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A SOCIOLOGICAL VIEW OF SOVEREIGNTY

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OF
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JOHN R. COMMONS

[1899-1900]

With an Introductory Essay

“JOHN R. COMMONS’
GENERAL THEORY OF INSTITUTIONS”

By JOSEPH DORFMAN

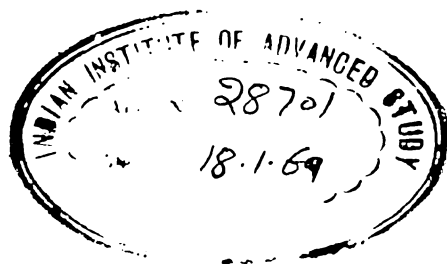


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JOHN R. COMMONS' GENERAL THEORY OF INSTITUTIONS

Buried in the pages of *The American Journal of Sociology* 1899 to 1900, is a series of essays, "A Sociological View of Sovereignty." The author is John R. Commons, who, along with Thorstein Veblen and Wesley C. Mitchell, became the founder of that branch of economic theory in the United States which came to be known as institutional economics. The reprinting of "A Sociological View of Sovereignty" in book form is most welcome not only because it contains Commons' first explicit though tentative approach to institutional theory in economics, but also because the argument is presented as a general theory of institutions applicable to all the social sciences.¹

His first major treatise, *The Distribution of Wealth* (1893) foreshadowed his institutional approach, but it contained such an elaborate marginal utility analysis, including extensive use of diagrammatics, that the role of institutions was obscured.² In "A Sociological View of Sovereignty," he relied more on "historical records as a source of social generalization."³

¹ "A Sociological View of Sovereignty," also contains Commons' first salute to Veblen. See below, p. 13.

² The reviewers considered the treatise not economics but socialism. Typical was the following: "The line he [Commons] has cut is not only not straight, but it carries him aside from economics itself into another field. In fact, it was opened at least two thousand years ago by Plato and has been trodden by a long line of dreamers. . . . They have steadily taught that private property should be abolished, equalized or in some way reconstructed by confiscation." ("The Official Political Economy of Indiana," *Social Economist*, January 1895, p. 23. The magazine was edited by George Gunton.)

³ Mark Perlman, *Labor Union Theories in America* (Evanston, Ill.: Row, Peterson, 1958) p. 174. See also L. G. Harter, Jr., *John R. Commons* (Corvallis, Ore.: Oregon State University Press, 1962) pp. 216-217.

Commons continued to hold to the doctrines of marginalism. Thus in presenting the "objective causes" of poverty and pauperism in *Social Problems. Syllabus* (1898) he listed, "(a) the law of diminishing returns; (b) marginal value, (c) the principle of 'indifference'; (d) the 'natural rates' of wages and interest; (e) the surplus: rent and monopoly profits." See also his use of "the margin of production" in *Races and Immigrants in America* (New York: Macmillan, 1908; 2nd ed., 1920) p. 156.

The essays are concerned with the development and functioning of the dominant institutions of modern society. And these institutions are seen to possess sovereign power. While the state is viewed as only one of the institutions, it is recognized as the ultimate repository of sovereignty, for the state possesses the physical force to guarantee the rights and duties of institutions. As he explained in *Sociology: Syllabus* (1898): "Sovereignty involves three conceptions: coercion, order and right. These together constitute the state. Absolutism, despotism [is] not a true state."

The essays were the initial installment of a treatise in sociology in the comprehensive manner of August Comte, Herbert Spencer, and Lester Frank Ward. Commons had planned this treatise to emphasize two aspects,—law and education—which, he felt, sociology had ignored. "A Sociological View of Sovereignty" deals essentially with the legal aspects which he would later more fully develop in his *Legal Foundations of Capitalism* (1924).

The years 1895-1899, during which Commons taught at Syracuse University, saw the preparation of the essays, and just as an understanding of *The Distribution of Wealth* may be aided by an account of his reformist activities while working on it first at Oberlin, and then at the University of Indiana, so an account of his Syracuse period may be of help in appreciating the essays. He was officially professor of sociology, but his courses covered all of the social sciences, including anthropology, criminology, charity organization, public finance, municipal government, and political economy. During this period, his interest in reform—both in the variety and in the intensity of his activity in them—was at its highest point in his long career as a teacher, investigator, and policy maker. He wrote and lectured in and outside of the university on practically every important controversial policy issue. These reforms included the establishment of the referendum, proportional representation, postal savings banks, and an effective civil service; remedies for juvenile delinquency, poverty, and unemployment; regulation of monopolies, public utilities, railroads, and other corporations; and reforms of taxation and the monetary and banking system. He was actively engaged in promoting

social settlement work. Equally important was his interest in, and his support of trade unionism.

As the latest historian of the university has written this "crusading professor" placed emphasis "upon the practical as well as the theoretical aspects of teaching and study. Determined that his students should acquire their knowledge and understanding first hand, Professor Commons utilized the City of Syracuse as a laboratory. His classes, therefore, visited factories and shops, toured the city and county municipal offices and jails, wandered through distressed areas, analyzed local newspapers, rang door bells and initiated a movement that led to the founding of a University Cooperative store."⁴ He also took his classes on trips to Elmira, Auburn, and Janesville, to examine the conditions and management of the reformatory and prisons of these communities, and to Freeville, to visit the George Junior Republic, an experiment by 200 poor children in charity, penology, and pedagogy, and particularly in self government and self help.⁴

Possessed of the fertile imagination of the social inventor, Commons was always ready with proposals for relieving the social and economic ills of society. Reform with him continued to have a strong religious inspiration. Thus in an article in which he contrasted the cooperative theory with the business theory he declared, "The city is . . . a moral organization. Its life is fundamentally religious. . . . What cities need is a religious revival. If we could only see that cities can be made as powerful instruments of salvation as churches, then their reforms will be imminent. But first the citizen must worship God instead of business."⁵

The law was another powerful instrument for reform. For example, he argued that tenement house congestion was the product first of the laws of property and taxation which favor owners and speculators instead of tenants, and second, of the private ownership of the rapid transit system which puts a tax on exit to the suburbs. The conges-

⁴ W. Freeman Galpin, *Syracuse University*, 2 vols. (Syracuse, New York: Syracuse University Press, 1952-1960) II, p. 24.

⁵ Quoted from *The Syracusean*, January 12, 1898, in Galpin, *Syracuse University*, II, p. 456.

tion could be relieved by a suitable tax on the speculative value of land and by municipal operation of the transportation system.⁶ He believed in the inevitability of monopoly, but this necessitated some check on the capricious use of power by men in charge of monopolies. "Ordinarily, however, . . . the state's control of manufacturing monopolies would extend only to the provisions for partnership rights on behalf of investors, minority stockholders, and employees." He asserted that the "process of socialization of . . . corporations has begun through the legislation . . . creating rights of the minority stockholders . . . in determining the will of the institution."⁷

Commons' treatment of problems in the area of industrial relations was one of the best examples of his particular method of approach to policy. The most perplexing problem in this area he declared in "The Right to Work" in 1899 was uncertain and irregular employment which gives rise to labor's claim to a "right of employment" or "security of employment." The three main sources of lack of employment were "arbitrary discharge . . . loss of employment through improved machinery and trusts . . . or loss of employment through depression of trade."

The remedy for arbitrary discharge was "a legal or so-called compulsory arbitration." As for the problem of unemployment caused by improved machinery and trusts, he agreed that these improvements benefit all laborers in the long run; but "the individual laborer's life . . . is not a long but a short run"; the wage earner, in other words suffers an immediate loss. The displaced laborer has "an ethical claim for compensation like that which the State grants to property owners, when it exercises the power of eminent domain. The laborer has been encouraged by society to fit himself for a particular trade, and when the occupation is abolished in the interest of society, the employer, first, and society, ultimately, should share the loss with him." This came close to the view that the right of

⁶ "Natural Selection, Social Selection, and Heredity," *The Arena*, July 1897, p. 97; *City Government: Syllabus* (Albany, New York: University of the State of New York, Extension Department, 1898) pp. 54, 61.

⁷ See below, pp. 82, 106.

employment is a property right of the worker.⁸ The specific procedures are "matters of social invention and experiment," but a step in the right direction was the German legislation for workingmen's insurance for which employee, employer, and the state contribute to the premiums.

The third source of unemployment—depression unemployment—in the absence of reforms that would stabilize industry, could be alleviated by such devices as employment bureaus, self sustaining labor colonies, and emergency public works.⁹

The appropriate emergency public works Commons insisted should not be confused with the customary work relief method of putting the unemployed on useless and degrading expensive works—such as breaking stones—under the supervision of overseers of the poor. This, he pointed out in the official organ of the American Federation of Labor, was no better than charity, and is inadequate to take care of seasonal, let alone depression, unemployment. Since private enterprise is certainly unable to fill the gap, the city must provide the employment. The answer was for the city to follow European precedents by constructing its ever increasing permanent improvements such as sewers and water mains, as much as possible during periods of seasonal slack and depression. Here he quoted the testimony of the British economist Sidney Webb before a royal commission: "Indeed, in extreme lack of employment, instead of dispensing charity the city ought to anticipate the work which it wants

⁸ Such a view had been expressed by Henry Carter Adams in his presidential address before the American Economic Association in 1896. Curiously, Commons at the time protested to Adams that it was unfortunate that Adams should use "the word 'property' in any but the established and accepted meaning." Adams, "Economics and Jurisprudence—Discussion," 1897; reprinted in *Relation of the State to Industrial Action and Economics and Jurisprudence*, edited by Joseph Dorfman (New York: Columbia University Press, 1954) p. 172.

⁹ "The Right to Work," *The Arena*, February 1899, pp. 139-141.

Commons in *Trade Unionism and Labor Problems* (1905) explicitly recognized that depression unemployment was the most baffling of all labor problems. "The cycles of prosperity and depression affect both capital and labor alike and obstruct the best intentioned efforts of employers, unions and legislatures." For Commons, the basic instrument of stabilizing industry and with it, employment, remained monetary management that would maintain a stable level of prices. See Joseph Dorfman, "The Foundations of Commons' Economics," in reprint of Commons, *The Distribution of Wealth* (1893; New York: Kelley, 1963) pp. ix-x.

done." As Commons put it later, "Such foresighted arrangement of public work . . . may be efficaciously used to counteract cyclical as well as seasonal fluctuations."¹⁰

He was quite advanced in his conception of the appropriate wage policy for emergency public works. Even most advocates of public works in depression argued that a great advantage was the lower labor cost in such a period. Commons on the contrary took the position that the pay for the unskilled should be a "fair American wage," and not the sharply reduced wages resulting from the intense competition for jobs in a severe depression. Cities should, in effect, set a minimum rate of wages for their public works below which they should not fall, and thus benefit all working people by maintaining or raising the level of wages on its projects. A fair American wage must take into consideration a certain standard of living "based upon the needs of a temperate, comfortable, and hopeful family." It must, however, be based not only upon what the employees must have but also upon what employers could pay. "The minimum is the standard of living just described; the maximum is the productivity of the labor." As for skilled labor on public works projects, rates should be the union scale.

The final factor to be considered is the length of the working day. It should be eight hours because this made for the greatest efficiency. "A wide experience seems to show that an eight hour day, coupled with proper rewards for energy, will secure to the laborer that share of leisure which is the first condition of an improved standard of living."¹¹

These policies would apply not only where the city does the work directly but also where the projects are constructed by private contractors. This treatment of industrial relations was for Commons merely one illustration of the doctrine that "the history

¹⁰ "A Comparison of Day Labour and Contract System on Municipal Works," no. 6, *The American Federationist*, June 1897, p. 73; John R. Commons and John B. Andrews, *Principles of Labor Legislation* (New York: Harper, 1916) p. 287. Commons was deeply impressed with Webb's work. See appendix.

¹¹ "A Comparison of Day Labour and Contract System on Municipal Works," no. 7, *The American Federationist*, July 1897, pp. 89-90; no. 8, August 1897, p. 112.

of civilization is the evolution of opportunities for free choice, and therefore of moral right and personal responsibility, through the suppression of necessity."¹² From this standpoint, the development of institutions makes possible the effective freedom of men to choose and act as they wish.

He worked out the full rationale in "A Sociological View of Sovereignty." He had earlier summarized his views in simple language for the layman. In "The Value of the Study of Political Economy to the Christian Minister" he declared that, "Institutions are the modes of association in which men live together in society. The fundamental institutions are the family, where language is first learned, and where the most lasting ideals are impressed at the most plastic period of life. Next are the school, the Church, the factory, the farm, the corporation, private property, government, the city, the State. These institutions are the molders of character. They are not merely physical forces, nor are they abstractions, but they are human beings organized in permanent but slowly evolving relations. They are associations of moral beings acting and reacting one upon another, and out of these relations spring the ruling beliefs of love, justice, charity, devotion, rights, and duties, which are the essential qualities of personality."¹³

. . . "[I]n order that personality may be educated the individual must be raised above the natural struggle for existence in the physical world. Nature's products of food and shelter for the support of life are irregular, inadequate and inferior, while for the finer intellectual and spiritual wants they are wholly lacking . . . But society, through the institution of private property, creates a new physical environment of social products and nature is thereby fitted to man instead of man to nature. It is these products that the economist calls wealth and capital. Social products are the material and forces of nature worked over by human thought and labor to satisfy human desires. They are no longer mere physical objects but they have become spir-

¹² "The Right to Work," *The Arena*, February 1899, p. 135.

¹³ [Compare with his definition of an institution in *Institutional Economics* (1934) as "collective action in control, liberation and expansion of individual action."]

itual and educational instruments whereby personality is unfolded . . . While social products raise man above nature, they subordinate him to society. They are not the products of isolated individuals but of the accumulated and imitated experiments of the race from the dawn of reason. Society in the act of producing them has created institutions of government and property which control their distribution. It therefore through them governs the individual . . . In the shape of food, clothing, shelter, they are essential to his life; and society by giving them to him or withholding them under the varied forms of wages, profits, interest, rents, charity, punishment, forces him or persuades him into harmony with the beliefs and institutions of the day . . .

"[To be sure] the sternest of human facts [is] self interest . . . Self interest has been likened to the steam, institutions to the engine which directs the energy of steam . . . Institutions can be modified. They are the product of human beliefs and wishes. It is here that the ethical forces operate to the greatest advantage—in molding institutions so that, notwithstanding, the constant strength of self-interest, more humane and nobler men may be educated. The factory legislation of England is a familiar illustration of this principle . . . That legislation did not abolish self-interest; it has directed it into humane channels. It has prohibited the work of women and children in factories after night and for long hours, has required sanitary and wholesome surroundings and as a result within two generations has rescued many of the people of England from the unspeakable degradation into which their parents had been crushed . . .

"Social institutions are in a constant change and evolution. Forms of government, of the family, of the Church, of private property are by no means the same as they were a generation ago. All these institutions originated as coercive instruments for controlling the masses and the weaker classes in the interests of the few and the strong . . . The development of institutions from primitive times to the present has consisted, not in abolishing the principle of coercion but in elevating those who were suppressed into partnership with those who owned them. The family has become a cooperative association of

lovers. Government and the control of industry are open to the serf and the slave . . . This movement is still in progress."¹⁴

From this view it followed, as he put it later, that institutional economics is not "contrary to pure economics. It is a continuation of pure economics into a higher degree of complexity, by incorporating reasonable value into the already expanding economics of exchange value. Reasonable value is an upper or lower limit of exchange value placed there by the American judiciary."¹⁵

A final word: in "A Sociological View of Sovereignty" as elsewhere, Commons' formulations are generally awkwardly phrased, but he there displayed the gifts that led John Dewey to write of his later contributions to economic theory that "on the whole he seems to me to have done more direct observing of the economic scene—and also of the history of its theory—than any other economist."¹⁶

¹⁴ "The Value of the Study of Political Economy to the Christian Minister," *The Methodist Review*, September, 1898, pp. 701-706.

¹⁵ Quoted by Theresa S. McMahon from an unpublished ms. of Commons in her review of Commons *Institutional Economics*, in *Weltwirtschaftliches Archiv*, July 1936, p. 58.

¹⁶ Dewey to A. F. Bentley, February 24, 1939, in *John Dewey and Arthur Bentley: A Philosophical Correspondence, 1932-1951*, edited by Sidney Ratner, Jules Altman, and J. E. Wheeler, (New Brunswick, New Jersey: Rutgers University Press, 1964) pp. 67-68. Dewey in his later work in philosophy took over from Commons the concept of the "transaction."

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FEBRUARY 1965

APPENDIX

AN EARLY COMMONS READING LIST ON LABOR

The following list on labor literature was prepared by Commons at the request of the Labor Committee of the National Council of the Congregational Churches of the United States, for the use of all those seeking "theoretic information" on the question. It appeared, along with the lists of nine other specialists on "present day industrialism" in the *Minutes* of the 1904 meeting of the National Council. I have added for each of the titles, the publisher and place and date of publication.

- Helen Marot, *A Handbook of Labor Literature*, Philadelphia: Leach, 1899.
Josiah Strong, ed., *Social Progress, A Year Book and Encyclopedia of Economic, Industrial, Social and Religious Statistics*, New York: Baker and Taylor, 1904.
Sidney and Beatrice Webb, *The History of Trade Unionism*, London: Longmans, Green, 1894.
Sidney and Beatrice Webb, *Industrial Democracy*, London: Longmans, Green, 1897.
George Lewis Bolen, *Getting a Living*, New York: Macmillan, 1903.
R. T. Ely, *The Labour Movement in America*, New York: Crowell, 1886.
R. T. Ely, *Socialism and Social Reform*, New York: Crowell, 1894.
John Graham Brooks, *The Social Unrest*, New York: Macmillan, 1903.
Washington Gladden, *Tools and the Man*, Boston: Houghton Mifflin, 1893.
T. S. Adams [and Helen L. Sumner], *Labor Problems*, New York: Macmillan, 1905.
John A. Hobson, *The Evolution of Modern Capitalism*, London: Scott, 1894.
D. F. Schloss, *Methods of Industrial Remuneration*, London: Williams and Norgate, 1898.
George Gunton, *Wealth and Progress*, New York: Appleton, 1887.
Henry George, *Progress and Poverty*, San Francisco: Hinton, 1879.
John Rae, *Eight Hours for Work*, London: Macmillan, 1894.
Henry D. Lloyd, *Labor Co-Partnership*, New York: Harper, 1898.
Vida D. Scudder, *Social Ideals in English Letters*, Boston: Houghton Mifflin, 1898.

- John Mitchell, *Organized Labor*, Philadelphia: American Book and Bible House, 1903.
- F. J. Stimson, *Handbook to the Labor Law of the United States*, New York: Scribner's, 1896.
- Industrial Conciliation: Report of the Proceedings of the Conference Held under the Auspices of the National Civic Federation*, December 16 and 17, 1901; and Papers Read at the Chicago Conference, December 17 and 18, 1900, New York: Putnam, 1902.
- Industrial Conference Held Under the Auspices of the National Civic Federation*, December 8-10, 1902, New York: Winthrop, 1903.
- John R. Commons, *et al.*, "Report on Regulation and Restriction of Output" *Eleventh Special Report of the Commissioner of Labor*, 58th Cong. 2nd Sess., H. R. Doc. no. 1734, Washington: Government Printing Office, 1904.
- United States Department of Labor, *Bulletin*, 1895—.

A SOCIOLOGICAL VIEW OF SOVEREIGNTY.

CHAPTER I.

INTRODUCTION.

THE standpoint from which sovereignty is examined is usually that of philosophy, law, or political science. The philosopher seeks the fundamental and general principle in the nature of man and the universal on which sovereignty is based. This principle always includes the ultimate purpose, the reason, the logical and rational end, to be met by the state. The view is moral, and may be called the moral-philosophical view of sovereignty. Schopenhauer, for example, defines the state as "the work of reason that mounts from the one-sided and personal to the collective point of view, whence it discerns the fundamental unity of man, and recognizes that in the total of humanity the pleasure of inflicting wrong is always defeated and swallowed up by the suffering which is necessarily correlative thereof. . . . The substitution for individualistic egoism of a collective or corporate egoism of all."

The lawyer, on the other hand, has a practical problem before him, namely, to decide between two claimants for control over a definite thing or person. He looks, therefore, for an ultimate human authority which has final power over both the litigants, and then for any expression of will, opinion, or preference, which has been laid down by this authority, applicable to the

particular case in court. He, therefore, goes no farther than the analysis of Austin,¹ who says :

If a *determinate* human superior, *not* in a habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society. . . . The position of its other members toward that determinate superior is a *state of subjection, or a state of dependence*.

In political science there are three phases of sovereignty usually examined—the nature of sovereignty, its location in the body politic, and the particular action of sovereign authorities. The nature of sovereignty is strictly a problem of philosophy and sociology, and underlies, rather than constitutes, political science. Whether the state be based on contract, on force, or on the general will, these are the philosophical and sociological foundations of political science. The latter is properly limited to the problem of the location of sovereignty and the action of the authorities. The standpoint here is the same as the legal, but the view is widened by a comparative study of constitutions, and of the practical utility or expediency of state interference in particular fields, such as the family, the church, property, and morals.

A sociological view of sovereignty should take the two standpoints, analysis and development. In the analysis of government its true nature is to be determined, the state is to be distinguished from other institutions, and both sovereignty and the state are to be directly established upon the observed nature of man in society. This is something less than philosophical analysis, which includes also the purpose of the state as conceived by the philosopher. The sociologist, as such, is not concerned with the moral end of the state—with the goal to be attained—but with its actual qualities, and its concrete relations to other institutions. He deals, not with the *idea* of sovereignty, but with the *concept*, the idea being, in the words of Coleridge,² “that conception of a thing which is given by a knowledge of

¹ *Lectures on Jurisprudence* (London, 1873), Vol. I, p. 226.

² *Complete Works*, Vol. VI, p. 30. See also article by C. M. PLATT in *Political Science Quarterly*, Vol. X, p. 292.

its ultimate aim." The psychology of the sociologist is historical, rather than moral. Analysis with him, therefore, is necessarily based on evolution, and adheres to the lines of actual development which history shows to have occurred. This is the second standpoint in a sociological view of sovereignty. Development is differentiation. In primitive society, sovereignty and its institution, the state, were blended homogeneously with all the other psychic motives and social institutions. Sociology traces the gradual separation of institutions out from the mass, holding fast, however, to their persistent unity in the one social organism. Thus analysis and development are inseparable. In this way sociology lays foundations for political science based on sovereignty, as well as for other social sciences based each on its peculiar psychic principles. Society precedes the state just as it precedes the family, the church, the corporation, the political party. It also unites all of these as a tree unites its branches. Sociology must discover both the laws of development and the basis of union, as found in the nature of the institutions themselves and in the psychology of the individual, who is, at one and the same time, a member of each. In the following chapters social institutions and their psychic bases are first analyzed, for the sake of definition, and then analysis and development are carried side by side.

CHAPTER II.

INSTITUTIONS.

In all human societies individual caprice is bounded by definite limits. These are the usages and laws which prescribe accepted modes of dealing with one another. In early society customs, usages, conventions, ceremonies, guide each person rigidly in his dealings with others. In advanced societies statutory law lays down certain general rules of conduct within which a large range of personal choices is opened, and reliance is placed on the right character and the personal beliefs and desires of the individual to hold him to tolerant treatment of his fellows. These definite and accepted modes of mutual dealing, handed down from generation to generation, and shaping each individual,

are institutions. The principal institutions with which we are here concerned are the state, the church, industrial property (tools, slaves, lands), business corporations, and political parties.

