed to work out the great problem of a genuine democracy from the bottom upward, but we must not fancy that we have solved the problem, or have approached anywhere near its solution. The proof that we have not is unmistakable. That proof is simply the growth of plutocracy and the proletariat in our midst. The democracy which produces such economic fruit is spurious and hypocritical, and will sooner or later give way to the oligarchy of material wealth, first in fact and then in outward semblance.

On the other hand a country with centralized government has a far more difficult task in the development of democracy. Where all local government is but an agency of central government, bureaucracy in local government is the natural result, and, since genuine democracy must be evolved from below upward, when the base fails, the superstructure cannot be reliable.

Above all things, the holding of colonies and dependencies is unfavorable to the development of democracy, especially when the dependencies are extensive and the relation is regarded as permanent. The population of the dependency is generally incapable of self-government. That is the reason in political ethics for the establishment of the relation. The

necessary autocratic government of the motherland in the dependency always tends to produce oligarchy and plutocracy in the home government. All the great colonial empires have had this experience and have met their downfall or their transformation in consequence of it. The uneasiness of Americans in regard to prolonging the rule of the United States government in the Philippines, Porto Rico, etc., is well grounded. It has already led to the unlimited powers by that government not before supposed to exist in it. If such be the tendency where the motherland is so large and the dependency so small, what must it be where the dependencies exceed in territory and population the motherland many times over? Limited government and the colonial empire system are practically incompatible, and unlimited government undermines democratic principle continuously and persistently. It is probable that the great world upheaval in the midst of which we now live may so reconstruct the nations and peoples and governments as to give genuine democracy a better chance for existence and development.

CHAPTER XIII

DEMOCRACY IN HISTORY

THE so-called Ancient Democracies were municipal. They were city states. Within these narrow limits the free heads of families constituted in their municipal assemblies the sovereign and legislative power, so to speak, and their elected agents the executive power. In the larger municipalities the principle of representation was gradually introduced into the constitution of the assemblies, and in these the whole body of the citizens was reduced to the position of the electorate. The electorate did not thereby become expanded beyond the circle of the free heads of families. It never contained a tenth part of the population. Moreover, when the whole government became representative, there was no organization behind it for holding it under limitations. At the same time control of the elections by irresponsible groups and rings of the shrewd and crafty appeared, and the powers of government were placed in their hands for use in behalf of personal advantage. Other defects were the absence of a defined sphere of civil rights and the means of enforcing them and the irresistible course of development taken in the union of adjoining municipalities under the form of city leagues or confederation. The ancient democracies all broke down under these difficulties and defects and became narrow oligarchies or despotisms in form and plutocratic in substance.

The so-called Rural Democracies of the earliest period of Germanic history came, for a time, a little nearer to the solution of the problems of this political form. The free heads of families were again the members of the assemblies, but in comparison with the populations of the ancient cities there were very few slaves in the Germanic tribes and the

proportion of the free house-fathers to the other elements of the population was, therefore, very much greater than in the ancient cities. Moreover, the principle of representation never found lodgment in the rural assemblies of the Germanic system and, therefore, the distinction between the electorate and the assemblies was not developed.

Still further, the tribal and hundred assemblies were not confederations of the village assemblies but were more of the nature of national bodies. All the free house-fathers of all the villages within the domain occupied by the tribe were the authorized members of the tribal assemblies. It was, however, remarked by Tacitus and by later authors who have derived their information from his great work that, while as a rule practically all of the free house-fathers attended the village assemblies, only the more important among them were generally to be found present in the tribal assemblies and that, therefore, these tribal assemblies tended from the first to become aristocratic and even oligarchic, although every free house-father was an authorized member. It was in and by these tribal assemblies that the temporary leader in war or migration was elected, and it was this officer, called the Herzog, military commander, who gradually, chiefly by the long continuance of a state of war or migration, developed into the King.

The long conflict of the German tribes and tribal confederations with the Roman Empire put an end to both the municipal and rural democracies, so-called, of the early centuries of the Christian Era. From the fifth century to the beginning of the eighth, the petty military monarchies of the Franks, Burgundians, Goths, Visi-Goths, Vandals, Lombards, Angles, Saxons, etc., supplanted them, and in the eighth and the beginning of the ninth centuries the Kingdom of the Franks and then the Carolingian Empire of the Franks united continental Europe from the Elbe to the Ebro and from the

North Sea to the Mediterranean in one great state body in which the monarchic principle, sustained by both military power and the Christian church, prevailed and the democratic element of the former times practically disappeared. It is held by some historians that the democratic element was, in some measure, at least, preserved in the Christian church. This was true in the early congregations, before the development of the hierarchy of the fourth and fifth centuries, and before the union of church and state in the Carolingian Empire system. After that, the people had no more control of, or influence upon, ecclesiastical than secular government.