Institutions are not mechanical organizations imposed from without, but are definite modes according to which persons deal with one another. This will appear when we examine the threefold aspect of each institution corresponding to a threefold relationship of the individual to society. An institution has, first, a body of accepted beliefs, which color and shape the individual's desires from infancy ; second, a group of material products, designed to satisfy these desires ; third, an organization which sets the allignment of individuals toward one another.

The beliefs which hover about an institution are the social atmosphere, the "social mind," related thereto. They are the traditional estimates and valuations, expressed and transmitted in some form of language, which a society or a class ascribes to the institutional relationships involved. The word "belief," the German *Glauben*, is derived from the Gothic *liubs*, *galaubjan*, "to hold dear, or valuable, or satisfactory." Its Anglo-Saxon kin is *leof*, "love." "Belief is the active part of our nature. It is related to will. We believe a thing when we accept it and are willing to act upon it."¹ The child is born and begins to grow as a plastic, homogeneous group of desires and activities urging him in all directions. He comes in contact with parents at home, policemen in the street, teachers in school and church, workers in shop and factory, and his homogeneous desires are drawn out and distinguished from each other by each several group of fellow-men. He learns the language of each institution. His innate but incoherent aptitudes and likings are thus given shape and particular expression. His mind fits into these social beliefs, and he learns to believe and act more or less spontaneously and appropriately in each institution. Social beliefs, giving shape to personal desires, are, therefore, the moving forces from which institutions get their life. In everyday language equivalent but

¹ W. B. PARKER, "The Psychology of Belief," *Popular Science Monthly*, Vol. LI, pp. 747-55.

different terms are employed for the various institutions, referring each to the peculiar activity of each. The family is based on domestic "affection," denoting sexual and parental love. The state and political parties are based on political "principles" or "opinions," denoting the common feeling of class or national aims and hopes. The church is based on religious "beliefs" and ethical opinions, denoting conscience, or the feeling of guilt, and the feeling of dependence upon a mysterious but perfect power governing nature and society. Industrial property and corporations are based on "self-interest," the sense of coming wants, the "effective desire of accumulation," the love of work. There are other minor institutions, such as schools, "sociables," charitable associations, etc., which are further differentiations, or crossings, of the major ones, and do not have a sufficiently distinct psychic basis to warrant attention in this brief discussion.

It is not difficult in advanced societies to mark off the several mental qualities of the individual, as above, seeing that each has expressed itself in a clean-cut institution. Indeed, to several of these institutions special social sciences have been erected. But in primitive society these mental qualities were blended and fused. Single passions and desires did not stand out alone in the mind of the hordes-man, because he had no institutions to develop them separately. His mind was homogeneous like his society. Religious, political, sexual, industrial activities were all concerned with the same small number of fellow-men; no definite times in the day or year were set apart for each; the same tools and weapons were used in each; there was the same headship and subordination. The homogeneous blending of institutions was reflected in the homogeneous blank of his mind. But with the civilized man social institutions are both the condition and expression of self-consciousness. The large field of distinct personal choices which they open up deepens the sense of responsibility and personality. This it is that distinguishes belief from desire. Belief is more than desire, yet it is based on desire. Belief is the form, desire the substance, of the psychic life. The pressure of the social group is the education which gives shape to the innate desires and capacities of each individual, bringing

them out into definiteness, making them susceptible to the suggestions of public opinion, and thus fitting each person for membership in each institution to the extent of which he is capable. These become his beliefs. Desire is common to men and animals. Belief is only for self-conscious beings. The sexual passion, without social education, ends only in animal-like pairing; but with the social beliefs of right and wrong, love of home, respect for women, hope for children, it forms the psychic basis of the social institution, the family. Hunger leads animals to seize and destroy their prey; but with the social beliefs of right and wrong, regard for others, love of work, provision for the future, it becomes the basis of the institution of property in material things. Religious and political beliefs have but the weakest germ of desire in animals, but in man they form his most powerful motives. Social beliefs, therefore, are the psychic foundation of each institution. They furnish the basis in the affections of each person which alone makes possible his responsiveness to the appeals of those with whom he must coöperate. The institution in which he finds himself is both the cause and effect of his beliefs. Every enduring socio-psychic motive or belief builds about itself a form of social organization. Sexual and parental love envelops itself with the institution of the family; conscience and belief in moral perfection, with the church; class interest, with political parties; the love of work, with industrial property and business corporations; and so on. It might be thought that the ethical motive—which may be defined as the longing for a more perfect relationship with others—demands an exception to this statement. There is, indeed, no *ethical* institution separate from other institutions, because the ethical motive tends in time to diffuse itself through all institutions and to modify their structure. The exception is only apparent. The ethical motive, in so far as it really leads to action, is identical with a religious belief in a perfect unseen ruler and a perfect society, and with the consciousness of guilt which a violation of that belief provokes.¹ The fact that it tends to modify other institutions is not peculiar to the religious belief. The psychic principles which

¹ See below, chap. ix. Right.

constitute the bases of the state, the family, political parties, do the same. The differentiation of institutions is not their isolation. They all continue to act organically, each upon the other, through the interaction of the beliefs and desires peculiar to each.

While the beliefs of each person are the product of his desires and his social education, and, consequently, are the mark which self-consciousness adds to desire, they are, at the same time, like desires, satisfied only through some form of the material of nature. No matter how ethereal and elevated the belief, it, like all things human, is a part of nature. "Life, in all its manifestations," says Spencer, "inclusive of intelligence in its highest form, consists in the continuous adjustment of internal relations to external relations."¹ But this adjustment is different for beliefs from that for desires. Desires are satisfied by the raw material of nature. But nature's products are irregular, inadequate, and, for the higher wants, wholly lacking. Nature's material must be worked over by human thought and labor for the purpose both of creating and of satisfying human desires and beliefs. This the economists call the production of wealth. It is an essential part of that social education, above described, whereby the individual's self-consciousness is evoked and his beliefs are given form. It is also the means for satisfying these desires and beliefs when once evoked. "In consumption," says Hegel, "it is chiefly human products and human efforts that are used up." Now, each social institution has its own peculiar social product which forms its material basis. The activity of individuals associated in each institution is concerned with the production and consumption of this physical material. The industrial and business institutions are preëminently devoted to the production of material things to be consumed in the other institutions. But the others also first add their own peculiar increment of usefulness and value before consumption takes place. Religion has its fetiches, idols, temples, its host and relics, whose worth proceeds from the touch and word of the holy priest, answering to the faith of the believers. The family has its keepsakes and heirlooms, but especially its food, clothing,

¹ *First Principles*, p. 25.

shelter, which bind wife and children to the fate and service of the bread-winner. The state has its naval and military equipment, its prisons and gallows, its tax proceeds, which compel obedience. Political parties depend for their control on a piece of ballot-paper, which in the hands of the managers carries the fate of candidates, of large business interests, of masses of the people. In each of these institutions this material basis is partly the object for the production of which the institution exists and partly the tie that holds its members together. Common to them all is the vital fact that each institution controls and dispenses, in the form of wages, salaries, interest, profits, charity, friendship, love, punishment, or reward, the food and subsistence of those whose work is specialized in each. This is in part the basis of the third aspect of institutions, their organization.

Theories of the organization of society and institutions have been largely shaped by the biological analogy. Leaving this aside, if possible, and looking directly at the facts, we see that the so-called division of labor in society consists in a specialization of individuals for the purposes of each institution. Those whose interests are merged in one institution draw their subsistence and support from individuals who are specialized in the other institutions. Consequently a twofold relationship of its members arises, first as a unity, with reference to other institutions, and, second, as individuals, with reference one to another. The unity of an institution is its capacity for joint action in dealing with other individuals and institutions. It acts as one; its members settle their differences; it has a single will. This gives energy and power. Common beliefs and desires are the vitalizing, active force within the institution. Material products represent its command over nature. Organization gives it unity and command over society.

Within the institution this unity is maintained in one of two ways, by mastery or by partnership. If the will of one man is the absolute will of the institution, the relationship is mastery. The will of others is not consulted. This is, however, seldom the case, and, to the extent that concessions are made to the likes and dislikes of subordinate members, partnership ensues.

Perfect partnership would be that relationship wherein the wishes of each and every member agree in every respect with the executed will of the whole. This also seldom, if ever, occurs. Majority rule is usually the nearest approach. In perfect partnership each individual would have a veto on all the others, and consequently there could be no unity of the institution except with such mutual concessions as would unite them all on a single course of action.¹ In so far as this ideal of perfect partnership is approached, it follows that mutual concessions must be brought about by mutual persuasion. Motives of all kinds are appealed to, and especially the motives dependent upon the common beliefs and desires peculiar to the institution. In the church it is the common faith to which appeal is made; in the family it is parental and sexual love; in industry it is self-interest and love of work; in the state it is patriotism; in the political party it is class-interest. To the extent that mastery supersedes partnership, coercion takes the place of persuasion. The veto is taken away from certain members, who thereby become subordinate, and united action is brought about, not solely through appeals to their beliefs and desires, but also through suppression of the same.

The foregoing shows briefly the threefold relation of the institution to the individual; first, as his teacher, shaping his character through education and persuasion in the form of beliefs; second, as his fellow-worker, fashioning nature into material products to satisfy these beliefs; third, as his arbiter, assigning his place in the social organization. Each institution is thus an organic union of beliefs, material products, and organization. This analysis will reappear in the following chapters, and will be amplified and illustrated.

CHAPTER III.

PRIVATE PROPERTY.

Comparing the use of force by human beings with that by animals, there are the following points of difference: The

¹ This was the arrangement in the Iroquois Confederacy and among American Indians generally; consequently military enterprises had to be undertaken usually under private initiative.

animal either drives others away, or seizes directly upon its prey by its own physical equipment and devours it at once for immediate gratification or self-preservation. Man, on the contrary, besides this animal exercise of force, also preserves, and even multiplies, the objects of his coercion for future gratification or service, and holds physical force in reserve as a means of compelling obedience to his commands. In the one case force is temporary, repellent, or destructive for present appetite, and essentially physical. In the other case force is enduring, appropriative, preservative, providing for future wants, and only conditionally physical. In the animal we have force *per se*, generic force, the competitive struggle for life by beings pressed on by desire. In man we have the same kind of force with the same motives, but it is postponed, reserved, economized, and made a means to lasting advantage. The difference suggests a psychic difference.

Those sociologists who have made distinct quest for the psychic basis of society have either contented themselves with an empiric classification of motives and desires, each of which is asserted to underlie some particular social phenomenon or institution, or they have attempted to designate that peculiar psychic bond which underlies the single fact of association. The former group would seem to lack the true scientific sense, which always seeks unity in a single underlying principle, and the latter group have falsely narrowed the field of their science. If sociology is a science underlying and unifying all the social sciences, then it must furnish the psychic as well as biologic basis for all the social sciences. Political science, jurisprudence, and religion must have a psychic basis as well as economics and the science of the family. Spencer, in so far as he touches the problem, finds the enduring psychic basis in altruism; "Christian" sociologists find it in love; Giddings practically agrees with them when he finds it in consciousness of kind; Ward finds a double basis, desire and intellect; Tarde, desire and belief. Other writers, like Durkheim, Novicow, De Greef, do not seek the psychic basis proper, but the social modes of its operation (imitation, social pressure, conflict, force yielding to contract).

In none of these efforts do we find the psychic basis of coercion; or, rather, in none of them do we find that unifying psychic principle which includes alike love, belief, desire, and coercion. Without entering here into the province of the psychologist, we may simply assert that the distinctive characteristic of man is self-consciousness, and that this includes, in an organic whole, all the contributing psychic facts above mentioned. Man is pre-eminently self-conscious, and since he finds in society both the external factor for developing self-consciousness and the field for its manifold exercise when developed, we can assert that the psychic basis of society is nothing less than the entire psychic unity of man, self-consciousness. While psychologists demonstrate in detail this conclusion, we are to trace its social workings, here particularly in the single aspect of coercion.

Self-consciousness implies not merely feeling, but, especially, knowledge of self. Such knowledge is, however, at the same time knowledge of others and of the world about. It is the knowledge and conviction of an enduring *ego*, having a past, a present, and a future, in the midst of a changing and passing environment. But this environment contains the essential means of the *ego's* life and happiness. Wherever there is a permanent scarcity of particular objects which constitute these means, the self-conscious person recognizes his dependence upon them, and these objects then come to have a conscious value to him. In other words, he believes, on account of their scarcity, that they are worthy of acquisition and retention for the sake of the present and future services they afford him. When man, in his evolution from the animal, reaches this stage, he begins to appropriate and save certain things which he formerly neglected or destroyed. First are probably fetiches; then rude tools, mere sticks; then wild animals, like the dog, which he takes young and domesticates. Here is the first bud of self-consciousness. For centuries he gets no farther than this. But with slow improvement in weapons and tools, and with the resulting increase of population, a new object of appropriation is forced upon him.

There is disagreement among sociologists as to the exact

nature of the primitive human family and the order of its evolution. It seems, however, that with the lowest races monogamy is the rule. But this is the rule with the highest apes,¹ and it cannot, therefore, be based on a strictly human element. Such monogamy is the outcome of mere instinctive natural selection. It is not a permanent union, but a temporary alliance holding through the infancy of the offspring. The monogamic pair lives an isolated life. With the increase of population and the increasing struggle for existence, larger groups are formed, and natural selection preserves the endogamous clan or tribe with its rigid rules of marriage. In such a state the women and children belong to no particular man. The principle of self-consciousness had not yet entered the institution of the family. But when we come to wife-capture, wife-purchase, and polygamy, we have individual appropriation of women. This is the true beginning of the human family as distinguished from the animal pairing or the endogamous hordes, for it is based on self-consciousness. Westermarck mentions several reasons why a man may desire to possess more than one wife, such as freedom from periodical continence, attraction for female youth and beauty, taste for variety, desire for offspring, wealth, and authority. The wife whom he has captured is his own, her children are his, and with them he is freed from the kinship bond of the clan, and stands out in his own right as an individual.

McLennan's theory of the rise of exogamy² brings out more clearly the economic basis of the self-conscious family. He finds the introduction of exogamy to coincide with the increasing practice of female infanticide, resulting, as it does, in a scarcity of women. The term "exogamy" with him is apparently equivalent to wife-capture, and this should be borne in mind by his critics, who find exogamy along with the matriarchate. Wife-capture and wife-purchase doubtless crept in gradually, like the private appropriation of weapons and animals, unnoticed by the clan; but because it increased the power of the stronger and led to slavery and chieftainship, it forced recognition and supplanted

¹ WESTERMARK, *The History of Human Marriage*, pp. 12-17.

² *Studies in Ancient History*, pp. 74 f.

the pre-human instinctive pairing. Slavery followed as the capture and appropriation of men; thus constituting, with polygamy, the patriarchate; and, finally, with increased population and agriculture, the conquest of territory and the establishment of feudalism completed the extension of self-consciousness through all the institutions of society.

It may be objected that man had become fully self-conscious long before the appearance of feudalism, and even before slavery or polygamy, and that, therefore, we should not look to social institutions as the peculiar expression of that capacity. The objection is not sound, for self-consciousness ranges from the child to the adult, from the idiot to the genius, and it reaches its highest development only with the appearance of a social environment fitted to give it expression. In fact, it is not until long after the establishment of feudalism, and when the bonds of custom are broken, that we find the generally accepted type of self-consciousness, the reflective, introspective philosopher. The earlier self-consciousness which originated social institutions was merely empiric, imitative, habitual, phenomenal, taking itself as a matter of course, and not inquiring into its own essence. It could, therefore, expand and deepen only as it found the social occasion, and this occasion was that gradual increase of population and improvement in the production of wealth which forced upon individuals the recognition of scarcity in successive fields of life as a determining factor in the struggle for existence. Scarcity is a relative situation. Private property in land could not be thought of until land came to be scarce and its possession a condition of survival. So with private property in men, women, children, and tools. It is increased density of population that brings into consciousness the element of scarcity in the several fields of human activity one after the other, and upon this consciousness private appropriation is built at once, thus setting the foundation for social institutions.¹ All social

¹ In an original and discerning discussion on "The Beginnings of Ownership," in the *AMERICAN JOURNAL OF SOCIOLOGY*, 1898, Dr. Veblen makes the distinction between "economic" property and that "quasi-personal" fringe of material things which the primitive man conceived as accompanying his own personality, and which had not yet come to have economic value to him.

institutions originated as private property; this differentiates human from animal society; private property is the social expression of the highest unity of man, self-consciousness.

Contrary to this view is the opinion of Professor Giddings, who, in noticing that McLennan affirms polyandry to have been the first marriage sanctioned by group opinion, sets up the criterion that human, as distinguished from animal, marriage is that form of marriage which first receives social acquiescence. "Marriage," he says, "is more than a fact of physiology and more than a relatively enduring cohabitation. Every possible group was tried—which one was first socially sanctioned?"¹

Doubtless, social acquiescence is needed to confirm the particular organization of the family which survives. But is this not true of the animal as well as of the human family? If our psychic distinction between man and animal is correct, then the human family needs not mere acquiescence, but acquiescence *in private ownership*. When this is vouchsafed, then that which was based only on might becomes also a right. Giddings' position respecting the family is maintained by T. H. Green respecting property in general. He holds that a necessary condition which "must be fulfilled in order to constitute property," even of the most simple and primitive sort, is "the recognition by others of a man's appropriations as something which they will treat as his, not theirs, and the guarantee to him of his appropriations by means of that recognition." The basis of this recognition he finds in the "general will"—*i. e.*, "not the momentary spring of any and every spontaneous action, but a constant principle, operative in all men qualified for any form of society, however frequently overborne by passing influences, in virtue of which each seeks to give reality to the conception of a well-being which he necessarily regards as common to himself with all others."²

Here is described, not *private property*, but the *social or moral right* of private property. Holland, looking at it from the lawyer's standpoint, defines such a right as "one man's capacity for

¹ *Annals of American Academy of Political and Social Science*, March, 1897.

Lectures on the Principles of Political Obligation, London, 1895, p. 217.

influencing the acts of another by means, not of his own strength, but of the opinion or the force of society." And a *legal* right, after the same manner, is defined as "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others." ¹

It will, no doubt, be agreed that private appropriation preceded the *right* of appropriation, and this is all that is here claimed. It came as an innovation, resisted by the existing organization of society, and only later, when it had shown its capacity for survival, did it acquire social sanction. In holding, therefore, that social institutions originated as private property, this origin is necessarily placed in advance of the origin of that social consciousness or general will which, through social acquiescence, creates a social or moral right, and still further in advance of the state which creates a legal right ; but it is placed after those instinctive and imitative modes of association and appropriation into which the factor of self-consciousness does not enter.

¹ HOLLAND, *Jurisprudence*, pp. 70, 71.

CHAPTER IV.

COERCION AND PERSUASION.

WE have seen that private property originates with the emergence of self-consciousness and scarcity. We are now to see that this is a social relation based on coercion. In distinguishing coercion from persuasion we enter a field of subtle and elusive errors and frauds. Coercion operates through motives—so does persuasion. But where shall we draw the line between the two kinds of motives? They are, indeed, everywhere blended and overlapped. Society and the social sciences have depended upon instinct and intuition to separate them in thought, and as a result they have been separated only as dictated by prejudice, class-feeling, sentiment, and self-interest. There is need of scientific distinction based on psychology and sociology.

Coercion, as has already been said, is not force. It holds force in reserve, and, in so far as actual force is necessary, the aim of coercion (*i. e.*, the services of the coerced) is defeated. Neither is it conquest. Conquest is only the physical exercise of force which precedes coercion.

Coercion, again, is not knowledge nor skill. Man overcomes nature, not by coercing her, but by "obeying her." That is to say, he understands her ways of working and then moves her different materials in such juxtaposition that their own inner forces of attraction, cohesion, gravitation, heat, etc., will work out the result he has in mind. This the economists call "the production of wealth," but it is properly only a limited section of production, that of the purely technical processes. It is an expression of man's knowledge and skill, constituent parts of self-consciousness, indeed, but different from coercion. In a related class is man's control over wild animals. He controls them by knowledge of their ways, by skill in daily dealing with them, and also by force; but he does not command them and

exact obedience. Domesticated animals he truly controls by coercion. His own children show the transition from control by knowledge and skill while they are babes, to control by force at times, then to coercion, and lastly to the highest form of control, that by persuasion and education.

If we examine the most elementary form of coercion as found in the earliest wife-capture, or slavery, we find it to consist of a command, express or tacit (in the language of Austin), accompanied by a power and a determination, recognized by the subject person, to inflict evil in case of disobedience or to award good in case of obedience. This command is definitely limited. It is not a command to know or to know how. It is not a command to believe, or think, or imagine, or invent, or feel, or will; nor to be well or sick, strong or weak, big or little. It may be such in form, if issued by a fool or a bigot, but in the nature of the case it cannot reach directly the psychic or physical constitution and functions of the subject. It is only a command to act or to forbear certain acts. The proprietor who gives the command has in the first place appropriated the slave as the readiest means of promoting his own interests. What these interests are is with him a matter of opinion, of desire, even of erratic and useless desire. His commands, whether they inure to his own benefit or not, are the expression of his wishes. In other words, what he commands is simply services. He may conceivably give orders merely to show his power, or he may give orders in drunkenness, hallucination, or eccentricity; but the predominant quality of all commands, taken in the large, is the desire for the services of those under control in promoting the wishes and opinions of the proprietor. This is the grand aim of private appropriation, and it may, indeed, seem at first a truism to assert it in this way, but its significance lies in the fact that the only external field where mere opinion or wish can get itself incorporated in tangible results is that of controlling the services of others. In consumption it is human products and human efforts that are used up. The individual finds free expression for his own character only as he consumes the services of others. Nature's products are irregular, inadequate, and, for both the

higher spiritual and the baser immoral wants, wholly lacking. Food, clothing, shelter, literature, art, religious beliefs, luxuries, intoxicants, poisons, are all simply the services which other people are continually offering to the individual. In consuming them he controls their services. And in doing so he is simply expressing his choices. But choice is the very core of self-consciousness. Here is the close relation between property and self-consciousness, each of which is the cause of the other. The progress of society and of the person may, with truth, be said to be the increasing range and variety of choices open to self-consciousness. The modern man who can choose all the way from food and clothing to pianos, paintings, and books, is far more deeply conscious of his own inner nature than the savage whose only choice is between food and hunger. It may be objected that the criterion of self-consciousness is the personal character of the one who chooses, rather than the range of choices. But both go together. One's capacity to choose (the biological brain capacity having been developed) is the outcome of an education which from childhood to manhood has consisted simply in opening up to him step by step the wider and wider ranges of choices which the services of his fellow-men afford. These services in civilized society are embodied mainly in material products—food, books, buildings, etc.—these are vehicles of personality, the tangible commodities in which human services are preserved for consumption. But the primitive man, devoid of commodities, begins to have a wide range of choice only when he has someone to serve him directly. T. H. Green says¹ that appropriation, being one condition of the existence of property, "implies the conception of himself on the part of the appropriator as a permanent subject for whose use, as instruments of satisfaction and expression, he takes and fashions certain external things, certain things external to his bodily members. These things, so taken and fashioned, cease to be external as they were before. They become a sort of extension of the man's organs, the constant apparatus through which he gives reality to his ideas and wishes." Green here has in mind the modern man

¹ *Principles of Political Obligation*, p. 214.

with his wealth of material products made by society for his use and enjoyment. The statement is highly ideal and elliptical, and represents the *aim* of private property, but omits its concrete basis. The latter is simply some sort of control over the services of one's fellows by which they are moved to furnish him with the material means for his "satisfaction and expression." This basic fact of private property is veiled by the wage system and the practice of purchasing commodities on a world market. But when we come back to its origin in wife-capture and slavery, we see it plainly as coercive control over others for one's personal satisfaction. In that primitive stage of appropriation it is plainly his servants who are the "extension of his own organs," "the constant apparatus through which he gives reality to his ideas and wishes." And, whereas, without these services, his only range of choice is that which is open to his own bodily and psychic powers, his new range includes the bodily and psychic powers of those who obey him.

But this is not all. Seeing that neither can he make a choice nor can his servant execute the same except as they both have knowledge and skill in the control of nature's forces and materials, and seeing that this knowledge and this skill are mainly copied from others, it follows that choices and services are dependent upon the social progress up to this time in the technical processes. The master in commanding and the slave in serving simply use the tools or imitate the processes which they find already adopted around them. The slave is, therefore, the means of appropriating to his master the social products of his time. And this, indeed, is all the master wants. He does not care for the unwilling act of service in itself (except as it may increase his show of power), and would, perhaps, do away with it if these social privileges and products which he craves could come to him through another route when he merely wishes them.

We have, then, the following chain of facts and events: (1) the personal character of the master as the outcome of his heredity, education, habits, beliefs, prejudices, and so on; (2) a wish, as the particular concrete component of his character; (3)

a choice, as the outgoing reference of his wish toward the variety of objects and activities which his social environment affords him; (4) a command, as an expression of his wish to, or its tacit recognition by, a person competent in bodily and psychic powers and social equipment to obey; (5) a service, as the appropriation to the master through the slave of the social objects of his wish; (6) coercion, as the guarantee that his mere wish will be thus satisfied.

Coercion, therefore, is simply a means of commanding and securing for consumption the services of others. The same is also the aim of persuasion. We must now seek a criterion which will clearly distinguish the one from the other.

The word "sanction," originally applied to the binding religious quality of an oath, has been extended by the jurists to mean obedience enforced by law through rewards and penalties; then by the utilitarian moralists to mean the sources of pleasure and pain which, in turn, are the motives to conduct; and finally by the psychologists, like Baldwin, to mean "all the reasons which are really operative on the individual, in keeping him at work and at play in the varied drama of life."¹ With so broad a definition, it is necessary to divide and subdivide the many sanctions of life according to some basis of classification. Baldwin marks off the "biological" sanction as the unconscious ground for action found in the functions of the physical organism. With these we have nothing to do. But the conscious sanctions are either "personal," "the reasons which a man sets before himself for the activities in which he engages," or "social," "the reasons for action which bear in upon the individual from the social environment." It is Baldwin's purpose to show that there is no antithesis between these two classes of sanctions, for both of them, including the sanctions of sovereignty, are really the personal sanctions of the "average man." Now, it is questionable whether much is gained by so broad a definition of sanctions. It is preferable to limit the word to the social sources of motives originating in the environment,

¹"Mental Development," *Social and Ethical Interpretations*, p. 359.

and to choose another word for the personal response. The word "motive" has also this double meaning, referring either to the external object or occasion for action, or to the internal susceptibilities. In the present discussion its meaning will be restricted to the latter. Seeing now that both society and self-consciousness are founded on mutual services, we may define a sanction as any expectation suggested by one person (the agent) adequate to arouse in another person (the subject) motives leading to acts of service. On the side of the agent we have sanctions, on the side of the subject motives and susceptibilities. These are now to be examined in turn, with reference to the two grand divisions of each, coercion and persuasion.

The usual classification of legal and penal sanctions describes them as punitive and remuneratory—the former the attachment of a penalty to a command, the latter the offer of a reward. From the sociological standpoint the classification is inadequate. The remuneratory sanction may be either coercive or persuasive, and punitive sanctions may be further divided. The following analysis of social sanctions is proposed as applicable to both public and private coercion and persuasion, remembering that in all social and psychic phenomena the motives are blended and overlapped, and can be separated out, not in actual examples, but by predominant characters.

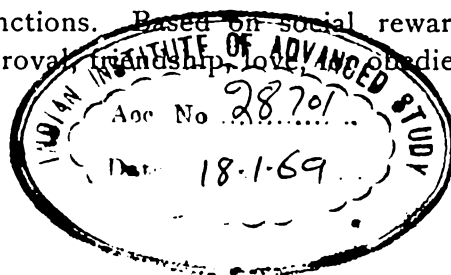
1. Corporal sanctions. Based on expectation of physical penalties: the infliction of death or bodily pain and detention in case of disobedience.

2. Privative sanctions. Based on expectation of material penalties: the dispossession of property, fines, the reduction or discharge from position in case of disobedience.

3. Remuneratory sanctions. Based on expectation of material rewards: the bestowal of property, revenues, appointments, promotions, for obedience.

4. Reprobatory sanctions. Based on the expectation of social penalties: the bestowal of blame, hatred, social ostracism, for disobedience.

5. Approbatory sanctions. Based on social rewards: the bestowal of praise, approval, friendship, love, for obedience.



The foregoing grouping of sanctions is in the order of coerciveness. The corporal sanctions depend on *direct* bodily control over the subject, as in slavery and punishment. The privative sanctions are *indirect* coercion through control over the external necessities, comforts, or luxuries of life, or over the opportunities for procuring these. The remuneratory sanction may be either coercive or persuasive, depending on its relation to the privative sanction. Generally, he who has power to grant rewards has also power to take them away. Here the two sanctions are not differentiated. The predominant quality is, therefore, that of coercion, since the sanction which bears upon necessities overshadows that which appeals to ambition, and where the two are tied inextricably together the former gives character to the whole. The remuneratory sanction in such case is coercive by virtue of the lack of a third choice. The subject person is shut up to the two alternatives of accepting reward for service or going without altogether. But when for any reason the agent is prevented from falling back on the privative sanction, his appeal must take on the character of persuasion, whether it be of the material or social kind. This is one of the parts played by the state, as will appear later, in differentiating the privative from the remuneratory sanctions, as in guaranteeing minimum conditions, such as minimum wages and security of employment. In this way the coercive element of the remuneratory sanction is taken away, and it becomes more distinctly persuasive.

The reprobatory and approbatory sanctions are wholly psychic in character. They offer nothing to the subject except the regard or disregard of the agent. The power to arouse motives depends on no external means of enforcing obedience, either by bodily pressure or by deprivation of material necessities. For this reason they are distinctly persuasive in character. The agent, in relying upon them, can appeal only to the active beliefs and desires of the subject. This compels him to cultivate in himself such qualities as entreaty, eloquence, and reasoning. Coercion, on the other hand, is the power to drive to an act of service by arousing through tacit or avowed threats the fear of bodily pains or material privations. The agent with such power

is, therefore, not careful of the qualities in himself which he exercises in order to secure the services of others.

From the standpoint of the subject it is the part of sanctions to arouse motives leading to acts of service. Here the question concerns, not the nature of the sanction, but the susceptibility to suggestion. Individuals differ widely in personal character, disposition, bias, responsiveness. For our present purpose the different kinds of susceptibility may be grouped upon two different principles of classification: first, with reference to institutions; second, with reference to coercion and persuasion. Upon the first principle of classification, susceptibilities are primary or institutional, and secondary or supplementary. The institutional susceptibilities are those primary beliefs and desires, already mentioned in chap. 2, which form the psychic basis on which the several institutions are successively built up. The religious susceptibilities are the belief in moral perfection and the consciousness of guilt; the domestic susceptibilities are sexual and parental love; the political are common national or class consciousness; the industrial are consciousness of future wants and love of work. These susceptibilities, blended and homogeneous in primitive man, are separated out by the division of labor, and they become each the motive which holds its peculiar institution together.

Secondary susceptibilities are those which modify the responsiveness of the primary, and give that tone or bias to personal character which fits or unfits individuals for social life in general or for specialization in a particular institution. They are such qualities as cheerfulness, appetite, sensuality, thrift, avarice, curiosity, intelligence, pride, ambition, indolence, self-interest, love of life, antipathy, devotion, and hundreds of other finer and rougher shades of character which an exhaustive analysis would reveal. The above institutional susceptibilities, together with the secondary ones, are the motives which are appealed to by persuasion. Here, however, the second principle of classification is called for.

Individuals differ in wide degree with regard to the amount of coercion or persuasion needed to move them to action. There

are qualities which render their subjects peculiarly susceptible to coercion, such as servility, fawning, venality, covetousness, timidity, deceptiveness; others, to which persuasion more effectively appeals, as devotion, magnanimity, heroism; others, not easily influenced by either coercion or persuasion, as stoicism and stubbornness. Besides these there are external circumstances influencing susceptibility, such as climate, rank, wealth, or penury, friends and relatives, education and forms of government.* Now, it is to be noticed that this grouping of susceptibilities does not affect the nature of the coercive and persuasive sanctions. The question with which we are now concerned is not one of casuistry, to discover in any given individual whether he is moved by coercion or not, but it is a question of the *relative* coerciveness of the different sanctions. This is the same for all individuals, no matter what the absolute amount of coerciveness exercised in any particular case. We are not inquiring whether Miss A is compelled to marry Mr. B, but whether women in general under similar circumstances are more subject to coercion than to persuasion. The latter is the social significance of coercion, the former is a certain individual grouping of sanctions and susceptibilities. Our grading of susceptibilities, therefore, does not affect the preceding analysis of sanctions.

There is, however, an intimate connection between the two. Coercion is not a single act, but a social system—as such it is educational. It produces in master and subject the very qualities which render the one able to exercise it and the other susceptible to it. The one becomes haughty, intolerant, commanding; the other servile, obsequious, deceptive. The evil of coercion does not consist in *unwilling* service, but in the low personal character which it cultivates. The slave, born and reared as such, and with no idea of freedom, obeys his master with willingness. It is not that he is consciously coerced in any particular act, but that the system has kept him so low in manly qualities that he

* Were there space and occasion, we might draw up a table of beliefs, desires, and susceptibilities, like BENTHAM'S "Table of the Springs of Action," but with reference to the above classification. Bentham uses the terms "exciting causes," "bias," "circumstances influencing sensibilities," but I have attempted to avoid his hedonism. See *Works*, Vol. I, pp. 21, 22, 197 (Edinburgh, 1843).

knows not that he is being coerced. On the other hand, the persuasive system educates the qualities of persuasiveness—eloquence, reasoning, politeness—and the qualities of responsiveness—devotion, love, heroism, ambition.

Returning now to the question of sanctions, it is to be noticed again that in primitive slavery or polygamy all the sanctions are blended, undifferentiated, centered in one man and annexed to commands in varying proportions. The coercive, although the most patent, is not therefore the most powerful. Wife and children prefer slavery to freedom, for freedom means death, but slavery means protection. Persuasive sanctions depend not only on the susceptibilities, but also on the circumstances of the one who responds. The fact that coercion is inadequate to sustain private property is also vividly shown in the appeal of the proprietors to religious sanctions. Fetiches, taboos, ancestors, penates, hearth fires, were all summoned as persuasive means of protecting owners against the owned and unpossessed. And with the growth of conquest and empire the religious sanctions became more and more pervasive, organized, and awe-inspiring. But the coercive sanctions, when thus blended, tend, as already intimated, to overshadow the others and to give character to the relationship, both from the side of the proprietor, as the means of expressing his personal character, and from the side of the servant, as suppressing his personal character. It also furnishes the basis for a new organization of society which shall take the place of kinship. Before developing this phase of the subject we may sum up our conclusions on the nature of coercion and persuasion as follows :

Coercion is a command, express or tacit, issued by a determinate person with power to enforce obedience on others by means of external material or bodily suffering. It differs from persuasion in that the latter does not depend primarily on material means for inducing compliance, but mainly on direct psychic influence. It differs from the commands of public opinion, or general will, in that these are issued by indeterminate persons, and their enforcement is problematical. It differs from the so-called commands of God, or conscience, in that these are not

true commands, but are personal susceptibilities which must be appealed to through persuasion, public opinion, or coercion.

CHAPTER V.

ORGANIZATION.

We are now to inquire how it is that coercion, originating in the homogeneous blending of all the sanctions and all the social institutions at the time of the earliest emergence of self-consciousness, contributes to the succeeding evolution of society. The problem is to follow out in the growth of chieftaincy and monarchy the accompanying differentiation and organization of the sanctions.

The institution of private property enormously increased the food supply and population. Hostile tribes were thrown into contact. The thirst for conquest seized upon the more daring spirits who yearned to free themselves from the kin-communism of the tribe, and to appropriate for themselves more peaceful tribes and nations as their personal property. Or, religious fanaticism, suddenly marshaling together disjointed tribes and peoples, inflamed them with the common desire to conquer obedience to their faith. Whatever the motive, the central fact to be observed is that the motive is common to those who join together. Otherwise there could be no joint action. It is common beliefs or desires that bring men together and move them to those large constructive acts which reveal force and power.

But this is not enough. A mob may have common desires. But, as long as its individuals are acting each for himself at cross purposes, their individual forces, no matter how powerful, will end only in equilibrium. To accomplish results they must be organized, that is, guided by one man. Further, if the mob is to become a conquering army, the leader must have, not only persuasive, but also coercive power over individuals. He must be clothed with sanctions which he can promptly enforce. His resources in enforcing them are the common desire of his followers who obey his commands. These he does not coerce, but persuades to do his bidding, by playing upon the personal

sanctions that spring from the common desires of each. By persuading the mass of his army they clothe him with coercive sanctions over individuals. He orders traitors to be killed. He appoints, promotes, and reduces his lieutenants. He distributes material rewards, and determines the pay of all beneath him. When finally his conquest is successful, and the army has settled upon conquered peoples, we find the following organization and differentiation of sanctions radiating out from the will of the monarch: corporal sanctions, applicable to the conquered peoples and the intractable elements of the conqueror; privative and remuneratory sanctions, including appointments, promotions, reductions, and removals, and control over the material sources of livelihood, applicable to the warriors and their chiefs; persuasive sanctions, applicable to the courtiers, favorites, and chief holders of fiefs, and also supplementary to the sanctions controlling all the other subordinate classes.

The organization of society is yet very loose. The thirst for private appropriation must precede the rise of public spirit. As soon as conquest is accomplished and the soil distributed among the chiefs, each becomes more or less a sovereign, and rids himself of the coercive sanctions of the king.

In the feudal organization of society, when thus first loosely thrown together (having omitted the minor stages which intervened since the original emergence of self-consciousness), we have the next extension of the principle of private property, the private appropriation of land. Primitive common property in land, so called, is not properly entitled to that designation, seeing that it did not spring from self-consciousness. It was simply the common use of land, which, in its abundance, attracted no more attention than did air and water. Animal instinct is adequate to mark off hunting-grounds, and to defend them against other animals. And, if we choose by metaphor to read into the minds of animals our refined and abstract self-consciousness, we may assert that they have developed the institution of property. But such would be only a metaphor. So, in our advanced civilization, after having developed the idea and the institution of property, we are tempted to read back into the

mind of primitive man a conception of which he was incapable. But the growth of population, the necessities of agriculture, the efficiency of organization, led to the private appropriation of land by the only persons who were in a position to appropriate it—the conquerors and chiefs of tribes. In settling upon a fixed territory we find a decisive step in the organization of the modern state, but it must be borne in mind that this step could be taken only by extending the principle of private property. The state originates as private property, like other institutions. The feudal proprietor was owner of the land, of the serfs, of the highways, the mill, the bakery, the courts of justice, and every tangible object and personal relation that could be brought under his control. Even the king or overlord was but one among many private proprietors.¹ He was not a sovereign in the modern sense, because, first, he did not receive his title by hereditary right, but was elected by the barons. In this his position but conformed to the feudal idea of property, wherein the estate reverts to the overlord, and the heir enters only on his own personal oath of fealty. But, second, the king was even more restricted by custom, which ruled in those days the lowest and the highest more rigidly than constitutions. Custom was, indeed, the constitution. The rights and privileges of property, the possession of coercive sanctions, the grading and subordination of classes, were all minutely bounded and guaranteed by custom. Within these bounds the private proprietor was autocratic; and the king as monarch was supposed to have no additional powers beyond those which belonged to him as a landed proprietor, except to organize the military forces, to support them by his prerogatives, and to declare and execute the custom of the land. That he could enact a law repealing the custom was inconceivable.

But, as we know, political and industrial conditions were against the permanence of this loose organization. The anarchy of the period, resulting from the private sovereignty of the

¹ "The king, it is true, is a highly privileged, as well as a very wealthy person. Still his rights are but private rights amplified and intensified." (POLLOCK and MAITLAND, *History of English Law*, I, 209.)

feudal lords, forced upon the people the longing for a united government with adequate coercive powers, and the rapid changes in industry following the rise of commerce and manufactures, the introduction of money, and the fluctuations of prices, broke down the rule of custom, and permitted the king to infringe more and more upon its precincts. Thus feudalism gave way to absolutism. The theory of absolutism made the will of the sovereign the sole law of the land, and the fiction arose that custom itself was law only on the ground that "what the king allowed he commanded."

Thus, in the rise of absolutism with the Tudors in England and Louis XIV. in France we have reached the culmination of the natural evolution of private property. The monarch or despot is the sole proprietor of all the land, and the administrator of public affairs. His will is now called law, because it controls many people of all classes. But in theory he is still a private proprietor, and in fact also, because the sanctions which he controls are exactly those corporal and privative sanctions controlled by the primitive proprietor. They have, however, in the process of centralization, become differentiated, as above indicated.

The following characteristics are now to be borne in mind in summarizing the foregoing rapid survey of the evolution of coercion :

1. The growth of monopoly, or exclusive jurisdiction. Professor Ward has pointed out that in animal and plant life the stage of free competition is only brief, incipient, and transitional, and that it terminates in "something that can very properly be called monopoly." "The tendency of every form of life, as soon as it acquires superior powers, is to drive out everything else and to gain a complete monopoly of the sources of supply that surround it." "The human animal has become paramount in his particular environment in harmony with this general law governing all living things.

2. But in addition to the biological law of monopoly we find the sociological law of centralization. Herbert Spencer has

¹ *American Economical Association*, Vol. X, p. 48.

shown that "in societies as in living bodies increase of mass is habitually accompanied by increase of structure. Along with that integration which is the primary trait of evolution, both exhibit in high degrees the secondary trait of differentiation."¹ The biological form of this statement conceals the true character of social integration, namely, centralization and subordination, based on private ownership and coercion.

A different defect is found in Ward's account of social structures. He finds the dynamic agent—the agent that causes change in structure—to be feeling. Feeling leads to effort. Effort consists in the "removal of obstacles to the satisfaction of desire," and desire is "the underlying cause of all social progress. It transforms the social environment. It modifies social structures and originates new ones. It establishes constitutions."²

We must, of course, allow that desire is the underlying cause of social change. But in doing so we must give such a broad definition to desire that that term becomes meaningless. Ask the schoolgirl why she did so and so, she answers: "'Cause I wanted to." But *why* did you want to? "Just because I wanted to." This answer is not adequately specific, whether advanced by the girl or by Mr. Ward. We must discover not merely that desire causes change, but why it is that desire causes this or that particular change. Now, the true immediate cause of organization is not desire, but necessity. Increase of structure does not remove the obstacles to happiness, but as often the reverse. It brings subordination, which lessens happiness. Workingmen do not join trades unions because they enjoy it, but because they must. So with capitalists organizing trusts, patriots in founding a nation. The compelling force is the increasing density of population and the increasing struggle for existence. Organization is simply the means whereby those having allied interests are brought together under command of a single will, so that their combined energies are directed promptly on a given point of attack. Survival comes to the organized group, and in the

¹ *Sociology*, Vol. I, p. 459.

² *Outlines of Sociology*, p. 178.

course of time the surviving group becomes larger and larger, and its machinery of organization more and more inexorable and despotic. This is necessary for the sake of survival. Social institutions are not picnics or fishing clubs. If they were, they would quickly fall apart. They are organized for struggle, survival, and supremacy. There is iron in them. They are based on the coercive sanctions intrinsic in private property, which is the social expression of self-consciousness and the origin of social institutions. Herein social organization is fundamentally different from physical or biological organization.

These sanctions, radiating from one man, give, on the one hand, unity, power, and survival to the social organization, and, on the other hand, increased scope and freedom to the mere wishes, choices, commands, and personal character of the autocrat. In the long run centralization may bring happiness to the subordinates, which seems to be the main justification of organization in the eyes of Spencer and Ward; but whether it does so or not is a matter of secondary importance. Survival first, happiness afterward. The latter can receive no attention whatever until the period of conflict has passed and coercive organization has achieved unquestioned supremacy. Those individuals and classes who reverse this order and seek happiness first are both immoral and increasingly extinct. Abraham's polygamy was justifiable because necessary, Brigham Young's was immoral because only utilitarian.

3. The coercion exercised by the monarch is not absolute and unlimited, but is conditioned by the character, circumstances, and stage of civilization of his subjects. He represents the organized coercion of society, but coercion is only one of the controlling social relations. Equally important are love, reverence, hunger, inertia, custom, and multitudes of petty local and private quests. As long as his coercion does not infringe too far upon the daily lives of his people, and they are secured in a measure of their customary beliefs and enjoyments, their entire strength, otherwise unorganized, is vouchsafed to him and appears in his hands as the coercive sanctions and the subordination of individuals to his wishes.

This evolution of society and coercion has grown out of unreflective, imitative, customary, and traditional ways of thinking and living on the part of the entire mass of people. There has been no literature (except as it may have been handed down from a former civilization), no philosophy, no science. Industry has been mainly agriculture, and trade has been barter. Religion has been natural or ethnic, as distinguished from ethical, and government has never been troubled with problems of abstract justice or the rights of man. It is the period of naïve, empiric, *imitative*, unreflective self-consciousness, corresponding to the childhood and youth of the individual. The psychic distinction between this and the succeeding or reflective stage is of such *prime importance* for the theory of sovereignty as to require at this point a careful examination.

CHAPTER VI.

REFLECTIVE SELF-CONSCIOUSNESS.

PROFESSOR BALDWIN in his *Social and Ethical Interpretations of Mental Development*¹ has set forth a theory of psychic recapitulation supplementary to that which the biologists have developed. In aiming to prove that the mind of the child passes through certain definite stages corresponding to those which human society has followed, he finds in each the following three stages :

1. A primary or organic stage, corresponding to the pre-human or animal stage of physical strife and "instinctive coöperation."

2. The "spontaneous, or frank, trustful, 'free and easy,' social stage," corresponding to the "tendency to family life and the germinal beginnings of social and collective action which we see illustrated in some degree in the animal kingdom."²

3. The self-conscious or reflective stage, beginning about the sixth year and corresponding to the period of distinctively intelligent social life which began with "the discovery of the arts of tilling the soil and living, for some of his meals at least, on vegetables. [Here] the social tide sets in. The quiet of domestic union and reciprocal service comes to comfort him, and his nomadic and agricultural habits are formed. He lives longer in one place, begins to have respect for the rights of property, gives and takes with his fellows by the bargain rather than by strife, and so learns to believe, trust, and fulfill the belief and trust."³ Here also is the rise of totemism and its accompanying recognition of a clan or public interest, as distinguished from mere private interest, a distinction to be found strongly "marked in the child's social development at the very beginning of his growth into real moral personality."⁴

¹ Pp. 188 ff.