The dissolution of the Carolingian Empire produced the so-called Middle Ages, and the two all-commanding institutions of this epoch were the feudal system and the hierarchic church. The principle of the feudal system was the government of the owner of a given territory over the persons inhabiting the same as tenants or hirelings, and the principle of the hierarchic church was the control of the laymen of the self-constituted clergy. This was all the negation of democracy, and but faint traces of any of its elements are to be discerned throughout the period reaching from the beginning of the tenth to the middle of the fifteenth century. Moreover, when it began to make its way back into the European state, it was under the protection of the form of government which appeared to be its direct opposite, viz., the so-called absolute monarchies, better termed the national monarchies of the centuries from the fifteenth to the eighteenth. The establishment and growth of trading centers, the development of the lawyer class in such places, the union, by purchase, marriage and confiscation, of members of feudal states in a single hand, brought together the petty feudal states, located within a sort of geographic unity and inhabited by people speaking a more or less common language, under

the rule of the most prominent and powerful feudal lord of the district, who checkmated the centrifugal tendencies of the other feudal lords by a policy favorable to the inhabitants of the towns and even of the feudal states. The national monarchies of Spain, France, England and Prussia were developed in this manner during the centuries from the fifteenth to the eighteenth. They were democratic in the sense that the people supported the royal power against the decentralizing power and policy of the feudal lords and that the royal power protected the people against the tyranny of these lords. The royal governments were *of* the people only in an historical sense, not in a formal political sense. They were not *by* the people. They were, however, in much larger degree, *for* the people than the feudal system which preceded them. Moreover, they contained the basic principle for the development of democracy, viz., national unity. Democracy is really possible only among a body of people who shall have arrived at a substantial consensus of opinion regarding the fundamental principles of rights and wrongs. Only such a body of people are capable of self-government. The experience of history is that the forms of democracy introduced among a people not capable of self-government produce a sham democracy which leads to anarchy.

The development of a popular consensus of opinion proceeds from a common speech, common interests, a common custom, a more or less common manner of thinking, and these are the fundamental ethnical elements of a nation. When a nation reaches, in its development, the *niveau* of a popular consensus regarding the fundamental principles of rights and wrongs, it will have become democratic in substance and will inevitably undertake to establish democratic forms and institutions.

This was the meaning of the revolutions of the eighteenth and nineteenth centuries in all of Europe west of Russia and

in all the Americas. Everywhere throughout these countries the principles of the sovereignty of the people and of no legislation without the consent of the representatives of the people were arrived at. In some of them the democratic principle attained an even more advanced realization. In all of the American states and in several of the European states, legislation was not only prevented without the consent of the representatives of the voters chosen by them, but was enacted by such representatives and executed by officials also selected by the voters. The suffrage lacked much of being universal manhood suffrage, but the trend towards this was manifest from the outset and has been at last substantially reached almost everywhere.

About every component part of the democratic principle is now to be found in a large number of the world's political systems, viz., popular sovereignty, universal manhood suffrage, constitutional limitations on governmental power, election of legislators and officials, and the responsibility of officials to constitutional control. Still the machinery for putting these elements of democracy into such working order and practical operation as to secure the ultimate end of democracy, namely, the general or universal welfare, has, either in whole or in part, still to be created, or, if already created, to suffer many adjustments. Nowhere can we claim that government for the people has been fully realized. Everywhere a designing class or group succeeds in deflecting it, in greater or less degree, from its ideal purpose to the profit and privilege of the few. For the realization of genuine democracy, what is now necessary is such an organization of the people in sovereign capacity as will reduce the power of government over their sovereign acts to a minimum, and give each member of the sovereign body substantially equal opportunity of influence in the initiation and enactment of sovereign or constitutional measures, and such a machinery of nomina-

tion and election as will keep the control of these procedures in the hands of at least a majority of the voters. But were all this accomplished in the most skillful and perfect manner, it would still avail little without the subtile and imponderable force to keep such organization and machinery in motion, namely, the intelligent and universal sense of public duty and the conscientious discharge of that duty. It is not easy to determine whether this is present and active or not by a simple inspection of the political principles and machinery of democracy. We can arrive at a reliable conclusion upon this point much more surely by viewing the results. Does the government promote, secure and maintain the general welfare, or does it favor the few at the expense of the many? Does it operate to produce, or even to allow the production of, the plutocracy and the proletariat? This is the question which overshadows all others in estimating the character of government. And thus from the historical viewpoint, as well as from the theoretical, we come to the same conclusion, namely, that the surest test of democracy is the economical rather than the political. It is conceivable, indeed, that a substantially general and even distribution of wealth in all its forms, both spiritual and material, may exist under other than democratic political forms, but genuine democratic government cannot exist without producing this economic result. While, therefore, we cannot conclude every time that where such an economic situation obtains, it has democratic government behind it, we can conclude every time that where it does not obtain, there is no genuine democratic government behind it. We can conclude every time that what is behind it, if it claims to be democracy at all, is either a sham, or is incipient and crude and lacks the proper machinery for realization or the necessary consciousness and compelling force of democratic duty. It will be much to be

able to put the finger upon the defective spot and diagnose the disease. It is the necessary preliminary to the application of the correct and effective remedy.

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