² Pp. 212-13.

³ P. 214.

⁴ P. 566.

It seems probable that the correspondences here pointed out by Professor Baldwin do actually exist, but he has not carried us forward to a more critical and fundamental distinction in the psychology both of the man and the race. This is the distinction between empirical thinking in terms of concrete wholes and abstract reasoning based on analysis of essential attributes, which is, of course, a prime distinction made by psychologists. It is incumbent upon the sociologist to locate the corresponding distinction in race psychology and to unfold the social cause of the transition from the lower to the higher.

Psychologists contrast these two modes of thinking as predominantly association by contiguity and association by similarity. The one is habitual "unconscious" inference, the other is voluntary analysis with the express purpose of making new classifications of the material of experience. "Empirical thought associates phenomena in their entirety, but reasoned thought couples them by the conscious intentional use of a particular partial aspect which has been extracted from the whole."¹ A more definitely sociological psychology would place greater emphasis on the difference in the processes of the two modes of thinking. Empirical thinking is imitative, traditional, customary, habitual. If it originates anything new, it is only by adding here and there to the old and familiar what has been accidentally hit upon in mere routine experience. In this way grew up primitive products, inventions, and institutions by a "natural" evolution, a process which M. Tarde² designates as "accumulation," though not pointing out its psychic basis.

Reflective thinking, on the other hand, is skeptical, critical, introspective, individualistic, at first iconoclastic, later inventive and constructive. It seeks "essential attributes," analyzes the accepted traditions, institutions, and products of the time, in order to discover either the fundamental laws and purposes which govern their making, or those attributes which in fundamental ways enable the thinker to reclassify and reorganize the material of experience. Invention here may displace the old altogether or recombine it in unthought-of ways, and progress leaps forward

¹James.

² *Les Lois de l'Imitation*, pp. 188 ff.

by "substitution," to use the term proposed by Tarde. Thus, while empirical thinking tends only to results, learns only by experience, and makes progress only through the crude logic of *post hoc*, reflective thinking searches for underlying causes and general principles, learns by criticism, and improves upon the past by the logic of *propter hoc*.

It is not difficult to locate the emergence of the reflective form of thinking in social history. We should first notice that it is not so different in kind from empirical thinking as the psychologist's distinction would seem to indicate. The difference consists, not in the nature of the process, but in the conscious search for hidden similarities, instead of the imitative acceptance of traditions and the empirical grasp of the first observed similarities that mere contiguity offers. This the Greeks called "thinking" *per se*, and "thinking" was the original name for philosophy. It did not require a new brain capacity, but came suddenly upon the breakdown of narrow tribal and local control, and the rise of commerce and money in the place of agriculture and barter. The introduction of money itself was a process of analysis and abstraction whereby the quality, value, was extracted from commodities and given an exact measurement and a preëminence over the concrete commodities themselves. These events threw individuals upon their own resources. They were compelled to think in order to survive. Thinking began in the economic field and then expanded elsewhere. Thales was first a merchant, then a philosopher. Sudden riches were acquired, and men of low origin became more powerful than kings descended from gods. This provoked political thinking. Class contests and civil wars arose, after the rulers had been found to be without divine sanctions. Merchants and politicians, like Solon, became political philosophers, and attempted to discover the hidden laws, not only of nature, but also of society and government. These political philosophers soon got a hearing from the disorganized multitudes and their political leaders. Pericles espoused Anaxagoras with his view that reason determined the mass.¹ Traditional government was shattered and must be

¹ ERDMANN, *History of Philosophy*, p. 66.

reorganized. Reflective thinking is called upon to shape new constitutions. Revised charters of Athens follow each other in quick succession, and so often did Florence mend her constitution that Dante likened her to a sick man in bed always changing his position to escape from pain.

There are differences in detail between the emergence of reflective thinking in Greece and Italy and its emergence in a centralized absolutism. In Italy the close of the wars between the pope and the emperor had left the local governments disorganized. Pressure from above was removed. Petty tyrants with illegitimate rule seized power through their shrewdness. Rapid revolutions brought all varieties of despotism, aristocracy, and democracy. Everything was on a small scale and easily overturned.¹ In England and France, however, despotic government was centralized. In France this continued until the Revolution. In England it underwent a slow evolution, as a result of reflective thinking. Here we can test more clearly than elsewhere the theories of sovereignty.

CHAPTER VII.

SOVEREIGNTY — COERCION.

Austin's theory of sovereignty is based on the conception of a single will issuing commands to subordinates. "If a determinate human superior *not* in a habit of obedience to a like superior receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society. The position of its other members toward that determinate superior is a state of subjection, or a state of dependence."²

This description, baldly dividing society, as it apparently does, into those who govern by sheer force and those who are forcibly subdued, has been met by attacks on all sides. With the help of these conflicting opinions we are able to analyze the elements which constitute sovereignty and to find that they are comprised in the following three concepts: coercion, order, right.

¹ BURKHARDT, *The Renaissance in Italy*, pp. 57, 129 ff.

² *Jurisprudence*, p. 226.

Rousseau is sometimes held to have substituted for force as the basis of sovereignty an original voluntary agreement; but he plainly holds that, "as nature gives to man absolute power over his members, the social compact gives to the body politic absolute power over its members."¹ This absolute power, however, is always directed by the general will instead of the will of the actually historical sovereign, and this general will is the will of the existing generation and can never be bound even by the original compact. Rousseau does not eliminate coercion, he only transfers it from the monarch to the people. Herbert Spencer, abandoning the original contract and perceiving that society originates in conquest, substitutes a vast system of individual contracts, as the basis of the modern "industrial régime."² Coercion with him is primitive and transitional; it is destructive of personality, and gives way to free mutual agreement between individuals.

Spencer's view is, indeed, a just criticism upon that narrow description of sovereignty set forth by Austin. Austin's conception is truly primitive. Its type is despotism. But Spencer overlooks the two elements which, following despotism, have been incorporated in sovereignty, namely, order and right. These have not eliminated coercion, but have changed its mode. In despotic times coercion was repressive, or criminal, enforcing uniformity in beliefs and habits. Now it is mainly civil or "restitutive,"³ setting forth the term and conditions for private contracts, enforcing and refusing to enforce certain ones, a function in primitive times exercised by custom. For this reason it does not efface personality, but has relaxed its pressure from personal beliefs and desires, and by adopting and acting upon certain ideas of right has opened a wide field of free choice for the subordinate individual.

Green's contention that "will, not force, is the basis of sovereignty," differs from Rousseau's, not at all in eliminating force, but in giving a narrower interpretation to the "general

¹ *The Social Contract*, Book II, chap. 4.

² See DURKHEIM, *De la division du travail social*, p. 221.

³ Durkheim, as above.

will." There is something of ambiguity in his use of this term. In one place he speaks of it as the "impalpable congeries of the hopes and fears of a people, bound together by common interests and sympathy." This meaning corresponds with Rousseau's, and is practically equivalent to public opinion. The other meaning, which, indeed, forms the tacit basis of all his reasoning, is much narrower, and is practically only that section of public opinion which is concerned with right and wrong. This meaning will appear later, in the discussion of right.

Willoughby¹ has cleared away the confusion into which Green had cast the theory of sovereignty by his discussion of the location of sovereignty in the body politic. Sovereignty, being a political term and designating coercive power, can be exercised only when society is politically organized. Until a people become politically organized in the form of a state there is no sovereignty. "Public opinion," "general will," "the ultimate political sovereignty," and similar terms, denote only certain *conditions* of political action, but are not in themselves legal or civil in their nature.² They enter into the question of political expediency, into the forecast of results by the sovereign, and into the formation of his opinion; but it is the expression of legal will through coercive agencies that marks the location of sovereignty. "Sovereignty is exhibited whenever the will of the state is expressed. In fact, it is almost correct to say that the sovereign will is the state, that the state exists only as a supreme controlling will, and that its life is only displayed in the declaration of binding commands, the enforcement of which is left to mere executive agents."³ Now, the will of the state is seen wherever in government there is exercise of choice, or discretion. Where this shall be depends on the actual constitution of the government. In modern constitutions it exists primarily in the legislature; but the executive, who ordinarily has no will or purpose of his own and is but the instrument of the legislative will, has also limited discretion in the ordinance-power, and is to that extent sovereign. "Constitutional conventions," in so far as

¹ *The Nature of the State* (Macmillan, 1896).

² P. 287.

³ P. 302.

they have the direct power of creating constitutional law, exercise the sovereign power.¹ And the courts, whose work is mainly interpretative, do actually create law, and are to that extent sovereign. The people are not sovereign except where they directly enact the laws, as in the initiative and referendum. Popular election of officials is only an administrative and not a legislative act, and when once elected these officials are themselves sovereign in as far as sovereignty is distributed among them by the actually existing organization of government.²

The advantage of Willoughby's analysis of sovereignty is that it is based on what we have already seen to be the psychic basis of coercion, the will, as seen in the expression of mere wish or preference. Sovereignty is thus separated psychologically from the strictly executive and judicial functions of government, where the psychic basis is knowledge and skill. But it is at the same time joined to the exercise of private coercion which we have already seen to be the psychic basis of private property. Whenever mere wish or opinion is imposed upon others and is carried into effect through coercive sanctions, there we have dominion. This dominion, when exercised by private persons, is private property; when exercised by public officials, it is sovereignty.

CHAPTER VIII.

SOVEREIGNTY — ORDER.

In the preceding paragraph we have seen that the common basis of public and private dominion is coercion. This conclusion is popularly rejected, because it is deeply felt that sovereignty is free from the characteristic quality of private dominion, caprice. Says Sir Henry Maine:³ "At first sight there could be no more perfect embodiment than Runjeet Singh of sovereignty, as conceived by Austin. He was absolutely despotic. He kept the most perfect order. . . . The smallest disobedience to his commands would have been followed by death or mutilation, and this was perfectly well known to the enormous majority of his subjects. But he never made a law. The rules which regulated the

¹ P. 304.

² Pp. 305, 307.

³ *Early History of Institutions*, p. 380.

life of his subjects were derived from immemorial usages, and these rules were administered by domestic tribunals, in families or village communities. . . . Customary law is not obeyed as enacted law is obeyed. Where it obtains over small areas and in small national groups, the penal sanctions on which it depends are partly opinion, partly superstition, but to a far greater extent an instinct almost as blind and unconscious as that which produces some of the movements of our bodies. The actual constraint which is required to secure conformity with usage is inconceivably small. . . . Nevertheless in the interior of the households which together make up the village community the despotism of usage is replaced by the despotism of authority. Outside each household is immemorial custom blindly obeyed; inside is the *patria potestas* exercised by a half-civilized man over wife, child, and slave."¹

The foregoing observations of Sir Henry Maine are, indeed, valid as against the literal statement of Austin's theory. Austin, of course, had in mind the sovereignty exercised through constitutional forms in the parliamentary system of Great Britain. Maine has in mind the dominion exercised prior to constitutional government. He rightly likens the operations of custom upon the family proprietor at this stage to the operations of international law upon nations. Each despot is sovereign in his own family, but he submits to accepted customs, not because they have coercive sanctions against him, but out of mere habit. Custom is backed by religion, and together they form, not merely the "general will," or the "public opinion" of the time, as is often asserted, but the very constitution and structure of government itself. Within the framework thus provided the individual proprietors exercise their *patria potestas*. Custom is the only guaranty of order. Where it does not hold, there caprice governs. But in the constitutional form of government, upon which Austin's theory is tacitly based, order is in some way incorporated in the very exercise of coercion itself. It is not an outside custom holding despotic wills in check, but it is an inside balancing of wills holding each other in check. We are now to inquire

¹ P. 393.

into the process whereby custom has disappeared as the maintainer of order, and coercion itself has become orderly.

The paternal family, we have seen, had both a political and a domestic side to its coercion. With the growth of population and chieftainship so much of the political side as was needed was separated out and organized in an overshadowing institution, the feudal hierarchy. This led to absolutism. Absolutism, we have seen, followed upon changed economic conditions. The increase of population, the complete occupation of land, the breakup of serfdom, the rise of the wage system, the mobility of population, the introduction of money, and the fluctuations of prices—all these causes conspired to overthrow entirely the rule of custom. With this bulwark of order disappearing, the power of the monarch increased. He began to extend his sovereign will into those precincts formerly controlled by custom. His lawyers now introduced the fiction that custom becomes law only because "what the sovereign allows he commands." This has become the doctrine of the analytical school of jurisprudence. "There can be no law without a judicial sanction," says Austin,¹ "and until custom has been adopted as law by courts of justice, it is always uncertain whether it will be sustained by the sanction [of force] or not."

In Austin's literal and tacit use of the word "law" as the *orderly* command of constitutional sovereignty this doctrine is, of course, true, but, then, it is also meaningless, for, by the very definition of law, custom is already excluded. In truth, the doctrine only marks the complete breakdown of custom, and the subsequent injection of order into sovereignty. Previous to this injection the king's invasion of the precincts of custom signified mainly the invasion of order by caprice. This is absolutism—the doctrine that the king's will alone is the fountain of law.

The first effort of absolutism is to reduce the feudal chiefs who are next to the monarch in power. Such was the outcome in oriental despotism, in China, India, and Russia. This is the culmination of absolutism. But in England a different result followed. The feudal nobility, deprived of their private dominion

¹ *Lectures*, p. 69.

by the king, had learned to combine together effectually and to secure for themselves a voice in shaping the sovereign will. No longer able to hold their earlier position as petty sovereigns, they could now become sovereigns over their own property only by sharing in the king's sovereignty, and securing through the House of Lords a veto on his arbitrary will. Here for the first time the state as such truly appears. A despotism is not a state. It is private property. Law is the criterion of a state, but the arbitrary, transient commands of a despot are not laws. It is the capriciousness of private property that evokes the state. Economic and competitive conditions had finally centralized the coercive sanctions in one man. On such a large scale his caprice assumed ominous import. While private despotism was distributed among numerous proprietors, its social significance could not be seen. But centered in one man it became simplified, visible, and portentous. The subject of coercion has no will of his own. He is merely the limb of another. Different kinds of masters, the willful, the humane, the weak, the vacillating, and different moods of the same master, deprive the subject of moral character. He has no security for the future, no incentive to make much of himself or his interests. In other words, he has no property of his own. The effect on the master is pride, false estimates of self, immorality, caprice. Here is the double urgency for order in social affairs. The political problem which marks the genesis of order and the state begins in the attempt of social classes which have been subordinated on the basis of the coercive sanctions to coerce in turn the monarch, in order to set boundaries to his coercion and to secure private property for themselves. Magna Charta was imposed upon an especially capricious king, in the form of an agreement binding on him and his heirs not to extend his will beyond certain limits. It set forth channels within which king, barons, and people should each henceforth execute their personal wishes, without interference from others. It was a compromise, "a treaty of peace between the king and his people in arms."¹ It was in form a series of commands purporting to issue from the free will of the king, but, from the fact

¹ TASWELL-LANGMEAD, *English Constitutional History*, p. 102.

that these commands were the expression of the joint will of the king and his barons, they are known as "positive laws" instead of mere commands. They are the will of the state as against the will of one man.

But Magna Charta must not be looked upon as more than a foreshadowing of the true state. It preceded by three hundred years the triumph of absolutism. It was mainly a compromise or "international" treaty between feudal proprietors, each sovereign in his own field. The advance of irresponsible absolutism continued to absorb the coercive sanctions of subordinate proprietors. It was not until the revolution of 1688 that subordinate classes achieved a recognized permanent right of participation in shaping the royal will. Sovereignty is a daily flow of coercion, and not the mere promise of a king to do and not to do so and so. Sovereignty, therefore, requires definite enduring constitutional organs for its daily exercise. Magna Charta did not adequately provide these. There was as yet too little common consciousness and coöperation among the barons and people. The private interests of each were not yet overshadowed by the absorbing despotism of the king. But the Bill of Rights introduced Parliament definitely into the will-shaping functions of sovereignty. It forever provided that "the pretended power of suspending of laws, of dispensing with laws, or the execution of laws, by regall authoritie without consent of Parlyament is illegall." Henceforth every command issued in the name of the king proceeds from the joint will of the king and Parliament, as provided in the constitution, and is a true law. Coercion is extracted from the king's private property and is made a public function, and Parliament is now admitted by the monarch into partnership in shaping the direction of this public coercion. The personal caprice of the king loses its import as a factor in sovereignty, and positive law comes to have order for its basis as well as force.

But it must not be thought that in this new form coercion has lost coerciveness. Philosophical and biological theories have tended to personify the state and to raise it above the matter-of-fact affair that it is. Hobbes says: "The common-

wealth is one person." Says Schopenhauer: "The state is the work of reason that mounts from the one-sided and personal to the collective point of view, whence it discerns the fundamental unity of man . . . [it is] the substitute for individualistic egoism of a collection or corporate egoism of all." The terms "social consciousness," "social mind," "social organism," are the present-day phrases which supplant the "universal reason," the personification, and the metaphysics of the past. Austin, no doubt, avoided entirely this personifying tendency when he divided society into masters and subjects. But Green, in developing the concept of the "general will," has given to it in the minds of his followers a strong support, and publicists of today, even with historical training, while clearly appreciating the analysis of Austin, are yet so fascinated by their theories of the unity of the sovereign that they are speaking of the state practically in metaphores. Says Willoughby:¹ "Sovereignty belongs to the state as a person, and represents the supremacy of its will. Sovereignty is thus independent of its particular powers in the same way that the self-conscious power of volition and determination of the individual human person is distinguished from his various faculties or the aggregate of them. It is the very possession of this sovereign will that gives personality to a politically organized community. Sovereignty . . . is necessarily a unit and indivisible—unity being a necessary predicate of a supreme will."

Our criterion and analysis of these conceptions will appear in examining the arguments for and against Aristotle's classification of the forms of government. Aristotle described monarchy as the rule of one, aristocracy as the rule of the minority, and democracy as the rule of the majority. This classification has been criticised as being purely arithmetical, and containing no organic principle. "Number, without a principle of measurement or rule of distribution, is about as vague defining principle as may be imagined."² On the other hand, Schleiermacher's

¹ *The Nature of the State*, p. 195.

² JOHN DEWEY, "Austin's Theory of Sovereignty," *Political Science Quarterly*, Vol. IX, p. 31.

defense of this classification has been generally accepted as sound. He holds that "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; the principle is this: 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, therefore, the number inspired with this consciousness, and participating in this organization, really does determine the organic character of the state."¹ Burgess, in making the important distinction between "state" and "government," holds that Aristotle's classification applies only to the "state," and he proposes a different classification for governments, based on administrative and structural peculiarities. This distinction is valid, and governments, being merely the machinery through which the states carry out their will, should be classified on the basis of the method of this organization. But, granting this distinction, have we really discovered anything more than a merely numerical basis of division in Aristotle's classification of states? If "state consciousness" becomes diffused among the people as mere isolated units, then a mathematical basis of classification is adequate. But if the diffusion of "state consciousness" is itself an organic function of the state, then the basis of classification must be found in the very nature and purpose of the state. That this is the case can be plainly seen from a view of the way in which "state consciousness" has actually developed. The state is the coercive institution of society. It is not an ideal entity, superimposed upon society, but is an accumulated series of compromises between social classes, each seeking to secure for itself control over the coercive elements which exist implicitly in society with the institution of private property. Every statute, legal decision, or executive ordinance newly enforced is a new differentiation and transference of coercion from its original private control to that of social organization, and every such fact is an increment in the growth of the state. Now, while this transference is

¹ BURGESS, *Political Science and Comparative Constitutional Law*, Vol. I, p. 73.

being made in the progress toward monarchy, described above, there is, properly speaking, no state consciousness. The monarch is simply a private proprietor on a larger and more authoritative scale than others, and all property, such as it is, whether held by monarch or by subject, is private property. When, however, this movement is completed in absolutism, those whose private coercion has been appropriated by the king through his sheriffs, judges, and other subordinates, and who find themselves reduced to the level of their own subordinates, now begin to be drawn together in common interest against the pretensions of the king. That which draws them together is, in the first place, the possession of similar property rights or coercive privileges, upon which the king has encroached. The consciousness which animates them is a class consciousness. This is only a name for their recognition of common interests in the face of a common obstacle, and their capacity to coöperate for overcoming this obstacle. It is more than that habitual, instinctive consciousness which in primitive times blindly leads to coöperation under the personal and divine prestige of a chief. It is an outcome of reflective self-consciousness. It depends, first, on an assured means of subsistence, and the accompanying leisure for contemplation and combination. With this there must also exist certain psychic qualities, such as self-control, self-sacrifice, intellectual capacity, hopefulness, energy, integrity. These are essential factors in mutual confidence. Without them enduring combination is impossible. It is a striking fact, already noted, that these psychic qualities did not exist among the nobility of Asiatic monarchies, and consequently they were able to make no permanent resistance to the power of the despot. In other words, they were unable to combine and to secure through their constituted spokesmen a share in determining the sovereign will. But in England the nobility, aided by the smaller proprietors, possessed these qualities in sufficient degree to constitute the House of Lords, and later the House of Commons, as partners with the kings in sovereignty. "State consciousness" is thus originally class consciousness, organized at first in voluntary, private, and unofficial ways. This organization, by concentrating

the coercive factors which remain in possession of the given class, acquires power adequate to gain a share in the coercion hitherto exercised alone by the monarch. Their voluntary organization is thus incorporated in partnership with the king, and the coercive institution thus inaugurated is the germ of the state. State consciousness is simply class consciousness organized for partnership in the coercive control of society. The problem of the diffusion of state consciousness is, therefore, the problem of the basis of social classes as constituents of the state. And, since the state is the coercive institution differentiated out from the primitive homogeneous blending of all institutions, the basis of a social class is the consciousness of common dependence upon a definite mode of coercion. This brings us back to our classification of coercive sanctions.¹

We have seen that in the early emergence of private property the proprietor possessed both corporal and privative sanctions. We are now to notice that in the gradual emergence of absolutism and the state it is first the corporal sanctions that are extracted from private property and are constituted the basis of sovereignty. In other words, private vengeance, private execution of criminal justice by feudal courts, and private ownership of serfs and slaves, were displaced by the king's justice. This involved eventually the entire undermining of the characteristic coercion exercised by feudal chiefs. Population at this time was sparse. Only a small portion of the land was under cultivation or reduced to private ownership. Slavery or serfdom was the only means of coercion, and the escaped serf became an "outlaw," roaming the primeval forest a free man, envied and sung by those unable to escape. Ownership under these conditions necessarily became a hereditary aristocracy. Communities were separated. Security required that each should be undivided and controlled by a single will. This was the economic basis of primogeniture. The feudal nobility, based on this common property interest, when finally deprived of private control by absolutism, recovered it collectively through state control, by

¹ See also LORIA, *Les bases économiques de la constitution sociale* (Paris, 1893), tr. by Bouchard.

sharing sovereignty with the monarch. They then became the aristocracy, and aristocracy, as a form of the state, is government by hereditary property.

With the further increase of population and the occupation of all the land, direct coercion was no longer needed, and was followed by freedom of labor and the wages system. Coercion here is indirect, and the sanctions are privative. Not the person of the laborer, but his means of subsistence, are owned. Instead of scarcity of men there is now scarcity of land, and economic value is transferred from men to land. The privative sanctions turn upon the power of proprietors to employ, promote, and discharge the laborers. Since there is no escape to vacant land and no scope for outlaws, this control is effective. It could be met only by organization on the part of the newly freed men in the form of merchants' and manufacturers' guilds, joint-stock associations, corporations, and companies. These, gradually acquiring wealth, acquired influence in government through their lobbies, and finally were legalized and incorporated in the structure of government, thus constituting the representative system. They acquired definite partnership in the English constitution with the Reform Bill of 1832. The characteristic feature of this new property interest, based on privative sanctions, is its transferability. It began in the free cities and later spread to the country. Labor is free and mobile, changing from one employer to another, and capital must also be free in order to go where it can get the richest results from the employment of labor. Government by this form of property is capitalism or plutocracy, and plutocracy is government by transferable property. Beginning on a small scale with small proprietors, this form of property tends to concentration in pools, combines, trusts, and monopolies, just as hereditary property tends to absolutism. Thus organized and centralized it strengthens its coercive control over all subordinates, over the community, and over the sovereignty in which it has acquired partnership.

The antagonism in England between aristocracy and plutocracy has resulted in the enfranchisement of the unpropertied classes, and in protective legislation in their behalf. In the

United States, where aristocracy had no hold, this movement has been influenced more by doctrines of natural rights and by the desire to attract immigrants. These classes have also been compelled to organize in labor unions in order to acquire *partnership* in the control of industry, and possibly also in sovereignty. The tendency here is quite similar to that of aristocracy. The feudal chiefs, having lost their private control through absolutism, regained it collectively through partnership with the sovereign; so the unpropertied and salaried classes, having lost individual control of transferable property through the growth of great industry and monopoly, are now in various countries regaining that control by the use of their newly acquired universal suffrage and partnership in government. This is the third form of the state, democracy. The alternative to democracy is a caste system. Both are wage systems, which follow the disappearance of serfdom and the occupation of the soil; but caste is private coercion, democracy is partnership in state coercion. Following the breakup of feudalism in England, the aristocracy, having lost private control over their serfs, attempted through sovereignty to fasten the caste system upon the ex-serf in the form of sumptuary laws and statutes of laborers which were aimed to suppress the standard of living and to keep wages at a minimum. This policy, successful in India, failed in England, and the way was left open for the later development of plutocracy and democracy.

From what precedes it appears that the state cannot properly be under the exclusive control of a single person or class. Such would be the perverted forms of the state designated by Aristotle as tyranny, oligarchy, ochlocracy. The state is rather the partnership of different classes in government. This partnership is not sporadic and chanceful, but is definite, organized, intended. Here is the significance of the structure or "constitution," or "government," as distinguished from the state. The state is the coercive institution of society controlled by those classes which have acquired partnership in determining the sovereign will. Government is the particular machinery or form of organization constituted for shaping and executing the coercive

will of the state. Hence the form of government follows the introduction of subordinate classes into lasting partnership in sovereignty. These subordinate classes have been forced to combine first in voluntary associations outside the state. This provides them with coercive power adequate to force entrance into the constitution. When once admitted, they are admitted as already organized, simply by legalizing their voluntary association and incorporating it into the structure of government. The House of Lords is the legalized organization of hereditary property; the House of Commons is the legalization of the national conventions and lobbies of merchants and small land-owners representing transferable property.¹ A law to be enacted must gain the consent of king, lords, and commons, each sitting independently, and not coerced by the others. In other words, each social class has a veto on the others. This is provided in the structure of government, which is therefore all-important in the substitution of order in the place of caprice. Each class must be furnished with organs for expressing its will which are appropriate to its own character. This is more likely to be the case where these organs have been previously developed in voluntary associations. The aristocracy, being limited in numbers and wealthy, can meet as a direct primary assembly, the house of lords. The plutocracy, being widely scattered, of limited means, and relatively numerous, must act through their leading men as designated in their local guilds, corporations, and associations of freemen. Democracy, being most widely extended and of most diversified interests, is unable to act through the other forms, and therefore tends to direct legislation. Where the machinery of government is not adapted to these several classes, or where a new political power has been injected into the old machinery, there are the conditions for political corruption. The unparalleled corruption of British politics previous to the Reform Bill sprang from the mixed machinery of aristocracy and plutocracy. The corruption of today in America and France, and its recent revival in British cities, springs from universal

¹See COMMONS, *Pro. Rep.*, pp. 14-16; HEARN, *The Government of England*, pp. 423-8.

suffrage working in the machinery of representative or plutocratic government, and is being remedied by such democratic remodeling as civil-service reform, secret ballot, corrupt-practices acts, primary-election laws, etc. The machinery of government is much more than machinery—it is the organized participation of political classes, based on property interests, in the exercise of sovereignty. It is the very source and genesis of order and right. It is the means whereby the unity of sovereignty, the “social consciousness,” the “state consciousness,” is originally established through the coöperation of the various political classes which participate therein. It, therefore, marks off the state from absolutism or despotism, where the will of one man dominates the people, restrained only by custom rather than by the legalized internal checks and balances of orderly sovereignty.

We can now see more clearly how it is that sovereignty and private property together constitute the coercion, or dominion, of society, and we can judge of the adequacy of Professor Burgess' statement¹ that “sovereignty is the absolute, unlimited, universal power over the individual subject and all associations of subjects.” Sovereignty is not original (historically), for it is derived from private dominion. It is not absolute, unlimited, and universal, because it is limited by so much of coercion as still remains in private hands. And those who retain it as private parties are the same as those who regulate it through sovereignty. Sovereignty and private property must always be in control of the same classes of individuals, since those who have the sovereignty are able wholly to dispossess the others. A prime aim of sovereignty is the protection of property. The fallacy consists in failing to distinguish between *potential* and *actual* sovereignty. Sovereignty *could* possibly encroach entirely upon private property, but it goes only as far as the actual structure of government and the partnership of propertied classes in the state has provided.² Coercion, either public or private, is

¹ *Political Science*, p. 52.

² “At any one time the state actually exercises, through its governmental organization, only those powers which it has drawn to itself by formal adoption.” There is “no capacity for legal action irrespective of state organs.” (WILLOUGHBY, pp. 194–292.)

not occasional or latent, but it is a situation, a social system; it is not an *event*, but a *flow*. It exists wherever there is will with corporal or privative sanctions. This is its essential characteristic, the will, the mere wish, the opinion, the expressed and obeyed desire of one who commands, whether this command be good or bad, wise or foolish, noble or base, right or wrong. Coercion is, therefore, solely in the field of ethics. Here we find the third factor in sovereignty, namely, right.

CHAPTER IX.

SOVEREIGNTY—RIGHT.

BESIDES reducing coercion to order, sovereignty also squares it with right. In so far as we have considered order alone, we have defined it merely in mechanical terms, as the balancing of force against force; as the extension of rule over wide areas. But social force is the expression of human will. Will is the outcome of beliefs and desires. We must now ask: What part have ideas and beliefs in sovereignty? We shall find that order itself is possible only on condition of a common belief animating separate classes and all classes.

First, the partnership of different social classes in determining the sovereign will is possible only for those classes which have developed the capacity and power of coöperation. Such capacity is based, in the last analysis, on a belief in the moral perfection of the unseen powers that rule the world. Such a conviction alone can sustain that optimism by which hopeful, united action persists. Whether this take the form of belief in a divine ruler, or in the rule of reason and nature, it is the inspiring confidence of the believer that he is working in harmony with a power mightier than all human opposition. It is the perception of a rational aim in the work he is doing, instead of the dictates of caprice, that enlists the will and energy of the worker. The alternative is suicide or slavery. If life were conceived as mere task-work, the mere carrying of bricks back and forth from one point to another, then only hunger or the lash could hold the toiler to his work. A society or a class convinced at heart of such pessimism would perish or be enslaved. For this reason religious revivals have usually preceded, in English history, the political uprisings of new social classes.

On the other hand, the ruling classes themselves must have accepted in general the same beliefs of moral perfection, else

they could not understand the claims of the aspiring class and would be unable to make those concessions implied in partnership. They would submit to sheer coercion in the form of imperialism or tyranny, but would not enter into that arrangement of mutual veto which characterizes the true state with its constitutional form of government.

Belief in moral perfection is the belief in right and wrong. The morally right is that which squares with the perfect rule of the universe. When this belief sinks in the heart, it leads to a certain judgment of self. This is a consciousness conditioned on personal freedom, either of one's own perfection or of one's guilt; of one's harmony or disharmony with the rule of right. In the empiric stage guilt is disobedience to ceremony or custom; in the reflective stage it is the consciousness of a sinful purpose. This consciousness of self is at the same time a judgment of similar perfection or guilt in others conditioned on the recognition of like freedom of choice and action in them. But this of itself does not lead to a recognition of the right of others to be free. There is needed in addition a belief in the moral worth of others; the conviction that they as well as one's self ought to be free to express self-perfection or self-guilt. The Brahman believes in freedom only for the higher caste. The lower are to have little or no choices of their own, but are to serve the higher. The moral worth of others, considered as an effective motive for self, is ultimately a religious conviction of the equality of others. This is the narrower meaning of the "general will" which Green really has in mind in his contention, referred to in chap. 7, that will, not force, is the basis of sovereignty. The general will, he says, is "not the momentary spring of any and every spontaneous action, but a constant principle, operating in all men qualified for any form of society, however frequently overborne by passing impulses, in virtue of which each seeks to give reality to the conception of a well-being which he necessarily regards as common to himself with others."¹ "The state or sovereign presupposes rights, and is an institution for their

¹ *Lectures on the Principles of Political Obligation*, p. 217.

maintenance."¹ "It is the interest of men in a common good, the desire on the part of each, which he thinks of others as sharing, for a good which he conceives to be equally good for them, that transforms mere 'potentia' into what may fitly be called *jus*, i. e., a power claiming recognition as exercised or capable of being exercised for the common good."²

There is an ambiguity in the word "right," of which the foregoing quotations from Green give evidence. There are three uses of the term, which may be designated, respectively, moral right, popular right, and legal right. That which has been described above as flowing from the belief in moral perfection is moral right. It is right in the "adjective" sense, and is contrasted with wrong. Popular right and legal right, however, have nothing directly to do with right and wrong. They are the "substantive" uses of the term, and denote a social relation based on coercion. Holland defines a right as "one man's capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society." He designates these respectively as "moral" right and "legal" right, but the term "moral" right is here ill-chosen. "Popular right" is preferable. The distinctions between these three uses of the term will appear clearly if we ask for the standard by which "moral" right is to be measured. When we ask, Is a given deed or social relation right, or is it wrong? we do not have reference to the standard set up by law or by public opinion. A legal right and a popular right may both be wrong. These are social relations, and may or may not be right. Neither do we refer to the social and legal rights of "normal" as distinguished from "pathological" societies, a criterion proposed by Durkheim.³ Individuals will differ in their opinions as to what is normal and what is pathological. Again, the standard cannot be "universal reason," for universal reason, so far as known, revealed, and workable, is only the reason of individual human beings, and these will differ. The standard of moral right must be subjective and

¹ GREEN, p. 143.

² *Ibid.*, p. 54.

³ *De la division du travail social*, p. 34.

not objective. But it cannot be the individual opinion of any and all persons, for then the standard set up by criminals, cranks, and degenerates would be of equal value with that set up by others, a position practically held by the sophists. The true criterion of right and wrong must, therefore, be the personal belief of each normal person who makes a conscientious effort to know the right. This effort consists partly in seeking social confirmation. "In order to know the law of God you must interrogate not only your *own* conscience, but also the conscience and consent of humanity."¹ It also consists partly in criticising and improving upon the existing standards of humanity. In this way do the beliefs regarding right change with every individual and every race and generation. But they are purely subjective and personal, and can be changed, not by arguing or by legislation, but by conversion. The heart, the subconscious self, the moral character, the religious faith, the passions and desires, are their foundation, and only as these change do men's beliefs of right change.

Beliefs in right, as they spread through society by propaganda and conversion, lead to action. This action is the united action of those believing alike. Its social consequences are the new coercive relations which it imposes upon those who do not accept the belief. These are "popular rights." Subjective right here becomes objective. "Adjective" right becomes "substantive." It becomes a social relation. Austin says that "a so-called law set by general opinion" is "not a law in the proper signification of the term," but that it is closely analogous to a law proper, and differs only in the fact that the law in the one case is established and obedience is exacted by an uncertain and indeterminate body of persons, and in the other case by a certain and determinate body.² These analogous and indeterminate "laws" are the basis of popular rights. As soon, however, as popular rights begin to find expression through the determinate, constituted authorities of the state, whether judges, legislators, executives, constitutional conventions, or referenda,

¹ MAZZINI, *The Duties of Man*.

² AUSTIN, *Lectures on Jurisprudence*, Lecture V.

they become "legal rights." Here the coercive element has been definitely extracted from the inchoate mingling of coercion and persuasion characteristic of popular rights, and has been given a clear and definite statement, on which the people can depend. The state thereby further emerges and differentiates from the other institutions of society, and the added powers in the hands of its certain and determinate agents constitute positive law and legal rights.

The confusion in meaning of moral right, on the one hand, and popular and legal right, on the other, is based on the deep conviction or feeling that legal rights should be backed by moral right. This conviction is expressed in the terms "divine rights" and "natural rights." Properly speaking, these terms do not apply to substantive rights. They do not indicate primarily a social relation, but an opinion as to what *would* be a *right* social relation, *i. e.*, a *right right*. They belong to moral right and not to substantive rights. They are simply a dogmatic way of asserting that one's own opinion of what ought to be a legal right is above question. It is to be noted that these terms do not appear until society has entered the reflective stage. In the empiric stage social relations are determined by religion and custom. These are above inquiry and criticism. They are not thought of as either right or wrong, but as commanded by the gods. But in the reflective stage, with its tyrants, tribunes, and absolute monarchs, whose personal wills emerge as sanctioning or even overruling custom, and whose commands become laws in the Austinian sense, then appeal must be made to the consciences of those who are called upon to obey. This was done first under the claim of the "divine right" of kings, then the "natural right" of kings, and finally, with the rise of transferable property, the doctrine of natural right was appropriated by the capitalist class in their demand for equal privileges with king and lords. Throughout all these controversies the terms "divine" and "natural" right signified merely that those who laid claim to the coercive power of the newly emerging state in the assertion of legal rights were morally justified in the action they took. It was their only way of appealing to the powerful

convictions of moral and social perfection lying deep in the subconscious minds of all.¹

I have said above that moral right exists only in the mind. It is subjective. But so dependent is the mind on its social condition that the belief in moral right can arise only as the individual feels himself to be free. Freedom is ability to choose and act as one wishes. There is neither right nor wrong where necessity rules — only success or failure. Free will is illusory if it does not end in free action, and free action is impossible where society has not yet overcome the high physical facts of necessity. There are three kinds of necessity. First, climatic, that which is above and beyond the control of man. The seasons, the winds, the zones, the ocean currents, the isothermal areas, establish conditions of necessity which man has but meagerly overcome, and in contest with which his freedom is only an illusory and empty option between life and death. Second, material necessity; that which man gradually overcomes through science, invention, and art. The material products which men consume and use and enjoy are but the raw material of nature worked over by human thought and labor. They are simply the products and services of others. Material freedom is the control over a wide range of these products. The savage is not free, because he has but few social products to choose from. The civilized man is free because he can choose all the way from Bibles, paintings, schools, homes, to whisky, roulette, and prostitutes. In doing so, as we have seen, he simply commands and controls the services of others. This the economists call wealth. It is material freedom. The savage is first a slave to nature, and is freed from nature by enslaving his fellow-men. Slavery is originally neither right nor wrong — it is necessary. Third, competitive necessity; that which marks the struggle for life and is overcome by organization, monopoly, and government. When the British soldiers were imprisoned in the Black Hole with only a six-inch window for air, their susceptibilities to love, justice, mutual help, which stimulated their marches and

¹ See also FIGGIS, *The Theory of the Divine Right of Kings* (Cambridge University Press, 1896).

battles, were utterly crushed in the death of the weaker and the survival of the stronger. When a thousand workmen compete for five hundred jobs, it is to the credit of human nature and the police if they do not cut each other's throats. When capitalists bankrupt their rivals, it is only the recluse, the agitator, the prophet, who whispers or shouts "injustice." The man in the struggle sees only necessity. It is vain to speak of freedom or of right and wrong, where the choice is limited to life and death, to success and failure. The first obligation in war is victory, and that is the reason why "war is hell." But when victory is won, when competition ends in monopoly, when organization and subordination take the place of struggle, then the victor is free; then he can listen to the still small voice of right.

It is the growth of monopoly and centralization in each social institution which has in the end subordinated necessity to freedom, and has paved the way not only for higher convictions of moral right, but also for the incorporation of these convictions in the form of legal rights. The freedom which thus emerges within each institution is "institutional freedom," corresponding to the factor of organization, just as material freedom corresponds to the material basis of each institution. Institutional freedom is private property; and the ethical phase of property is the judgment of the right or wrong concerning choices which proprietors are free to make. This is personal ethics, which has a twofold character. It may refer to the effect of the free choices on the character and destiny of self, or on the character and welfare of others. But in either case the ethical judgment is unwarranted unless the person is secure in that control over the wide range of services of others which we understand by property. Now, competition is not property, but struggle for property. Its criterion is not the right nor the wrong, but the successful. Property is a requisite for survival, but it is not mere ownership. It is also the organization, subordination, discipline, efficiency, of the human agents combined under the management of the proprietor. And until monopoly is reached this organization is never so secure that it can dispense with the equipment for fight. There is always another organization, as

well or a little better disciplined, ready to overwhelm it and capture its territory and subsistence. If this be true, then it is only in the lulls of competition or in the completed and victorious monopoly that the ethical appeal can be made. This is doubly true of that customary period which culminated in absolutism, where survival of the fittest necessitated the survival of the strongest and largest organization. It is also true in the reflective period, where, although doctrines of moral right were enlisted in the strife for participation in sovereignty, yet these doctrines lodged in the mass of the people rather as a stimulus to strife than a devotion to right. But when struggle ended in centralization, when strife ended in sovereign partnership, then the claims of ethics could be heard and obeyed. The psychic basis of this fact is the same as that which we have found in private property, namely, that coercion is the means for executing the mere wish or opinion of the proprietor. It compels obedience, and therefore need not rely upon knowledge, skill, or tact. The character of the commands imposed are simply the outward expression of the moral character of him who commands. The same is true of the state's commands. They express the moral character of those who participate in sovereignty. But this partnership must first be compulsorily acquired and guaranteed in the very constitution of the state. In this process all other qualities are mere instruments of might. Force can be met only with force. But when acquired, then the moral character of the sovereign can show itself, whether he be a mere sensualist and demander of pleasure, or a conscientious dispenser of justice and right in the use of his coercive power. It is the beliefs of the sovereign concerning right which shape his sovereign will. The ethical appeal to him is in effect an appeal to use his property in such a way as to promote the highest good of self and of others, *i. e.*, to command the services of others rightly instead of wrongly.

But, unfortunately, the human will unchecked is capricious, self-seeking, oppressive. During the period of competition it is checked by its own weakness. In the period of absolutism only the personal character of the chance ruler determines the ethical

character of the entire institution. What is true of the state is true of the other social institutions, whether governmental or subordinate; each one becomes an organization with a will of its own, enforced through the subordination of its members. The capacity of the human will, its range of free choice, is deepened and widened when competition has disappeared in monopoly. It becomes an institutional will, which is the will of the headman of the institution.

The problem of the reflective organization of society, following the breakdown of custom and the disappearance of competition, is how to check the capricious use of power by this headman in each institution, and to induce him continually to exalt justice above caprice. This is the problem of order and right.

We thus have the three constituents of sovereignty—coercion, order, right. Coercion originates as private property. The struggle for existence causes this to survive in the form of monopoly and centralization. Order emerges as a constituent of sovereignty in place of caprice only when sovereignty has extended over wide areas and when subordinate classes have earned the veto power in determining the sovereign will. Right takes its place as the moral aim of sovereignty when freedom has displaced material and competitive necessity; when the struggle for property has ended in the monopoly of property. We are now to examine in detail the subordinate or persuasive institutions of society with respect to the growth of organization, the extraction of coercion, and the injection of right.

CHAPTER X.

THE FAMILY.

WE have seen that coercion, when it has been transferred from private to public control, takes on the attributes of order and right, thus becoming sovereignty. The institution which is thus differentiated out from the primitive blending of all institutions is the state. It becomes the supreme institution, because it is looked upon as the proper custodian of the decisive social relation, coercion. In thus emerging from the social mass the state has set off other institutions, based each upon its own peculiar persuasive sanction. The family, originally a coercive institution, becomes the custodian of sexual and filial affection. The church becomes the voluntary association of believers in common worship, based on the sanctions of belief in moral perfection and consciousness of guilt. Industrial property is transformed from slavery and serfdom into free contract and mutual interest. These are the three original institutions from which the state has been differentiated. There are also certain derived and secondary institutions which have sprung up with the free conditions that followed the differentiation of the four original institutions. Those to be especially noted in these papers are political parties and business corporations.

We have found the starting-point of the human family in the patronymic and resulting patriarchate order of society. We are now to analyze more closely the threefold character of the institution—its persuasive beliefs and desires, its material basis, and its coercive organization.

In modern society the family has been differentiated as the custodian of sexual and parental affection. Its persuasive principle is family love. But in its primitive origin we cannot expect to find affection so clearly isolated. It was inextricably blended with ancestor-worship, with the desire to secure a son who should perform the sacrifices on which the happiness of his deceased

father depended, and with the desire for power and success which could be obtained mainly through a large following of wives, sons, daughters, and dependents. The principle which held together this aggregate was in theory the worship of a common ancestor, to whom the aggregate belonged as his private property. The patriarch himself was only the priestly mediator between that ancestral proprietor and the living generation. In practice he was, therefore, the living proprietor, and he exercised direct coercive power over the group by means of physical penalties. It was on this simple basis that the organization of the family was effected. Implicit obedience to one man, the priest-father, provided the unity and centralization needed for survival. The ownership of the material basis of the family—its lands, houses, subsistence, earnings—by this same ancestor, and the unquestioned administration of the same by the living priest-father, placed in his hands also the power of indirect coercion through material penalties, as well as direct coercion through physical penalties. This is the social organization so completely explained by Fustel de Coulanges.

Here was a complete blending of all social institutions and all personal beliefs and desires in a simple centralized group. The theory of its union, however, was blood-relationship traced through male ancestry. Seeing, now, that the struggle for existence requires the increasing size of the group and the monopoly of its organizing principle throughout the social body, the primitive man is met by the fact that blood-relationship is physically limited. He resorts, therefore, to the fiction of adoption and the ceremony of initiation, by which the ancestral blood and worship are transmitted to the new accessions. This applies even to slaves. The organizing principle of blood-relationship, thus fictitiously enlarged, is now capable of indefinite expansion, but a new limit again is reached, namely, the scarcity of land. The Claudian gens which moved to Rome, and certain of the gentes of the Albanians, mentioned by Strabo,¹ numbered as high as ten thousand souls, but it is doubtful whether this number was ever exceeded. If blood is

¹ LIPPERT, *Allgm. Gesch. des Priesterthums*, Vol. II, p. 572.

the basis of union, such basis can maintain monopoly only while the different gentes are separated by wide areas of neutral territory. As soon as increasing population compels confederation or conquest, the blood principle loses its monopoly, and certain of its coercive features are transferred to a larger group composed of the newly combined gentes. The territorial basis is substituted for the gentile basis. Individuals set up new contractual relationships with individuals in other gentes; the family property is broken into by sale and bequest; inheritance becomes a matter of actual blood descent and not of corporate gentile descent; plebeian families enter the social organization without the ancestral worship; clients and serfs become conscious of a class interest cutting across gentile lines,¹ and thus gradually and unknowingly the family lops off its collateral lines, its fictitious members, its serfs and dependents, and is reduced to its modern proportions of husband, wife, and children. The principle of private property, however, still remains as the organizing basis both of the family and of the feudal monarchy which has been differentiated out from the associated families. The monarchy is but one form of private property, and the monarch's property in his wife and children, similar to his property in other objects, is also similar to the property of his subjects. The latter are supreme rulers in the family circle, and the content of the monarch's power is constituted more from the small increments which he has absorbed from the increasingly large number of families under his control, than from the amount of power which he has taken from each. In other words, his power is confined to inter-familial, intertribal, and international relations rather than to the internal control of the domestic institution. Marriage is therefore a private contract. For the weaker member it is a necessity. Married women alone are protected as chattels. Unmarried women are protected by their fathers as chattels. Adultery is a violation of property rights, not a matrimonial offense. Severe punishment is meted to the wife by the husband, and he alone can give a bill of divorce.

¹ FUSTEL DE COULANGES, *La cité antique*, liv. iv.

Up to this point the development of the family and the state had occurred in the realm of empirical self-consciousness. There was no theorizing concerning right and wrong, no investigation, no idealism. The institution was judged solely by results, and was handed down by blind custom and imitation. We are now to notice the way in which the newly formed state, having asserted its superiority, begins to turn upon the family from which it empirically sprang, and to consciously regulate its internal structure by the further extraction of coercive features.

The earliest interference with private domestic control in Anglo-Saxon history was undertaken by the church. The church, not yet separated from the state, employed the coercive sanctions of the latter to enforce its decrees. Under the ecclesiastical laws of Theodorus and Edmund marriage was made a sacrament, polygamy was prohibited, the wife's consent was made a condition to marriage, as against sale by her parents; the bridegroom was required to give pledges for her protection, and she was granted the right of divorce.¹ By these laws the prospective state began to use its coercive sanctions to regulate the family in the interests of right as conceived by the church. The succeeding triumph of feudalism subordinated certain of these marriage rights of the higher tenants in the interests of the feudal proprietors, but at the same time it elevated the slaves through serfdom and settled habitation to the rights of marriage. Not until the practical separation of church and state through the annulment of the sacramental character of marriage following the Reformation, and the innovation of parliamentary divorce in 1687, did the way open for the unequivocal interference of sovereignty in the family on the ground of its social importance. Finally, under the influence of nineteenth-century theories of the "rights of man," the legislature extracted from the head of the family so many incidents of private property in his wife that the structure of the state itself received a new differentiation in order to manage specifically this new access of sovereignty. Ecclesiastical courts and parliament were dispossessed of their judicial control over marriage and divorce, and this was

¹ See A. R. CLEVELAND, *Woman under English Law* (London, 1896).

transferred to the civil courts. Under these sovereign regulations the position of the wife has been advanced from "honorable servitude" to companionship and partnership. She is granted divorce, not only on account of adultery, but on account of cruelty and desertion; she has a right to independent industry, to the ownership of property, to political suffrage, to the possession of her children. The family, thus, through the extraction of the coercive sanctions, ceases to be a coercive institution and becomes a persuasive institution based on its own peculiar sanction of love. Society has here branched out into two institutions, the one based on coercion and the other on sexual love. The coercive institution has taken to itself nearly all that pertains to the structure and organization of the family. Organization, as we have seen, was based on the control of the coercive penalties, the power to punish, reward, promote, discharge, deprive; and in extracting these penalties from the family the state becomes itself, as it were, the structure, with its legislative, judicial, and administrative organizations adapted for sustaining order and right, and in this structure the family proper lives. The vital principle of the family thus environed is not coercion, but affection. Affection is a purely psychic relation, whereas coercion depends on the control of external means. The family, thus deprived of these external props, is itself exalted to a clarified psychic principle and calls out, through mutual persuasion, in the individual characters of its partners those personal qualities and charms which strengthen, deepen, and ennoble the passion itself.

In so far as there still remains an element of external dependence of the weaker and less privileged sex upon the stronger, there still remains an element of the original coercion which characterized the family. Polygamy, the direct control of women through coercive corporal sanctions, has been eliminated, but prostitution, the indirect control of women through the privative sanctions springing from control over their means of subsistence, has taken its place, and is, equally with the family, its legal successor. Such direct inquiries as have been made seem to show that in but a small proportion of prostitutes is

mere lust the basis of their life; it is rather their situation of dependence, whether from physical or from social and legal subjection, that has led to their acceptance of the wage-system of the family. It may be that this dependence can never be eliminated, as was polygamy. It shows itself, not only in prostitution, but also in many families, where marriage is contracted and maintained for the sake of support as well as affection.

The *patria potestas* covered also the children as the property of the father, including the power of sale and exposure. This was later restricted in Anglo-Saxon times by the marriage laws requiring the consent of the daughter, and by the general laws against homicide. The children were protected by the church and religion. In recent times, however, the social importance of training for citizenship and the higher ideas of human rights have led to compulsory education, factory legislation, and child-saving laws, which recognize rights of children against their parents, even to the extent of coercively finding them a new home. In the adoption of these laws and the administrative provisions for their enforcement the state has become a larger institution through the abstraction of important incidents from private property in the family, and the governmental structure has been correspondingly increased with newly devised machinery of coercion formerly controlled by the head of the family. The public-school system is held in law to be a branch of the family, the teachers and authorities standing *in loco parentis*; yet this system is at the same time a branch of the state. The state has here interfered in the private ordering of the household by taking the child from its parents for one-third of its waking hours, and has introduced order and system into the training of children, together with the assertion of rights on their part. The family becomes thereby less a coercive institution, where the children serve their parents, and more a spiritual and psychic association of parent and child based on persuasion. A more searching interference on the part of the state, together with a new set of governmental organizations for its enforcement, is found in the boards of children's guardians, the societies for the prevention of cruelty to children, orphans' asylums, state

public schools, with their investigating and placing-out agents, empowered under supervision of the courts to take children away from parents and to place them in new homes. A large part of the unlimited coercion of the *patria potestas* is here extracted from the family and annexed to the peculiar coercive institution where it is guided by notions of children's rights, and all families are thereby toned up to a stronger emphasis on persuasion as the justification of their continuance.

CHAPTER XI.

THE CHURCH.

The church may be looked upon as both an original and a derived institution. As original, it belonged to the segmentary form of society, the blood-relationship of communicants, the empiric stage of self-consciousness, and the ethnic stage of religious belief. As derived, it appeared in the organic or territorial form of society, the contractual relationship of individuals, the reflective stage of self-consciousness, and the ethical stage of religious belief. We are to inquire now into the threefold character of this institution—its persuasive motive, its material basis, and its coercive organization. The psychic basis of the church we name religion. The church itself is the organization which grows up about religious belief in the struggle for existence. The material basis is the social products, which, being reduced to private property, constitute the material penalties which support organization.

What is exactly the peculiar psychic principle of religion? Sociology must answer this question somewhat more narrowly than philosophy and psychology. Professor Baldwin,¹ summarizing current theories, reduces the factors of religion to two: the feeling of *dependence* and the feeling of *mystery*. Sociology, having the definite problem of social relations and social organization in mind, must narrow this description so as to imply its social bearings. It is but a particular deduction from Baldwin's generalized terms if we describe the religious motives as the belief in moral perfection and the consciousness of guilt. From the

¹ *Social and Ethical Interpretations*, p. 327.

belief in a morally perfect invisible ruler originated the belief in order and authority. These found expression in the customs and ceremonial laws of primitive man, and in the political authority which always claimed divine sanction. From this sprang the first conception of the moral right of property, as distinguished from the legal right. The latter did not appear until the reflective stage of society and the emergence of the state. The former was its precursor, and could not have gained respect in the minds of men without religious sanction and support. Felix holds, indeed, that the very concept of private property was religious in origin.¹ At the death of a proprietor his belongings were sacrificed that they might accompany him beyond. To the gens and its patriarch, as the administrator of the ancestor, the property which was not sacrificed was held in usufruct, and not of private right. To the deities primitive man yielded in sacrifices a large part of his belongings, without material or physical coercion. The discovery and punishment of thieves belonged to the deities as the protectors of property. In this way the religious sanctions, which are purely persuasive in character, were diffused throughout the entire life of man and served to vivify each new institution as it began to emerge in the form of private property. In ethical religions, especially Christianity, for ceremonial observances is substituted the law of love in the heart toward God and man. The belief in perfection is turned from outward imitation to inward reflection, and remains as before a psychic principle evoked, not by coercion, but by persuasion.

The consciousness of guilt is the counterpart of the belief in moral perfection. Lippert has shown² that it is upon the foundation of sacrifice that priesthood is erected. The priest is not teacher nor preacher. He rather is often arrayed against these. His duty is that of administering and giving efficacy to sacrifices. The need of sacrifice follows from the consciousness of guilt, which everywhere holds sway in the human breast. The evils, misfortunes, and sufferings of life, as well as torments following

¹ FELIX, *Der Einfluss der Religion auf die Entwicklung des Eigenthums* (Leipzig, 1889), p. 7.

² *Allg. Gesch. des Priesterthums* (Berlin, 1884).

death, are held to be penalties inflicted by deities whose commands have been rejected or neglected. From these evils men must be saved by propitiating the deity concerned. In the empiric period the disobeyed commands were the customs and ceremonies; the means of propitiation were the animal and food sacrifices which the offended deity could enjoy. Here we discover the first material basis of religion, the sacrifices. He who alone could make the sacrifices acceptable to deity, whose word and touch could alone make them sacred, must needs, through them as a material basis, gain control over the believers. Add to this the power over fetiches and medicines which he possessed, and we have the material products whose production by the sacred labor of the priest and whose private ownership by him furnish the basis for the growth of a hierarchy with coercive control over the community. If it should ever come that popular faith in these material products thus monopolized by the priesthood should fail, then they would lose their value for want of demand, and the entire structure of coercive control would fall. This was the work of Jesus. For animal sacrifice he substituted his own death. Here no priest was needed, for no material sacrifice was demanded. The believer laid hold on forgiveness of sin and salvation from evil, solely by faith in Christ. He became his own "high priest." Had this been the only inference and practice which could have been drawn from the teachings of Jesus, it is difficult to see how there could have followed the organized church with its masterly discipline and subordination. Each believer would have come directly to God without intervention of priest or material sacrifice.

But Christ had left with his disciples certain observances which, under later beliefs, came to be looked upon as sacraments, and therefore as under the control of priests. These were especially the supper, the baptism, and the laying on of hands.¹ Initiation into the body of believers was celebrated by the former two, and the transmission of the sacred offices and healing of diseases by the latter. There were originally no priests, because no sacrifices. The presbyter was the presiding member of the

¹ LIPPERT, Vol. II, p. 643.

local community ; the deacon, the poor officer, having disposal of the common funds ; the "episcopus" was "overseer ;" the apostles were teachers. Later the communion became a symbol instead of a common meal ; the bread and wine became the very body of Christ, made so by the word and touch of the priest ; excommunication became deprivation of Christ's forgiveness for guilt, and later, with the church's wealth and political power, it even deprived the subject of property and subsistence. With the introduction of relics and sacred places where temples and convents were built, those who were put in charge exercised power over the superstitions of the people. Believers, desiring forgiveness for their souls, contributed gifts, and the introduction of wills opened the way for bequests, until one-third of the land of Europe was in the hands of the church. Tithes, immunity from taxation, the seizure of judicial and legislative functions in the absence of a constituted monarchy or state, the celibacy of the clergy, made the church the wealthiest corporation of the time. Its material equipment now was twofold in character. First, religious, such as the eucharist, relics, and sacred places, whose value depended on the faith of believers ; second, industrial, such as lands and vested incomes, whose value depended upon the bodily wants of mankind. In both cases scarcity was a necessary decisive condition of value ; but in the first case the demand, existing in the mind alone, was liable to vanish with changes of belief ; while in the second the demand, existing in the bodily wants of the masses, was certain to increase with the growth of population. In either case, while demand and scarcity played together, these material products were the valued objects of private appropriation and the basis of organization. We are now to notice briefly the steps that led to monopoly and centralization.

Originally each local community of worshipers elected its presbyter, episcopus, deacons, and other leaders. But induction into office required the sacred apostolic succession, and laying on of hands. Here was the germ of the power that ultimately crowded out local election and substituted centralized appointment. Centralization then centered about the see of Rome

because of the abundance of its relics and because it was the seat of the apostle Peter. The beliefs of the people gradually made the bishop of Rome the head of the church. In his hands was centered the control of the church's property, with the resulting privative and remuneratory sanctions, backed by material penalties and rewards. Appointment, promotion, and removal of the priests throughout Christendom came from Rome. Excommunication became exclusively the pope's weapon, with its unparalleled sweep of spiritual and material penalties. Finally, trials and punishments for heresy, conducted by the pope's subordinates, added to his power the physical penalties of death and bodily suffering.

We have here again the universal law of monopoly and centralization, enforced by necessity and the struggle for existence. The religious teachings of Christ, love of God and man, meekness, self-sacrifice, devotion to law, order, and property rights, showed themselves in the martyrs of the early church, but the results were not commensurate with the sacrifices. There was the wastefulness, the loss of energy, which follows lack of organization. With the barbarian invasions, with a rude people needing discipline, the church required unity and energy, and the insignia of the same, pomp and wealth. Only with the discipline of organization and the wealthy material basis therefor could even those meek, persuasive qualities of Christ's religion, apparently so opposite, hope to survive and pervade society.

But monopoly, when once attained, is prone to exalt its material basis above its persuasive principles, and the interests of its hierarchy above the interests of the community. Organization should be perfected for struggle, not for gathering the fruits of victory. A continuation of the methods of competition now becomes aggrandizement instead of public service. The community had been educated by the church and by the forces that followed on its path, up to the point where it became equipped with the persuasive susceptibilities which constituted the church's mission. The community was now developing a crude state consciousness, whose essential qualities are that respect for law, order, authority, property, and moral

right which the church had fostered, but which the church's aggrandizement now threatened to suppress. This state consciousness became concrete in the person of the emperor and the king. In the century of the Reformation two lines of evolution lay open to Europe. Either the church should become wholly sovereign and the state its coercive instrument, or the state should be sovereign and the church one of its subordinate institutions. The former was the path of India, the latter the path of Europe. In the contest of the century the church became the opponent of the very qualities it had fostered; no longer a supporter, but a destroyer of authority; not a peacemaker, but an inciter of war and insurrections; not a guardian of security, but a source of universal unrest through persecution of heretics and witches; not the supporter of law, but its violator; not the defender of the poor, but their oppressor; and always the disturber of property relations.¹ The decisive steps of the contest by which the church was subordinated were the following: First, the loss of popular faith in transubstantiation, relics, sacred places, and clergy. The supply of relics had been so largely increased through the enterprise of competing monasteries that their value materially depreciated, and ultimately disappeared. Second, secularization of lands and treasures; statutes of mortmain. By the foregoing measures the material basis of the organization was drawn from under the feet of the priest proprietors. Third, appointment of clergy by the king. This measure substituted the king for the pope as the head of the church, and later, through cabinet government and responsibility to parliament, the people were taken into partnership within the religious organization, with a voice in determining its will. Fourth, toleration acts; acts removing disabilities from dissenters, Catholics, Jews; acts incorporating dissenting congregations and legalizing their holdings; acts legalizing affirmations as well as oaths; and, in the United States, the disestablishment of the church by the exclusion from public taxes. By these acts ethical principles, securing the right

¹ FELIX, *Der Einfluss der Religion auf die Entwicklung des Eigenthums* (Leipzig, 1889), p. 386.

to free belief and expression of opinion, were introduced into the structure of religion. The state, by extracting the coercive sanctions from the priesthood, constituted itself the structure within which the religious principle operates. In these and other ways the religious motive has been separated out from dependence on external sanctions and penalties, and has been compelled to rely upon its own peculiar psychic and persuasive sanctions. No longer able to enforce its doctrines through coercion, the church now seeks converts through preaching, conversion, and persuasion. The religious revivals of both Protestantism and Catholicism of the past one hundred and fifty years, the missionary societies, the charitable and reformatory work of the church, are witness to the increased emphasis and deepening of the religious principle when once differentiated in its own proper institution. The state, through its laws of property and its creation of ecclesiastical corporations, determines the coercive structure and organization within which the spiritual life of religion moves and breathes. By thus insuring to all believers certain partnership rights in the external means and machinery of worship, and removing therefrom the individual caprice of a priesthood, the state has freed religion from the supremacy of those who rise by mere diplomacy, shrewdness, and manipulation of church machinery, and has transferred it to those whose spiritual and personal preëminence commands in its own right the devotion and coöperation of the community of believers. The spiritual defect in all combinations of church and state has been the dominion of the priest and the ostracism of the preacher and teacher. The church as a purely persuasive institution is the field for the gifts of the preacher.

The state has increased its bulk and complicated its structure by the increments of coercion extracted from the church. The confiscation of monasteries, the secularization of charities, the rise of direct taxation, ecclesiastical laws adjudicated and enforced, all have occurred as a result of the transference of dominion from the private control of ecclesiastics to the public control of those who share in sovereignty.

CHAPTER XII.

INDUSTRIAL PROPERTY AND CORPORATIONS.

THE third original institution, or set of institutions, from which the state has sprung, was private property in slaves, serfs, land, and capital, or the industrial institution *per se*. Throughout social evolution during the empiric stage this institution was subordinate to the overshadowing institutions of the family, the monarchy, the church. But since the emergence of the reflective stage and its abolition of slavery and serfdom, the industrial has taken a new and derived form, a change analogous to that which occurred in religion in the transition from the ethnic to the ethical, and in the state in the transition from absolutism to constitutionalism. These derived institutions are the merchants' and manufacturers' guilds and the more recent business corporation.

The persuasive basis of industry is originally closely bound with the coercive basis of organization, both being grounded on the necessity of subduing nature to gain a livelihood. But in the empiric stage coercion was corporal—the direct ownership of slave and serf. Consequently labor was degraded and despised, and those whose lot it was felt no particular devotion to it. But in the reflective stage, with the freedom of labor, with inventions, machinery, and industrial technique, industry acquires an interest in itself and arouses a devotion which is susceptible to the sanctions of persuasion. The love of work is the persuasive basis of industry. Work has an interest for its own sake, and also an ulterior interest as a means to the sustaining of all the other institutions. A free man works because he finds an interesting outlet for his energies, and because he wishes to support wife, children, preacher, government. But in so far as this ulterior end is not voluntary but compulsory, in so far as this love of work is overshadowed by the necessities of the worker, the basis

is not persuasive, but coercive, and where the latter element still exists it chokes the persuasive element and gives character to the institution. It is the gradual extraction of coercion from industry and its absorption by the state that permits this institution to be separated out from the others and established upon its own persuasive motive, the love of work.

The material basis, from the very nature of the institution, is more inclusive in industry than in any other institution. Industry is concerned primarily with the material of nature, fitting it for use in all institutions. It produces food, clothing, and shelter for wife and children; weapons and munitions for the state; cathedrals for the church; ballot paper for political parties. It thus prepares the primary material basis to which the other institutions add their own peculiar increment of value. It is partly for this reason that in the empiric stage, when production is direct and not yet based on the roundabout methods of accumulated capital, the industrial institution is not yet differentiated out from under the domestic, the military, and the ecclesiastical institutions. Capital consists of tools in place of machinery; land is more abundant than population; and consequently the material basis of industry does not have an independent importance and value. It is laborers who are scarce rather than land and machinery, and consequently industry is built upon slavery and serfdom rather than upon property in land and capital.¹ In the reflective period, however, with its wage system and oversupply of labor relative to land and capital, the latter becomes the basis of a newly differentiated institution, the industrial.

The organization of industry and its tendency to monopoly and centralization have the same basis and follow the same laws as those we have seen in other institutions. Yet the distinction between the empiric and reflective stages must be noted. In the former stage, as already stated, industry had not acquired its separate institution, but was subordinate mainly to the political institution. Therefore, as the latter developed toward centralization,

¹ The disproportionate importance given to this principle by Loria, expanding on the suggestion of Henry George, cannot be accepted. He overlooks the equal importance of religious and moral beliefs. See translation by KEASBEY, *Loria, The Economic Foundations of Society*.

so did industry centralize with it. The absolute monarch was private proprietor, not only of the land and vassals, but also of all the slaves and serfs belonging to the latter. Centralization was political, not industrial. Consequently in the later development of the state whereby subordinate classes gained partnership with the monarch and introduced order and right into coercion, the rights acquired were not peculiarly industrial, but primarily political. Freedom of labor is a political privilege. The right of free industry is the right to be free from governmental obstructions in the way of setting up an independent establishment and buying in the cheapest market and selling in the dearest. The right of free movement and free employment is the right to be free from arbitrary political obstruction in seeking employment. The right of property is the right of every individual, regardless of rank, learning, political influence, or other obstruction, to get and keep such property as he can. These are all primarily political privileges, and consist in the removal of those restrictions which the rulers had imposed directly on individuals and classes.

It is often asserted that slavery and serfdom disappeared, not because of state prohibition, but primarily through the economic fact of the wastefulness of coerced labor in competition with voluntary labor. This view is undoubtedly true. As already stated, only when useful objects, be they tools, animals, women, men, land, saints' relics, or public franchises, come to be recognized as scarce with reference to the existing density and volume of population, does their significance for self and their capacity for coercion rise into consciousness with sufficient clearness to invite men to appropriate them as private property. And when the increasing population and wealth production have transferred scarcity to other factors, then is the motive for appropriation also transferred. But while this may cause the disappearance of slavery and serfdom, it is not enough to bring about the positive rights of freedom. Economic causes alone would abolish serfdom, but would not prevent the substitution of a caste system like that of India. It required the positive interference of the state in the creation of legal rights, such as free

industry, free movement, free employment, free ownership of property, to enable individuals from the serf caste not only to be free from direct coercion, but also to break into the hitherto exclusive ranks of the ruling castes, and to share their industrial privileges. In China, too, with a weak state, slavery has run for centuries alongside freedom. But the European or American state, with its doctrines of right and its partnership of the capitalist and wage-earning classes, has both forcibly deprived the original slave- and serf-holding aristocracies of their private property in men, and has also given the latter equal privileges with the former, and in so doing has reshaped the industrial institution in such a way that indirect coercion and persuasion mainly, instead of direct coercion, must be relied upon to induce work and to create wealth. By the abolition of slavery and serfdom all persons are made the property of the state instead of the property of private owners, and the state, using its coercive power as it sees fit, has adjusted them to each other in their work according to its ideas of right, constituting the familiar substantive rights of life, property, free contract, free movement, free industry, free use of public property and the gifts of nature, etc. Caprice is thus largely excluded from industry, and order and security take its place—indispensable conditions for that immense increase of production required by the increase of population, and producible only through methods of persuasion.

The state in the reflective period, thus extracting direct coercion from property owners, prepared the way for the evolution of the industrial institution upon its own material basis. It did this by breaking down the restrictions which subordinate industry to politics and religion, thus making possible new associations of men for industrial purposes alone. The rights of freedom made industry fluid, and prepared it to recrystallize around its own persuasive and material basis. The material basis thus prepared was private property in land and capital, which henceforth was to be free of acquisition to all, and transferable. Here is a new basis for the industrial institution, enabling it to be separated out from other institutions and to

develop toward monopoly and centralization by means of its own indirect coercion, the privative sanctions. This development took successively two forms, the guild and the corporation.

First, as to the guilds. Along with the freedom of labor which resulted from economic and legal changes went the growth of absolutism ; and the monarch, in order to strengthen himself against his nobility, introduced what may be called the *democratization* of property. The fact and concept of property originated as the possession of a narrow and aristocratic class. Serfs, slaves, and subordinates were not considered as capable of holding property in their own right. The mediæval guilds of merchants and manufacturers, having their origin in the necessity of association on the part of the newly freed serfs, and gradually gaining through their organization a recognition from the king, secured from the latter for each of their members the right of private property in tools, lands, and family. This democratization consisted simply in the right to buy, sell, and give their own tools and lands in trade and their daughters in marriage, just as the feudal lords did with their property.

These guilds, originating as the voluntary associations of free men, secured in time, through the further growth and strengthening of their organization, the exclusive jurisdiction, not only of commerce and manufactures, but also of local government, within their respective areas, as well as a share in the national government. The last came about as follows: Their delegates or headmen, from time to time, met in national convention, or went as a lobby to the meetings of the king and his grand council, in order to secure special privileges for their members. This convention or lobby was finally legalized and incorporated with delegates from the smaller landowners, and became a branch of the state, the house of commons. The guilds themselves in their local areas were granted again and again certain sovereign prerogatives—the right to tax themselves, to appoint and name the governmental officers in the locality, to adopt and enforce ordinances. Gradually by this process of legalization they became intrinsic parts of the structure of sovereignty. The sovereign merely took those forms

of organization which had sprung up as private associations through struggle and survival, and had shown by the fact of survival their strength and fitness, and then filled them with political functions. Their structure, that is, the organization of their coercive sanctions, was private and competitive in its origin and growth. It became public simply by being legally recognized as an organization and intrusted with public functions. Later, through the simple device of extension of the suffrage, subordinate and hitherto excluded classes, living in the area governed by the organization, were admitted to partnership in determining its will. This may be called the *socialization* of property and institutions. The democratization of institutions consisted in breaking up the centralized form which had resulted from survival, and creating small copies of it, each with similar unrestricted powers of private dominion. The socialization of institutions consists in introducing the subordinate classes into partnership with the hitherto absolute proprietor. The family was democratized when polygamy was outlawed, and slaves and serfs were guaranteed possession and control of their wives and children. The family was socialized when the wife and children were granted the right to veto the arbitrary commands of the head of the family and so were made partners with him. Political parties were democratized through the guaranteed right of free assemblage, free speech, and free nomination and election of candidates, whereby any group of persons could organize a party if they could persuade enough others to join. Parties are being socialized through the legalized ballot and primaries, by which the organization proper is transferred to sovereignty, and the subordinate members are guaranteed approved rights of veto and persuasion within the organization.¹ Democratization divides and multiplies an institution, restricting its centralizing tendencies, but retains its basis in private property. Socialization transfers it from private property to sovereignty, incorporates its organization into the constitution of the state, fixes the relations of its members to each other against capricious change, and amends it in such ways as

¹ See following chapter.

to guarantee certain rights within it to the constituted members. The guilds were a consequence of the democratization of property. Their socialization was effected after the triumph of the exclusive jurisdiction and political power which they attained under private control. This power and jurisdiction, being legally recognized and transferred to sovereignty, was amended in the interest of order and right, and thereby became the structure of city government.

Strangely enough, the guilds, which originated and grew up as industrial associations, ultimately lost their industrial life, while the shell of their organization survived by being filled with political duties. Their fate strikingly illustrates the suffocation which organization, as it approaches perfection, with its increased coercive power, inflicts upon the persuasive principle which animates it. Owing to the restrictions of the guilds, the new industry which arose with the inventions of machinery was compelled to seek new areas and develop a new organization, the corporation.

In the origin of business corporations we find again the freedom of labor and democratization of property which furnished the basis for new associations. Here, also, the principle of coercion with its privative sanctions was the basis of organization. Perfect freedom on the part of the owners of machinery in the employment, payment, discharge, and promotion of those who worked with their machines was the condition of organizing and economizing the forces of each establishment and fitting it to overcome others in the struggle for survival. Again, also, in this struggle, proceeding for the past 150 years, the smaller and weaker establishments have disappeared, and their territory has been occupied by the larger, until, in the United States, where this private competition has been the freest, and where corporations were earliest legalized through general incorporation laws in the place of special charters, the resultant monopoly and centralization have in many industries been accomplished. The state has not only not interfered, but has contributed positively to the process of centralization by its laws creating and protecting business corporations. These corporations, being a species of

joint property, require for the unity of administration of the coercive sanctions intrinsic in private property a further coercive power on the part of a portion of their stockholders over the remaining portion. A corporation is in law a unity, an artificial person, and by this can only be meant that all stockholders must submit to the controlling interest. The state, without taking ethical questions into account, but merely recognizing the natural unreflective relations which property owners assume to each other, legalized these relations as it found them, and determined the controlling interest in the corporation on the basis of the *shares* of stock rather than the number of stockholders. The will of the corporation is therefore the will of the owners of a majority of the stock. The process of socialization of these corporations has begun through legislation protecting, or rather creating, rights of the minority stockholders in determining the will of the institution. The state has not gone as far as to obliterate the plutocratic basis, "one share one vote," but it has in some cases, under a new ethical motive, authorized associations to be formed on the humanitarian basis, "one member one vote." These are known as coöperative associations, and the fact that they have not survived in the struggle with corporations shows how difficult it is for the state to create outright the structure of a new institution. Structure is a matter of private, competitive, unethical, coercive survival, and the state can introduce the ethical notions of right into it only after its period of struggle is past and after its monopolistic character has guaranteed immunity from the disciplined organizations based on private coercion. Since the public opinion controlling the state has not yet recognized the inevitable monopoly of corporations and is still busied with plans for their democratization, our search will find as yet but occasional steps toward their socialization. It can only be said that such steps will probably be directed to providing further rights for minority stockholders and to creating rights within the corporation for the laborers employed. The rights of the laborers turn especially upon the right to freedom from capricious employment and discharge, that is, to the introduction of order and right into the structure of the

institution. In general this may be designated as the "right to employment," and should be distinguished both from the "right to work" advocated by the revolution of 1848 in France and from the socialistic theory of the rights of laborers.

Louis Blanc's advocacy of the "right to work" and the establishment of "national workshops" in 1848 recognized intuitively that the right to work depended upon the perfection of organization. Consequently the two planks of the revolutionary platform were the "right to work" and the "organization of labor." The former depended on the latter. But the plan of organization thus ethically preconceived could by no means survive. It was absurdly simple and military. Eleven laborers formed an "escouade" with an "escouadier" at their head, five escouades a brigade with a brigadier, four brigades a lieutenancy, four lieutenancies a company, and as many companies under one chief as were necessary.¹ Apart from the reputed hostility of the French government which administered these workshops, they, of course, could not have competed with the highly disciplined organization of the "trust" which natural selection has since evolved. The state was here, as with the coöperative association, attempting to create an ethical institution where only a coercive one could survive. The case is different, however, after the final victory of the trust or monopoly. In this case the coercive sanctions have been organized and preserved by the struggle for life, and are fitted to the work in hand. Ethical considerations are now only questions of such structural amendment as will give the laborers security within the perfected and victorious organization. The device of compulsory or legal arbitration, as adopted in Australian colonies, is a step in this direction. Public ownership of monopolies is probable in many cases, but where it has hitherto been adopted the motive has not been mainly the provision of rights for employés, but the improvement and cheapening of the service for the public. Civil-service reform is a crude guaranty of the right to employment in the public service, but it again lacks fitness for industry, since it is an artificial check on the heads of

¹ See SINGER, *Das Recht auf Arbeit* (Wien, 1894), p. 44.

departments imposed by an outside commission, and was created by the state outright on ethical and *a priori* principles, instead of being developed under the test of survival. In successful private business the general manager has complete power of appointment and removal of subordinates, unhampered by any outside academic board of examiners, and if private industry is transferred to public ownership, this method must be retained. The solution lies in the proper selection of the heads of departments, and in accomplishing this the state or city must imitate the method of private corporations in selecting their general managers and superintendents.¹ The structure of industry must be incorporated into government exactly as developed by competitive survival, but at the same time must be so amended as to secure the rights of the laborers which are at the time accepted as the ethical purpose of the state.

The right to employment differs from the socialistic theories of labor's rights in that the latter hold that the laborer has the right to the entire product. If this be so, there can be no temporizing with petty claims short of confiscation. But these theories are weak on the economic side, because they do not apprehend the psychological basis of interest; and they are peculiarly naïve in their treatment of organization and administration, for, while socialists see the coerciveness of private property, they do not see that coercion is also the basis both of that organization which makes private business successful and of that administration which constitutes government. Coercion has a psychic basis, founded in human nature, and whether it be in

¹See COMMONS' *Pro. Report.*, New York, 1896, pp. 211-16. Also report of New York state excise commissioner, 1898. The commission, speaking of the amended civil-service law which restricted the state civil-service commission to examinations for "merit" only and gave to the heads of departments authority to hold examinations for "fitness," says, p. 38: "The results of these examinations were very interesting and instructive, and satisfied me that, except for places requiring technical knowledge, no examination which appears to grade and rate people according to their relative ability for a particular line of work should ever be wholly a paper or written examination; but should be made and personally conducted by people of broad experience, quick perception, and knowledge of human nature, who themselves are thoroughly qualified in the line on which they assume to question and grade candidates."

public or private hands, it cannot neglect its basis. Now, organization is essential to the right to employment, and socialists, by disdaining administrative problems, fail to comprehend the very nature of the state which they seek to enlarge.

Without considering further the possible details of state control of industry, we can only observe the principle. The growth of monopoly and centralization increases the coercive power of the private owners of industry by strengthening the privative sanctions. All the opportunities for investment and labor being under the control of a single authority, the material penalties inflicted on those who do not obey this authority are unavoidable. But the grounds for private coercive authority having ceased through the cessation of struggle, the state as the coercive institution of society tends to absorb this side of the industrial institution. It constitutes itself the coercive framework of industry within which the persuasive motives operate. This framework consists in the statutes and codes of laws governing property and corporations, the factory laws, the judicial decisions, the administrative methods which determine the relations of producers to each other. The state becomes the framework of industry, just as it becomes the framework of the family and the church. The laws governing property and labor constitute the bulk of its functions, and the legislatures, courts, and executives have been created expressly for, and are busied mainly with, the regulation of this important institution. And here, as with the other two original institutions, we see how the organic nature of the state has grown. It has been differentiated out from the primitive, homogeneous blending of institutions, not by being separated off from society and set out as a kind of envoy extraordinary, whose business it is to treat and arbitrate with foreign states and between private proprietors, but the very differentiation has been at the same time a deepening of the hold of the state and its seizure upon the hidden recesses of society previously autonomous. The state bears the relation to other institutions of structure to function, of organization to life, of machinery to force, of coercion to persuasion.

It is in this very way that the state liberates the industrial

motives from capricious control and gives security and right to the subordinate members of the institution. The persuasive motives thus freed are greatly strengthened and intensified. Security for investors and minority stockholders stimulates the savings of the masses of the people, increases their thrift, lowers the rates of interest, multiplies the machinery and production of society. The position of laborers is removed from the personal control of those over whom they have, in turn, no control ; the amount and kind of their work becomes defined and calculable ; each laborer acquires increased scope of self-direction, and his productive powers are called out, not by the fear of deprivation, but by the remuneratory and approbatory sanctions upon which his employers are thenceforth compelled to rely. Useful labor, thus freed from the badge of subjection, becomes a motive in itself, and the industrial institution, like other institutions, is established on its own clarified, persuasive basis, the love of work.

CHAPTER XIII.

POLITICAL PARTIES.¹

ORIGINAL institutions are those which existed undifferentiated in society previous to the emergence of the state. The rise of the latter, collecting to itself the coercive factors of the several institutions, permitted first the free action of individuals within them. But this free action, leading to immense increase of wealth and population, and therefore becoming essentially competitive, tended necessarily to association and then to subordination to a single will. Thus the freedom of labor prepared the way for industrial corporations, and the extension of the right of suffrage prepared the way for the rise of political parties. These have reached their highest development in the United States, because here labor has been earliest freed and suffrage widest extended. Political parties are now generally recognized as essential to popular government. But our federal and state constitutions were originally framed under the conviction that parties were the deadliest rocks in the path of freedom. Parties were identified with factions. Washington's farewell address stated this conviction. Instead, therefore, of incorporating parties into the constitutional framework of government, the constitution-makers did all they could to suppress them. It was natural for a people which had just emerged from a life-struggle with a foreign foe, where unanimity was required for success, to look with anxiety on the personal, factional, and sectional struggles that followed. Washington himself could hardly see that the differences in his cabinet between Hamilton and Jefferson were anything more than the personal differences between an energetic business-man and a phlegmatic theorist. But history shows that each stood for deep and lasting principles, which

¹ This chapter is an adaptation of a paper read at the National Conference on Practical Reform of Primary Elections, in January, 1898, and published in the proceedings of the conference, pp. 18-23 (C. Hollister & Bro., Chicago, 1898).

since that time have competed for supremacy. These opposing principles, if not recognized in the organic structure of the constitution, must make a place for themselves outside and above the constitution. This compels us again to note the distinction between the persuasive basis of an institution and the coercive elements which constitute its framework. In the case of a political party the one is the principles for which the party contends, the other is the organization, or "machine," by which it gains success.

Its principles are all the selfish and the patriotic interests which its members strive to have enacted into law and enforced upon the people. Its organization is the machinery by which it marshals together a majority or plurality of the voters. The success of organization depends not only upon the number of voters, but also upon their discipline. Discipline depends upon control over the privative and remuneratory sanctions, that is, the appointment, discharge, promotion, and reward of the party workers. Consequently discipline and organization tend to monopoly and centralization. In the struggle for existence the best-disciplined and largest organization, if backed by the motive power of desires and conscious interests, will survive. In the system of election by majority vote there can be but two great parties, and every advance in organization of the one must be copied or bettered by the other, under penalty of lasting defeat. So urgent is this necessity that quite divergent principles and interests are usually forced into the same organization. It does not follow, because there are two parties, that there are also but two opposing principles animating their membership. It is the overwhelming demands of success that give organization preponderance over minor divergent principles. Various subordinate groups and factions of the party may be unrepresented in the ruling faction, but they must yield. And with this yielding of factions within the party for the success of the whole has it followed that parties have become more powerful than the constitution itself. The federal and state constitutions recognize only the individual candidate and the individual voter. But parties strive to elect those men who will above all things else enforce

the party's principles, and in so doing they have forced the constitution to their necessities. This is shown notoriously in the election of the president on a party ticket, instead of the election of a non-partisan, like George Washington, as contemplated in the constitution. It is shown also in the appointment of the subordinate civil-service officials in nation, state, and city, on the basis of partisan activity, a policy of appointment introduced by those early inventors of the political machine, George Clinton in New York and Andrew Jackson in the union. This policy has greatly strengthened party organization by enabling the party leaders to reward and punish the party workers by substantial privileges and revenues, and so to hold together between elections and fortify themselves in their supremacy over the government and over their own partisans.

This centralizing tendency in party government was resisted by the American voters in the same way that centralization in national government has been resisted, by the formation of people's clubs in localities, meeting together to criticise and take independent action against their leaders. These local clubs gradually compelled recognition and secured, as the authoritative organ of the party, the substitution of the party nominating convention composed of their own delegates, instead of the legislative or congressional caucus of party leaders. Thus the primaries originated. They tended to socialize the parties and to give voice to the wishes of the party membership as a whole. They thereby greatly strengthened the party organization, not by lessening the power of leadership, but by reconciling the members to the leadership of those whom they believed to have been fairly chosen.

With the completed recognition of the primary in the first thirty-five years of this century, party government came to be firmly established in the hearts of the people. The increase of power coming from it led the parties to seize upon the machinery of the government, the subordinate offices, and the laws, to keep themselves in power. It now became necessary for the opposing parties in self-protection to use legislation to hold each other in check. Consequently the first legal cognizance of parties appears

in the effort to put both parties on an equal footing in elections. The first intimation which I can find in the laws of New York that political parties actually existed was in the election law of 1842, which provides for the election of three inspectors of elections, but permitted the elector to vote for only two. This was doubtless designed to give the minority party one of the inspectors. But the party organization as such was not yet acknowledged, the theory still being that candidates, not parties, were being voted for. Parties as actual factors in elections were first recognized not until after the war, in the election law of 1870, which provided for bipartisan police and election boards in New York city and Brooklyn. This act provides specifically that the choice of the third inspector should not be left to chance, as in the law of 1842, but that he should be chosen "from the party in general political opposition on state issues to the party electing the two successful candidates." An act of 1880 provided for a board of registration in counties of more than 300,000 population, to be appointed from both political parties. And a general law of 1880 provided that every "political organization that shall present a candidate or candidates" shall appoint watchers to oversee the inspectors in counting the ballots. These laws were merely a negative recognition of parties and did not give them a place in the legal machinery of government. They merely protected them against each other. The same was true of the first primary law of 1882, providing penalties for those who should willfully obstruct the primaries, and placing the presiding officers under oath.

Another negative legal acknowledgment of parties is the so-called civil-service-reform legislation. The appointment of strictly administrative officials to strengthen the party is an unwarranted use of these offices, except as the necessity of survival dictates. Civil-service reform aims to exclude this necessity. Here for the first time legislation deals with political parties by taking away one of the strong props of their organization. Such legislation is an effort, not to incorporate parties into the machinery of government, but to exclude them from a large section of this machinery.

The first positive recognition of parties came with the Australian or legalized ballot. The principles of this legislation were the following:

1. A rough definition of political parties based upon the party convention and the general and executive committees of the party, but not based on the rank and file of the membership.

2. Party nominations as certified by the aforesaid party authorities. Here for the first time it was legally recognized that the American voter does not vote for candidates, but for parties, and the party is accordingly made a constituent element in the machinery of government.

3. While recognizing parties as belonging to the legal machinery of government, the law deprived these same parties of their most important mechanical incident or function, the management of elections, the printing and distributing of ballots. This function does not pertain to the essential nature of parties in so far as they are based on principles, but is only an accident of their organization based on coercion, through the control of the necessary material of elections, especially the ballot paper, and therefore the state, in assuming to execute the function itself through its own sworn officials, did by no means interfere with the part that parties must play in popular government. It rather liberated the true spirit and persuasive function of parties from the shell of organization. The ballot was originally a piece of paper prepared by the voter himself. Afterward the party organization assumed this strictly mechanical service in the interests of economy and superior organization. The control of the ballot paper, an object in its nature distinguished by scarcity, became thus an instrument of coercion, and those who controlled it became the private owners of the party. Finally the state took this service away from the party, because it had become an instrument of autocracy tending to check the free spirit and expression of party principles in the mass of the party membership.

We have, therefore, now the official or legalized ballot instead of the private party ballot, and the results are noteworthy. It greatly increases the influence of the individual citizen in the

elections, thus socializing the parties. It gives, as far as it goes, a preponderance to the persuasive principles rather than to the mere organization of parties, and so tends to bring to the front in party leadership those who stand for principles rather than mainly for shrewdness and manipulation. It finally puts both parties on a higher level of competition by eliminating from party strife the factitious elements of bribery and intimidation, depending as these do upon private control of the machinery and material of election, and so increases rather than lessens devotion to party by giving the voters more confidence in their leadership.

The next step following the official ballot is in the same direction: the further legal recognition of parties as belonging to the structure of government, and the further assumption by the state of certain merely mechanical incidents of party organization. Having legally incorporated the party machinery into the system of government, the law must now more carefully define what is meant by a party. A party is not its general committee nor even its party convention—as the official ballot law assumes; it is primarily all the voters who support its principles. The election law leaves this definition to those in control of the organization—an instance of the suppression of the individual citizen by the conquering power of monopoly. Having legalized parties and made them a constituent element in the organization of government, it follows that the individual citizen has a moral right to be a member of a party just as he has to be a citizen. By this is meant that his right to party membership must be defined and enforced by the same power as that which defines and enforces his right to citizenship, namely, the law of the land. Just as the state does not leave the definition of citizenship and the machinery of naturalization to the private interests of any body of men, so it cannot leave the definition of party membership to even the party organization. Political parties are no longer private concerns organized for agitation, but they are public institutions organized to name the officers of government and so to control the government itself. They are now constituted by law precisely for this purpose. The

individual citizen has practically no voice in government except through these party organizations. Consequently the state which protects his rights of citizenship must protect his rights of partisanship. If this protection is left to private management, the test will be his past devotion to the management. If it is put in the hands of the state, the test will be his present intention to support the party of his choice. This declaration of intention, rather than previous affiliation, is the test of citizenship whenever needed, as in naturalization, and should also be the test of partisanship, whenever needed. The only safeguard of such a test is the sovereign power of law.

As to the details of primary-election laws, here is not the place to describe them.¹ Different American states are experimenting upon them with varying results. The object to be secured consists in recognizing the all-importance of the printing and handling of the ballot paper used at the primary elections. This is the material basis of the party organization. He who decides upon the names of candidates that shall be printed upon this piece of paper and the names that shall be rejected holds the party membership in his control. The object to be secured consists also in recognizing the natural evolution of the organization toward centralization, based on the ballot paper and the control of the "workers," resulting in the dominion of one man. The next step is the readjustment of the organization in such a way that, while unity and efficiency are retained, yet the subordinate members of the party shall have an equal voice in determining the will of the management. This is the completed socialization of parties.

A primary-election law of this kind gives a preponderance to the persuasive principles animating the membership of the party rather than to the machinery of its organization. In other words, it extracts the inherent coercive factors which have become powerful and visible in proportion as the party has become monopolistic and centralized, and leaves the peculiar persuasive factors which characterize the institution. This is done by

¹ See Report of National Conference on Practical Reform of Primary Elections, as above.

absorbing on the part of the state, which is the common representative of all parties and all citizens, the machinery of the primary itself, such as the enrollment of party members, the printing and handling of the ballots, the appointment of officials, inspectors, and judges, instead of leaving these to the representatives of the organization. These all belong to the coercive side of the party. Just as the control of the ballot paper constituted the party leaders the dictators of the party, so the power to appoint, remove, promote, and reward the party workers, who in turn have charge of the enrollment, the registration, the marshaling of the membership at the polls, has constituted the boss the private proprietor of the institution. The state here, with its official inspectors, judges, registrars, *et al.*, constitutes itself the structure within which the party operates. The state becomes a larger institution, by deepening its hold on a subordinate institution which had grown up as private property under the law of survival and centralization, until it reached the point where organization tended to suppress the free movement of the persuasive principle animating its members. But the state in thus enlarging itself does not suppress parties. It enlarges itself by merely incorporating their coercive structure and throwing itself about them in order to free them from the capricious coercion of the leaders whom natural selection had constituted the private proprietors. This, of course, is a further guaranty of the rights of the individual voter to a place in the party membership, by protecting him in the enrollment and counting of his vote and the certification of the result. It introduces into party organization the two attributes of sovereignty, order and right, by first extracting coercion from it. This, like the official ballot, is also a subordination of the machinery of organization to the principles of the party. Party success, then, depends not so much upon control over the mechanical details as upon enthusiasm for common principles. And these principles, therefore, become broader and more patriotic, because they must be broad enough to hold together the various factions and minor interests which must be combined to get a majority. Patriotic principles rather than shrewd organization are the banner of party success.

A primary-election law of this kind does not lessen the hold of parties upon the hearts of the people. It rather, as with the official ballot, turns the emphasis upon persuasion instead of coercion, and so increases the devotion to party and the acquiescence of the minority in the leadership of the majority. Neither does it deprive parties of their eminent leadership which has justified its position by the decisive criterion, success. The same abilities of leadership, instead, are made subservient to the party as a whole rather than to the demands of a faction in the party or to the love of power on the part of their fortunate possessors.

Thus primary-election laws are one of the steps away from the early dread of political parties toward their legalization as a constituent of the governing machinery. Only when recognized as such can they be controlled in the interests of the ethical ideals of the state. They have in themselves what larger patriotism does not always possess, the powerful motive of self-interest. Their so-called principles are mainly the common self-interest of their members. This is their constantly impelling force. This is their persuasive energy that gets results. The problem of politics is how to direct this self-interest for the common good. At first the problem was attacked negatively, the endeavor being to prevent one party from getting unfair advantage over the other. Next the attack was positive, in the interests of the people at large, endeavoring through the official ballot to deprive parties of those artificial and factitious means of success which depend only upon the machinery of organization. Later the problem is the internal organization of the parties themselves, the legalized primary, the very heart of the party situation. The party primary is peculiar to American self-government. The primary is democratic in its origin. It has become oligarchical through the necessity of organization. The problem of politics is to recognize the organization as necessary and then so to order its coercive conditions and terms as to make it an agent for securing equal persuasive opportunities for all its members and all citizens.

CHAPTER XIV.

THE THREEFOLD PROBLEM OF EACH INSTITUTION.

With the foregoing brief survey of the more important social institutions, we are now able to return to our elementary discussion of coercion, and persuasion and to verify the distinctions there made. By an institution is meant an enduring social relation based upon one of the elementary psychic capacities of the individual. Being a social relation, its essential qualities are found in the kind of dealings with one another which the members of the institution carry on. The motive which responds to the persuasive sanction is that elementary psychic susceptibility which is the basis of the institution, while the motive responding to the coercive sanction is the fear of pain or material privation. We have, then, in each institution a threefold problem, corresponding to the threefold division of the material basis, the psychic basis and coercion. First, a technical problem, based on knowledge and skill; second, a persuasive problem based on tact and eloquence; third, an ethical or political problem, based on the power to choose the end to which these services shall be directed. We shall consider each problem separately in the several institutions.

A rough survey of all the activities of all the people living in a society shows that by far the greater part are engaged directly in the industrial institution, in working up the material of nature for the satisfaction of human wants. They are manufacturing, transporting, and delivering goods, or fitting up machinery, buildings, and highways for these purposes. The work is planned by architects and engineers, whether mechanical, electrical, or civil, who are more or less equipped in the technology of their particular callings, and in the sciences of mathematics, physics, and chemistry. The work is executed by foremen, artisans, and laborers, who have varied skill in handling the materials to be worked up. This is the technical problem of the industrial institution. It deals with the material of nature. As far as this problem is concerned, there is no difference whether the work is

done by the people as private individuals in the administration of their private property, or by individuals employed by the state. In overcoming nature and exploiting her resources the problem is purely technical.

The same is true of the large array of people who, in the domestic and ecclesiastical institutions, are teaching the children at home or in the schools and churches; of the policemen and prison officials who are dealing with anti-social classes; of the charity workers and pauper overseers who are dealing with the sub-social classes; these are fitting social material for society, just as the other technical workers are fitting natural material for society's uses. This work is also technical, requiring knowledge gained more or less from the sciences of psychology, penology, and sociology, and skill gained from experience in the application of scientific principles. Whether they do their work as employes of the state or as members of the domestic or of the ecclesiastical institutions is not at all a matter of concern, seeing that the quality of knowledge and skill for which they are employed is the same in either case.

Besides these technical duties which the state and the industrial institutions may have taken from the family and the church, the latter institutions have certain duties still peculiar to themselves. The technical work of the family is the duties of "house-keeping," the larger part of the training of children, the care of the health, the provision for amusements, comforts, and necessities of the home. These duties are usually met empirically, but they may be met by the help of science and technology, as is the case where the physician's advice is taken, or when "scientific cookery" and child psychology are enlisted.

The technical work of the church is the observances of rites, ceremonies, sacred times; the arrangement of auditoriums, confessionals, wardrobes; the routine of deacons, elders, bishops; the provision for religious and secular education.

The technical problems of political parties are the duties of the party "workers;" the methods of nominating conventions, campaigns, elections; the preparation of ballots and poll lists, in so far as these have not been taken over by the state.

The technical work of the state is the duties of officials within the laws and constitutions, the drafting, publication, and enforcing of laws. The state in absorbing coercion from the subordinate institutions has been compelled to take with it a large amount of technical work in which its officials are required to be equipped. This has been indicated above. As will be noticed, the technical problem of each institution is not entirely distinct and separate from that of others. There is overlapping at many points. The mental qualities, however, required to meet this problem wherever found are the same, namely, knowledge and skill.

But a high development of technical ability is not possible without a minute division of labor and a specialization of knowledge and skill in limited fields of work. This necessitates in the industrial institutions transfers of goods, the selling of one's own specialized products, and the buying of the products of others for one's own personal and industrial needs. Furthermore, this technical ability must also be specialized within a single industry, and a hierarchy of knowledge and skill must be organized on a larger or smaller scale, according to the extent of the market and the character of the production. Here we have a new problem, that of buying and selling and the organization of responsibility. Material must be bought and sold, wages and salaries must be paid, employ  s must be selected and fitted into the respective processes according to their equipment in knowledge and skill, and the highest productive energy must be evoked from each employ   by the proper play upon his motives. Altogether the problem is one of economizing the technical abilities of individuals, that is, of increasing the productive power of each group with the least sacrifices and concessions to other groups and to the associated individuals within the group. This is usually known as the problem of business or administration. It deals with individuals instead of raw material, and the psychical quality required is tact. This quality is seen in the successful business manager who generally has but little technical ability, knows but little of the sciences and the various branches of technology over which he presides, and has no skill in handling

material, but is able to "deal with men" through his possession of the personal qualities of foresight, shrewdness, diplomacy, courtesy, blandishment, and firmness, all of which are factors going to make up persuasion. Here again we are not concerned with the question of public or private management. The same qualities are required whether the work be done by a business manager employed by the state or by a private company, or whether by one who is "his own employer."

The problem of persuasion in each institution requires much the same mental qualities as in business. But in addition there must exist the peculiar quality belonging to the institution in question. In the family, tact, self-control, self-sacrifice, integrity, deception, or what not, are summoned to aid the underlying sanctions and motives of sexual and parental love. In the church, eloquence, entreaty, appeal, personal character and example of the pleader are added to the belief on both sides in God, conscience, divine reward and retribution. Political parties hold their voters together by the arts and arguments of the politician, his sincerity, convincingness, judicious use of party shibboleths, or confusion of issues. He plays upon the class consciousness, patriotism, self-interest of his auditors and readers.

The state is primarily coercive, but where technical work has been absorbed by it, just as its officials must be equipped in knowledge and skill, so also must they learn tact. Penology, pedagogy, "scientific" charity, are highly successful only when the iron hand of coercion is gloved by the arts of persuasion. The state extracts coercion from private hands in order that the latter may be compelled to rely on persuasion, and the criterion of the success of state coercion itself is the extent to which the officials have learned to make it unnecessary. Streets can be kept clean by appeal to the pride and public spirit of the citizen in behalf of coöperation with the sweepers. Policemen can govern a city without revolvers and clubs, if once they see that their duties are to make good citizens rather than suppress malefactors. The state is, indeed, becoming more persuasive and less coercive in proportion as the officials recognize their position as

public servants, and as the people become upright and patriotic in character.

The characteristics of a technical and a business problem, whether for city, state, or nation, being thus established, what is the nature of an ethical or political problem?

Society is made up of individuals working each in his special field. Division of labor is the main device for creating wealth. The product is not the work of one man or of one set of men, but of society as a whole. Everything that the individual man uses in his work and in his pleasures, the tools with which he works, the food, clothing, luxuries which he enjoys, even the language with which he thinks, is the joint product of all society past and present. These are all simply the services which his fellow-men everywhere are contributing to his life. Society is mutual service. But the motive which leads each individual to contribute his share to the joint product is mainly the share which he and those whom he loves can get in return. Society is opportunity. Freedom is the command over the services of others. But in acquiring this opportunity and this freedom the lone individual is helpless against the pressure of others. Consequently everywhere we find that those with common interests are compelled to join together to gain the power which united effort secures. If their interest is urgent enough and their demands are not granted, they will resort to compulsion. History is full of the uprisings of sects and classes, of riots and wars, brought about by this struggle to share in larger degree the freedom and opportunities which society vouchsafes. This struggle, however, is not always violent. It may be constitutional. That is, the machinery of government may be so constructed and the suffrage so extended that different sects and classes may get a share of social services by simply getting control of the constituted authorities through well-recognized channels and without resorting to violence. This, we have seen, is the injection of order into coercion. But, in either case, whether violently or orderly, it must be noted, the resort is to compulsion. The power of compulsion, wherever it exists, is the

power to put one's own opinion or desire into effect regardless of the desires and opinions of others. This power is controlled and directed, therefore, not by proof and logic, but by appeals to the sense of justice and expediency. It belongs to the realm of opinion rather than demonstration and understanding. Here we have the essential mark which separates the political from the technical and business problems. In the technical field there is no power of compulsion. One must act according to unchangeable laws governing human nature and physical nature. "We conquer nature by obeying her," that is, by knowledge and skill, not by opinions and prejudice.

In the business field we apparently come nearer to compulsion. Successful business discipline at present depends on the power to appoint, promote, and discharge subordinates. But this power exists only in so far as the laws of property permit and enforce it. Here the business problem depends upon the political forces that regulate property. The business manager is allowed to use compulsion only to the extent that the people through their laws have chosen. His success within this area is based primarily on tact and persuasion.

The political problem of the state occurs at exactly this point. It is concerned with the extent to which compulsion shall be used by private persons, by sects or classes, in promoting their interests. It is not independent of technology and business. In fact, as shown above, it depends on these to further its ends. It cannot override them, but it can use them. It is concerned only with the questions: Who shall get the advantages of social production? For whose benefit shall services be rendered, and who shall bear the burdens? It deals with social classes, whereas the technical problem deals with the material of nature and the business problem deals with individuals.

We saw in the chapter on order that private property and sovereignty together constitute the total of coercion which exists in a given society. We saw in the chapter on right that coercion, originating and developing in the necessities of the struggle for survival, and becoming a matter of ethical choice in proportion as necessity gives way to freedom, is prone, however,

to be used without reference to right even after the era of freedom is reached. At this point, in so far as the state emerges and transfers coercion from private to social control, it does so by the only adequate means, superior coercion. The motive is simply the redistribution of this control among social classes, with the idea that it shall be used rightly instead of wrongly. In so far as coercion is used, whether by private parties or by the state, the end is attained, not by knowledge nor skill nor persuasion. These are successful only as they observe and "obey" the forces of nature and the passions of men. Coercion overrides these passions. It is obedient, therefore, only to the desires of the agent. What he wants he commands and gets. Coercion is, therefore, solely an ethical problem. It is the problem of right and wrong choices. It is settled by opinion, prejudice, and preference, not by knowledge, skill, and tact.

It is for this reason that the ethical or political problem takes precedence of the technical and persuasive problems, both in the management of subordinate institutions, and in the exercise of public coercion. Men are, first of all, creatures of desire. The individual may choose to use his control of his fellows in industry, in the family, in the church, for self-aggrandizement, for political power, for social promotion, for philanthropy, education, or religion. The partisan may aim at class tyranny or the honor and welfare of his country. Having made this primal decision, the execution is a matter of business and persuasion, of technology and tact. So with the state. Its strictly political problems are solely in the realm of ethics. Its constituted social classes attend first of all to the distribution of social privileges and burdens, through the exercise of coercion. As long as these are open questions they pay little attention to the administrative or technical problems of government.

The peculiar political problems which evoke class contests within the state are concerned with beliefs, enjoyments, and incomes. The most inveterate and deep-seated of class preferences is that which is based on religious beliefs. Dissenting sects demand equal privileges with members of the established church in holding property, participation in elections and public

offices, free worship, and exemption from church tithes. When these are granted, when the religious hold weakens, when the majority turns to material pleasures, subordinate classes demand exemption from sumptuary laws of all kinds, and the right to enjoy themselves in their own way and to spend their money as they choose. Beliefs and enjoyments take precedence of all other desires in the hearts of people. They are concerned mainly with the *use* of property. But accompanying these primary political differences, and later intensified with the growing density of population, with the increase in technical improvements, with new kinds of industry, with extremes in wealth, political differences arise concerning the distribution of property. These differences arose, indeed, in connection with beliefs and enjoyments. The secularization of monasteries and guilds was a redistribution of property through superior coercion animated by new ethical motives. But in modern times the property question becomes more distinct. The tariff question turns on the distribution of property between manufacturers and farmers; the currency question, between creditors and debtors; corporation questions, between capitalists and "the public;" factory laws, between the employers and laborers; and so on. All of these questions affect the incomes and the coercive power of the several classes in society.

The foregoing are the main political problems which enter into sovereignty. These must be decided by the state before the people can attend to the business or technical problems. And upon their decision the latter problems must be solved as best they can. Here we find the criterion of the successful solution of the ethical or political problem. The political problem deals with the destination of the benefits of social services. The only immediate criterion of its successful solution is the satisfaction it gives to the desires and ethical opinions of those who have the power. But there is an ultimate, as distinguished from the immediate, criterion. This is the survival or extinction of the society in the struggle for existence with other societies. If the state, in redistributing coercion among its members, has done so, not merely in the narrow spirit of class dominion, but

also in accordance with what may be called those principles of natural or divine right existing in the very make-up of society and the universe, then that society will survive in competition with other societies, as being the best fitted to the plan of the world. The persuasive faculties of its members will evoke from one another such a lively exercise of all the passions and abilities of human nature that in the resulting devotion to family, church, industry, and country, the people will effect the greatest conquest of nature and production of wealth, will promote the purest family life, will plant morality and religion deepest in the individual heart, will inspire the intensest patriotism, and so will construct the equipment for national survival.

The part played by the state in the exercise of coercion must be rightly understood. State coercion is necessary as against private coercion, not because the state can elevate the people to a higher level than that attained by the free exercise of their own persuasive powers, but in order to prevent the lower and selfish elements of society from dragging the several institutions down. The state sets the minimum level below which the struggle for existence shall not be permitted to force an institution. If wife-capture and wife-purchase were customary and recognized, only the strong and wealthy could get wives, and others would be compelled to compete with them on their own ground or else fail to secure the privilege of family and home. The moral level of the community having risen above wife-capture and wife-purchase, those who desire to base their own family life on persuasion are able to do so safely only because through the state they have relegated these earlier approved practices to the category of the crimes of rape and prostitution, to be punished by the state. The moral level of the people, or at least of the dominant social classes, first inaugurates in its own institution the reign of persuasion and then secures the adoption of a minimum somewhat below its own actual attainment, to be imposed upon those who have not yet reached this higher level. These become now the sub-social or anti-social classes, in so far as the state is actually compelled to proceed against them. For the mass of people actual state interference is not needed, because

of their obedience, not only to the state minimum, but also to an even higher standard of right.

Similar principles are true of the church. State coercion does not elevate the people religiously, it only prevents private persons from degrading them. The established or coercive church, having power over all the people, derived not from persuasion, but from coercion, has an advantage over other bodies without being compelled to rise to their moral-persuasive level. When the people have risen to a religious level above that which the coercive church is exhibiting, then, in their own protection, acting through the state, they take this extraneous power from the church and compel it to compete with the others on the same basis of persuasion. It is religion that elevates the people, not the state ; the latter only sets the minimum below which religion shall not be prostituted to private ends.

In the case of political parties coercion is necessary, not to lift people, but to lift the party organization up toward the moral level which the ruling majority of the people had attained. Otherwise those in control of the organization, directing it to their private ends, render it unrepresentative of the moral tone of the people, and the impression is conveyed that the people themselves are corrupt, whereas only the machinery of organization fails of adjustment to the people's moral character.

Again, the state is not as competent to evoke industry as private persons. State coercion here is necessary, not to increase the productive power and inventiveness of the people, for the state is not a pioneer, except where it represents a higher civilization (India), or where it is a despotism, in both of which cases it is rather a private proprietor and acts under the motives of private enterprise. But the state proper, with its partnership and mutual veto of social classes in determining the sovereign will, cannot, from its very nature, evoke the highest industry and inventiveness, that is, the highest stimulation of the industrial susceptibility, love of work. The state only sets a minimum below which individual employers and employés shall not exercise coercion for private ends, and does this after the dominant elements of the people have reached so high an ethical level of

industry and enterprise that those who are on the higher level are being crowded in competition by those on the lower. There may be also a certain class of industries, like the post-office, streets and roads, railways, sewers, water supply, in which the state goes still farther in its sovereign function of redistributing property among the people, and, by means of public monopoly of ownership and operation at cost or free of charges, attempts to place the poorer classes and sections upon an equal basis with wealthier classes and sections in the use of these services. Such industries, too, operating under special franchises from councils and legislatures, are a peculiarly fertile source of corruption, and, in defense of its own autonomy, the state may be compelled to monopolize them in its own hands, even at the loss of the inventiveness and enterprise which private operation would introduce. Here the state is compelled to go beyond its duty as the coercive institution of society, wherein it acts only as the framework of the institutions, and to take up also the technical and business problems of industry. Ordinarily, however, except for these outside interests, the state's control of manufacturing monopolies would extend only to the provisions for partnership rights on behalf of investors, minority stockholders, and employés. This is the extent of its control in the other institutions, and is in harmony with its nature as the coercive institution constituting the framework within which private persuasion operates upon the persuasive motives.

CHAPTER XV.

SUMMARY.

I have designated these papers "A Sociological View of Sovereignty." It remains to justify this title and further to distinguish the sociological from other views. These are, as already stated, the philosophical, the legal, the political. Philosophical views turn upon the ideal, or ultimate purpose, of the state, as the expression of universal reason or of the development of human character. They tend to personify the state, and to abstract the idea from the actual historical institution. The sociological view is concerned not so much with the ultimate

purpose as with the detailed processes of the state's evolution. It is an inductive, comparative study of historical societies with reference to the part played by sovereignty, and its aim is to discover the actual laws governing the emergence of the state. The legal view is the view of the lawyer and the judge whose problem is a practical one. He must decide between two claimants for control in a definite matter of life, property, or other privilege. For this reason the legal view is entirely separated from the scientific purpose of sociology, and, if projected by the legal mind into social theories, it tends to abstract the state from the remainder of society and to set it overhead as something external and mechanical. Political science, which has borrowed its concepts from jurisprudence and has been prosecuted by lawyers, falls also into this fault.

The sociological view, beginning as it does with primitive society, finds that the state, as conceived by the philosopher and the lawyer, does not there exist. It is blended and confused with other institutions. The sociologist must, therefore, look first for the germ which later was differentiated out from society and became the state, and, second, for the stages of growth of this germ and the exact point when it can properly be called the state. He looks not for an ultimate repository of sovereignty which comes into play on occasion, as does the lawyer, but he looks for a constant pervasive psychic influence existing everywhere in society and affecting all social relations. He looks, not for an event, but for a "flow." The object which he seeks is dynamic, evolutionary. If this be so, sovereignty is but a branch, a differentiation, from this primitive sociological psychic influence. We have found this primitive all-pervasive principle to be private property, which originates with man's self-consciousness and is the beginning and basis of all social institutions. Private property is but another name for that coercive relation existing between human beings through which the proprietor commands the services of others. This also is sovereignty, and in mediæval law¹ "the one word *dominion* has to cover both proprietary rights and many kinds of political power; it stands

¹ MAITLAND, *Doomsday Book and Beyond*, p. 344.

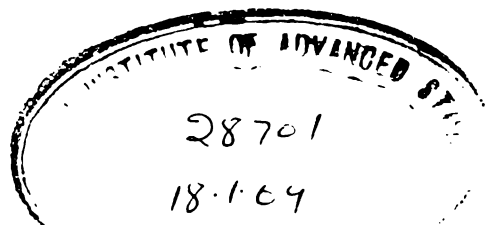
for ownership, lordship, sovereignty, suzerainty." Up to this point, therefore, in European history the state had not yet clearly emerged. Private property is strictly competitive, a necessity of the struggle for life, and has no ethical implication. Neither is it subject to the will of any person outside the proprietor himself. When, therefore, order and right are injected into property, we may say the state has appeared. Sovereignty and private property, then, constitute the two branches of this all-pervasive social relation, coercion, or *dominion*.

But private property, contrary to the legal view, is not the creature of the state, nor is it subject to the state. It is pristine and anterior. It springs from the very nature of man. The state is rather the creature and offspring of private property. It arises quite late in the history of property, with the rise of reflective thinking and the capacity for rational coöperation. The legal view, seeing only the unity and immense power of the modern state, has reversed both the historical and the psychological order. The state is not sovereign, except to the extent that it has actually become so, *i. e.*, except as it has actually extracted coercion from private property, and has, at the same time, acquired for itself the organization for expressing and enforcing its will. The state expresses the coöperative or mutual-veto will of that part of society which is politically organized for this purpose. Private property expresses the individual will of the several private owners, or of the private chief, whether patriarch, pope, suzerain, boss, or industrial monopolist, who is at the head of the particular institution. The sociological view, being strictly inductive, does not impart to the theory of the state that which is potential and ideal, but only that which is actual and historical. At the same time, by recognizing the state as a process and not an entity, it allows for its further growth and extension, and even its ultimate absorption of all private property. Only in the latter event could it be rightly said that the state is absolute and ultimate, as maintained by the legal view.

The sociological view is also more closely connected with biology than are the others. The connection with biology

appears in its use of the concepts "survival" and "organization." Organization, in biology, is the means of economizing the vital forces and increasing the chances of the organism for survival. The same is true of social organization, which economizes the social forces. But there is an important difference. Biological organization is physical and compact, and consists of bony, muscular, and other structure. Social organization is psychic, and consists of those coercive sanctions which subordinate individuals to a single will, notwithstanding their inclinations to satisfy their desires at cross purposes in their own private ways. Organization is not originally the free persuasive grouping of men for mutual satisfaction, but is an alternative forced upon them by increasing population and increasing struggle for existence. Upon the utilitarian explanation, organization would be immoral, for it tends to suppress individuals to the passions of a few. As it is, organization is neither moral nor immoral—simply necessary.

Here the sociological view leads from biology to the philosophical or ethical view. The ethical motive is, indeed, a human and not an animal attribute. But it cannot assert dominion during the period of struggle for survival. This is the period of subterfuge, diplomacy, strategy, brute force, keen intelligence. Only in the lulls of competition, or in the final victory of perfected and centralized organization, is it possible to introduce the ethical purpose. The sociological view of sovereignty, therefore, in distinguishing between that necessity which builds up organizations through survival of the fittest and that freedom which characterizes victorious monopoly, reveals the state as the peculiarly ethical institution, emerging after monopoly and freedom have been reached, and then injecting into each monopolized institution in turn its conception of right; and so the sociological view, in showing the relations between man as a creature of necessity and man as a free agent, furnishes the philosophical or moral view of the state with a firm foundation and a proper knowledge of its limitations.





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